



# HR Electronic Records

## Electronic Signatures in United Kingdom: What it means for HR

### What is an electronic signature?

- An electronic signature is a technical process logically associated with a document in which two (or more) individuals or organizations (the signatories) agree to rely on in order to express their intent to sign.
- Three components are necessary: a document, a signatory, and an e-signature tool. While the tool most commonly used for handwritten signatures is a simple pen, electronic signature tools are more complex.
- The term "electronic signature" is a broad category that encompasses many types (or levels) of electronic signatures. Depending on the country it is used in, there are differences in purpose, technical implementation, legal and cultural acceptance of electronic signatures.
- Most civil law countries (including the EU and most countries in South America and Asia) support a "tiered" approach with higher levels of signature called digital or qualified electronic signatures.
- Most common law jurisdictions (US, Canada, Australia, etc.) are typically more technology neutral.
- In addition, specific industries (e.g. healthcare or banking) or specific documents (e.g. marriage or adoption contracts) often require a higher level of e-signature or handwritten signature.

### What are the laws and regulations in the United Kingdom?

As most Common Law based countries, there is no need under English and Welsh law for contracts to be in any particular form; in fact, they can be entered into orally, provided there is offer and acceptance, consideration, certainty of terms and an intention to be legally bound.

Therefore, a contract may be concluded using an electronic signature. In addition, the government has confirmed electronic signatures can be used to sign formal contracts under English law (through a binding ministerial statement). Typing a name into an email satisfies a statutory requirement for a document to be signed and that an electronic signature has the same legal status as a signed paper original document, the key question being whether or not the purpose of the signature is to authenticate the document.

To prove a valid contract, parties sometimes have to present evidence in court. Digital transaction management solutions can provide electronic records that are admissible in evidence under s7(1) Electronic Communications Act 2000 (ECA 2000), to support the existence, authenticity, and valid acceptance of a contract.

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An English or Welsh court would accept the document bearing the electronic signature as prima facie evidence that the document was authentic and, unless the opponent adduced some evidence to the contrary, that would be sufficient to deal with the challenge. The person alleging that the document was not authentic (e.g., produced fraudulently, not signed by the person who had purportedly done so or not properly witnessed) would need to prove, on a balance of probabilities, that this was the case. These are the same principles that the Courts would apply in relation to signatures on an original paper document.

On July 1, 2016, Regulation (EU) No 910/2014 on electronic identification and trust services for electronic transactions in the internal market (the “eIDAS Regulation”) came into force and replaced the former EU Directive on electronic signatures (1999/93/EC). The eIDAS Regulation, directly applicable in the member countries of the European Union, brought uniformity - and much needed clarity - among the EU member states’ local legislation on electronic signatures. The Electronic Identification and Trust Services for Electronic Transactions (Amendment etc.) (EU Exit) Regulations 2019 (the “eIDAS Regulations”) replaced the regulation in the United Kingdom.

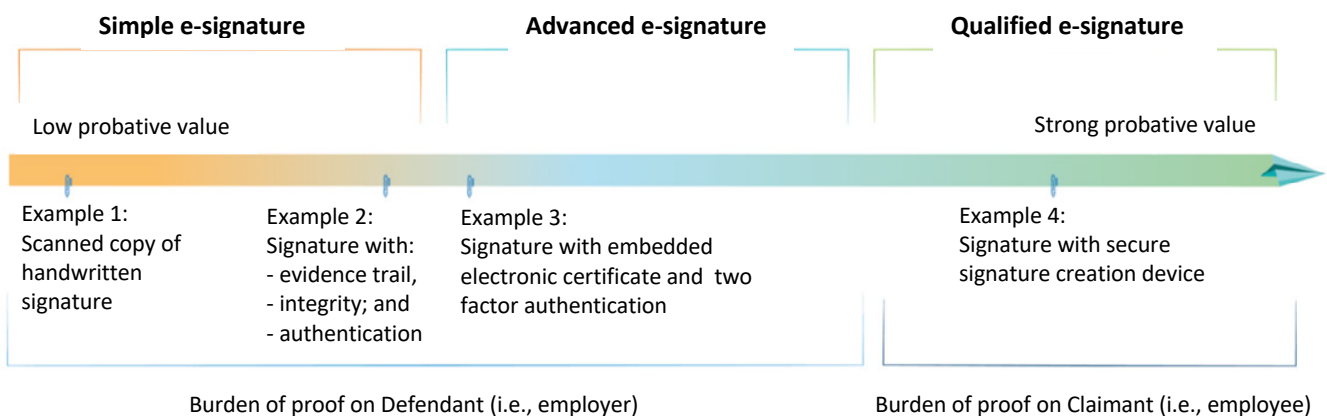
## Are electronic signatures valid?

Under eIDAS, a valid electronic signature may be **simple, advanced, or qualified**. All three levels of signature are legally **valid** and defensible in court. However, the **probative value** (i.e., how easily the validity of the signature can be proven in court) will vary depending on the type (or level) of electronic signature as illustrated by the graph.

E-signatures almost always offer higher guaranties than handwritten signatures, regardless of the level of the e-signature being used:

- the **evidence trail** associated with superior electronic signature tools will allow defendant to prove the validity of the signature.
- the use of time-stamping and encryption technologies will provide a much higher level of confidence in the **integrity** of an electronically-signed document compared to the limited level of protection provided by a handwritten original (unless notarized).

## Probative value scale



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For **simple and advanced electronic signatures**, it is the employer's responsibility to bring evidence of the validity of the signature if an employee challenges the document.

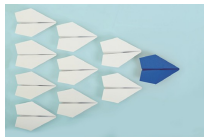
**Advanced signature** solutions typically offer a more robust evidence file in that regard than simple e-signatures solutions.

**Qualified electronic signatures** offer the same probative value as a handwritten signature it is the responsibility of the party challenging the validity of the signature (most likely the employee) to bring evidence of the signature's invalidity.

## What level of e-signature is recommended for HR documents?

The vast majority of HR-related documents are suitable for simple or advanced electronic signatures. Simple and advanced electronic signature are recommended for documents with a risk factor ranging from low to medium. These are often external documents with limited risk and typically include employment agreements, company policies, employee handbook, performance reviews, expense report, etc.

Qualified electronic signatures or handwritten signatures would only be justified in limited cases for very sensitive documents such as credit or life insurance agreements or when specifically required by law (e.g., specific healthcare documents).



### HR Best Practices

Many customers elect to use different electronic signature solutions depending on the type of document being signed. In Europe, customers typically use an advanced electronic signature for employment agreements as well as other HR-related agreements, and rely on a strong simple e-signature solution for other less sensitive HR documents such as policies and performance reviews. However, this decision also depends on an employer's internal culture and its level of risk-adversity.

### Note: Deeds

There are specific statutory requirements that need to be met when executing certain types of documents, such as a settlement deed or an employment contract containing a power of attorney, as these documents will need to be formally executed as deeds. In this instance, an electronic signature would not by itself, ensure the validity of that particular HR document. A deed must be in writing, be clear that it is intended to take effect as a deed, validly executed as a deed and delivered as a deed. The government has confirmed that electronic signatures can be used to sign deeds (through a binding ministerial statement), however other formalities for deeds must also be satisfied.

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