

## Response ID ANON-EVK9-F3FZ-R

Submitted to **Law Commission consultation on the electronic execution of documents**

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### About you

**What is your name?**

**Please enter your name.:**

Mike Holland

**What is the name of your organisation?**

**Enter name of organisation:**

Agricultural Law Association

**Are you responding to this consultation in a personal capacity or on behalf of your organisation?**

Response on behalf of organisation

**What is your email address?**

**Please enter your email address.:**

mike.holland@ala.org.uk

**What is your telephone number?**

**Please enter your telephone number:**

07885643341

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### Electronic signatures and other preliminary questions (Consultation Questions 1 to 6)

**Consultation 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

**Please expand on your answer. :**

Statutory confirmation of the same would be helpful to give the law clarity.

As a point of principle, we are generally concerned with the use of electronic execution of documents in relation to the transfer of land and/or property in respect of the potential for fraud to occur. The risk of fraudulent actions which may result in the passing of a property asset into the hands of another where either the transferor or transferee are not entitled to act in such transactions or do not have the authority of all those with an interest, is significant.

Any proposed reform in this area must provide for sufficient and robust protection against fraudulent actions to protect those who hold the title of the property asset where the impact of fraudulent activity could have very significant implications.

This concern is particularly acute where land is held by Trustee or Trustee companies and there is an increased risk of land being fraudulently transferred without notice to the beneficial owners.

**Consultation 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

**Please expand on your answer. :**

**Consultation 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.)**

Please share your views below. :

**Consultation 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

Please expand on your answer. :

**Consultation 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.)**

No

Please expand on your answer. :

Given the present level of uncertainty, statutory confirmation would be welcome and constructive.

**Consultation 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

Please expand on your answer.:

We would willing

## **Deeds (Consultation Questions 7 to 14)**

**Consultation 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

Please expand on your answer.:

Provided that the content of such an attestation clause is set out clearly in the legislation introducing this reform (and not be delegated legislation that can be passed without scrutiny).

For example, the attesting witness should confirm the method by which they observed the signature, and the date and time of witnessing.

**Consultation 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.)**

Please expand on your answer.:

The requirement to use signing platforms would be a barrier to adoption of electronic execution of documents.

We do not consider that either is appropriate as it is open to the risk of simply 'ticking the box' to comply, where there is a risk that the proper procedures have not been followed.

**Consultation 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.)**

No

Please expand on your answer. :

**Consultation 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

Please expand on your answer.:

**Consultation 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.)**

No

Please expand on your answer.:

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

Do you 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?:

How should the witness record the signatory's acknowledgement?:

**Consultation 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

Please expand on your answer.:

**Consultation 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

Please expand on your answer.:

**Consultation 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

Please expand on your answer. :

### Impact of reform (Consultation Questions 15 to 18)

**Consultation 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.)

No

Please expand on your answer. :

Legislation is required to put the matter beyond doubt.

**Consultation 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.)

Please provide your answer below.:

**Consultation 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?:

You can upload additional evidence here.:

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**Consultation 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.  
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**CQ19:**

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