

Lord Chancellor confirms validity of electronic signatures

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Earlier this month, the Government endorsed the Law Commission's report on Electronic Execution of Documents.

Robert Buckland, Lord Chancellor and Secretary of State for Justice, agreed with the report's conclusion that formal primary legislation is not necessary to reinforce the legal validity of electronic signatures. Buckland noted, "*the existing framework makes clear that businesses and individuals can feel confident in using e-signatures in commercial transactions*". This also applies to the execution of deeds.

Background

The Law Commission's report was published in September 2019. Its purpose was to "*address any uncertainty as to the formalities around the electronic execution of documents*". The Courts consider that the use of electronic signatures is generally acceptable, including where there is a statutory requirement for a signature. A judge will consider the particular facts of the case, applying an objective test as to whether the conduct of the signatory indicates an authenticating intention. Any further requirements, for example a witness, must also be satisfied.

The current law addressing electronic signatures is the EU regulation, eIDAS which came into force in 2016. Member states are required to recognise electronic signatures that meet the standards of eIDAS. The regulation makes a distinction between two standards of electronic signature, 'Advanced' and 'Qualified'.

An advanced electronic signature is one which is: a) uniquely linked to the signatory, b) capable of identifying the signatory, c) created using electronic signature creation data that the signatory can, with a high level of confidence, use under their sole control and d) linked to the data signed therewith in such a way that any subsequent change in the data is detectable. Whereas, qualified signatures require enhanced identity proof and are not widely used in the UK. The Regulation makes clear that no electronic signature should be denied legal effect or admissibility as evidence solely on the grounds that it is in an electronic form or that it does not meet the requirements for qualified electronic signatures.

The following are examples of valid electronic signatures: a name typed on the bottom of an email,

clicking an “I accept” tick box on a website and typed signature at the bottom of an email chain. However, a party’s name in an email address automatically inserted by an internet provider did not constitute a signature on an email because there was no evidence that the party intended to authenticate the document.

Comment

There are clear benefits to the validity of electronic signatures. Firstly, it makes the process of signing documents online very fast, which offers mobility and immediacy. Secondly, the possibility of errors are minimised. Thirdly, electronic signatures provide a simpler process for consumers to enter into a contract, while also having a positive effect on the productivity of employees, as they are likely to save time on paperwork and filing documents. This also enhances an eco-friendly image. Finally, the use of electronic signatures could give a company a competitive edge.

There is already scope for further considerations such as the question of video witnessing of electronic signatures in relation to the execution of deeds. Buckland accepted the concerns raised in the report that, notwithstanding the position in law, there are issues on the security and technology of electronic signatures that require further consideration from suitably experienced experts. He agreed with the Law Commission’s recommendation that an Industry Working Group should be established, which the Government should convene. Buckland noted that while technological advances present opportunities they also entail challenges. These include ensuring that reform does not have any adverse impact, particularly on vulnerable people.

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