# Guidance Note: Elect

#### **Deeds and Contracts**

#### 1. <u>Introduction</u>

In today's business world, individ methods to enter into legally bind means useof electronic means to

For a long period, there was a rel to sign contracts, deeds, or othe "wet ink" signatures on documents borne out of uncertainty as to who in electronic form might render to law case precedents provided an thereluctance has persisted to a Society and the Law Commission this area.

Firstly, in 2016 the Law Society p legal advisers wishing to enter i documents) with one or more oth using an electronic signature. Sec its report on electronic execution being the relevant law is not as continuing degree of reluctance Government might wish to codify t

As a result of the Commission's clearer, so that business people means of entering into contrac completely paperless offices, but way, and the Law Commission reg

Due to the coronavirus disease (0 in the use of electronic signatures the Law Society issued a practic during the pandemic (which can temporary changes to its proceduran be found in its updated guidar

The following explains various praelectronically, taking account of th opinion on the subject.

Inevitably, there will be various guidance. Where this guidance do be validly produced in electronic for advice before creating or executing

#### 2. Wet ink signatures on pa

The classical means of agreeing terms be set out in two identical using a"wet ink" signature) and originals, and each party would ke sign one original, the other woul

nt to use modern and convenient or documents, and in practice that

usiness people and their advisers ay other than using conventional (paper) form. This reluctance was c document containing signatures a unenforceable. Although English valid use of electronic signatures, sue hasbeen clarifiedby the Law dispelmuch of the uncertainty in

to help business entities and their act (and other types of business ies intend to execute the contract sion in September 2019 published mission observed that for the time e – and that is a reason for the matures. It suggested that the it clearer and more accessible.

onclusionsthe topic is now much onfidently make use of electronic uments. We may not ever have have ever been to working in that boost.

e has been a substantial increase d to work from home. As a result, irtual execution and e-signatures and Registry has also introduced onic signatures. These changes and documents here.

, executingand using documents Commission'sguidance and legal

ich are <u>not</u> within the following a particular type of document can onic means, you should seek legal onic form.

#### wet ink signatures

l entering into a contract is for the for each party to sign (by hand, e two documents would both be les, each party would instead only I, and they would then date and

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

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

However, it has increasingly become scanned copies of wet ink signature in a range of commercial transaction escalated as a result of the coronal

#### 3. Exceptions: Land Regist

As an exception to the following groperty, certain documents requive wet ink signatures. An option for where all parties have legal represed registry has announced that it was been executed electronically their practice guide. In the majorial a conveyancer in order for HM Larcheck the Land Fattps://www.gov.uk/government/puprofessional, before drafting and exegistry.

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

This guidance also does not cover

#### 4. Terminology.

Please see the Glossary below note: "signature", "writing", "electro

#### 5. Effect of an electronic sign

By virtue of the Electronic Communication evidence in any legal proceeding whether they are valid in law. In English law.

The principle that an electronic signocument in the same way as if if and is in effect affirmed by the "e English law in 2016, and which will

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

#### 6. Contracts: where valid al

vith evidence both that the parties

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

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

documents, in relation to land and Land Registry doneed to contain documents does exist, but only the Covid-19 pandemic, HM Land ccept 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 leeds, or seek advice from a legal that is to be submitted to the Land

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

consumer documents.

the following terms used in this r hand".

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

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

pose of an electronic signature is execution formalities have been

<u>ot in writing or signed)</u>

An oral contract, by its nature, is r of contract may under English law that is needed is for the parties to

Although a proposed contract manevertheless choose to enter into down the terms of the contract in electronic signatures. Their use of demonstrating that they intend to be

### 7. <u>Contracts: what if a do</u> and/or signed for it to be

Certain (but not all) types of conwriting and signed. Various statu tocomply with other formalities (erequirements) if they are to be valid

Examples of such contracts are: sale or other disposition of an i statutory assignment under the La of copyright, or an instrument of tr

Case law establishes that a doc document in "writing" and that an below). Therefore, the above exambe in electronic form and executed be on paper or signed in "wet ink" contract by exchange of emails. A solicitors amounted to a legally bemails can also amount to a binding.

Note that since a contract can be inadvertently enter into a binding of at that time. This might be because not set out all of the terms in the ea a more formal document (which doemails) to be the binding contract emails - whether the emails are prevent an exchange of emails are contract" might be used for this circumstances this or any other inadvertently arising.

#### 8. Deeds

A contract which is <u>not</u> in the forr paragraphs "6" and "7" above.

Acontract or other document intervalid must be:

- in writing. It is generally a valid as a deed.
- executed by an individual in executed by a director in director and the company s

n any sense "signed": some types though only oral,in which case all is to be legally bound.

lid in oral form, the parties might t. In this case, they can validly set ien signthe contract by means of simply then their chosen means of

#### a type that must be in writing

binding and effective if made in of contractsto be in writing and and sometimes must meet other

andum or note, a contract for the sition of an equitable interest, a a promissory note, an assignment rities.

containing visible words is still a ill a "signature" (see the Glossary to be valid, must be in writing, may nic signature. They do not need to apple, it is possible to validly form a d that a chain of emails between perty transaction. An exchange of s of transaction.

informal way, it is all too easy to intend not to do so in that way or ed agreement on all terms or have ight be because you intend to use subject matter of the exchanges of priate wording as a header in all emselvesor their solicitors - can tract. Wording such as "subject to ensure whether in the particular te to prevent a binding contract

ted and executed as explained in

to be in the form of a deed to be

represented on a screen can be

ess, or if by a company it must be less or by two directors or by a

Some types of documents must be the parties to a document choose is not legally necessary to do so formalities must be observed, and and that it is executed as such, and The Law Commission confirmed is signed and witnessed, they will be signature of the person executing form. (See "Witnessing of docume The Commission has recommend deeds generally. This would be wor signing, witnessing or any of the

## other means of legally executing of9. Execution of documents

working group has been set up to

The ways in which an individual, are set out in our Guidance N paragraph 12 below).

As to companies, where the docu other person with authority, that witnessed, the signature of the paragraph 8 above.

Similarly, where an LLP is to exec

#### 10. Witnessing of documents

A witness to an electronic signat electronic signature is applied. T otherwise) when the party to the d

It was thought that if a witness we party's signature on a deed - by although not best practice. However that for a witness' signature to be the case during the coronavirus (Coin its practice note on the use of (Covid-19) pandemic. Whilst Covrestrictions and/or social distancir has said that it is possible to witnessed whether open or closed), at a distiphysically present and able to see

#### 11. <u>Miscellaneous</u>

 What if the validity of a challenged in court? The L signature of the documer evidence is given to the principles as it would a challenged: the court woul electronic form. n order to be valid but sometimes the form of a deed even though it ase, to be a valid deed, the above te that it is intended to be a deed

eds mustbe set out in writing and ed in, electronic form, and so the lat signature may be in electronic

should be a review of the law of confined to looking at the means formalities. At the time of writing, a use of electronic signatures and

#### a company or LLP

ecute a deed or contractgenerally ning Deeds and Contracts (see

irector(s) or secretary or by some ectronic form. If that signature is electronic form. See also under

it if physically present when the their own signature (electronic or ctronic signature.

but was, for example observing a nilar means - that would be valid n's view is stricter, and its view is al presence is needed. This is still was confirmed by the Law Society signatures during the coronavirus for witnesses to be present when e, guidance from the Law Society a window (car or house window, plic space, provided the witness is ocument.

s that it is likely that the electronic by the court as authentic unless s, a court would apply the same nature whose authenticity were be signature solely because it is in





- There is no legal need for wet-ink version in addition useful to have a wet ink version to the signatory's in the document.
- If electronic signatures are specific reference to the fa

#### 12. Related Guidance Note

Our Guidance Note: Formalities guidance on the various means by order to ensure that they are legal guidance. It can be found either in our Property folder here.

We recommend that you read the Note: Formalities for Signing Deed to execution of documents, when whether the signature is "wet ink"

#### "Signature"

Something isa "signature"in Englis in order to give, and with the interbound by it. A signature may be stamp, or even a description of the website. It need not be tangible, may therefore be in electronic form

#### "Writing"

Under English law (by virtue of the lithography, photography and other form'. In short, words in any visib ink, or in print, in hard copy or other copy.

This means that a contract representation smartphone screen) such that it cannot be a single document: an exception would be an agreement in writing existence in this way, although it of

#### "Electronic signature"

This can take one of several forms

- type their name into a co
- pastea scan (i.e., an ir signature block
- use a web-based e-sign handwriting font inserted

a document to be executed as a version. However, it is sometimes as beyond the scope of this note) by, and security of the information

ere is no need to include in it any res may be or are being used.

Contractscovers provides general actsmay be executed or signed in the serves as a supplement to that recorn our Business folder hereor

ction with this note. TheGuidance the various requirements relating ard copy or electronic form and

ched to or inserted in a document ity to it, i.e., the intention of being me; it might be initials, a mark or ne person. It might be a click on a lard copy or otherwise tangible: it

 , 'writing' includes'typing, printing, or reproducing words in a visible words need not be handwritten in

e.g.,a desktop, laptop, tablet, or be 'in writing' at that point. It need mails amounting to an agreement valid guarantee could come into item.

a proposed document might: ontaining the contract terms

to have their name in a typed or to their signature block; or

into a soft copy contract in the

5

use a finger or e-pen to

"Electronic signature" means "da associated with other data in ele This will usually be signature in or

Any method may be used to inse any form (e.g., scanned image o font, etc.).

#### "Under hand"

To be valid, some documents may been executed otherwise than been been executed otherwise than been been executed otherwise than been executed otherwise. tangible, so use of an electronic si it has nevertheless been executed let in the contract.

which is attached to or logically s used by the signatory to sign".

e into the document. It may be in a generic handwriting font, typed

nder hand". This meansthey have t be in hard copy or otherwise enticate the document means that