

Electronic Trade Documents Bill [HL]

EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Department for Digital, Culture, Media & Sport, have been ordered to be published as Bill 280—EN.

EUROPEAN CONVENTION ON HUMAN RIGHTS

Paul Scully has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Electronic Trade Documents Bill [HL] are compatible with the Convention rights.

Electronic Trade Documents Bill

[HL]

CONTENTS

- 1 Definition of “paper trade document”
- 2 Definition of “electronic trade document”
- 3 Possession, indorsement and effect of electronic trade documents
- 4 Change of form
- 5 Exceptions
- 6 Consequential provision
- 7 Extent, commencement and short title

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Make provision about electronic trade documents; and for connected purposes

BE IT ENACTED by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

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1 Definition of “paper trade document”

(1) A document is a “paper trade document” for¹⁰ the purposes of this Act if—

(a) it is in paper form,

(b) it is a document of a type commonly used in¹⁵ at least one part of the United Kingdom in connection with—

(i) trade in or transport of goods, or ²⁰

(ii) financing such trade or transport, and

- (c) possession of the document is required as a matter of law or commercial custom, usage or practice for a person to claim performance⁵ of an obligation.
- (2) The following are examples of documents that are commonly used as mentioned in subsection (1)(b)—
- (a) a bill of exchange; 15
 - (b) a promissory note; 15
 - (c) a bill of lading;
 - (d) a ship's delivery order; 20
 - (e) a warehouse receipt; 20
 - (f) a mate's receipt;
 - (g) a marine insurance policy; 25
 - (h) a cargo insurance certificate. 25

2 Definition of “electronic trade document”

- (1) This section applies where information in electronic form is information that, if contained in a document in paper form, would lead to the document being a paper trade document. 30
- (2) The information, together with any other information with which it is logically associated that is also in electronic form, constitutes an “electronic trade document” for the purposes of this Act⁴⁰ a reliable system is used to—
- (a) identify the document so that it can be distinguished from any copies, 45
 - (b) protect the document against unauthorised alteration,

- (c) secure that it is not possible for more than one person to exercise control of the document at any one time, 5
 - (d) allow any person who is able to exercise control of the document to demonstrate that the person is able to do so, and 10
 - (e) secure that a transfer of the document has effect to deprive any person who was able to exercise control of the document immediately before the transfer of the ability to do so (unless the person is able to exercise control by virtue of being a transferee). 15
- (3) For the purposes of subsection (2)— 20
- (a) a person exercises control of a document when the person uses, transfers or otherwise disposes of the document (whether or not the person has a legal right to do so), and 25
 - (b) persons acting jointly are to be treated as one person.
- (4) Reading or viewing a document is not, of itself, sufficient to amount to use of the document for the purposes of subsection (3)(a). 30
- (5) When determining whether a system is reliable for the purposes of subsection (2), the matters that may be taken into account include— 35
- (a) any rules of the system that apply to its operation; 40
 - (b) any measures taken to secure the integrity of information held on the system;

- (c) any measures taken to prevent unauthorised access to and use of the system;
- (d) the security of the hardware and software used by the system;
- (e) the regularity of and extent of any audit of the system by an independent body;
- (f) any assessment of the reliability of the system made by a body with supervisory or regulatory functions;
- (g) the provisions of any voluntary scheme or industry standard that apply in relation to the system.

3 Possession, indorsement and effect of electronic trade documents

- (1) A person may possess, indorse and part with possession of an electronic trade document.
- (2) An electronic trade document has the same effect as an equivalent paper trade document.
- (3) Anything done in relation to an electronic trade document has the same effect (if any) in relation to the document as it would have in relation to an equivalent paper trade document.
- (4) An electronic trade document is to be treated as corporeal moveable property for the purposes of any Act of the Scottish Parliament relating to the creation of a security in the form of a pledge over moveable property.

4 Change of form

- (1) A paper trade document may be converted into an electronic trade document, and an electronic trade document may be converted into a paper trade document, if (and only if)—
 - (a) a statement that the document has been converted is included in the document in its new form, and
 - (b) any contractual or other requirements relating to the conversion of the document are complied with.
- (2) Where a document is converted in accordance with subsection (1)—
 - (a) the document in its old form ceases to have effect, and
 - (b) all rights and liabilities relating to the document continue to have effect in relation to the document in its new form.

5 Exceptions

- (1) If an intention that section 3 should not apply in relation to an electronic trade document appears in, or can reasonably be inferred from, the document or terms that have effect in relation to the document—
 - (a) that section does not apply in relation to the document, and
 - (b) section 4 also does not apply in relation to it.
- (2) Sections 1 to 4 do not apply in relation to—

- (a) an uncertificated unit of a security that is transferable by means of a relevant system in accordance with the Uncertificated Securities Regulations 2001 (S.I. 2001/3755), or
 - (b) a document or instrument of a type specified in regulations made by the Secretary of State.
- (3) The Secretary of State may by regulations amend this section so as to amend or remove the exception conferred by subsection (2)(a).
- (4) The Secretary of State must consult the Scottish Ministers before making regulations under subsection (2)(b) that contain provision that is to have effect in relation to Scotland.
- (5) Regulations under this section—
 - (a) are to be made by statutory instrument;
 - (b) may include incidental, consequential, transitional or saving provision.
- (6) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

6 Consequential provision

- (1) In section 89B(2) of the Bills of Exchange Act 1882 (instruments to which section 89A applies), at the end insert “or to anything that is an electronic trade document for the purposes of the Electronic Trade Documents Act 2023 (see section 2 of that Act).”

- (2) In section 1 of the Carriage of Goods by Sea Act 1992 (shipping documents etc), omit subsections (5) and (6).

7 Extent, commencement and short title

- (1) This Act extends to England and Wales, Scotland and Northern Ireland, except that section 3(4) extends only to Scotland.
- (2) This Act comes into force at the end of the period of two months beginning with the day on which it is passed.
- (3) Sections 3 and 4 do not apply in relation to a paper trade document or an electronic trade document issued before the day on which this Act comes into force.
- (4) This Act may be cited as the Electronic Trade Documents Act 2023.

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