



# Electronic Communications Act 2000

## 2000 CHAPTER 7

### PART II

#### FACILITATION OF ELECTRONIC COMMERCE, DATA STORAGE, ETC.

VALID FROM 25/07/2000

#### **7 Electronic signatures and related certificates.**

- (1) In any legal proceedings—
- (a) an electronic signature incorporated into or logically associated with a particular electronic communication or particular electronic data, and
  - (b) the certification by any person of such a signature,
- shall each be admissible in evidence in relation to any question as to the authenticity of the communication or data or as to the integrity of the communication or data.
- (2) For the purposes of this section an electronic signature is so much of anything in electronic form as—
- (a) is incorporated into or otherwise logically associated with any electronic communication or electronic data; and
  - (b) purports to be so incorporated or associated for the purpose of being used in establishing the authenticity of the communication or data, the integrity of the communication or data, or both.
- (3) For the purposes of this section an electronic signature incorporated into or associated with a particular electronic communication or particular electronic data is certified by any person if that person (whether before or after the making of the communication) has made a statement confirming that—
- (a) the signature,
  - (b) a means of producing, communicating or verifying the signature, or
  - (c) a procedure applied to the signature,

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is (either alone or in combination with other factors) a valid means of establishing the authenticity of the communication or data, the integrity of the communication or data, or both.

## 8 Power to modify legislation.

- (1) Subject to subsection (3), the appropriate Minister may by order made by statutory instrument modify the provisions of—
- (a) any enactment or subordinate legislation, or
  - (b) any scheme, licence, authorisation or approval issued, granted or given by or under any enactment or subordinate legislation,
- in such manner as he may think fit for the purpose of authorising or facilitating the use of electronic communications or electronic storage (instead of other forms of communication or storage) for any purpose mentioned in subsection (2).
- (2) Those purposes are—
- (a) the doing of anything which under any such provisions is required to be or may be done or evidenced in writing or otherwise using a document, notice or instrument;
  - (b) the doing of anything which under any such provisions is required to be or may be done by post or other specified means of delivery;
  - (c) the doing of anything which under any such provisions is required to be or may be authorised by a person's signature or seal, or is required to be delivered as a deed or witnessed;
  - (d) the making of any statement or declaration which under any such provisions is required to be made under oath or to be contained in a statutory declaration;
  - (e) the keeping, maintenance or preservation, for the purposes or in pursuance of any such provisions, of any account, record, notice, instrument or other document;
  - (f) the provision, production or publication under any such provisions of any information or other matter;
  - (g) the making of any payment that is required to be or may be made under any such provisions.
- (3) The appropriate Minister shall not make an order under this section authorising the use of electronic communications or electronic storage for any purpose, unless he considers that the authorisation is such that the extent (if any) to which records of things done for that purpose will be available will be no less satisfactory in cases where use is made of electronic communications or electronic storage than in other cases.
- (4) Without prejudice to the generality of subsection (1), the power to make an order under this section shall include power to make an order containing any of the following provisions—
- (a) provision as to the electronic form to be taken by any electronic communications or electronic storage the use of which is authorised by an order under this section;
  - (b) provision imposing conditions subject to which the use of electronic communications or electronic storage is so authorised;
  - (c) provision, in relation to cases in which any such conditions are not satisfied, for treating anything for the purposes of which the use of such communications or storage is so authorised as not having been done;

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- (d) provision, in connection with anything so authorised, for a person to be able to refuse to accept receipt of something in electronic form except in such circumstances as may be specified in or determined under the order;
  - (e) provision, in connection with any use of electronic communications so authorised, for intermediaries to be used, or to be capable of being used, for the transmission of any data or for establishing the authenticity or integrity of any data;
  - (f) provision, in connection with any use of electronic storage so authorised, for persons satisfying such conditions as may be specified in or determined under the regulations to carry out functions in relation to the storage;
  - (g) provision, in relation to cases in which the use of electronic communications or electronic storage is so authorised, for the determination of any of the matters mentioned in subsection (5), or as to the manner in which they may be proved in legal proceedings;
  - (h) provision, in relation to cases in which fees or charges are or may be imposed in connection with anything for the purposes of which the use of electronic communications or electronic storage is so authorised, for different fees or charges to apply where use is made of such communications or storage;
  - (i) provision, in relation to any criminal or other liabilities that may arise (in respect of the making of false or misleading statements or otherwise) in connection with anything for the purposes of which the use of electronic communications or electronic storage is so authorised, for corresponding liabilities to arise in corresponding circumstances where use is made of such communications or storage;
  - (j) provision requiring persons to prepare and keep records in connection with any use of electronic communications or electronic storage which is so authorised;
  - (k) provision requiring the production of the contents of any records kept in accordance with an order under this section;
  - (l) provision for a requirement imposed by virtue of paragraph (j) or (k) to be enforceable at the suit or instance of such person as may be specified in or determined in accordance with the order;
  - (m) any such provision, in relation to electronic communications or electronic storage the use of which is authorised otherwise than by an order under this section, as corresponds to any provision falling within any of the preceding paragraphs that may be made where it is such an order that authorises the use of the communications or storage.
- (5) The matters referred to in subsection (4)(g) are—
- (a) whether a thing has been done using an electronic communication or electronic storage;
  - (b) the time at which, or date on which, a thing done using any such communication or storage was done;
  - (c) the place where a thing done using such communication or storage was done;
  - (d) the person by whom such a thing was done; and
  - (e) the contents, authenticity or integrity of any electronic data.
- (6) An order under this section—
- (a) shall not (subject to paragraph (b)) require the use of electronic communications or electronic storage for any purpose; but

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- (b) may make provision that a period of notice specified in the order must expire before effect is given to a variation or withdrawal of an election or other decision which—
  - (i) has been made for the purposes of such an order; and
  - (ii) is an election or decision to make use of electronic communications or electronic storage.
- (7) The matters in relation to which provision may be made by an order under this section do not include any matter under the care and management of the Commissioners of Inland Revenue or any matter under the care and management of the Commissioners of Customs and Excise.
- (8) In this section references to doing anything under the provisions of any enactment include references to doing it under the provisions of any subordinate legislation the power to make which is conferred by that enactment.

**Modifications etc. (not altering text)**

- C1** S. 8(4)-(6)(8) applied (S.) (27.6.2003) by [Criminal Justice \(Scotland\) Act 2003 \(asp. 7\), ss. 82\(5\), 89; S.S.I. 2003/288, art. 2, Sch.](#)
- C2** S. 8(7) excluded (26.2.2003 for certain purposes, 1.4.2003 for certain further purposes and 7.4.2003 for certain further purposes) by [2002 c. 21, ss. 54\(10\), 61; S.I. 2003/392, art. 2](#) (subject to art. 3)

**9 Section 8 orders.**

- (1) In this Part “the appropriate Minister” means (subject to subsections (2) and (7) and section 10(1))—
  - (a) in relation to any matter with which a department of the Secretary of State is concerned, the Secretary of State;
  - (b) in relation to any matter with which the Treasury is concerned, the Treasury; and
  - (c) in relation to any matter with which any Government department other than a department of the Secretary of State or the Treasury is concerned, the Minister in charge of the other department.
- (2) Where in the case of any matter—
  - (a) that matter falls within more than one paragraph of subsection (1),
  - (b) there is more than one such department as is mentioned in paragraph (c) of that subsection that is concerned with that matter, or
  - (c) both paragraphs (a) and (b) of this subsection apply,
 references, in relation to that matter, to the appropriate Minister are references to any one or more of the appropriate Ministers acting (in the case of more than one) jointly.
- (3) Subject to subsection (4) and section 10(6), a statutory instrument containing an order under section 8 shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) Subsection (3) does not apply in the case of an order a draft of which has been laid before Parliament and approved by a resolution of each House.
- (5) An order under section 8 may—

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- (a) provide for any conditions or requirements imposed by such an order to be framed by reference to the directions of such persons as may be specified in or determined in accordance with the order;
  - (b) provide that any such condition or requirement is to be satisfied only where a person so specified or determined is satisfied as to specified matters.
- (6) The provision made by such an order may include—
- (a) different provision for different cases;
  - (b) such exceptions and exclusions as the person making the order may think fit; and
  - (c) any such incidental, supplemental, consequential and transitional provision as he may think fit;
- and the provision that may be made by virtue of paragraph (c) includes provision modifying any enactment or subordinate legislation or any scheme, licence, authorisation or approval issued, granted or given by or under any enactment or subordinate legislation.
- (7) In the case of any matter which is not one of the reserved matters within the meaning of the <sup>M1</sup>Scotland Act 1998 or in respect of which functions are, by virtue of section 63 of that Act, exercisable by the Scottish Ministers instead of by or concurrently with a Minister of the Crown, this section and section 8 shall apply to Scotland subject to the following modifications—
- (a) subsections (1) and (2) of this section are omitted;
  - (b) any reference to the appropriate Minister is to be read as a reference to the Secretary of State;
  - (c) any power of the Secretary of State, by virtue of paragraph (b), to make an order under section 8 may also be exercised by the Scottish Ministers with the consent of the Secretary of State; and
  - (d) where the Scottish Ministers make an order under section 8—
    - (i) any reference to the Secretary of State (other than a reference in this subsection) shall be construed as a reference to the Scottish Ministers; and
    - (ii) any reference to Parliament or to a House of Parliament shall be construed as a reference to the Scottish Parliament.

**Modifications etc. (not altering text)**

**C3** S. 9(5)(6) applied (S.) (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp. 7), ss. 82(5), 89; S.S.I. 2003/288, art. 2, Sch.

**Marginal Citations**

**M1** 1998 c. 46.

**10 Modifications in relation to Welsh matters.**

- (1) For the purposes of the exercise of the powers conferred by section 8 in relation to any matter the functions in respect of which are exercisable by the National Assembly for Wales, the appropriate Minister is the Secretary of State.

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- (2) Subject to the following provisions of this section, the powers conferred by section 8, so far as they fall within subsection (3), shall be exercisable by the National Assembly for Wales, as well as by the appropriate Minister.
- (3) The powers conferred by section 8 fall within this subsection to the extent that they are exercisable in relation to—
- (a) the provisions of any subordinate legislation made by the National Assembly for Wales;
  - (b) so much of any other subordinate legislation as makes provision the power to make which is exercisable by that Assembly;
  - (c) any power under any enactment to make provision the power to make which is so exercisable;
  - (d) the giving, sending or production of any notice, account, record or other document or of any information to or by a body mentioned in subsection (4);  
or
  - (e) the publication of anything by a body mentioned in subsection (4).
- (4) Those bodies are—
- (a) the National Assembly for Wales;
  - (b) any body specified in Schedule 4 to the <sup>M2</sup>Government of Wales Act 1998 (Welsh public bodies subject to reform by that Assembly);
  - (c) any other such body as may be specified for the purposes of this section by an order made by the Secretary of State with the consent of that Assembly.
- (5) The National Assembly for Wales shall not make an order under section 8 except with the consent of the Secretary of State.
- (6) Section 9(3) shall not apply to any order made under section 8 by the National Assembly for Wales.
- (7) Nothing in this section shall confer any power on the National Assembly for Wales to modify any provision of the <sup>M3</sup>Government of Wales Act 1998.
- (8) The power of the Secretary of State to make an order under subsection (4)(c)—
- (a) shall include power to make any such incidental, supplemental, consequential and transitional provision as he may think fit; and
  - (b) shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

**Marginal Citations**

**M2** 1998 c. 38.

**M3** 1998 c. 38.

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