

ELECTRONIC TRANSACTIONS ACT 2000

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AN ACT

To facilitate electronic transactions, and for connected purposes.

WE, your Majesty's most dutiful and loyal subjects, the Council and Keys of the said Isle, do humbly beseech your Majesty that it may be enacted, and be it enacted, by the Queen's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows (that is to say):-

PART 1
VALIDITY OF TRANSACTIONS ETC.

1. Validity of electronic transactions

(1) For the purposes of any statutory provision or rule of law, a transaction is not invalid merely because it takes place wholly or partly by means of one or more electronic communications.

(2) Subsection (1) is subject to the following provisions of this Part and Part 2.

(3) Regulations may provide that subsection (1) does not apply to -

- (a) a transaction of a description specified in the regulations, or
- (b) a statutory provision or rule of law so specified.

2. Time and place of dispatch and receipt of electronic communications

(1) Subject to subsection (8), this section applies for the purposes of any statutory provision or rule of law.

(2) If an electronic communication enters a single information system outside the control of the originator, then, unless otherwise agreed between the originator and the recipient of the electronic communication, the dispatch of the electronic communication occurs when it enters that information system.

(3) If an electronic communication enters successively 2 or more information systems outside the control of the originator, then, unless otherwise agreed between the originator and the recipient of the electronic communication, the dispatch of the electronic communication occurs when it enters the first of those information systems.

(4) If the recipient of an electronic communication has designated an information system for the purpose of receiving electronic communications, then, unless otherwise agreed between the originator and the recipient of the electronic communication, the time of receipt of the electronic communication is the time when the electronic communication enters that information system.

(5) If the recipient of an electronic communication has not designated an information system for the purpose of receiving electronic communications, then, unless otherwise agreed between the originator and the recipient of the electronic communication, the time of receipt of the electronic communication is the time when the electronic communication comes to the attention of the recipient.

(6) Unless otherwise agreed between the originator and the recipient of an electronic communication -

- (a) the electronic communication is taken to have been dispatched at the place where the originator has its place of business; and
- (b) the electronic communication is taken to have been received at the place where the recipient has its place of business.

(7) For the purposes of the application of subsection (6) to an electronic communication -

- (a) if the originator or recipient has more than one place of business, and one of those places has a closer relationship to the underlying transaction, it is to be assumed that that place of business is the originator's or recipient's only place of business; and
- (b) if the originator or recipient has more than one place of business, but paragraph (a) does not apply, it is to be assumed that the originator's or recipient's principal place of business is the originator's or recipient's only place of business; and
- (c) if the originator or recipient does not have a place of business, it is to be assumed that the originator's or recipient's place of business is the place where the originator or recipient ordinarily resides.

(8) Regulations may provide that this section does not apply to -

- (a) an electronic communication of a description specified in the regulations; or
- (b) a statutory provision or rule of law, or a statutory provision of a description, so specified.

3. Attribution of electronic communications

(1) For the purposes of any statutory provision or rule of law, unless otherwise agreed between the person by whom an electronic communication purports to be sent and the recipient of that communication, that person is bound by that communication only if the communication was sent by him or with his authority.

(2) Subsection (1) does not affect a statutory provision or rule of law which makes provision for -

(a) conduct engaged in by one person within the scope of his actual or apparent authority to be attributed to another; or

(b) one person to be bound by conduct engaged in by another within the scope of the other's actual or apparent authority.

(3) This section does not affect the operation of any statutory provision or rule of law which provides for a statement made by a person to be treated as an admission made by a party to any legal proceedings.

(4) Regulations may provide that this section does not apply to -

(a) an electronic communication of a description specified in the regulations; or

(b) a statutory provision or rule of law, or a statutory provision of a description, so specified.

PART 2

APPLICATION OF LEGAL REQUIREMENTS

4. Requirement etc. to give information in writing

(1) If a statutory provision or rule of law requires a person to give information in writing, that requirement is taken to have been met if he gives the information by means of an electronic communication where the conditions in subsection (3) are fulfilled.

(2) If a statutory provision or rule of law permits a person to give information in writing, he may give the information by means of an electronic communication where the conditions in subsection (3) are fulfilled.

(3) The conditions referred to in subsections (1) and (2) are that -

(a) at the time the information was given, it was reasonable to expect that the information would be readily accessible so as to be usable for subsequent reference; and

(b) if the information is required or permitted to be given to a public authority or to a person on behalf of a public authority, and the authority requires that -

(i) the information be given, in accordance with particular technical requirements, by means of a particular kind of electronic communication, or

(ii) particular action be taken by way of verifying the receipt of the information, the requirement mentioned in sub-paragraph (i) or (ii) has been met;

(c) if the information is required or permitted to be given to a person who is not a public authority and is not acting on behalf of a public authority, that person consents to the information being given by way of electronic communication.

(4) This section does not affect the operation of any statutory provision which requires or permits information to be given, in accordance with particular technical requirements -

(a) on a particular kind of data storage device; or

(b) by means of a particular kind of electronic communication.

(5) This section applies to a requirement or permission to give information, whether the expression "give", "send" or "serve", or any other expression, is used.

(6) For the purposes of this section, giving information includes, but is not limited to, the following -

- (a) making an application;
- (b) making or lodging a claim;
- (c) giving, sending or serving a notification;
- (d) lodging a return;
- (e) making a request;
- (f) making a declaration;
- (g) lodging or issuing a certificate;
- (h) making, varying or cancelling an election;
- (i) lodging an objection;
- (j) giving a statement of reasons.

5. Signature

(1) If, under any statutory provision or rule of law, the signature of a person is required, that requirement is taken to have been met in relation to an electronic communication if -

- (a) a method is used to identify him and to indicate his approval of the information communicated; and
- (b) having regard to all the relevant circumstances at the time the method was used, the method was as reliable as was appropriate for the purposes for which the information was communicated; and
- (c) if the signature is required to be given to a public authority or to a person on behalf of a public authority, and the authority requires that the method used as mentioned in paragraph (a) be in accordance with particular technical requirements, that requirement has been met;
- (d) if the signature is required to be given to a person who is not a public authority and is not acting on behalf of a public authority, that person consents to that requirement being met by the use of the method mentioned in paragraph (a).

(2) This section does not affect the operation of any other statutory provision requiring -

- (a) an electronic communication to contain an electronic signature (however described); or
- (b) an electronic communication to contain a unique identification in an electronic form; or
- (c) a particular method to be used in relation to an electronic communication to identify the originator of the communication and to indicate the originator's approval of the information communicated.

6. Production of document

(1) If, under any statutory provision or rule of law, a person is required to produce a document which is in the form of paper, an article or other material, that requirement is taken to have been met if he produces, by means of an electronic communication, an electronic form of the document, where the conditions in subsection (3) are fulfilled.

(2) If, under any statutory provision or rule of law, a person is permitted to produce a document which is in the form of paper, an article or other material, then, instead of producing the document in that form, the person may produce, by means of an electronic communication, an electronic form of the document, where the conditions in subsection (3) are fulfilled.

(3) The conditions referred to in subsections (1) and (2) are that -

(a) having regard to all the relevant circumstances at the time the communication was made, the method of generating the electronic form of the document provided a reliable means of assuring the maintenance of the integrity of the information contained in the document;

(b) at the time the communication was made, it was reasonable to expect that the information contained in the electronic form of the document would be readily accessible so as to be usable for subsequent reference; and

(c) if the document is required or permitted to be produced to a public authority or to a person on behalf of a public authority, and the authority requires that -

(i) an electronic form of the document be produced, in accordance with particular technical requirements, by means of a particular kind of electronic communication, or

(ii) particular action be taken by way of verifying the receipt of the document, the requirement mentioned in sub-paragraph (i) or (ii) has been met;

(d) if the document is required or permitted to be given to a person who is not a public authority and is not acting on behalf of a public authority, that person consents to production, by means of an electronic communication, of an electronic form of the document.

(4) For the purposes of this section, the integrity of information contained in a document is maintained if, and only if, the information has remained complete and unaltered, apart from -

(a) the addition of any endorsement; or

(b) any immaterial change;

which arises in the normal course of communication, storage or display.

(5) This section does not affect the operation of any statutory provision which requires or permits electronic forms of documents to be produced, in accordance with particular technical requirements -

(a) on a particular kind of data storage device; or

(b) by means of a particular kind of electronic communication.

(6) The following does not constitute an infringement of the copyright in a work or other matter embodied in a document -

(a) the generation of an electronic form of the document for the purposes of this section; or

(b) the production, by means of an electronic communication, of an electronic form of the document for the purposes of this section.

7. Recording and retention of information

(1) If, under any statutory provision or rule of law, a person is required to record information in writing, that requirement is taken to have been met if he records the information in electronic form, where -

(a) at the time of the recording of the information, it was reasonable to expect that the information would be readily accessible so as to be usable for subsequent reference; and

(b) if regulations or any other statutory provision require that the information, if recorded in electronic form, be recorded on a particular kind of data storage device, that requirement has been met.

(2) If, under any statutory provision or rule of law, a person is required to retain, for a particular period, a document which is in the form of paper, an article or other material, that requirement is taken to have been met if he retains an electronic form of the document throughout that period, where -

(a) having regard to all the relevant circumstances at the time of the generation of the electronic form of the document, the method of generating the electronic form of the document provided a reliable means of assuring the maintenance of the integrity of the information contained in the document; and

(b) at the time of the generation of the electronic form of the document, it was reasonable to expect that the information contained in the electronic form of the document would be readily accessible so as to be usable for subsequent reference; and

(c) if regulations or any other statutory provision require that the information, if retained in an electronic form, be retained on a particular kind of data storage device, that requirement has been met.

(3) If, under any statutory provision or rule of law, a person ("the first person") is required to retain, for a particular period, information which was the subject of an electronic communication, that requirement is taken to be met if the first person retains, or causes another person to retain, in electronic form, that information, where -

(a) at the beginning of that period, it was reasonable to expect that the information would be readily accessible so as to be usable for subsequent reference; and

(b) having regard to all the relevant circumstances at the beginning of the retention of the information, the method of retaining the information in electronic form provides a reliable means of assuring the maintenance of the integrity of the information contained in the electronic communication; and

(c) throughout that period, the first person also retains, or causes the other person to retain, in electronic form, such additional information obtained by the first person as is sufficient to enable the identification of the following -

(i) the originator of the electronic communication;

(ii) the recipient of the electronic communication;

(iii) the time when the electronic communication was sent;

(iv) the time when the electronic communication was received; and

(d) at the beginning of the retention of the additional information referred to in paragraph (c), it was reasonable to expect that it would be readily accessible so as to be usable for subsequent reference; and

(e) if regulations or any other statutory provision require that the information, if retained in an electronic form, be retained on a particular kind of data storage device, that requirement has been met throughout that period.

(4) For the purposes of subsections (2) and (3), the integrity of information contained in a document or information which was the subject of an electronic communication is maintained if, and only if, the information has remained complete and unaltered, apart from -

(a) the addition of any endorsement; or

(b) any immaterial change;

which arises in the normal course of communication, storage or display.

(5) Where, under any statutory provision, a person is required to make a document available for inspection, and the document is retained in electronic form, that requirement is taken to have been met if he makes the document available for inspection in a visible and legible form.

(6) The generation of an electronic form of a document for the purposes of this section does not constitute an infringement of the copyright in a work or other matter embodied in the document.

8. Exemptions from this Part

(1) Regulations may provide that this Part, or a provision of this Part specified in the regulations, does not apply to -

(a) a requirement so specified;

(b) a permission so specified; or

(c) a statutory provision or rule of law so specified.

(2) This Part does not apply to the practice and procedure of any court or tribunal; and for this purpose "practice and procedure" includes any matter in respect of which rules of court may be made.

(3) Nothing in this Part affects any statutory provision or rule of law relating to evidence in proceedings in any court or tribunal.

PART 3 GENERAL

9. Registration of certification service providers

(1) Regulations may provide for -

(a) the establishment and maintenance, by such person or authority as is specified in the regulations, of a register of certification service providers;

(b) the conditions for registration;

(c) applications for registration;

(d) the duration of registration;

(e) removal from the register;

(f) appeals against decisions relating to applications for registration and removal from the register;

(g) fees for applications for, and continuance of, registration;

(h) the admissibility of statements as to entries on the register.

(2) Regulations may make it an offence for any person -

(a) to make a statement which is false in a material particular, or recklessly to make a statement which he knows to be false in a material particular, or to withhold any material information, for the purpose of securing the making or retention of any entry on, or the removal of any entry from, the register; or

(b) falsely to represent himself to be entered in the register;

and may provide for a person guilty of such an offence to be liable on summary conviction to a penalty not exceeding that specified in the regulations (which shall not exceed a fine of £5,000 or custody for a term of 6 months or both).

(3) In this section -

"certificate" means a communication which purports to confirm the identity of the originator of an electronic communication, by reference to an electronic signature attached to or logically associated with the latter communication;

"certification service provider" means a person who, in the course of his business, issues certificates in relation to electronic signatures;

"electronic signature" means data in electronic form which are attached to or logically associated with other electronic data and serve as a means of authentication;

"register" means the register of certification service providers established by regulations, and "registration" has a corresponding meaning.

10. Liability of service providers

(1) In proceedings against a service provider for any offence consisting of or arising out of the handling of an electronic communication by means of his system, it shall be a defence for him to show that he was not the originator of the communication and either -

(a) he did not know and had no reasonable cause to suspect that the handling of the communication would (apart from this subsection) constitute or give rise to that offence; or

(b) as soon as reasonably practicable after he knew or had reasonable cause to suspect that the handling of the communication would (apart from this subsection) constitute or give rise to that offence -

(i) he took such steps as were reasonable to prevent such handling by means of his system; and

(ii) he notified a responsible authority of any relevant facts in his possession.

(2) A service provider is not subject to any civil liability in respect of an electronic communication which is handled by means of his system if he was not the originator of the communication and either -

(a) he did not know and had no reasonable cause to suspect that the handling of it would (apart from this subsection) give rise to that liability; or

(b) as soon as reasonably practicable after he knew or had reasonable cause to suspect that the handling of the communication would (apart from this subsection) give rise to that liability, he took such steps as were reasonable to prevent such handling by means of his system.

(3) A service provider is not subject to any civil liability for any action he takes in good faith pursuant to subsection (1)(b) or (2)(b).

(4) A service provider is not required to monitor any electronic communication handled by means of his system in order to ascertain whether its handling would (apart from this section) constitute or give rise to an offence or give rise to civil liability.

(5) Except as provided by subsection (3), nothing in this section relieves a service provider from -

(a) any obligation to comply with an order or direction of a court or other competent authority; or

(b) any contractual obligation.

(6) In this section -

"handle", in relation to an electronic communication, means generate, send, transmit, receive, store or otherwise process the communication;

"responsible authority", in relation to an offence with which a service provider is charged, means -

(a) a constable, or

(b) such authority (if any) in the Island as appears to the service provider to be responsible for enforcing the statutory provision creating the offence;

"service provider" means a person who maintains an information system or telecommunication system ("his system") by means of which, on behalf of another, he handles electronic communications, and includes a servant or agent of such a person.

11. Evidence

(1) Nothing in the rules of evidence shall operate to prevent information recorded in electronic form being admissible in evidence in proceedings in any court or tribunal -

(a) solely on the ground that it is recorded in electronic form, or

(b) on the ground that it is not in its original form, if it is the best evidence that the person adducing it could reasonably be expected to obtain.

(2) Information recorded in electronic form and adduced in evidence in that form shall be given such weight as is appropriate in all the circumstances; and in determining what weight should be given to it, regard shall be had to -

(a) the reliability of the means by which it was generated, sent, transmitted, received, stored or otherwise processed;

(b) the reliability of the means by which its integrity was maintained;

(c) the means by which its originator was identified; and

(d) any other material facts.

(3) This section does not affect -

(a) sections 5 and 6 of the Civil Evidence Act 1973, or

(b) section 7 of, and Schedule 1 to, the Criminal Justice Act 1991.

12. Interpretation

In this Act -

"consent" includes consent which can reasonably be inferred from the conduct of the person concerned;

"data" includes the whole or part of a computer program;

"data storage device" means any article or material (for example, a disk) from which information is capable of being reproduced, with or without the aid of any other article or device;

"electronic communication" means a communication, by means of a telecommunication system, of information -

(a) in the form of data, text or images, or

(b) in the form of speech, where the speech is processed at its destination by an automated voice recognition system;

"information" means information in the form of data, text, images or speech;

"information system" means a system for generating, sending, receiving, storing or otherwise processing electronic communications;

"public authority" means -

(a) any person holding office under the Crown (whether in right of the Isle of Man or in right of the United Kingdom);

(b) any Department or Statutory Board;

(c) any government department of the United Kingdom;

(d) any local authority or joint board;

"place of business", in relation to a public authority or voluntary body, means a place where its operations or activities are carried out;

"regulations" means regulations made by the Department of Trade and Industry or the Treasury;

"technical requirements" means the requirements of any information technology, and includes software requirements;

"telecommunication system" has the same meaning as in the Telecommunications Act 1984 [\[see note\]](#);

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

"voluntary body" means a body the activities of which are carried on otherwise than for profit, but does not include a public authority.

13. Regulations

(1) Subject to subsection (2), regulations under this Act shall not have effect unless they are approved by Tynwald.

(2) If the Treasury is satisfied that it is necessary to do so, it may provide in regulations made by it under this Act that this subsection shall apply to them; and in that case -

(a) the regulations may come into operation before they are approved by Tynwald;

(b) they shall be laid before Tynwald as soon as may be after they are made; and

(c) unless they are approved by Tynwald at the next or next-but-one sitting after they are made, the regulations shall cease to have effect.

14. Short title and commencement

(1) This Act may be cited as the Electronic Transactions Act 2000.

(2) This Act shall come into operation on such day as the Department of Trade and Industry may by order appoint.

NOTE: The Act was brought into force on 1st November 2000 by the Electronic Transactions Act 2000 (Appointed Day) Order 2000 (SD 530/00).

NOTE: "Telecommunication system" is defined by the Telecommunications Act 1984 s.2 as follows:

(1) In this Act 'telecommunication system' means a system for the conveyance, through the agency of electric, magnetic, electromagnetic, electrochemical or electromechanical energy, of-

(a) speech, music and other sounds;

(b) visual images;

(c) signals serving for the impartation (whether as between persons and persons, things and things or persons and things) of any matter otherwise than in the form of sounds or visual images; or

(d) signals serving for the actuation or control of machinery or apparatus.

(2) For the purposes of this Act telecommunications apparatus which is situated in the Island and-

(a) is connected to but not comprised in a telecommunication system; or

(b) is connected to and comprised in a telecommunication system which extends beyond the Island,

shall be regarded as a telecommunication system and any person who controls the apparatus shall be regarded as running the system.

(3) In this Act-

'telecommunication apparatus' means apparatus constructed or adapted for use-

(a) in transmitting or receiving anything falling within paragraphs (a) to (d) of subsection (1) which is to be or has been conveyed by means of a telecommunication system; or

(b) in conveying, for the purposes of such a system, anything falling within those paragraphs; .

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