

# SIGNATURES, E-SIGNATURES, AND THE LAW AN INTRODUCTION



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The way we do business is changing. The advantages of going paperless are widely recognised and every day transactions are increasingly carried out online. This is being acknowledged by jurisdictions across the globe and legislation is catching up.

## English Law and Contract Formation

While there are exceptions, the general rule under English Law is that a contract does not need to be in any particular form to be legally binding. Nor is there any requirement for it to be signed.

However, for a contract to be **enforceable**, several key elements must be evidenced:

- **Agreement** (offer and acceptance),
- **Consideration** (each party gives and receives something),
- **Certainty of terms** (terms are made clear); and
- **Intention** (each party must intend to create a legally binding contract).

Signatures go to the Intention element. When you sign a document, you evidence your intention to be legally bound by its terms.

## So what is a signature?

When you use a pen and ink to sign your name on a document, you produce a mark unique to you; a "signature", that identifies you personally as the signer.

## So what is an electronic signature ("e-signature")?

Electronic signature software collects and secures digital evidence of the online document signing process. So, while in the paper world, a "wet-ink" signature can identify you as the person who put pen to paper; in the digital world, e-signature data can identify you as the person who digitally altered (signed) the data (document).

## So is it legal?

The more features that a digital or e-signature has in place to ensure authenticity and integrity, the greater the weight given to it in legal proceedings. Legalesign offers the Advanced Electronic Signature as defined by EU legislation (see over for detail).

For simple contracts that do not have any special execution, registration or other requirements, The Advanced Electronic Signature is a valid way of executing a document and will carry strong evidential weight in court. However there remain circumstances in which in which particular formalities are required and/or where e-signature (of any kind) may not be practical or appropriate. When thinking e-signature, you should always consider the nature and jurisdiction of the arrangement in question.

For further information see [www.legalesign.com](http://www.legalesign.com).

This is intended as helpful guidance only. Legalesign does not provide legal advice and users must seek their own counsel on the use of e-signature with regard to the prevailing law, jurisdiction and circumstances in each case.

## The Advanced Electronic Signature

EU eIDAS Regulation 910/2104 effective 1 July 2016



The signature must be uniquely linked to a signatory

Legalesign's process uses email with a one-use link

The signatory must be able to use the software unaided

The clear user interface is easy to use from any device

The signature must be capable of identifying the signatory

Audit log + email + signing process identifies the signatory

Subsequent changes to the data that has been signed must be detectable

Legalesign's certificate is stored on a hardware security module ("HSM") and legalesign uses high security certified document services to certify documents making them verifiably tamper-proof

Legalesign offers the "Advanced Electronic Signature" as defined within the recent EU "eIDAS" Regulation

The Advanced Electronic Signature is widely recognised and respected across the EU and worldwide as a high standard for electronic signatures