



Covid-19: FAQs on electronic signatures and e-signing

What is an electronic signature?

An electronic signature is data in electronic form which is attached to or logically associated with other data in electronic form, and which is used by a signatory to sign.

An electronic signature can take many forms, for example, a signatory can scan a handwritten signature that is then incorporated into a soft copy document. Alternatively, the signatory can type his or her name or initials at the foot of an electronic document, for example an email or in a signature block in an electronic contract. Other familiar forms of electronic signature include the clicking of “I agree” or equivalent buttons on a webpage or e-signing platform (e.g. DocuSign), or using a trackpad or stylus to indicate acceptance on a touchscreen interface.

Does an electronic signature satisfy a statutory requirement for a contract to be signed under English law?

Yes. Where contractual documentation is required by a statutory provision to be in writing and signed, a soft copy contract executed using an electronic signature will satisfy this requirement.

The Law Society concluded in its 2016 Practice Note that an electronic contract or deed executed with an electronic signature is capable of satisfying a statutory requirement to be in writing and signed. This was reinforced in the Law Society’s 2019 Report, which indicated that electronic signatures are capable of being used to validly execute a contract (including deeds), subject to the requirement of the executing party needing to have intended to authenticate the document, as well as satisfaction of any specific formalities relating to the document in question.

Are there any statutory formalities which may prevent the use of an electronic signature?

In some circumstances particular statutory formalities will preclude the use of an electronic signature. One example relates to registrable dispositions of land: HM Land Registry will not accept an electronic document with an electronic signature as a depository deed for registration unless it satisfies the Land Registration Act 2002 and rules 54A-D of the Land Registration Rules 2003. While the legislative framework for registering dispositions

electronically already exists, this is currently restricted to electronic mortgage deeds using the Land Registry's digital mortgage service. It is anticipated that the Land Registry intends to operate other digital services for registrable dispositions in the future. This, however, is only one example. The key takeaway is that when parties are contemplating the use of electronic signatures for documents governed by specific legislation, they should obtain specialist legal advice as to whether particular formalities need to be satisfied.

Can an electronic signature be used to sign a deed?

As indicated above, the answer to this is 'yes'. An electronic signature will be as effective for the purposes of executing a deed as it is for a simple contract. Note that the same formalities apply in the circumstances as for a 'wet ink' signature executed by hand. A person may witness another individual's signature by witnessing that signatory inserting his or her electronic signature into the relevant signature block.

If one person uses an electronic signature, do all parties have to use the same method and sign electronically?

No. Subject to any specific provision on this point in the body of the given contract, the Law Society's 2016 Practice Note confirms that where one or more parties elect to use an electronic signature, other parties may use a 'wet ink' signature if they wish.

If parties to a contract decide to execute remotely, is a counterparts clause required in the contract?

No. Though such clauses are frequently inserted among other boilerplate provisions, any contract governed by English law can be executed in counterpart, regardless of whether a counterparts clause is inserted into the document.

Is an electronic signature admissible as evidence in litigation in England & Wales?

Pursuant to Section 7(1) Electronic Communications Act 2000, in any legal proceedings (a) an electronic signature incorporated into or logically associated with a particular electronic communication or particular electronic data, and (b) the certification by any person of such a signature, *shall* each be admissible in evidence in relation to any question as to the authenticity of the communication or data or as to the integrity of the communication or data. Note also the explanatory notes to the statute which state at paragraph 5: "*An electronic signature is something associated with an electronic document that performs similar functions to a manual signature. It can be used to give the recipient confirmation that the communications comes from whom it purports to come from ("authenticity"). Another important use of electronic signatures is establishing that the communication has not been tampered with ("integrity").*"

This article is for information purposes only. The above is not intended to be and shall not constitute legal advice. Specialist advice should always be sought for individual cases where necessary.

