

ORDER IN COUNCIL

X
2001

ratifying a Projet de Loi

ENTITLED

The Electronic Transactions (Sark) Law, 2001

(Registered on the Records of the Island of Guernsey
on the 7th August, 2001.)



2001

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 7th day of August, 2001 before de Vic Graham Carey, Esquire, Bailiff; present:— David Charles Lowe, Esquire, Mrs. Eileen May Glass, Laurence Lenfestey Guille, Derek Martin Le Page, Stephen Edward Francis Le Poidevin, Alan Cecil Bisson, David Michael Jory, Keith Bichard, OBE, Esquires, The Reverend Peter Gerald Lane, Michael John Wilson, and Michael Henry De La Mare, and Michael John Tanguy, Esquires, Jurats.

The Bailiff having this day placed before the Court an Order of Her Majesty in Council dated the 18th day of July, 2001, approving and ratifying a Projet de Loi of the Chief Pleas of the Island of Sark entitled “The Electronic Transactions (Sark) Law, 2001”, THE COURT, after the reading of the said Order in Council and after having heard Her Majesty’s Procureur thereon, ORDERED:—

1. That the said Order in Council be registered on the records of this Island; and
2. That an extract of this present Act, together with a copy of the said Order in Council, be sent by Her Majesty’s Greffier to the SÉNÉSCHAL of Sark for registration on the records of that Island, of which Order in Council the tenor followeth:—

At the Court at Buckingham Palace

The 18th day of July, 2001

PRESENT,

The Queen's Most Excellent Majesty in Council

WHEREAS, there was this day read at the Board a Report from the Right Honourable the Lords of the Committee of Council for the Affairs of Guernsey and Jersey dated the 5th day of July 2001 in the words following, viz.:—

“YOUR MAJESTY having been pleased, by Your General Order of Reference of the 22nd day of February 1952, to refer unto this Committee the humble Petition of John Michael Beaumont, OBE, Seigneur of Sark, Lieutenant Colonel Reginald John Guille, MBE, Sénéchal of Sark, and Alfred William John Adams, Prévôt of the Island of Sark setting forth:—

1. That, in pursuance of their Resolution of the 27th day of July, 2000, the Chief Pleas of the Island of Sark, at a meeting held on the 17th day of January 2001 approved a Bill or “Projet de Loi” entitled “The Electronic Transactions (Sark) Law, 2001”:
2. That the said Bill or “Projet de Loi” is as set forth in the Schedule hereunto annexed. And most humbly praying that Your Majesty might be graciously pleased to grant Your Royal Sanction to the Bill or “Projet de Loi” of the Chief Pleas of Sark entitled “The Electronic Transactions (Sark) Law, 2001”, and to order that the same shall have force of law within the Island of Sark.”

“THE LORDS OF THE COMMITTEE, in obedience to Your Majesty’s said Order of Reference, have taken the said Petition and the Projet de Loi annexed thereto into consideration and do this day agree humbly to report, as their opinion, to Your Majesty, that it may be advisable for Your Majesty to comply with the prayer of the said Petition and to approve of and ratify the said Projet de Loi.”

HER MAJESTY, having taken the said Report into consideration, is pleased, by and with the advice of Her Privy Council, to approve of and ratify the said Projet de Loi, and to order, and it is hereby ordered, that the same shall have the force of law within the Island of Sark.

AND HER MAJESTY doth hereby further direct that this Order, and the said Projet de Loi (a copy whereof is hereunto annexed), be entered upon the Register of the Island of Guernsey and observed accordingly.

AND the Lieutenant Governor and Commander-in-Chief of the Island of Guernsey, the Bailiff and Jurats, and all other Her Majesty's Officers for the time being in the said Bailiwick, and all other persons whom it may concern, are to take notice and govern themselves accordingly.

A. K. Galloway

PROJET DE LOI

ENTITLED

The Electronic Transactions (Sark) Law, 2001

ARRANGEMENT OF SECTIONS

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10. Application of conditions by Order.
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- 15. Liability of mere conduits.
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PROJET DE LOI

ENTITLED

The Electronic Transactions (Sark) Law, 2001

THE CHIEF PLEAS OF SARK, in pursuance of their Resolution of the 27th day of July, 2000, have approved the following provisions, which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Islands of Sark and Brecqhou.

Facilitation of electronic transactions

General facilitation of electronic transactions.

1. Information shall not be denied legal effect, validity, enforceability or admissibility solely because it is in electronic form.

Contracts.

2. (1) A contract or any provision thereof shall not be denied legal effect, validity or enforceability solely because the contract was made in electronic form or by electronic means.

(2) Evidence of a contract or any provision thereof shall not be denied admissibility solely because it is in electronic form.

Declarations and statements.

3. A declaration of intention, statutory declaration or other statement made under oath, by affirmation or otherwise shall not be denied legal effect, validity, enforceability or admissibility solely because it is in electronic form.

Signatures, etc.

4. A signature, seal, attestation or notarisation shall not be denied legal effect, validity, enforceability or admissibility solely because it is in electronic form.

Documents, etc.

5. A document, record, notice or instrument shall not be denied legal effect, validity, enforceability or admissibility solely because it is in electronic form.

Information incorporated by reference.

6. Nothing specified in sections 1 to 5 shall be denied legal effect, validity, enforceability or admissibility (as the case may be) solely because information is referred to, but not contained, in other information in electronic form.

Saving provision.

7. The provisions of sections 1 to 6 shall not prevent anything specified therein being denied legal effect, validity, enforceability or admissibility (as the case may be) for a reason other than that it is in electronic form or was done by electronic means.

Requirements of form

Requirements of form.

8. (1) If a law, whether statutory or customary, requires-

- (a) information or a record, notice, instrument or document of any description to be in writing, a document in electronic form satisfies the law;
- (b) a signature, a signature in electronic form satisfies the law;
- (c) a seal, attestation or notarisation, a seal, attestation or notarisation in electronic form satisfies the law;
- (d) a person to retain a document that is in the form of paper, an article or other material, retention of a copy of the document in electronic form satisfies the law;
- (e) a person to retain a document that is in electronic form, retention of a copy of the document satisfies the law; or
- (f) a statement or declaration to be made under oath or in a statutory declaration, a sworn document or statutory declaration in electronic form satisfies the law.

(2) If a law, whether statutory or customary, requires or permits information or a document to be given, produced, served, sent or delivered (whatever expression may be used to describe the act), giving, producing, serving, sending or delivering the information, the document or a copy thereof in electronic form or by electronic means satisfies the law.

(3) For the purposes of subsections (1) and (2), the requirement may arise-

- (a) in the form of an obligation, or
- (b) as a result of the law imposing consequences in the event that the requirement is not met.

No obligation to use electronic form or means.

9. (1) Subject to subsection (2), the provisions of section 8 shall not compel a person to do or accept anything in electronic form or by electronic means.

(2) The Chief Pleas may, from time to time, by Ordinance make such provision as they deem necessary or expedient prescribing circumstances in which a person shall be obliged to do or accept something in electronic form or by electronic means.

(3) For the purposes of this section, section 22(2)(b) shall not apply.

Application of conditions and exemption by Order

Application of conditions by Order.

10. (1) The Committee may, from time to time, by Order make provision for such conditions as it deems necessary or expedient to attach to the operation of this Law or any Ordinance made thereunder, or such provision thereof as may be specified in the Order, as it applies-

- (a) to any class of transactions, persons, matters or things specified in the Order; or

- (b) with reference to any particular purpose or provision specified in the Order.

(2) Without prejudice to the generality of subsection (1), an Order made under this section may make provision with regard to-

- (a) the particular electronic form to be used;
- (b) the particular means of communication to be used; and
- (c) the particular actions to be carried out by a person;

and may make such ancillary and incidental provision as appears to the Committee necessary or desirable for the operation of this Law.

Exemption by Order from application of Law.

11. The Committee may, from time to time, by Order provide that this Law or any Ordinance made thereunder, or such provision thereof as may be specified in the Order, shall not apply to any class of transactions, persons, matters or things specified in the Order to which it would otherwise apply.

Enabling provisions for certain transactions

Electronic service and production.

12. (1) Where a law, whether statutory or customary, requires or permits information or a document to be served or produced, the Chief Pleas may, from time to time, by Ordinance make provision in respect of-

- (a) a deemed time and place of service or production of information or a document served or produced in electronic form or by electronic means; and
- (b) the manner (if any) by which such deemed time and place of service or production may be rebutted.

(2) For the purposes of subsection (1), information or a document shall be regarded as being required or permitted to be served or produced whether the expressions "serve" or "produce" or expressions having a like meaning, including "give", "send" and "deliver", are used.

Sending and receipt of electronic information.

13. The Chief Pleas may, from time to time, by Ordinance make provision in respect of-

- (a) the time or place of sending of information communicated by electronic means;
- (b) the time or place of receipt of information communicated by electronic means;
- (c) the circumstances in which a person shall be bound by information in electronic form or communicated by electronic means; and
- (d) the manner (if any) by which a person may indicate his intention not to become subject to any such provision.

Electronic agents.

14. (1) The Chief Pleas may, from time to time, by Ordinance make provision for the legal effect of actions carried out by means of an electronic agent.

(2) Without prejudice to the generality of subsection (1), an Ordinance made under this section may make provision in respect of-

- (a) the circumstances in which a person shall be bound by the actions of an electronic agent;
- (b) the circumstances in which the interaction of a natural person and an electronic agent shall give rise to a contract or produce other legal consequences;
- (c) the circumstances in which the interaction of an electronic agent and information in electronic form shall give rise to a contract or produce other legal consequences; and
- (d) the circumstances in which the interaction of two or more electronic agents shall give rise to a contract or produce other legal consequences;

and may make such ancillary and incidental provisions as appear to the Chief Pleas necessary or desirable for the conduct of transactions by electronic agents.

(3) For the purposes of this section, "**electronic agent**" means a computer program or electronic or other automated means used independently to initiate an action or to respond in whole or in part to information or actions in

electronic form or communicated by electronic means, without review or action by a natural person.

Intermediaries

Liability of mere conduits.

15. (1) Where a service provider establishes-

- (a) that he did not initiate the transmission;
- (b) that he did not select the receiver of the transmission;
and
- (c) that he did not select or modify the information
contained in the transmission,

the service provider shall not be subject to any criminal liability, or liable for any damages, in respect of or arising out of the information transmitted or to which access has been provided.

(2) Nothing in this section shall affect the capability of a court or other authority, in accordance with any law, whether statutory or customary, to require the service provider to terminate or prevent an infringement or breach of any law, right or obligation.

Liability in respect of caching.

16. (1) Where a service provider establishes-

- (a) that he did not modify the information;

- (b) that he complied with conditions on access to, or updating of, the information;
- (c) that he did not interfere with the lawful use of technology to obtain data on the use of the information; and
- (d) that, upon obtaining actual knowledge of the fact that-
 - (i) the information at the initial source of the transmission has been removed from the telecommunications system; or
 - (ii) access to the information has been disabled; or
 - (iii) a court or other authority has ordered such removal or disablement,

he acted expeditiously to remove or to disable access to the information he had stored,

the service provider shall not be subject to any criminal liability, or liable for any damages, in respect of or arising out of the automatic, intermediate and temporary storage of the information, performed for the sole purpose of improving the efficiency of its onward transmission to other persons.

(2) Nothing in this section shall affect the capability of a court or other authority, in accordance with any law, whether statutory or customary, to require the service provider to terminate or prevent an infringement or breach of any law, right or obligation.

Meaning of "service provider".

17. (1) For the purposes of sections 15 and 16, "service provider" means a person who provides a service that consists of-

- (a) the transmission over a telecommunications system of information provided by another person; or
- (b) the provision of access to a telecommunications system.

(2) For the purposes of section 15, references in subsection (1) of this section to the acts of transmission and of provision of access include the automatic, intermediate and transient storage of the information transmitted insofar as this takes place for the sole purpose of carrying out the transmission over the telecommunications system and only if the information is not stored by the service provider for any period longer than is reasonably necessary for the transmission.

Liability in respect of hosting.

18. (1) Where a host establishes-

- (a) that he did not have actual knowledge of-
 - (i) any unlawful information stored, or
 - (ii) any unlawful activity arising out of the storage of the information; or

- (b) that, upon obtaining such knowledge, he acted expeditiously to remove or to disable access to that information,

the host shall not be subject to any criminal liability in respect of or arising out of the information stored at the request of the other person.

(2) Where a host establishes-

- (a) that he did not have actual knowledge of-
 - (i) any unlawful information stored, or
 - (ii) any unlawful activity arising out of the storage of the information, and

was not aware of facts or circumstances from which the unlawfulness of the information or activity was apparent; or

- (b) that, upon obtaining such knowledge or awareness, he acted expeditiously to remove or to disable access to that information,

the host shall not be liable for any damages in respect of or arising out of the information stored at the request of the other person.

(3) Subsections (1) and (2) shall not apply in any case where the person who provided the information stored was acting under the authority or control of the host.

(4) Subsections (1) and (2) apply whether or not the host provides other persons with access to the information stored by him.

(5) Nothing in this section shall affect the capability of a court or other authority, in accordance with any law, whether statutory or customary, to require the service provider to terminate or prevent an infringement or breach of any law, right or obligation.

(6) In this section, "**host**" means a person who provides a service that consists of the storage in electronic form of information provided by another person.

(7) For the purposes of subsection (6), section 22(2)(b) shall not apply.

Encryption

Encryption.

19. (1) Subject to subsections (2) and (3), for the avoidance of doubt, it is hereby declared that it is not unlawful for a person to use any means of encryption or decryption for any lawful purpose solely by reference to the bit size or other measure of strength of the means of encryption or decryption.

(2) Nothing in subsection (1) shall affect any enactment or rule of law rendering an act or omission unlawful for any reason other than that specified in subsection (1).

(3) Nothing in subsection (1) shall prejudice the operation of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972^a, as amended, or of any of the Orders made thereunder.

Interpretation of "writing", etc

Meanings of "writing" and "physical writing".

20. (1) In this Law and in every other enactment passed on or before the day of the commencement of this section, expressions referring to writing shall, unless the contrary intention appear, be construed as including references to printing, lithography, photography, and other modes of representing or reproducing words in a visible form.

(2) In every enactment passed after the day of the commencement of this section, expressions referring to writing shall, unless the contrary intention appear, be construed as referring to information recorded by any means or in any form.

(3) For the purposes of subsection (2), "**information**" includes text, graphics, images, sounds, data, notation, instructions or code of any description.

(4) In this Law and in every other enactment, whether passed on, before or after the day of the commencement of this Law, expressions referring to physical writing shall, unless the contrary intention appear, be construed as referring to any writing on or in a physical medium from which it can be perceived directly by the human senses.

^a Ordres en Conseil Vol. XXIII, p. 573; Vol. XXIV, p. 87; and No. XIII of 1991.

Miscellaneous and supplemental

General provisions as to subordinate legislation.

21. (1) Any Ordinance of the Chief Pleas or Order of the Committee under this Law-

- (a) may be amended or repealed by a subsequent Ordinance or, as the case may be, by a subsequent Order hereunder;
- (b) may contain such consequential, incidental, supplemental and transitional provision as may appear to the Chief Pleas or, as the case may be, the Committee to be necessary or expedient;
- (c) shall, in the case of an Order, be laid before a meeting of the Chief Pleas as soon as possible and shall, if at that or the next meeting the Chief Pleas resolve to annul it, cease to have effect, but without prejudice to anything done under it or to the making of a new Order.

(2) Any power conferred upon the Chief Pleas or the Committee by this Law to make an Ordinance or, as the case may be, an Order may be exercised-

- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified

exceptions, or in relation to any specified cases or classes of cases;

(b) so as to make, as respects the cases in relation to which it is exercised-

(i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise);

(ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes;

(iii) any such provision either unconditionally or subject to any prescribed conditions.

General interpretation.

22. (1) In this Law, unless the context otherwise requires-

"admissibility" means admissibility as evidence in any legal proceedings;

"Committee" means the General Purposes and Advisory Committee of the Chief Pleas or such other committee of the Chief Pleas as the Chief Pleas may by Ordinance determine;

"copy" includes a copy wholly or partly in electronic form or made wholly or partly by electronic means;

"document" includes anything containing recorded information;

"electronic" includes electrical, magnetic, wireless, optical, digital or electromagnetic;

"information" includes text, graphics, images, sounds, data, notation, instructions or code of any description;

"signature in electronic form" means a signature wholly or partly in electronic form attached to or logically associated with information in electronic or non-electronic form, and references to a signature being in electronic form shall be construed accordingly;

"transaction" includes a transaction of a non-commercial nature.

(2) In this Law, unless otherwise provided, references to something in electronic form shall include-

- (a) something partly in electronic form; and
- (b) something, whether or not itself in electronic form-
 - (i) made wholly or partly by electronic means, or
 - (ii) made wholly or partly by means of something wholly or partly in electronic form.

(3) In this Law, unless otherwise provided, references to something done by electronic means shall include something done partly by electronic means.

(4) The Interpretation (Guernsey) Law, 1948^b shall apply to the interpretation of this Law as it applies to the interpretation of a Guernsey enactment: provided that section 10 of that Law shall cease to apply to the interpretation of this Law on the day of the commencement of section 20(1) of this Law.

Power to modify by Ordinance.

23. (1) For the purpose of authorising or facilitating the use of electronic form or electronic means, the Chief Pleas may, from time to time, by Ordinance make such amendment-

- (a) to sections 1 to 11, 20 and 22 of this Law; or
- (b) to any other enactment,

as they deem necessary or expedient.

(2) An Ordinance under subsection (1)(a) may empower the Committee, in specified circumstances, to make an Order.

(3) For the purposes of this section, "**amendment**" includes any alteration, addition or deletion.

Citation.

^b Ordres en Conseil Vol. XIII, p. 355.

24. This Law may be cited as the Electronic Transactions (Sark) Law, 2001.

Commencement.

25. This Law shall come into operation on a date or dates to be appointed by Ordinance of the Chief Pleas; and such an Ordinance may appoint different days for different provisions and different purposes.