

PROJET DE LOI

ENTITLED

The Electronic Transactions (Guernsey) Law, 2000 *

[CONSOLIDATED TEXT]

NOTE

This consolidated version of the enactment incorporates all amendments listed in the footnote below. It has been prepared for the Guernsey Law website and is believed to be accurate and up to date, but it is not authoritative and has no legal effect. No warranty is given that the text is free of errors and omissions, and no liability is accepted for any loss arising from its use. The authoritative text of the enactment and of the amending instruments may be obtained from Her Majesty's Greffier, Royal Court House, Guernsey, GY1 2PB.

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* No. VIII of 2000 (Ordres en Conseil Vol. XL, p. 263); as amended by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII of 2003, Recueil d'Ordonnances Tome XXIX, p. 406); the Electronic Transactions (Obligation to use Electronic Form) (Guernsey) Ordinance, 2014 (No. XIV of 2014); the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016 (No. IX of 2016); the Electronic Transactions (Cheque Imaging) (Guernsey) Ordinance, 2017 (No. XXIV of 2017). See also the Mental Health (Miscellaneous Provisions) (Guernsey and Alderney) Ordinance, 2013 (No. XVI of 2013).

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THE STATES, in pursuance of their Resolution of the 24th day of February, 2000^a, 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 Guernsey, Herm and Jethou.

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.

NOTE

In accordance with the provisions of the Mental Health (Miscellaneous Provisions) (Guernsey and Alderney) Ordinance, 2013, section 15, with effect from 8th April, 2013 and notwithstanding article 1 of the Electronic Transactions (Exemptions) Order, 2001, sections 1 to 5 and 8 of this Law apply to (a) any information, record, notice or instrument, or document of any description, (b) any signature, (c) any statement or declaration, or (d) any requirement or permission to give, produce, serve, send or deliver information or a document, required by or under the Mental Health (Bailiwick of Guernsey) Law, 2010.

^a Article V of Billet d'État No. VI of 2000.

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. (1) A declaration or statement made under oath or by affirmation shall not be denied legal effect, validity, enforceability or admissibility solely because it is in electronic form.

(2) A statutory declaration or other declaration or statement made otherwise than under oath or by affirmation shall not be denied legal effect, validity, enforceability or admissibility solely because it is in electronic form.]

NOTE

Section 3 was substituted by the Electronic Transactions (Obligation to use Electronic Form) (Guernsey) Ordinance, 2014, section 2, with effect from 1st May, 2014.

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 declaration or statement to be made under oath or by affirmation, a sworn or affirmed declaration or statement in electronic form satisfies the law, or
- (g) a statutory declaration or other declaration or statement to be made otherwise than under oath or by affirmation, a statutory declaration or other declaration or statement 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.

NOTE

In section 8, paragraph (f) of subsection (1) was substituted and paragraph (g) thereof inserted by the Electronic Transactions (Obligation to use Electronic Form) (Guernsey) Ordinance, 2014, section 3, with effect from 1st May, 2014.

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 States 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.

NOTE

The following Ordinances have been made under section 9:

Electronic Transactions (Obligation to use Electronic Form)
(Guernsey) Ordinance, 2014;
Electronic Transactions (Cheque Imaging) (Guernsey) Ordinance,
2017.

[Provision as to electronic imaging of cheques and other instruments.]

9A. (1) The provisions of this Law are, in respect of the presentment of bills of exchange within the meaning of the Bills of Exchange (Guernsey) Law, 1958 (as that Law has effect in the Bailiwick excluding the islands of Alderney and Sark), subject to any provision made by or under –

- (a) Part IVA of that Law (presentment of cheques and other instruments by electronic means), and
- (b) the Electronic Transactions (Cheque Imaging) (Guernsey) Ordinance, 2017.

(2) The Committee may by Order make such provision as it thinks

fit –

- (a) for the purposes of authorising or facilitating, or otherwise in respect of, the implementation (including the introduction, use, administration, execution, recognition and enforcement) of electronic cheque imaging, and
- (b) to the extent relevant for those purposes, for carrying this Law (and the Bills of Exchange (Guernsey) Law, 1958, as it has effect in the Bailiwick excluding the islands of Alderney and Sark) into effect.]

NOTE

Section 9A was inserted by the Electronic Transactions (Cheque Imaging) (Guernsey) Ordinance, 2017, section 1, with effect from 1st October, 2017, subject to the transitional provision in section 15(2) of the 2017 Ordinance.

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,
- (c) the particular actions to be carried out by a person, and

make such ancillary and incidental provisions as appear 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.

NOTE

The following Order has been made under section 11:

Electronic Transactions (Exemptions) Order, 2001.

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 States 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 States 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 States 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,
- (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

make such ancillary and incidental provisions as appear to the States 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.

NOTE

The following Ordinances have been made under section 14:

Electronic Transactions (Cheque Imaging) (Guernsey) Ordinance, 2017;
Electronic Transactions (Electronic Agents) (Guernsey) Ordinance, 2019.

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 Import and Export (Control) (Guernsey) Law, 1946^b or of any of the Orders made thereunder.

^b Ordres en Conseil Vol. XII, p. 332; Vol. XXIII, p. 573; and No. XVI of 1991.

General interpretation

Meanings of "writing" and "physical writing".

20. In the Interpretation (Guernsey) Law, 1948^c, for section 10 substitute the following sections –

"Meaning of "writing".

10. (1) In this Law and in every other enactment passed before the day following the commencement of section 20 of the Electronic Transactions (Guernsey) Law, 2000, 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 commencement of section 20 of the Electronic Transactions (Guernsey) Law, 2000, 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.

Meaning of "physical writing".

10A. In this Law and in every other enactment, whether passed before or after 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

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

from which it can be perceived directly by the human senses."

NOTES

Section 20 is not yet in force.

The Interpretation (Guernsey) Law, 1948 has since been repealed by the Interpretation and Standard Provisions (Bailiwick of Guernsey) Law, 2016, section 28(a), with effect from 1st October, 2018.

Miscellaneous and supplemental

General provisions as to subordinate legislation.

21. (1) Any Ordinance of the States 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 States 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 States as soon as possible and shall, if at that or the next meeting the States 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 States 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.

Interpretation.

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

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

[**"declaration"** includes, for the avoidance of doubt, a declaration required or permitted to be made by or under or otherwise for the purposes of an enactment or statutory instrument,]

"Committee" means the States [Committee for Economic Development] or such other committee of the States as the States 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,

[**"statutory declaration"** means a declaration made in accordance with the provisions of an Order of the Royal Court made on the 23rd of April 1838^{ca},]

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

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

^{ca} Recueil d'Ordonnances Tome II, p. 488.

- (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) Any reference in this Law to an enactment or statutory instrument is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.]

NOTES

In section 22,

the definitions of the expressions "declaration" and "statutory declaration" in subsection (1) were inserted by the Electronic Transactions (Obligation to use Electronic Form) (Guernsey) Ordinance, 2014, section 4, with effect from 1st May, 2014;

the words in square brackets in the definition of the expression "Committee" in subsection (1) were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 1(a), with effect from 1st May, 2016;¹

subsection (4) was inserted by the Electronic Transactions (Cheque Imaging) (Guernsey) Ordinance, 2017, section 2, with effect from 1st October, 2017.

The functions, rights and liabilities of the Commerce and Employment Department and of its Minister or Deputy Minister arising under or by virtue

of this Law were transferred to and vested in, respectively, the Committee for Economic Development and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 1(a), with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.²

Power to modify by Ordinance.

23. (1) For the purpose of authorising or facilitating the use of electronic form or electronic means, the States 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.

NOTE

The following Ordinances have been made under section 23:

Electronic Transactions (Obligation to use Electronic Form)
(Guernsey) Ordinance, 2014;
Electronic Transactions (Cheque Imaging) (Guernsey) Ordinance,
2017.

Citation.

24. This Law may be cited as the Electronic Transactions (Guernsey) Law, 2000.

Commencement.

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

NOTES

Sections 1 to 9 were brought into force on 1st March, 2001 by the Electronic Transactions (Guernsey) Law, 2000 (Commencement) Ordinance, 2001, section 1.

Sections 10 to 14, 19, and 21 to 24 were brought into force on 1st October, 2000 by the Electronic Transactions (Guernsey) Law, 2000 (Commencement) Ordinance, 2000, section 1.

Sections 15 to 18 were brought into force on 1st December, 2000 by the Electronic Transactions (Guernsey) Law, 2000 (Commencement) (No. 2) Ordinance, 2000, section 1.

¹ These words were previously substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 1(c), Schedule 2, paragraph 1(c), with effect from 6th May, 2004.

² The functions, rights and liabilities of the Commerce and Employment Department and its Minister arising under or by virtue of this Law were previously transferred to and vested in them, respectively, from the Advisory and Finance Committee and its President by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 1, Schedule 1, paragraph 1(c), Schedule 2, paragraph 1(c), with effect from 6th May, 2004, subject to the savings and transitional provisions in section 4 of the 2003 Ordinance.