

Episode 2:

"What is an Electronic Will – A Legal Perspective"

*Key discussion points and practical insights from
Episode 2 of the [Modernising Wills: Reform and
Reality](#) podcast.*

Anthony Philips, CEO - Arken Legal
Helen Claydon, CLO - HAIG Legal Group
Michael Culver, Managing Director - Culver law
Ian Bond, Head of Legal - Farewill

July 2026

1. Introduction

In our previous white paper, we asked the question "what is an Electronic Will?" as envisaged by the Law Commission in its May 2025 report. We looked at the rationale for the introduction of Electronic Wills, considered what constitutes an Electronic Will and compared them to paper Wills. We also discussed what is, and what is not an Electronic Will. In this paper we explore the existing legal requirements under the Wills Act 1837, and the new provisions the draft Bill introduces to enable a valid Electronic Will.

Wills law in England and Wales is primarily governed by the Wills Act 1837, with the key relevant provisions set out in Section 9, reinforcing the authenticity, voluntariness and evidential certainty of a Will. From a policy point of view, there is an opportunity to increase the percentage of people with Wills. In this context, the baseline for Electronic Wills is that they must provide protections at least as good as those currently afforded to paper Wills as set out in that Section.

As discussed in the previous white paper, an Electronic Will as envisaged by the Law Commission would be:

A Will in electronic form (eg a PDF),
That has been executed in a "reliable system",
Where the digital signature is linked to the signer's identity, and
The original document is secure, distinguishable and protected against unauthorised alteration or destruction.

This is not the same as an "online Will" – which may refer to a Will completed by a testator via an online form with or without professional oversight.

This is a brief review of the provisions of Section 9 and what they can enable today, and what would have to change to enable a valid remotely witnessed Electronic Will.

2. “In writing” does not necessarily mean “on paper”

Section 9 requires the Will to be "in writing". It does not say:

"on paper"

"in ink"

"handwritten or printed on a physical medium"

Therefore, as contemporary law typically regards electronic texts as "writing" (eg contracts, deeds and other instruments), it is fair to conclude that "writing" in this context means "recorded intelligible words". Moreover, per the Interpretation Act 1978: "writing" includes typing, printing and other modes of representing or reproducing words in a visible form. There is a credible argument that an electronic document could qualify, although the point remains uncertain in the Wills context.

3. An electronic signature can satisfy “signed by the testator”

Section 9 requires the Will to be: "signed by the testator". Could that signature be digital or electronic?

The Act does not define "signed". UK law already recognises electronic signatures as valid for most purposes. The purpose of a signature is to authenticate intent. Pen and paper are incidental. A typed name, stylus mark, or cryptographic signature could therefore qualify.

Historically courts have been conservative, treating Wills as a special category. However, recognising electronic authentication in this context would itself be a conservative step. It simply recognises that a testator could authenticate their intent electronically.

By accepting that an Electronic Will could be validly executed in this manner, courts would merely be accepting well-established common practice in commercial contracts as well as honouring the testator's intention. Indeed, an electronically signed document may be more secure and have more information embedded in it than a paper document.

4. The witnesses' signatures could also be electronic

If the testator's electronic signature is valid, it follows that:

The witnesses' electronic signatures should also be valid; and Section 9 does not specify how witnesses sign.

The focus is on authentication, contemporaneity, and intent. There is no obvious textual impediment to a Will being signed and witnessed with digital signatures although there remains practical and legal uncertainty.

5. Remote witnessing: could "presence" include virtual presence?

Section 9 requires witnesses to be: "present at the same time". It does not say "physically present". So, arguably, real-time audio-visual presence satisfies the functional requirement.

But this is where argument becomes much harder. The Covid-era amendments to enable remote witnessing no longer apply. Therefore, while a digitally signed Will may be valid if it is signed and witnessed contemporaneously and in the same place, a remote digital witness would most likely not be valid.

6. **Does Section 9 enable valid Electronic Wills?**

On a plain reading of Section 9, one argue it would be possible to produce a valid Will, signed and witnessed electronically if the testator and witnesses are all present at the same location. However, most practitioners would not rely on this interpretation and would be reluctant to present their client as a test case.

So, as things stand, a valid digital Will is not possible under Section 9 of the Act if witnessed remotely and uncertain if not. However, the Bill proposed by the Law Commission addresses the issue of remote witnessing and removes ambiguity from the other provisions.



Does the Bill enable remote witnessing?

The draft Wills Bill preserves the familiar structure of Will execution while adapting it for Electronic Wills. Requirement B provides that the testator, or an authorised person, must sign the Will. Requirement D then requires that the signature, or the testator's later acknowledgement of it, take place in the presence of two or more witnesses who are present at the same time. Requirement E requires two of those witnesses to sign or attest the Will in the presence of the testator.

The key change is that for Electronic Wills, Schedule 2 paragraph 9(2) expands the concept of "presence" to include presence by means of visual transmission. In practical terms, this means that the witnessing requirements in Requirements D and E may be satisfied by live video transmission, provided the Will is an Electronic Will, and the other statutory requirements are met.

Requirement F provides the additional safeguard framework for Electronic Wills. It requires the use of a reliable system which links each signature to the person signing, identifies the authoritative version of the Will, and protects that version from unauthorised alteration or destruction. The apparent policy is to permit remote witnessing for Electronic Wills, while relying on system-level controls to preserve evidential integrity.

This should be understood as a specific mechanism for Electronic Wills, rather than a general reintroduction of remote witnessing for paper Wills. Section 9 of the Wills Act 1837 relies heavily on physical presence as the evidential foundation for due execution: the testator and witnesses are, in effect, able to see each other sign or acknowledge the Will. By contrast, the draft Bill makes the technological system itself part of the evidential framework.

In that context, the reliable system may generate and preserve evidence such as:

- identity verification;
- authentication;
- timestamps;
- audit logs;
- cryptographic integrity; and
- controlled workflows.

This represents a shift from a model in which physical presence supports authenticity and due execution, to one in which system reliability also plays a central evidential role.

Accordingly, the Bill appears to enable remote witnessing for Electronic Wills, but only where the statutory requirements are satisfied. The important implication is that Electronic Wills are not simply paper Wills displayed on a screen. Instead, they become structured digital execution events, with the reliable system forming part of the evidential basis for validity.

This places significant weight on the meaning of a "reliable system", which is intentionally not exhaustively defined in the Bill. However, the statutory parameters are clear enough to frame the discussion, and we will return to the meaning of a reliable system in a later white paper.



Conclusion

Electronic Wills as envisaged by the Law Commission report are not simply paper Wills converted into PDFs.

Although current law can arguably accommodate a Will in electronic form and even electronic signatures (provided the traditional Section 9 requirements are otherwise met), remote witnessing remains a key challenge. After the expiry of the Covid-era video witnessing rules, Section 9 is unlikely to support a Will being witnessed by video link alone.

The Law Commission's draft Bill addresses that gap by creating a specific regime for Electronic Wills. It preserves the familiar execution structure of signing, intention, witnesses and attestation, but allows "presence" to include visual transmission where the Will is electronic. It is noteworthy that this facility is not extended to paper Wills. The proposed regime places heavy evidential weight on the use of a reliable system: one that links signatures to identified individuals, identifies the authoritative version of the Will, and protects it from unauthorised alteration or destruction.

So, the main shift is not from ink to pixels. It is from physical presence as the core safeguard to a structured digital execution event, where identity, intent, timing, integrity and auditability are evidenced by the system itself.

Appendix 1

Section 9 of the Wills Act 1837 Signing and attestation of wills

(1) No will shall be valid unless

(a) it is in writing, and signed by the testator, or by some other person in his presence and by his direction; and

(b) it appears that the testator intended by his signature to give effect to the will; and

(c) the signature is made or acknowledged by the testator in the presence of two or more witnesses present at the same time; and

(d) each witness either

(i) attests and signs the will; or

(ii) acknowledges his signature, in the presence of the testator (but not necessarily in the presence of any other witness), but no form of attestation shall be necessary.

(2) For the purposes of paragraphs (c) and (d) of subsection (1), in relation to wills made on or after 31 January 2020 and on or before 31 January 2024, "presence" includes presence by means of videoconference or other visual transmission.

Appendix 2

Schedule 2: Draft Bill for a new Wills Act (May, 2025)

Schedule 2: Formality Requirements

1. Meaning of "the formality requirements"

(1) For the purposes of this Act, the formality requirements in relation to a will are--

(a) requirements A to E, and

(b) if the will is in electronic form, requirement F.

(2) See sections 7(2) and 8(2) for further provision about the formality requirements in relation to alterations to wills and the revocation of wills.

2. Requirement A is that the will is in writing.

3. Requirement B: will to be signed by or on behalf of testator

Requirement B is that the will --

(c) is signed by the testator, or

(d) is signed in the testator's presence by another individual whom the testator directed to sign the will on their behalf ("the authorised individual").

4. Requirement C: signature indicates intention for will to have effect

Requirement C is that it appears from the testator's signature, or from the signature of the authorised individual, that the testator intended the will to have effect.

5. Requirement D: will to be signed in the presence of witnesses

Requirement D is that

(a) the testator, or the authorised individual, signed the will in accordance with requirement B in the presence of two or more witnesses who were present at the same time,

(b) the testator signed the will in accordance with requirement B and subsequently, in the presence of two or more witnesses who were present at the same time, the testator acknowledged that signature,

(c) or the authorised individual signed the will in accordance with requirement B and subsequently, in the presence of two or more witnesses who were present at the same time, the testator acknowledged

(i) the signature of the authorised individual, and

(ii) that the authorised individual signed the will in accordance with requirement B.

Appendix 2 (continued)

6. Requirement E: will to be signed and attested by witnesses

(1) Requirement E is that two or more of those witnesses, in the presence of the testator (but not necessarily in the presence of each other or any other witnesses)

(a) signed and attested the will,

(b) or acknowledged that they earlier signed the will and that the signature on the will is theirs, and attested the will.

(2) For the purposes of requirement E--

(a) it does not matter whether a witness knew that what was being signed or attested was a will;

(b) a witness attests a will if, by their signature or by acknowledging their signature, the witness attests that requirement D was met in relation to the will.

7. Requirement F: use of a reliable system

Requirement F is that a reliable system is used--

(a) at the time of the signing of the will, to link any signature with the person whose signature it is,

(b) to identify the will so that it can be distinguished from any copies, and

(c) to protect the will against alteration or destruction other than by the testator or a person authorised or directed by the testator to alter or destroy the will.

8. Regulations about the formality requirements in relation to wills in electronic form

(1) The Secretary of State may by regulations made by statutory instrument make provision about how the formality requirements are to be, or may be, met in relation to a will in electronic form (including those requirements as modified by sections 7(2) and 8(2)).

(2) Regulations under sub-paragraph (1) may, among other things, identify systems, or descriptions of systems, that are, or are not, reliable systems for the purposes of requirement F.

(3) Before making regulations under sub-paragraph (1), the Secretary of State must consult such persons as the Secretary of State considers appropriate.

(4) Regulations under sub-paragraph (1) may--

(a) make different provision for different purposes, and

(b) make supplementary, incidental, consequential, transitional or saving provision.

(5) A statutory instrument containing regulations under sub-paragraph (1) is subject to annulment in pursuance of a resolution of either House of Parliament.

9. Supplementary

(1) Any individual who is able to sign and attest a will for the purposes of requirement E may be a witness for the purposes of that requirement and requirement D.

(2) For the purposes of this Schedule so far as it relates to a will in electronic form--
"presence" includes presence by means of visual transmission;

"signature" means an electronic signature (within the meaning of section 7 of the Electronic Communications Act 2000).

Appendix 3: Comparison of Paper Will and Electronic Will

(Per the Law Commission)

Evidence	Paper Will	Electronic Will	Comment
Intention	Implied by signature; no independent evidence of deliberate intent	Cryptographic signature verifiably linked to testator's authenticated ID	Electronic execution is an evident and verified act; paper relies on inference
Due execution	Assumed from signatures on face of document; no independent verification	Verified: all three signatures confirmed with trusted encrypted timestamps	Electronic Wills remove reliance on assumption and human memory
Signature	Wet ink; no proof of who actually signed	Qualified Electronic Signature (QES); ID verified by Certificate Authority	Paper signature verifiable only by handwriting expert after the fact
Witnessing/ presence	Implied by witnesses' signatures; physical presence assumed, not proven	Verified by witness QES signatures/timestamps; video record available under LC proposals	Remote witnessing permitted under LC proposals; presence independently verifiable
Identity of testator and witnesses	Named in document; verified only by wet ink signature	Independently verified by Certificate Authority at time of signing	Electronic Will eliminates disputed identity; linked to verifiable credential
Integrity of document	None; document can be physically altered/substituted post execution	Cryptographic hash; any post-signing alteration invalidates all signatures	Paper Wills may be vulnerable to substitution and destruction disputes
Final version certainty	None; no way to prove the document filed is the version that was signed	Guaranteed; cryptographic signature covers the complete document	Eliminates disputes about whether a different version was executed
Time of execution	Approximate; date on face of document only, no verification	Trusted timestamp from Time Stamping Authority (TSA); tamper-proof	Precise execution time can be decisive in disputed revocation cases
Audit trail	None; process relies on human memory and contemporaneous notes	Complete and unalterable; records all key drafting and execution events	Provides a verifiable record of the entire will-making process
Capacity evidence	Statement in document only; reliance on solicitor's attendance note	Video record and competency assessment stored as part of the electronic record	Directly supports the LC's proposal to align the capacity test with the MCA 2005
Undue influence safeguards	Limited; reliance on human observation and witness attestation only	Video record of execution; metadata showing a testator-initiated process	Supports LC proposals to lower the evidential threshold for undue influence claims
Storage	Document; vulnerable to loss, destruction, or concealment	Stored on accredited platform; encrypted and access-controlled	LC does not mandate central registration; finding the Will after death remains a practical challenge