

Electronic Trade Documents Bill

[HL]

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B I L L

[AS AMENDED IN PUBLIC BILL COMMITTEE]

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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:—

1 Definition of “paper trade document”

- (1) A document is a “paper trade document” for the purposes of this Act if—
- (a) it is in paper form,
 - (b) it is a document of a type commonly used in at least one part of the United Kingdom in connection with—
 - (i) trade in or transport of goods, or

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- (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 performance of an obligation. 5

(2) The following are examples of documents that are commonly used as mentioned in subsection (1)(b)—

- (a) a bill of exchange;
- (b) a promissory note; 10
- (c) a bill of lading;
- (d) a ship's delivery order;
- (e) a warehouse receipt;
- (f) a mate's receipt;
- (g) a marine insurance policy; 15
- (h) a cargo insurance certificate.

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. 20
- (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 Act if a reliable system is used to— 25
 - (a) identify the document so that it can be distinguished from any copies,

- (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
 - (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). 10
- (3) For the purposes of subsection (2)— 15
- (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
 - (b) persons acting jointly are to be treated as one person. 20
- (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).
- (5) When determining whether a system is reliable for the purposes of subsection (2), the matters that may be taken into account include— 25
- (a) any rules of the system that apply to its operation;

- (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; 5
- (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; 10
- (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 15

- (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. 20
- (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. 25

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)—

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(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.

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(2) Where a document is converted in accordance with subsection (1)—

(a) the document in its old form ceases to have effect, and

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(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—

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(a) that section does not apply in relation to the document, and

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(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 appropriate authority. 5
- (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. 10
- (5) Subsection (4) does not apply if the regulations are to be made by the Secretary of State and the Scottish Ministers acting jointly. 15
- (6) Regulations under this section may include incidental, consequential, transitional or saving provision.
- (7) “The appropriate authority”, in relation to regulations under subsection (2)(b), means— 20
 - (a) in any case, the Secretary of State or the Secretary of State and the Scottish Ministers acting jointly;
 - (b) in a case in which all of the provision made by the regulations is within Scottish devolved competence, the Scottish Ministers. 25
- (8) Provision is within Scottish devolved competence if it is provision which would be within the legislative

competence of the Scottish Parliament if contained in an Act of that Parliament.

6 Regulations under section 5

- (1) Any power to make regulations under section 5, so far as exercisable by the Secretary of State acting alone or by the Secretary of State and the Scottish Ministers acting jointly, is exercisable by statutory instrument. 5
- (2) For regulations made under section 5 by the Scottish Ministers acting alone, see section 27 of the 2010 Act (Scottish statutory instruments). 10
- (3) A statutory instrument containing regulations made under section 5 by the Secretary of State acting alone, or by the Secretary of State and the Scottish Ministers acting jointly, may not be made unless a draft of the instrument containing the regulations has been laid before and approved by a resolution of each House of Parliament. 15
- (4) Regulations made under section 5 by the Scottish Ministers acting alone, or by the Secretary of State and the Scottish Ministers acting jointly, are subject to the affirmative procedure (see section 29 of the 2010 Act). 20
- (5) Where regulations are made under section 5 by the Secretary of State and the Scottish Ministers acting jointly— 25
 - (a) section 29 of the 2010 Act (affirmative procedure) applies in relation to the regulations as it applies in relation to devolved subordinate

legislation (within the meaning of Part 2 of that Act) which is subject to the affirmative procedure, but as if references to a Scottish statutory instrument were to a statutory instrument, and

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(b) section 32 of the 2010 Act (laying) applies in relation to the laying before the Scottish Parliament of the statutory instrument containing the regulations as it applies in relation to the laying before that Parliament of a Scottish statutory instrument (within the meaning of Part 2 of that Act).

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(6) In this section “the 2010 Act” means the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10).

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7 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).”

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

8 Extent, commencement and short title

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(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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To Make provision about electronic trade documents;
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