



**Law  
Commission**  
Reforming the law

# ELECTRONIC EXECUTION OF DOCUMENTS

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Summary of Report

# SUMMARY

In the modern world, individuals and businesses demand convenient methods of making binding transactions. Increasingly, parties are concluding agreements entirely electronically. But we have been told that lingering uncertainty around the legal validity of documents executed electronically, at least in some circumstances and for certain transactions, is discouraging some parties from making use of technological solutions which could increase efficiency.

Our project considers whether there are problems with the law around the electronic execution of documents and deeds which are inhibiting the use of electronic documents in situations where they might be beneficial. It does not, however, seek to mandate the use of electronic signatures in any particular situation or presume that they will always be appropriate.



Our project covers both commercial and consumer documents. It also covers deeds, including powers of attorney and trust deeds. Our report does not extend to wills or registered dispositions under the Land Registration Act 2002 as these are being considered by separate projects being conducted by the Law Commission and HM Land Registry.



## WHAT ARE THE CURRENT PROBLEMS?



### Inaccessibility of the law on electronic signatures

Some stakeholders have told us that there is uncertainty about the current law on electronic signatures because it is not contained in a single piece of legislation.



### Practical and technical challenges of using electronic signatures

We have been told that practical issues can affect the decision as to whether to execute a document electronically. For example, the evidential value of a particular type of electronic signature, the security and reliability of different technologies and the cross-border nature of some transactions.



### Concerns for consumers and vulnerable individuals

Some stakeholders have raised concerns that electronic signatures are more susceptible to fraud than handwritten signatures, and that a consumer or vulnerable individual may be more likely to enter into a binding legal agreement without proper consideration because of the convenience of electronic signatures.



### Remote witnessing for deeds

The law requires that a deed must be signed in the presence of a witness who attests the signature. In our report we conclude that the current law probably does not allow for “remote” witnessing where the witness is not physically present when a signatory signs a deed.



### Formalities for executing a deed

Some stakeholders have suggested that the current law of deeds is outdated and may no longer be fit for purpose, whether they are executed electronically or otherwise. Stakeholders also mentioned *R (Mercury Tax Group Ltd) v Her Majesty’s Commissioners of Revenue and Customs* [2008], in which the court referred, in non-binding comments, to a requirement that a document must be “a discrete physical entity ... at the moment of signing”. The legal profession has developed practical ways of dealing with the concerns raised by *Mercury*, which we agree work well.

## WHAT DOES THE LAW SAY ABOUT ELECTRONIC SIGNATURES?

Our statement of the law below sets out our high-level conclusions as to the law regarding the validity of electronic signatures. It applies both where there is a statutory requirement for a signature and

where there is not. Because of the way the law has developed, our summary of the law also has broad application and is not restricted to commercial and consumer documents.

### Statement of the law: execution with an electronic signature

1. An electronic signature is capable in law of being used to execute a document (including a deed) provided that (i) the person signing the document intends to authenticate the document and (ii) any formalities relating to execution of that document are satisfied.
2. Such formalities may be required under a statute or statutory instrument, or may be laid down in a contract or other private law instrument under which a document is to be executed. The following are examples of formalities that might be required: (i) that the signature be witnessed; or (ii) that the signature be in a specified form (such as being handwritten).
3. An electronic signature is admissible in evidence in legal proceedings. It is admissible, for example, to prove or disprove the identity of a signatory and/or the signatory's intention to authenticate the document.
4. Save where the contrary is provided for in relevant legislation or contractual arrangements, or where case law specific to the document in question leads to a contrary conclusion, the common law adopts a pragmatic approach and does not prescribe any particular form or type of signature. In determining whether the method of signature adopted demonstrates an authenticating intention the courts adopt an objective approach considering all of the surrounding circumstances.
5. The courts have, for example, held that the following non-electronic forms amount to valid signatures:
  - a. signing with an 'X';
  - b. signing with initials only;
  - c. using a stamp of a handwritten signature;
  - d. printing of a name;
  - e. signing with a mark, even where the party executing the mark can write; and
  - f. a description of the signatory if sufficiently unambiguous, such as "Your loving mother" or "Servant to Mr Sperling".
6. Electronic equivalents of these non-electronic forms of signature are likely to be recognised by a court as legally valid. There is no reason in principle to think otherwise.
7. The courts have, for example, held that the following electronic forms amount to valid signatures in the case of statutory obligations to provide a signature where the statute is silent as to whether an electronic signature is acceptable:
  - a. a name typed at the bottom of an email;
  - b. clicking an "I accept" tick box on a website; and
  - c. the header of a SWIFT message.
8. Our view is that the requirement under the current law that a deed must be signed "in the presence of a witness" requires the physical presence of that witness. This is the case even where both the person executing the deed and the witness are executing / attesting the document using an electronic signature.

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## WHAT DO WE RECOMMEND?

**An industry working group** – An industry working group with multi-disciplinary membership should be convened by Government to consider practical issues relating to the electronic execution of documents. It should also provide best practice guidance for the use of electronic signatures in different commercial transactions as well as where individuals, particularly vulnerable individuals, execute documents electronically.



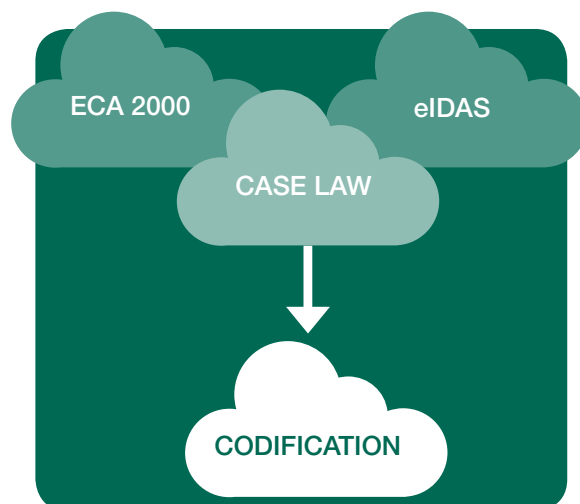
**Video witnessing for deeds** – The industry working group should consider potential solutions to the practical and technical obstacles to video witnessing of electronic signatures on deeds and attestation. Following the work of the industry working group, Government should consider legislative reform to allow for video witnessing.

**A future review of the law of deeds** – A future review of the law of deeds should consider broad issues about the efficacy of deeds and whether the concept remains fit for purpose, as well as specific issues which have been raised by consultees in relation to witnessing, delivery and the decision in *Mercury*. Such a review should take a holistic approach, and deal with both deeds executed on paper and electronically.

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## FURTHER OPTIONS FOR REFORM

**A new legislative provision** – Although the current law already provides for electronic signatures, Government may wish to consider codifying the law on electronic signatures in order to improve the accessibility of the law. Any legislative provision should have broad application, and further consultation would be required. As our terms of reference (which set out the scope of this project) are limited to commercial and consumer documents, we have not actively consulted stakeholders operating in other areas where electronic signatures may be used, either now or in the future. It would therefore not be appropriate for us to recommend the introduction of a broad legislative provision confirming the status of electronic signatures beyond our terms of reference. Instead, we set out options for reform which Government, or we, could take forward with a wider remit.



This is a summary of the Law Commission report *Electronic execution of documents*. The report and further details about this project are available at [www.lawcom.gov.uk/project/electronic-execution-of-documents/](http://www.lawcom.gov.uk/project/electronic-execution-of-documents/).

