

ELECTRONIC COMMUNICATIONS ACT 2000

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part II Facilitation of electronic commerce, data storage, etc.

Section 7: Electronic signatures and related certificates

42. This section provides for the admissibility of electronic signatures and related certificates in legal proceedings.
43. It will be for the court to decide in a particular case whether an electronic signature has been correctly used and what weight it should be given (e.g. in relation to the authentication or integrity of a message) against other evidence. Some businesses have contracted with each other about how they are to treat each other's electronic communications. Section 7 does not cast any doubt on such arrangements.
44. *Subsection (1)* allows an electronic signature, or its certification, to be admissible as evidence in respect of any question regarding the authenticity or integrity of an electronic communication or data. *Authenticity* and *integrity* are both defined in section 15(2):
- references to the *authenticity* of any communication or data are references to any one or more of the following—
 - (i) whether the communication or data comes from a particular person or other source;
 - (ii) whether it is accurately timed and dated;
 - (iii) whether it is intended to have legal effect.
 - references to the *integrity* of any communication or data are references to whether there has been any tampering with or other modification of the communication or data.
45. *Subsection (2)* defines an *electronic signature* for the purposes of the section.
46. *Subsection (3)* explains what is meant by *certified* in this context.

Section 8: Power to modify legislation

47. This power is designed to remove restrictions arising from other legislation which prevent the use of electronic communications or storage in place of paper, and to enable the use of electronic communications or storage of electronic data to be regulated where it is already allowed. Its potential application in such cases means that it is narrower in scope than section 7, which applies wherever electronic signatures are used, including those cases where there is no legislative impediment to the electronic option. The power can be used selectively to offer the electronic alternative to those who want it.

48. There are a large number of provisions in statutes on many different topics, which require the use of paper or which might be interpreted to require this. Many of these cases involve communication with Government Departments by businesses or individuals - including submitting information or applying for licences or permits. Other cases concern communications between businesses and individuals, where there is a statutory requirement that the communication should be on paper. The power can be used in any of these cases, and is not limited to the provision of written information:
- *document* is defined in [section 15\(1\)](#) to include a map, plan, design, drawing, picture or other image;
 - *communication* is defined in [section 15\(1\)](#) to include a communication comprising sounds or images or both and a communication effecting a payment.
49. Some examples of the way in which the power could be used relate to the Companies Act 1985. On 5 March 1999 the DTI consulted about whether the Act should be changed to enable companies to use electronic means to deliver company communications, to receive shareholder proxy and voting instructions and to incorporate. The consultation letter "*Electronic Communication: Change To The Companies Act 1985*" is available from DTI's Company Law and Investigations Directorate, telephone 020 7215 0409. A draft order, which the Government proposes to make under this power, was published for consultation in February 2000 and is available by phoning the same telephone number and at www.dti.gov.uk/cld.condocs.htm
50. The Government will also ensure a co-ordinated approach among Departments and issue guidance for their use. This accords with the observation in the Performance and Innovation Unit report *e-commerce@its.best.uk* (para 10.45) that "A significant degree of co-ordination will be needed to ensure that measures to acknowledge legal equivalence of written and digital signatures marches in step between departments". This role has been assigned to the Central IT Unit in the Cabinet Office, which provides the policy lead for developing Information Age Government under the Modernising Government agenda. The Cabinet Office is developing guidelines to ensure that Departments follow a consistent approach.
51. There are, however, many communications where paper is not currently required by law - for example the vast majority of contracts fall into this category. People will remain free to undertake transactions of this kind using whatever form of communication they wish.
52. *Subsection (1)* gives the appropriate Minister the power to modify, by order made by statutory instrument, the provisions of any enactment or subordinate legislation, or instruments made under such legislation, for which he is responsible. He may authorise or facilitate the use of electronic communications or electronic storage (instead of other methods of communication or storage) for any purpose mentioned in *subsection (2)*. This power is limited by *subsection (3)* which places a duty on the Minister not to make such an order unless he considers that authorising the option of electronic communication or storage will not result in arrangements for record-keeping that are less satisfactory than before. It is also limited by *subsection (6)*.
- *enactment* is defined in section 15 and includes future legislation;
 - *record* is defined in section 15 to include an electronic record;
 - the *appropriate Minister* is defined in section 9 (1).
53. *Subsection (2)* describes the purposes for which modification by an order may be made.
54. *Subsections (4) and (5)* specify the types of provision about electronic communications or the use of electronic storage that may be made in an order under this section.
55. *Subsection (6)* provides that an order under this section cannot require the use of electronic communications or electronic storage. However, when someone has

previously chosen the electronic option, the variation or withdrawal of such a choice may be subject to a period of notice specified in the order.

56. *Subsection (7)* provides that this section does not apply to matters under the care and management of the Commissioners of Inland Revenue or the Commissioners of Customs and Excise. Such matters are already covered in sections 132 and 133 of the Finance Act 1999.

Section 9: Supplemental provision about section 8 orders

57. This section says who may make section 8 orders, and sets out supplementary provisions relating to such orders; it contains standard provisions commonly accorded to powers to make subordinate legislation, such as an ability to make supplementary provision.
58. *Subsections (3) and (4)* provide that the regulations made under section 8 will be subject to a choice of either affirmative or negative resolution procedure in both Houses of Parliament. The Government intends to use affirmative resolution at least for the first order, so that the general principles can be debated. *Subsection (7)* provides for the power to be exercised by the Scottish Ministers, with the consent of the Secretary of State, in relation to Scottish devolved matters. Scottish legislation is brought within the ambit of the power by virtue of the definitions of *enactment* and *subordinate legislation* in section 15.

Section 10: Modifications in relation to Welsh matters

59. This section provides for the power in section 8 to be exercised by the National Assembly for Wales, to the extent set out in *subsections (3) and (4)*. That power is to be exercisable with the consent of the Secretary of State.