



INFORMATION NOTE FOR LMCS: ELECTRONIC SIGNATURES

This note applies to LMCS based in England & Wales, and Scotland. This note is based on the law as at 14 November 2018 and does not constitute legal advice. If you are in any doubt as to whether an e-signature would be valid you should seek specific legal advice.

1. WHAT CONSTITUTES AN ELECTRONIC SIGNATURE (E-SIGNATURE)?

An electronic signature comprises anything in electronic form which is incorporated into an electronic communication and purports to be used by the individual creating it to sign. The test is function over form. The most commonly used e-signatures are:

- a typed signature
- a manuscript signature that has been reproduced in electronic form
- a manual signature on a screen using a tablet/PC and stylus pen
- clicking a button/ticking a box on a website confirming agreement to terms and conditions

2. CAN E-SIGNATURES BE USED INSTEAD OF WET-INK SIGNATURES?

In many cases, E-signatures are capable of satisfying a requirement for a document to be signed, provided that the signatory inserts the electronic signature in the appropriate place in the document with the intention of authenticating it. E-signatures have the same legal effect as a handwritten or wet-ink signature.

E-signatures do not need to be in a specific format and can include typed signatures and manuscript signatures reproduced in electronic form.

It is not necessary to include any specific reference to electronic signatures in the document itself in order for it to be validly executed using an electronic signature.

E-signatures are unlikely to be able to be used to execute transfers of land, Deeds (in England & Wales), or to establish certain types of trusts.

3. EXAMPLES OF DOCUMENTS WHERE I CAN USE AN E-SIGNATURE

- Simple contracts (not deeds) governed by English or Scottish law.
- Documents where there is a statutory requirement for the document to be in writing and/or signed and/or underhand.
- Written resolutions, appointment of proxies and meeting minutes in relation to companies incorporated



under the Companies Act 2006 (unless the Articles of Association of the company provide otherwise).

4. OTHER CONSIDERATIONS

England & Wales

- If an individual is signing on behalf of a company, there may something in the company's constitutional documents or board resolutions restricting it from using an e-signature which could render the e-signature invalid.
- Companies House usually only accept wet-ink signatures on charging documents.
- The Land Registry and Land Charges Registry usually only accept wet-ink signatures.
- Deeds, documents relating to property disposals, or documents which require a signature to be witnessed, are unlikely to be deemed to be validly executed by using an e-signature.

Scotland

- In order to rely on a document in court as being validly signed by the relevant parties, without having to prove this, the e-signature must be an 'advanced electronic signature' and be certified by a 'qualified certificate'. These requirements are usually satisfied by using a third party e-signature service.