

ISSUED ON BEHALF OF THE SCOTTISH LAW COMMISSION  
NOT FOR PUBLICATION OR BROADCAST  
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### CONTRACT FORMATION FOR THE ELECTRONIC AGE

We enter into contracts so frequently that we sometimes don't even notice that we are doing so: buying a bus ticket, a loaf of bread or a ringtone. In other situations, the contract will be the product of lengthy and careful negotiation, such as when we get a home extension or new kitchen or, in the commercial field, when a public authority has a school built or an airline buys a new plane.

In many cases, the contract is performed satisfactorily, but in a few cases problems may emerge and legal advice is needed. Are the rules of Scots contract law adequate? Could they be improved? Our review of contract law aims to examine these questions. We began by looking at the rules which determine what the meaning of a contract is. (Our Discussion Paper on Interpretation of Contract was published last February.) But that assumes that there is a contract in the first place, whose meaning is in dispute. How, though, do you tell if there is a valid contract at all? If you want to enter into a binding contract how can you be sure of success and are there any formalities which you must observe?

These are questions which need to be answered periodically to make sure that the law is still satisfactory and is keeping pace with expectations of all users, whether private individuals or commercial parties. Just now there is added urgency because of the rapid rise in the use and importance of electronic media – how do you form a contract in the electronic age and what role can electronic signatures play? Do the rules which were designed for oral and paper contracts still work for e-contracts?

The present Discussion Paper seeks to address these questions. It re-examines the general principles of the law and proposes changes, some of which are aimed at facilitating the use of electronic media to form contracts. In coming up with proposals we have been assisted by a number of people with expertise in this area of the law, and their views have been very useful. We now wish to widen the discussion further and seek comments from all interested parties.

**Professor Hector MacQueen**, the lead Commissioner for this project, said: "With the rise in new technology it is high time that our law on how contracts are formed is reviewed and updated. Our proposals would lead to a clear and modern law in line with developments in technology and its usage. We think that the innovations would be particularly attractive for

commercial parties, for whom the proposals offer world-class levels of certainty and convenience.”

The Discussion Paper is available on the Commission's website at <http://www.scotlawcom.gov.uk/> and comments are sought by 29 June 2012.

## NOTES TO EDITORS

1. The Scottish Law Commission was set up in 1965 to promote the reform of the law of Scotland. The Commissioners are Laura J Dunlop QC, Patrick Layden QC TD, Professor Hector L MacQueen, and Dr Andrew JM Steven. The Chief Executive is Malcolm McMillan.
2. Further information can be obtained by contacting Charles Garland, Scottish Law Commission, 140 Causewayside, Edinburgh EH9 1PR (Tel: 0131 668 2131, Fax: 0131 662 4900, email: [info@scotlawcom.gsi.gov.uk](mailto:info@scotlawcom.gsi.gov.uk)).
3. The paper may also be viewed on, and downloaded from, our website at [www.scotlawcom.gov.uk](http://www.scotlawcom.gov.uk) or purchased from TSO ([www.tsoshop.co.uk](http://www.tsoshop.co.uk)).