

Electronic Signatures – a Quick Guide

A signature is simply a way of providing evidence that a person agreed to be bound by the terms of a document or contract.

Under both Scots and English law, the majority of day to day contracts can be created **electronically**.

In Scotland, legislation – including the [Legal Writings \(Counterparts and Delivery\) \(Scotland\) Act 2015](#) – allows for the electronic authentication of certain documents that must be in writing. The Law Commission for England and Wales last year stated that electronic signatures are valid in most cases.

How do you decide what sort of electronic signature to use?

When deciding how to sign (or authenticate) electronically using Adobe Sign, it is essential that we provide a reasonable level of assurance that the document was authenticated by the person purporting to sign it and not someone else on their behalf.

What is appropriate may depend on the nature of the contract or document, the risk of a challenge to the validity of the signature, and the consequences of a successful challenge.

For example, simply inserting a JPEG of someone's 'wet ink' signature into a Word document provides very little assurance.

On the other hand, an online signing platform such as Adobe Sign or DocuSign collects meta data on the signing, including information around the date and time of signing, the email address to which the request to sign was sent, and the IP address of the device. These platforms can also use two factor authentication, where the signatory needs to insert a code that has been sent to a mobile number, which reduces the risk of someone with delegate inbox access signing in someone else's name.

When should you *not* use simple electronic signatures?

For certain agreements it is acceptable to use Adobe Sign, as a simple electronic signature will suffice even though legally it does not create a self-proving document.

However, in many cases it will not be appropriate and each circumstance should be considered on a case by case basis.

The primary areas where simple electronic signatures, such as the standard functionality in Adobe Sign and DocuSign, are *not* a valid means of signing are in relation to:

- Estates and property contracts;
- Banking documents and certain types of guarantees; and
- Where (under Scots law) you wish a document to have self-proving status, such as those of higher value and risk or of a strategically important nature.

Electronic signatures using Adobe Sign are *not* self-proving for the purposes of the [Requirements of Writing \(Scotland\) Act 1995](#).

Checklist

When looking to use electronic signatures, the following checklist can help determine suitability:

- Is there any reason that an electronic signature may not be valid for the document you wish to sign?
- Do you need to use a particular form of electronic signature, such as an advanced electronic signature or qualified electronic signature, in order for the signature to be valid?

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- If signing electronically, which signing system will you use (Adobe Sign, DocuSign)? And if you plan to use a signing platform, are you using additional security features, such as two factor authentication?
 - When using a signing platform such as Adobe Sign or DocuSign, one party coordinates signing and issues invitations to the other signatories. It is important to agree protocols and procedures in advance, for example:
 - Who will do that?
 - If lawyers are involved in the transaction, which firm will take the lead?
 - If you are sending the document to someone who is not legally represented do they understand what they are signing?
 - Do you need to include any information in your contract or document to state when it will take effect?
 - What information will you retain to evidence the signature? Signing platforms usually provide a certificate with the information collected. If you are not coordinating signing, have you requested a copy of that?

Legislation – electronic delivery, counterparts and date of effect

- Electronic delivery can be the sending of signed documents via email, or by Adobe Sign.
- Counterparts are where different parties to an agreement sign different versions of it, which are then compiled into one fully executed document by a nominated party to the transaction.
- The date of delivery of electronic documents and electronic counterparts has specific legal rules in the 1995 and 2015 Acts.
- Parties may wish to agree the date of delivery and effect when dealing with electronic signing and particularly so if using electronic counterparts.