GUIDANCE ON REMOTE NOTARISATION

This guidance is intended to assist notaries in determining whether it is appropriate to authenticate the signing or execution of a document or otherwise intervene remotely using remote technologies and sets out appropriate procedures to be adopted in such cases. Notaries must, in accordance with their faculty, be physically located in England and Wales when using remote technologies (as defined below).

Notaries are reminded that nothing in this guidance removes the need for notaries to satisfy themselves as far as practicable that the procedures followed (a) are not prohibited by the law of the foreign state or territory where a remote appearer is located, (b) comply with data protection legislation, (c) will result in the acceptance of the document concerned in the receiving jurisdiction, (d) do not conflict with any requirement under the law of England and Wales that a deed or other document be executed in the physical presence of a witness. Such satisfaction as to acceptability in the receiving jurisdiction shall for instance be by the notary or the client seeking local professional advice.

Notaries are further reminded that at all times they must have regard to (a) relevant anti-money laundering and anti-terrorist financing legislation and guidance (b) sanctions on individuals, entities and states from time to time imposed by His Majesty’s Government.

This guidance does not preclude that other ways to authenticate the signing or execution of a document remotely may be possible and lawful, nor should it be considered to be a full statement on the law concerning the same but is intended to provide some assurance for notaries that there are methods of performing notarial acts remotely that have been specifically approved by the Master.

This guidance is not a set of rules or regulations made by the Master. It does not replace or amend rules and regulations made by the Master, including the Notaries Practice Rules 2019.

In following this guidance notaries may decide in a particular case that the use of remote technologies is not appropriate whether because it is not possible to identify the signatory to a sufficiently high standard using remote technologies or because the circumstances of the matter mean that the notary cannot be satisfied as to the client’s understanding of the matter, free will and capacity.
1. Definitions

In this guidance:

“certify” includes notarial certification by digital means using a notary’s Qualified Electronic Signature;

“electronic signature platform” means a web-based platform providing an interface through which documents may be uploaded and sent to a recipient to execute by applying a signature in a secure electronic form;

“Qualified Electronic Signature” is an electronic signature meeting the requirements laid down in Regulation (EU) No. 910/2014 (eIDAS) as incorporated into UK law, including any amendment or re-enactment thereof;

“remotely located individual” or “remote appearer” means an individual who is not in the physical presence of the notary who wishes to have the signing or execution of a document authenticated by a notary or seeks the performance of another notarial act;

“remote technologies” include video conferencing technology and electronic signature platforms;

“signature” means a wet-ink or electronic signature, and “sign” should be construed accordingly;

“video conference technology” means any electronic device or process that facilitates communication of visual images and audio in real time between a notary and a remotely located individual, including a remotely located individual who has visual, hearing or speech impairment.

2. Notarial acts using remote technologies

(a) A notary may use remote technologies to certify the execution of a document signed by a remote appearer (whether acting in a personal or representative capacity) by means of a notarial act in private or public form;

(b) Before using remote technologies notaries should take reasonable steps to verify that the procedure adopted will result in the acceptance of the document in the receiving jurisdiction and where they are unable to obtain such verification they shall inform the remote appearer accordingly.
3. Best-practice recommendations for use of remote technologies

Where any act by a notary under paragraph 2 is to be performed using remote technologies, the following are recommended as best-practice procedures:

(a) if the notary does not already hold sufficient identity evidence, the remotely located individual should transmit electronically documents necessary to satisfy the notary as to the individual’s identity by means secure from fraud and misuse and capable of providing an appropriate level of assurance that the person claiming a particular identity is in fact the person with that identity and should be asked to present such documents to the notary during the real time interaction;

(b) the remotely located individual should transmit via electronic means, a legible copy of the relevant document in relation to which notarial acts are to be performed;

(c) where the notary is using an electronic signature platform, the notary should control the signing process using the notary’s own electronic signature platform account, taking sufficient steps to verify that the individual interacting with the platform is the person they purport to be;

(d) where the notary is not using an electronic signature platform, the notary may, after observing the signature or requisite act of the remotely located individual, issue and attach a notarial certificate to a transmitted copy of the document and send a copy of the same to the individual by electronic means;

(e) where a remotely located individual affixes an electronic signature to any document which is to be authenticated by a notary, the notary should conduct a video conference with the individual so as to be satisfied as to the individual’s understanding of the matter, free will and capacity;

(f) in addition to the other records of the notarial act performed which are required to be retained under the Notaries Practice Rules the notary may, subject to having obtained the prior consent of the remotely located individual, retain as evidence of the remote meeting a recording of any video conference and/or screen capture photographs of the individual and retain the same for an appropriate period having regard to the Notaries Practice Rules, anti-money laundering legislation and guidance, all as in force from time to time:

(g) where a remotely located individual appears before the notary via video conference technology any statement by the notary as to appearance should relate that fact and not state or imply that the notary was physically present with the individual at the time the document was signed or executed. A note that video conferencing was used should be recorded in the notary’s register kept under the Notaries Practice Rules.
4. **Repeat of notarisation**

A notary may repeat the notarisation of a relevant document in relation to which notarial acts were performed by video conference technology where the notary receives the relevant original document the subject of the signature or requisite act together with a copy of the notarised document sent under paragraph 3(d) within thirty days after the date of execution.

5. **Refusal to perform notarial act**

A notary who is requested to perform a notarial act using remote technologies may refuse to perform the act where the notary is not satisfied that the notarial act, if performed, would comply with these paragraphs. In addition, the notary should refuse to act where, having regard to the nature and circumstances of the transaction, including the location of the parties, it is apparent that the intervention of an English or Welsh notary would be inappropriate. A record of the request, refusal and reasons for declining the request should generally be kept and if a notary suspects or has reasonable grounds for knowing or suspecting, that a person is engaged in, or attempting, money laundering or terrorist financing, a suspicious activity report should be made.

6. **Oaths, declarations, deeds and other instruments**

Nothing in this guidance is intended to affect or alter any requirement of law that (a) a deponent to an oath or affidavit or a declarant to a statutory declaration should be physically present with the notary when the oath or affidavit is sworn or the declaration made (b) a witness be physically present with the maker of a deed, will or other instrument.

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