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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. This reluctance was borne out of uncertainty as to whether signatures in electronic form might render the documents void and unenforceable. Although English law case precedents provided an indication of the validity of electronic signatures, this reluctance has persisted to a significant extent. The Law Society and the Law Commission have addressed this area.

business people and their advisers have been reluctant to sign documents in any way other than using conventional signatures on (paper) form. This reluctance was borne out of uncertainty as to whether a document containing signatures in electronic form would be void and unenforceable. Although English law case precedents provided an indication of the validity of electronic signatures, this reluctance has persisted to a significant extent. The Law Society and the Law Commission have addressed 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 in September 2019 published guidance. 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 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. Secondly, the Law Commission's report on electronic execution of contracts in September 2019 published guidance. 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 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 report, the law is now much clearer, so that business people and their advisers can confidently make use of electronic means of entering into contracts and other documents. We may not ever have completely paperless offices, but the use of electronic signatures has certainly boosted the way, and the Law Commission report has also encouraged the use of electronic signatures.

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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 practical guidance on virtual execution and e-signatures during the pandemic (which can be found in its updated guidance on electronic signatures and documents [here](#)).

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The following explains various practical aspects of entering into contracts electronically, taking account of the Law Commission's opinion on the subject.

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**2. Wet ink signatures on paper**

**wet ink signatures**

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

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exchange the two originals. Either had made an agreement and the t

with evidence both that the parties

A fairly common practicealso gre further—whereby the parties to a able to sign paper documents and by signing a hard-copy document electronic form (e.g., by scanning

used now as technology develops physically at a meeting and so not original - to sign via email, typically the document and signature into ending it by email.

However, it has increasingly beco scanned copies of wet ink signatu in a range of commercial transact escalated as a result of the corona

s technology evolves, not only for of “electronic signature”to be used ily to continue.This trend has also pandemic.

**3. Exceptions: Land Regist**

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As an exception to the following g property, certain documents requ wet ink signatures. An option fo where all parties have legal repres Registry has announced that it w has been executed electronically their practice guide. In the majori a conveyancer in order for HM Lan check the Land R <https://www.gov.uk/government/p> professional, before drafting and e Registry.

documents, in relation to land and Land Registry doneed to contain documents does exist, but only the Covid-19 pandemic, HM Land accept a deed for registration that r specific requirements set out in the deed must be represented by ail signatures. You are advised to (now updated) at [deeds](#), or seek advice from a legal that is to be submitted to the Land

There are also other cases whe example, documents to be execu issues and some documents whic Registry) but these and other exce

ay not be effective including, for e tax, stamp duty or cross border ther authorities (e.g., the UK Ship cope of this note.

This guidance also does not cover

consumer documents.

**4. Terminology.**

Please see the Glossary below note:“signature”, “writing”, “electro

the following terms used in this r hand”.

**5. Effect of an electronic si**

By virtue of theElectronic Commu evidence in any legal proceeding whether they are valid in law. In English law.

onic signatures are admissible in address the separate issue as to e must consider other sources of

The principle that an electronic sig document in the same way as if i and is in effect affirmed by the “e English law in 2016, and which wi

of being used to validly execute a ure is based on English case law (Regulations)which became part of

Both English case law and eIDAS to render a party bound by the satisfied) it has the same legal sta

urpose of an electronic signature is execution formalities have been e.

**6. Contracts: where valid at**

**not in writing or signed)**

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An oral contract, by its nature, is not a contract under English law. The only way that is needed is for the parties to

in any sense "signed": some types of contract, although only oral, in which case all parties are to be legally bound.

Although a proposed contract may not be a contract, the parties might nevertheless choose to enter into a 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.

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

**a type that must be in writing**

Certain (but not all) types of contract are binding and effective if made in writing and signed. Various statutes require contracts to be in writing and signed and sometimes must meet other requirements (e.g. witnesses) if they are to be valid.

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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 of a share in a company.

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Case law establishes that a document is in "writing" and that an electronic document can be in electronic form and executed by electronic signature. They do not need to be on paper or signed in "wet ink". A contract by exchange of emails. A contract between solicitors amounted to a legally binding contract. An exchange of emails can also amount to a binding contract.

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Note that since a contract can be made 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 agreed on all terms or have not set out all of the terms in the document. It might be because you intend to use a more formal document (which does not yet exist) to be the binding contract. An exchange of emails - whether the emails are signed or not - can prevent an exchange of emails amounting to a binding contract. Wording such as "subject to contract" might be used for this purpose. In some circumstances this or any other wording might inadvertently arising.

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8. **Deeds**

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- in writing. It is generally a deed if it is in writing and executed as explained in paragraphs "6" and "7" above.
- executed by an individual if it is in writing and executed by a director in writing and signed by the director and the company seal.

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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 (beyond the scope of this note) for evidentiary, and security of the information in the document.

a document to be executed as a wet-ink version. However, it is sometimes useful to have a wet ink version (beyond the scope of this note) for evidentiary, and security of the information in the document.

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- 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.

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**12. Related Guidance Note**

Our Guidance Note: Formalities for Signing Documents provides general guidance on the various means by which documents may be executed or signed 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](#).

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We recommend that you read the Guidance Note: Formalities for Signing Documents to execution of documents, whether in hard copy or electronic form and whether the signature is “wet ink” or electronic.

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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 name, a stamp, or even a description of the person. It need not be tangible, and may therefore be in electronic form.

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 name, a stamp, or even a description of the person. It might be a click on a website. It need not be tangible, and may therefore be in electronic form.

**“Writing”**

Under English law (by virtue of the Statute of Frauds), ‘writing’ includes ‘typing, printing, lithography, photography and other processes’. In short, words in any visible form, whether in ink, or in print, in hard copy or otherwise.

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This means that a contract represented by a smartphone screen) such that it could be a single document: an exchange of emails amounting to an agreement ‘in writing’ would be a valid guarantee could come into existence in this way, although it could not be a single document.

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**“Electronic signature”**

This can take one of several forms:

- type their name into a contract containing the contract terms
- paste a scan (i.e., an image of a handwritten signature) into a soft copy contract in the signature block
- use a web-based e-signature to have their name in a typed or handwriting font inserted into their signature block; or

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- use a finger or e-pen to

let in the contract.

“Electronic signature” means “data associated with other data in electronic form. This will usually be signature in or

which is attached to or logically associated with other data in electronic form used by the signatory to sign”.

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

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**“Under hand”**

To be valid, some documents may not be executed otherwise than by hand. If a document is not tangible, so use of an electronic signature means that it has nevertheless been executed

“under hand”. This means they have not been in hard copy or otherwise executed. If a document is not tangible, so use of an electronic signature means that it has nevertheless been executed

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