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1. Introduction

In today's business world, individuals use modern and convenient methods to enter into legally binding documents, and in practice that means use of electronic means to

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For a long period, there was a reluctance to sign contracts, deeds or other documents using "wet ink" signatures on documents borne out of uncertainty as to whether signatures in electronic form might render the documents unenforceable. Although English law case precedents provided an indication that the use of electronic signatures was valid, the reluctance has persisted to a significant extent. The Law Society and the Law Commission have sought to dispel much of the uncertainty in this area.

business people and their advisers have been reluctant to sign contracts, deeds or other documents in any way other than using conventional signatures on paper (paper) form. This reluctance was borne out of uncertainty as to whether a document containing signatures in electronic form might be unenforceable. Although English law case precedents provided an indication that the use of electronic signatures was valid, the reluctance has persisted to a significant extent. This issue has been clarified by the Law Commission's guidance, which dispel much of the uncertainty in this area.

Firstly, in 2016 the Law Society published guidance for legal advisers wishing to enter into contracts (and other types of business documents) with one or more other parties using an electronic signature. Secondly, the Law Commission's report on electronic execution of contracts, published in September 2019, observed that for the time being the relevant law is not as clear as it should be – and that is a reason for the continuing degree of reluctance to use electronic signatures. It suggested that the Government might wish to codify the law in this area.

to help business entities and their legal advisers wishing to enter into contracts (and other types of business documents) with one or more other parties intend to execute the contract using an electronic signature. The Law Commission's report on electronic execution of contracts, published in September 2019, observed that for the time being the relevant law is not as clear as it should be – and that is a reason for the continuing degree of reluctance to use electronic signatures. It suggested that the Government might wish to codify the law in this area.

As a result of the Commission's recommendations, the law is now much clearer, so that business people can confidently make use of electronic means of entering into contracts and documents. We may not ever have completely paperless offices but we have been to working in that way, and the Law Commission reports that this will be a boost.

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2. Wet ink signatures on paper

wet ink signatures

The classical means of agreeing terms is for the parties to enter into a contract by each party signing (by hand) two identical documents (one original and one copy) using a "wet ink" signature) and each party would then date and sign one original, the other would then date and sign the other original, and they would then exchange the two originals. Either party would then have evidence both that the parties had made an agreement and the terms of that agreement.

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by signing a hard-copy document in electronic form (e.g. by scanning a document).

the document and signature into electronic form and sending it by email.

However, it has increasingly become common to use scanned copies of wet ink signatures in a range of commercial transactions.

As this technology evolves, not only for the use of “electronic signature” to be used in a range of commercial transactions but also to continue.

3. Exceptions: Land Registry

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As an exception to the following guidance, certain documents require wet ink signatures. An option for electronic signatures exists where all parties have legal representation. For more guidance see <https://www.gov.uk/guidance/when-to-use-wet-ink-signatures> or seek advice from a legal professional, before a document is submitted to the Land Registry.

Documents, in relation to land and property, which the Land Registry do need to contain wet ink signatures. An option for electronic signatures does exist, but only where all parties have legal representation. For more guidance see <https://www.gov.uk/guidance/when-to-use-wet-ink-signatures> or seek advice from a legal professional, before a document that is to be submitted to the Land Registry.

There are also other cases where documents may not be effective including, for example, documents to be executed in certain countries, tax, stamp duty or cross border issues and some documents which require signatures of other authorities (e.g. the UK Ship Registry) but these and other exceptions are outside the scope of this note.

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4. Terminology.

Please see the Glossary below as to the meaning of “signature”, “writing”, “electronic signature” and “signed”.

Please see the Glossary below as to the meaning of the following terms used in this note: “signature”, “writing”, “electronic signature” and “signed”.

5. Effect of an electronic signature

By virtue of the Electronic Communications Act 2000, electronic signatures are admissible in evidence in any legal proceeding, whether they are valid in law. In England and Wales, the law is English law.

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The principle that an electronic signature is as good as a wet ink signature is based on English case law (and is in effect affirmed by the “electronic signature regulations”) which became part of English law in 2016, and which will continue to apply.

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6. Contracts: where valid and enforceable

Contracts: what must be in writing or signed)

An oral contract, by its nature, is not enforceable. Under English law, a contract is enforceable if the parties to the contract intend to be legally bound.

In any sense “signed”: some types of contract may be enforceable although only oral, in which case all parties to the contract must intend to be legally bound.

Although a proposed contract may be enforceable in oral form, the parties might nevertheless choose to enter into a contract in writing. In this case, they can validly set down the terms of the contract in writing and sign the contract by means of electronic signatures. Their use of electronic signatures simply demonstrates their intention to be bound.

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7. Contracts: what if a document is not in writing and/or signed for it to be enforceable

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comply with other formalities (e.g. requirements) if they are to be valid.

Examples of such contracts are: a contract for the sale or other disposition of an interest in land, a statutory assignment under the Law of Property Act 1925, a contract of copyright, or an instrument of transfer.

Case law establishes that a document is in "writing" and that an agreement, even if made orally, can be in electronic form and exchanged by email. It need not be on paper or signed in ink. It can validly form a contract by exchange of emails between solicitors amounting to a contract. An exchange of emails can also amount to a contract.

Note that since a contract can be formed in an informal way, it is all too easy to inadvertently enter into a binding contract at that time. This might be because you have not set out all of the terms in writing, or you use a more formal document (e.g. exchanges of emails) to be the best evidence of the agreement. The use of the header in all emails - whether sent by solicitors - can prevent an exchange of emails from being such as "subject to contract" might be sufficient in the particular circumstances to prevent a binding contract inadvertently arising.

8. Deeds

A contract which is not in the form of a deed is not a deed. See paragraphs "6" and "7" above.

A contract or other document intended to be a deed must be:

- in writing. It is generally assumed that a document represented on a screen can be a deed.
- Executed by an individual or a company. If executed by a director in the company's name, it must be executed by the company secretary.

Some types of document must be in the form of a deed even though it is not legally necessary to do so. In such cases, the above formalities must be observed. The document must state that it is intended to be a deed and that it is executed as such.

The Law Commission confirmed that if a document is signed and witnessed, they will be treated as a deed. The signature of the person executing the document must be in electronic form. (See "Witnessing of documents")

The Commission has recommended that the formalities for deeds generally. This would be with regard to signing, witnessing or any of the other formalities.

and sometimes must meet other formalities.

For example, a contract for the sale or other disposition of an equitable interest, a contract for a promissory note, an assignment of a lease, or a contract for the assignment of a franchise.

A document containing visible words is still a document. It must still be a "signature" (see the Glossary). For a document to be valid, it must be in writing, whether in electronic or electronic signature form. They do not need to be in electronic form. A typical example, it is possible to form a contract by court case found that a chain of emails between solicitors amounting to a contract for a property transaction. A contract for other types of transaction.

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It must be intended and executed as explained in paragraphs "6" and "7" above.

A contract or other document intended to be in the form of a deed to be a deed must be:

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- Executed by an individual or a company. If executed by a director in the company's name, it must be executed by the company secretary, two directors or by a director and the company secretary.

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9. Execution of documents

The ways in which an individual, or other person with authority, that the signature of the party to the deed is witnessed, the signature of the party to the deed is witnessed. See also under paragraph 8 above.

Similarly where an LLP is to execute a deed or contract generally, the ways in which an individual, or other person with authority, that the signature of the party to the deed is witnessed, the signature of the party to the deed is witnessed. See also under paragraph 8 above.

10. Witnessing of documents

A witness to an electronic signature is someone who is physically present when the electronic signature is applied. The witness must be present (physically or otherwise) when the party to the deed is signing the deed.

It was thought that if a witness were to witness a party's signature on a deed - by other means - that would be valid. However, the court's view is stricter and its view is that for a witness' signature to be valid, the witness must be present when the party to the deed is signing the deed.

11. Miscellaneous

- What if the validity of a deed or contract is challenged in court? The court will consider the evidence given to the court and will apply the same principles as it would apply if the deed or contract were challenged: the court will not invalidate a deed or contract solely because it is in electronic form.
- There is no legal need for a deed or contract to be executed as a wet-ink version in addition to an electronic version. However, it is sometimes useful to have a wet ink version of a deed or contract relating to the signatory's consent to the document.
- If electronic signatures are used, there is no need to include in it any specific reference to the fact that electronic signatures may be or are being used.

12. Related Guidance Note

Our Guidance Note: Formalities for Signing Documents provides general guidance on the various means by which a deed or contract may be executed or signed in order to ensure that they are legally binding. It can be found either in our Business folder [here](#) or in our Business folder [here](#).

We recommend that you read that Guidance Note: Formalities for Signing Documents as it explains the various requirements relating to execution of documents and whether the signature is "wet" or "electronic".

Execution of documents by a company or LLP

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“Signature”

Something is a “signature” in English law in order to give, and with the intention of being bound by it. A signature may be a handwritten mark, a stamp or even a description of the signatory on a website. It need not be tangible, and it may therefore be in electronic form.

“Writing”

Under English law (by virtue of the Electronic Communications Act 2000), 'writing' includes 'typing, printing, lithography, photography and other processes' or reproducing words in a visible form'. In short, words in any visible form, whether in ink, or in print, in hard copy or otherwise.

This means that a contract represented by a document (e.g. a desktop, laptop, tablet or smartphone screen) such that it can be reproduced in a visible form need not be a single document: an exchange of emails amounting to an agreement would be an agreement 'in writing' for the purposes of the Act. A valid guarantee could come into existence in this way, although it could be a single document.

“Electronic signature”

This can take one of several forms:

- type their name into a contract block;
- paste a scan (i.e. an image of a handwritten signature) into a signature block;
- use a web-based e-signature tool to have their name in a typed or handwriting font inserted into a signature block; or
- use a finger or e-pen to sign a document.

“Electronic signature” means “data in electronic form which is attached to or logically associated with other data in electronic form and which is used by the signatory to sign”. This will usually be a signature in electronic form.

Any method may be used to insert a signature into the document. It may be in any form (e.g. scanned image of a handwritten signature, typed name in a generic handwriting font, etc.).

“Under hand”

To be valid, some documents may need to be executed “under hand”. This means they have not been executed otherwise than by a signature, and the use of an electronic signature to execute a document means that it has nevertheless been executed “under hand”.

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which is attached to or inserted in a document and which is used by the signatory to sign”. It might be initials, a mark or a description of the person. It might be a click on a website or a hard copy or otherwise tangible: it need not be in hard copy or otherwise tangible: it may therefore be in electronic form.

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To be valid, some documents may need to be executed “under hand”. This means they have not been executed otherwise than by a signature, and the use of an electronic signature to execute a document means that it has nevertheless been executed “under hand”.