

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

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 a document in electronic form might render the document unenforceable. Although English law case precedents provided an indication that the use of electronic signatures was valid, this reluctance has persisted to a degree. The Law Society and the Law Commission have sought to dispel much of the uncertainty in this area.

Firstly, in 2016 the Law Society published guidance for legal advisers wishing to enter into documents (including deeds) with one or more other parties using an electronic signature. Secondly, the Law Commission's report on electronic execution of documents in September 2019 published its findings. The Commission 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. The Commission might wish to codify the law in this area.

As a result of the Commission's findings, the law is now much clearer, so that business people can confidently make use of electronic means of entering into contracts and deeds. We may not ever have completely paperless offices, but the use of electronic signatures has been a substantial boost.

Due to the coronavirus disease (COVID-19) pandemic, there has been a substantial increase in the use of electronic signatures. As a result, the Law Society issued a practice note on virtual execution and e-signatures. The Land Registry has also introduced changes to its procedures for the use of electronic signatures. These changes can be found in its updated guidance on virtual execution and e-signatures [here](#).

The following explains various practical aspects of entering into documents electronically, taking account of the Law Commission's guidance and legal principles which are not within the following guidance. Where this guidance does not cover a particular type of document or transaction, you should seek legal advice before creating or executing documents in electronic form.

Inevitably, there will be various practical aspects of entering into documents electronically, taking account of the Law Commission's guidance and legal principles which are not within the following guidance. Where this guidance does not cover a particular type of document or transaction, you should seek legal advice before creating or executing documents in electronic form.

2. Wet ink signatures on paper documents

The classical means of agreeing to a contract is for the terms to be set out in two identical documents, one for each party to sign (by hand, using a "wet ink" signature) and the other to be kept as an original, and each party would then sign one original, the other would be destroyed.

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business people and their advisers may other than using conventional (paper) form. This reluctance was borne out of uncertainty as to whether a document containing signatures in electronic form might render the document unenforceable. Although English law case precedents provided an indication that the use of electronic signatures was valid, this reluctance has persisted to a degree. The Law Society and the Law Commission have sought to dispel much of the uncertainty 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 in September 2019 published its findings. The Commission 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. The Commission might wish to codify the law in this area.

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Wet ink signatures

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exchange the two originals. Either party could have had made an agreement and the other party could have

A fairly common practice also grew out of the pandemic – whereby the parties to a transaction were unable to sign paper documents and instead signed by signing a hard-copy document and then converting it into electronic form (e.g., by scanning).

However, it has increasingly become a practice to use scanned copies of wet ink signatures. This has been in a range of commercial transactions and has escalated as a result of the coronavirus pandemic.

3. Exceptions: Land Registry

As an exception to the following guidance, in relation to property, certain documents require wet ink signatures. An option for a deed exists, but only where all parties have legal representation. HM Land Registry has announced that it will accept a deed for registration that has been executed electronically. This is set out in their practice guide. In the majority of cases, a conveyancer in order for HM Land Registry to check the Land Registry. <https://www.gov.uk/government/publications/land-registry-guidance> professional, before drafting and executing a deed to the Land Registry.

There are also other cases where a deed may not be effective including, for example, documents to be executed by a company, some documents which are subject to other authorities (e.g., the UK Ship Registry) but these and other exceptions are outside the scope of this note.

This guidance also does not cover consumer documents.

4. Terminology.

Please see the Glossary below for definitions of the following terms used in this note: “signature”, “writing”, “electronic signature”.

5. Effect of an electronic signature

By virtue of the Electronic Communications Act 2000, electronic signatures are admissible in any legal proceeding to address the separate issue as to whether they are valid in law. In England and Wales, the law must consider other sources of evidence in any legal proceeding.

The principle that an electronic signature is valid in the same way as if it were a handwritten signature and is in effect affirmed by the “Electronic Communications Regulations” which became part of English law in 2016, and which will continue to apply.

Both English case law and eIDAS (Regulation (EU) 910/2014) require that in order to render a party bound by the signature (i.e., the signature is satisfied) it has the same legal status as a handwritten signature.

6. Contracts: where valid and enforceable

with evidence both that the parties intended to create a legal relationship.

used now as technology develops. It is possible to sign physically at a meeting and so not need to sign via email, typically the original - to sign via email, typically the document and signature into electronic form (e.g., by scanning) and sending it by email.

As technology evolves, not only for the purpose of “electronic signature” to be used but also for the purpose of “writing” to be used. This trend has also been accelerated by the coronavirus pandemic.

7. Deeds: where valid and enforceable

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10. Contracts: where valid and enforceable

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An oral contract, by its nature, is not in any sense “signed”: some types of contract may under English law be made although only oral, in which case all that is needed is for the parties to agree to be legally bound.

Although a proposed contract may be made in oral form, the parties might nevertheless choose to enter into a written contract. In this case, they can validly set down the terms of the contract in writing. They can then sign the contract by means of electronic signatures. Their use of electronic signatures simply then their chosen means of demonstrating that they intend to be bound.

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

Certain (but not all) types of contract are binding and effective if made in writing and signed. Various statutes set out the requirements of contracts to comply with other formalities (e.g. to be in writing and sometimes must meet other 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 promissory note, an assignment of a right, or an instrument of transfer of a right.

Case law establishes that a document in “writing” and that an electronic document (see below). Therefore, the above examples of contracts that, to be valid, must be in writing, may be in electronic form and do not need to be on paper or signed. They can be formed by exchange of emails between solicitors and a client. An exchange of emails can form a contract by exchange of emails between solicitors and a client. An exchange of emails can form a contract by exchange of emails between solicitors and a client.

Note that since a contract can be made in an informal way, it is all too easy to inadvertently enter into a binding contract. This might be because you intend not to do so in that way or you have not set out all of the terms in the document. This might be because you intend to use a more formal document (which does not contain the subject matter of the exchanges of emails) to be the binding contract. Appropriate wording as a header in the emails - whether the emails are sent to themselves or their solicitors - can prevent an exchange of emails from forming a contract. Wording such as “subject to contract” might be used for this purpose. In the particular circumstances this or any other contract might be prevented from arising.

8. Deeds

A contract which is not in the form of a deed is not a deed. Paragraphs “6” and “7” above.

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

- in writing. It is generally a deed if it is in writing and signed by the party making it.
- Executed by an individual or by a company. If by an individual it must be signed by the individual or by a director in the presence of two witnesses or by a director and the company secretary.

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Some types of documents must be in the form of a deed even though it is not legally necessary to do so for the parties to a document choose to execute a deed. In such a case, to be a valid deed, the above formalities must be observed, and the document must be intended to be a deed and that it is executed as such, and the document must be set out in writing and signed and witnessed, they will be valid if the signature of the person executing the deed is in electronic form. (See "Witnessing of documents")

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

The Commission has recommended that deeds generally. This would be with regard to the means of signing, witnessing or any of the other formalities. At the time of writing, a working group has been set up to consider the use of electronic signatures and other means of legally executing documents.

9. Execution of documents

The ways in which an individual, company or LLP can execute a deed or contract generally are set out in our Guidance Note on Signing Deeds and Contracts (see paragraph 12 below).

As to companies, where the document is signed by a director(s) or secretary or by some other person with authority, that signature must be in electronic form. If that signature is in electronic form. See also under paragraph 8 above.

Similarly, where an LLP is to execute a deed or contract generally, the signature of the person executing the deed or contract must be in electronic form. See also under paragraph 8 above.

10. Witnessing of documents

A witness to an electronic signature must be physically present when the party to the document applies the electronic signature. The witness must be physically present when the party to the document applies the electronic signature. The witness must be physically present when the party to the document applies the electronic signature.

It was thought that if a witness were to observe the party's signature on a deed - by either physical or electronic means - that would be valid. However, the Law Society's view is stricter, and its view is that physical presence is needed. This is still the case during the coronavirus (Covid-19) pandemic. Whilst the Law Society has confirmed by the Law Society that it is possible to witness signatures during the coronavirus pandemic, guidance from the Law Society is that witnesses must be present when the document is signed, whether open or closed, at a distance, provided the witness is physically present and able to see the document.

11. Miscellaneous

- What if the validity of a document signed electronically is challenged in court? The Law Society's view is that it is likely that the electronic signature of the document will be accepted by the court as authentic unless there is evidence to the contrary. If a court would apply the same principles as it would a document whose authenticity were challenged: the court would not reject the signature solely because it is in electronic form.

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- There is no legal need for a wet-ink version in addition to an electronic version. However, it is sometimes useful to have a wet ink version (for reasons beyond the scope of this note) to ensure the integrity and security of the information in the document.
- If electronic signatures are used, there is no need to include in it any specific reference to the fact that they may be or are being used.

12. **Related Guidance Note**

Our Guidance Note: Formalities for Signing Documents covers the various means by which documents may be executed in order to ensure that they are legally binding. It can be found either in our Property folder [here](#) or in our Business folder [here](#).

We recommend that you read the Guidance Note: Formalities for Signing Documents in conjunction with this note. The Guidance Note covers the various requirements relating to execution of documents, whether the signature is “wet ink” or electronic.

“Signature”

Something is a “signature” in English law if it is intended to be used 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 person. It need not be tangible, and may therefore be in electronic form.

“Writing”

Under English law (by virtue of the definition of ‘writing’ in the Law of Property Act 1925), ‘writing’ includes ‘typing, printing, lithography, photography and other modes of reproducing words in a visible form’. In short, words in any visible form, whether in ink, or in print, in hard copy or otherwise, are ‘writing’.

This means that a contract can be made by a person using a smartphone screen) such that it can be made on a single document: an electronic document would be an agreement ‘in writing’ if it is made in this way, although it does not need to be in writing.

“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 service which inserts a handwriting font into a contract block;
- use a finger or e-pen to sign a contract block.

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- use a finger or e-pen to sign a contract block.

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

Any method may be used to insert a signature into the document. It may be in the form of a scanned image of a signature, a generic handwriting font, typed text, etc.).

“Under hand”

To be valid, some documents may require a signature “under hand”. This means they have not been executed otherwise than by hand, i.e. they are not in hard copy or otherwise tangible, so use of an electronic signature is not permitted. However, if a document has nevertheless been executed by hand, it is still valid.

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