Annex to STEP Response to the Law Commission’s Consultation on the Electronic Execution of Documents

About us

STEP is the worldwide professional association for those advising families across generations. We help people understand the issues families face in this area and promote best practice, professional integrity and education to our members.

Today we have over 20,000 members across 95 countries, with over 7,000 members in the UK. Our membership is drawn from a range of professions, including lawyers, accountants and other specialists. Our members help families plan for their futures: from drafting a will or advising family businesses, to helping international families and protecting vulnerable family members.

We take a leading role in explaining our members’ views and expertise to governments, tax authorities, regulators and the public. We work with governments and regulatory authorities to examine the likely impact of any proposed changes, providing technical advice and support and responding to consultations.

STEP welcomes the opportunity to respond to this consultation.

STEP has provided responses to the specific questions posed by the Law Commission in the electronic response form provided, below is an annex to the response containing additional observations and commentary.

Annex

The following observations and comments are additional to the consultation response submitted by STEP, the response should be read in the context as discussed in this note.

1. There is an increasing number of consumer agreements that are completed online, where the consumer commits by ticking a box to confirm they have read the terms and conditions and then clicking the "I Agree/Confirm" button. Even battle-hardened lawyers admit they rarely read the terms and conditions (which can often be the equivalent of many pages of A4 print). Somewhere within the terms and conditions will be a statement of the law applying to the agreement, which may frequently be that of a jurisdiction outside of the UK. Will any rules or consumer safeguards brought in as a result of this consultation also apply to such arrangements?

2. The Times, on Saturday, 10 November 2018, reported a case where a 3 year old child, playing with their parent’s mobile phone, inadvertently entered into a contract for the provision of mobile services. We suggest that the ability to contract through a mobile phone should also be within the umbrella of the current consultation.

T: +44 (0) 203 752 3700  F: +44 (0) 203 752 3701  E: step@step.org  W: www.step.org

Artillery House, 11-19 Artillery Row, London, SW1P 1RT, United Kingdom
3. Where a document is executed in several parts, it is considered best practice for all the completed parts to be bound together to form a single document. It is then clear to the world that all parties have executed the document in the same form. If, as a result of the adoption of the Mercury decision and the 2009 Note, it is considered sufficient for the signature pages only to be collated with a copy of the document, what safeguards will there be for third parties acting in reliance upon the integrity of such documents?

4. At 1.23, the Consultation Paper notes that some 9% of the population has never used the internet, and so would be effectively blocked from electronic execution. However, we believe there to be an even larger number of persons whose lack of confidence in the security of the internet is such that they will not use it to undertake any financial or legal transaction. It is therefore important that the ability to execute documents electronically does not undermine the ability of such persons to continue to execute documents by hand.

5. At present there are various categories of document where no special rules apply to their execution, and yet they relate to what may often be the bulk of an individual’s wealth – e.g. pension fund nominations and death benefit nominations. We suggest consideration be given to codifying the execution of such documents, whether in paper form or via an electronic signature.

6. The discussion relating to the attestation of documents appears to conflict with what was said about attestation in the Law Commission review of wills (CP 231).

7. Some service providers (financial institutions and others) appear only to deal with consumers who are able to “sign up” on line. We suggest consideration be given to requiring that notwithstanding the ability to use electronic signatures, there must be available the ability to complete documents other than electronically. Otherwise any legislation may unreasonably limit or deprive those not capable of using the internet from access to a wide range of services, etc. Might there be a default position to the effect that documents are to be completed in hard copy unless all parties agree to electronic execution?

8. Where there are multiple signatories required to a document, is it envisaged that the document could in part be executed electronically, and partly by hand? Would legislation need to make clear whether or not a mixed execution is permissible and, if so, the procedures and safeguards relating thereto?

9. Where there is a requirement for electronically executed documents to be registered, for security, and to maintain their integrity we recommend that they be submitted and stored in a specified format, say PDF or TIFF, whereby any changes made post execution/registration will be identifiable using metadata.
10. What considerations will be given to the longevity of the platform used for electronic signatures? A system is only as safe and robust as its accessibility and longevity. To feel confident to rely on an electronic signature, on for example a trust deed, third parties would not only need to be able to access a copy in the short term but also potentially in 100 years from now.