



## The Faculty Office

### Covid-19: Guidance on remote notarisation

This guidance, prepared in conjunction with the professional bodies, is intended to assist notaries in determining whether it is appropriate to authenticate the signing or execution of a document remotely using video conference technology at a time when social distancing measures or the provisions of the [Health Protection \(Coronavirus, Restrictions\) \(England\) Regulations 2020](#) (including any modification or amendment regulations) apply such as to preclude meeting individuals in person.

Notaries are reminded that nothing in this guidance removes the need for the notary to satisfy himself or herself as far as practicable that the procedure followed will result in the acceptance of the document concerned in the receiving jurisdiction or affects 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 shall for instance be by the notary or their client seeking local legal or similar guidance.

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 those notaries who cannot physically meet individuals that there is a method of doing so that has 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 the notary may decide in a particular case that the evidence of identity provided is insufficient and in those circumstances he may either refuse to proceed or charge a proper fee for carrying out additional verification, for example by using on-line identity verification services.

#### 1. Definitions

In this guidance:

“**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; and

“**remotely located individual**” means an individual in England and Wales who is not in the physical presence of the notary who wishes to have his execution of a document authenticated by a notary.

## 2. Notarial acts using video conference technology

- (a) A notary may, subject to the conditions set out in paragraph 4, use video conference technology to certify the execution of a document signed (including by electronic signature) by an individual (whether acting in a personal or representative capacity) by means of a notarial act.
- (b) Before using video conference technology the notary should use his or her best endeavours to verify that the procedure adopted will result in the acceptance of the document in the receiving jurisdiction and where he or she is unable to obtain such verification he or she shall inform the individual accordingly.

## 3. Conditions for use of video conference technology

Where any act by a notary under paragraph 2 is to be performed using video conference technology, the following conditions should apply:

- (a) the remotely located individual must demonstrate that he or she is physically situated in England and Wales;
- (b) the remotely located individual should transmit via facsimile, email or other electronic means, a legible copy of the relevant document in relation to which notarial acts are to be performed, together with documents necessary to satisfy the notary as to his or her identity having regard to the [Legal Sector Affinity Group \(LSAG\) – Advisory Note COVID-19 – and preventing Money Laundering /Terrorist Financing in Legal Practices](#);
- (c) the notary may, after observing the signature or requisite act of the remotely located individual, notarise a transmitted copy of the document and return it via facsimile, email or other electronic means;
- (d) if practicable the notary shall, having obtained the prior consent of the remotely located individual, record the video conference and retain that recording for a period of 6 years in addition to the other records of the notarial act performed which he is required to retain under the Notaries Practice Rules;
- (e) where it is not practicable to record the video conference the notary shall, having obtained the prior consent of the remotely located individual, endeavour to take screen capture photographs of the individual, his or her identity documents and

the relevant document and retain those screen captures for a like period to that referred to in sub-paragraph (d);

- (f) where the remotely located individual is not personally known to the notary, the individual should be asked to present valid photo and other identification required under sub-paragraph (b), above, to the notary during the real time interaction;
- (g) the notary should not be considered, and should not describe himself or herself as, an attesting witness to the document certified by him under this guidance;
- (h) the notarial certificate should narrate the procedure followed by the notary and should not state or imply that the notary was physically present with the individual at the time he or she executed the document. The procedure followed, including a brief note of the type of video conferencing used, should be recorded in his 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(c) within thirty days after the date of execution.

#### **5. Refusal to perform notarial act**

A notary who is required to perform a notarial act using communication technology may refuse to perform the act where the notary is not satisfied that the notarial act, if performed, would comply with this guidance.

#### **6. Oaths and declarations**

Nothing in this guidance is intended to affect or alter any requirement of law that a deponent to an oath or affidavit or a declarant to a statutory declaration should be physically present with the notary when he swears the oath or affidavit or makes the declaration.

#### **7. Expiry**

This guidance shall cease to have effect on such date that the Registrar may designate by Notice.

*Dated: 7 May 2020*