



Electronic execution of documents: Consultation

Introduction

This form accompanies the consultation paper on the electronic execution of documents, available at <https://www.lawcom.gov.uk/project/electronic-execution-of-documents/>. Please answer as many questions as you can, in as much detail as you can. However, you do not need to answer all the questions.

Please save a copy of your completed form and email it back to us at electronic-execution@lawcommission.gov.uk by **23 November 2018**.

Where possible, it would be helpful if comments were sent using the online form at <https://consult.justice.gov.uk/law-commission/electronic-execution> or using this form. However, comments can also be sent in an email to electronic-execution@lawcommission.gov.uk, or by post to: Commercial and Common Law Team, Law Commission, 1st Floor, Tower, 52 Queen Anne's Gate, London, SW1H 9AG.

Consultation principles

The Law Commission follows the Consultation Principles set out by the Cabinet Office, which provide guidance on type and scale of consultation, duration, timing, accessibility and transparency. The Principles are available on the Cabinet Office website at:

<https://www.gov.uk/government/publications/consultation-principles-guidance>

*We treat all responses as public documents in accordance with the **Freedom of Information Act 2000** and we may include the names of respondents and attribute comments in any publication relating to this consultation. If you want your submission to remain confidential, you should contact us before sending your response. (Please note that we disregard automatic IT-generated confidentiality statements.)*

For information on how we handle your personal data, please see our [Privacy Notice](#).

Your details

Name

Organisation

Type of response

Personal response

Response on behalf of above named organisation

Email address

Telephone number

If you want the information that you provide to be treated as confidential, please explain to us why you regard the information as confidential. As explained above, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Electronic signatures and other preliminary questions

(Consultation Questions 1 to 6)

Question 1.

Our provisional conclusion is that an electronic signature is capable of satisfying a statutory requirement for a signature under the current law, where there is an intention to authenticate the document. Do consultees agree? (See paragraph 3.87 of the consultation paper.)

Yes

No

Other

Question 2.

Our provisional conclusion 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. Do consultees agree? (See paragraph 4.57 of the consultation paper.)

Yes

No

Other

Question 3.

We welcome consultees' views and experiences on how other jurisdictions have dealt with the cross-border dimension of electronic execution. (See paragraph 6.19 of the consultation paper.)

Question 4.

We believe that where specific provision is necessary in relation to certain types of documents (for example, to protect vulnerable parties, particularly for lasting powers of attorney), that is a matter for specific legislation or regulation, and not for the general law of execution of documents. Do consultees agree? (See paragraph 6.41 of the consultation paper.)

Yes

No

Other

Question 5.

We consider that legislative reform is not necessary to confirm that an electronic signature is capable of satisfying a statutory requirement for a signature. Do consultees agree? (See paragraph 7.20 of the consultation paper.)

Yes

No

Other

Question 6.

We provisionally propose that an industry working group should be established, potentially convened by Government, to consider practical, technical issues. Do consultees agree? (See paragraph 7.28 of the consultation paper.)

Yes

No

Other

Deeds (Consultation Questions 7 to 14)

Question 7.

We provisionally propose that it should be possible to witness an electronic signature via video link and then attest the document. Do consultees agree? (See paragraph 8.32 of the consultation paper.)

Yes

No

Other

Question 8.

If witnessing by video link is to be permitted, how do consultees consider the witness should complete the attestation:

- (1) Via a signing platform which the signatory and witness both log into?
- (2) With the document being emailed to the witness by the signatory immediately after signing?

(See paragraph 8.33 of the consultation paper.)

Question 9.

Do consultees consider that it should be possible to “witness” an electronic signature through an online signing platform in real time, without a video link or any direct communication between the signatory and the witness? (See paragraph 8.42 of the consultation paper.)

Yes**No****Other****Question 10.**

Our view is that the witnessing and attestation requirement for electronic signatures on deeds should not be replaced with a requirement for a particular type of technology, such as a digital signature using Public Key Infrastructure. Do consultees agree? (See paragraph 8.50 of the consultation paper.)

Yes**No****Other**

Question 11.

Do consultees think that there is a case for moving away from the traditional concepts of witnessing and attestation in the context of deeds executed electronically, allowing for electronic acknowledgement? (See paragraph 8.60 of the consultation paper.)

Yes

No

Other

Please expand on your answer.

(1) How should electronic acknowledgement be effected (for example, by email, telephone, text message, in person)?

(2) Do consultees consider that there should be a prescribed period of time (for example, 24 hours) within which: (a) acknowledgement must occur after signing; and (b) acknowledgement and witnessing must take place?

(3) How should the witness record the signatory's acknowledgement?

Question 12.

Our view is that the requirement that deeds must be delivered does not impede the electronic execution of deeds in practice. Do consultees agree? (See paragraph 8.70 of the consultation paper.)

Yes

No

Other

Question 13.

We consider that legislative reform is unnecessary and inappropriate to address the implications of the Mercury decision. Do consultees agree? (See paragraph 8.83 of the consultation paper.)

Yes

No

Other

Question 14.

Do consultees think that a review of the law of deeds should be a future Law Commission project? (See paragraph 8.88 of the consultation paper.)

Yes

No

Other

Impact of reform**Question 15.**

We provisionally conclude that an electronic signature is capable of satisfying a statutory requirement for a signature, provided there is an intention to authenticate a document. Do consultees believe that this will result in increased confidence in the legality of electronic execution in England and Wales? Is any more needed? (See paragraph 8.93 of the consultation paper.)

Yes

No

Other

Question 16.

What do consultees believe would be the financial value of increased confidence in the legality of electronic execution in England and Wales? For example, do consultees think there could be a reduction in transaction costs by as much as 10% to 30%? (See paragraph 8.94 of the consultation paper.)

Yes

No

Other

Question 17.

Do consultees agree that the Law Commission's proposal to establish an industry working group, to consider practical, technical issues, would do any of the following? (See paragraph 8.95 of the consultation paper.)

(1) Provide benefits such as reduced transaction costs? If so, how much?

(2) Provide non-monetary benefits? If so, what benefits?

Question 18.

We have canvassed several options for electronically executing deeds without the physical presence of a witness. We welcome evidence from consultees on the benefits (for example, reduced delays in completing transactions) or costs which might result from the following. (See paragraph 8.96 of the consultation paper.)

- (1) The capacity to execute deeds electronically without the physical presence of a witness.
- (2) Any or all of the specific options for electronically executing deeds described above, namely via video link, signing platform, or acknowledgement.