

EXPLANATORY MEMORANDUM TO
THE ELECTRONIC IDENTIFICATION AND TRUST SERVICES FOR
ELECTRONIC TRANSACTIONS REGULATIONS 2016

2016 No. 696

1. Introduction

- 1.1 This Explanatory Memorandum has been prepared by the Department for Business, Innovation and Skills and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 The purpose of this instrument is to implement the supervisory body and penalty regime requirements of Regulation (EU) 910/2014 of the European Parliament and of the Council on electronic identification and trust services for electronic transactions (OJ No L 257, 28.8.2014, p73) (“the eIDAS Regulation”) which repeals the 1999/93/EU Directive (“the 1999 Directive”) on a Community framework for electronic signatures.
- 2.2 The main objective of the eIDAS Regulation is to enable secure and seamless electronic cross-border transactions between businesses, citizens and administrations and introduce a regime for the mutual recognition of electronic signatures, electronic seals, electronic time-stamping and acceptance of electronic documents and website authentication.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 This instrument implements the supervisory body and penalty regime requirements from the eIDAS Regulation. This instrument repeals and revokes the Electronic Signatures Regulations 2002 and makes amendments to section 7 of the Electronic Communications Act 2000, both of which implemented the 1999 Directive.
- 4.2 Given the overlap between the functions of the supervisory body under the eIDAS Regulation and that of the Information Commissioner’s Office (ICO) under the Data Protection Act 1998 (DPA), the approach taken to implementing was to designate the ICO as the supervisory body and to modify the ICO’s existing powers under the DPA to apply for the purpose of enforcing these Regulations.
- 4.3 The Department deposited an Explanatory Memorandum in Parliament concerning the draft proposal for the eIDAS Regulation. The House of Commons European

Scrutiny Committee and the Lords Select Committee on the EU considered and cleared the draft proposal in March 2014.

4.4 A transposition note is attached.

5. Extent and Territorial Application

5.1 The extent of this instrument is the United Kingdom.

5.2 The territorial application of this instrument is the United Kingdom.

6. European Convention on Human Rights

6.1 The Parliamentary Under-Secretary of State and Minister for Intellectual Property has made the following statement regarding human rights:

“In my view the provisions of the Electronic Identification and Trust Services for Electronic Transactions Regulations 2016 are compatible with the Convention rights”.

7. Policy background

What is being done and why

7.1 Whilst the 1999 Directive made provision for the use of electronic signatures cross-border, it did not do so for secure cross-border and cross-sector electronic transactions in general. In response to this, the eIDAS Regulation expands the scope of the 1999 Directive to enable secure and seamless electronic cross-border transactions between businesses, citizens and administrations and introduces a regime for the mutual recognition of electronic signatures, electronic seals, electronic time-stamping and acceptance of electronic documents and website authentication.

7.2 The eIDAS Regulation is directly effective in UK law. However, these Regulations transpose the supervisory body and penalty regime requirements. The UK must implement these aspects of the eIDAS Regulation and we propose to meet our EU obligation by implementing this instrument.

7.3 The key elements from the eIDAS Regulation include:

- the cross-border acceptance of electronic signatures;
- the introduction of electronic seals to guarantee the origin and integrity of the electronic documents to which they are linked;
- the introduction of electronic time stamps to confirm the point at which activity has taken place in a transaction;
- the introduction of the principle that electronic documents are admissible in evidence in proceedings in relation to any question as to the authenticity of an electronic transaction;
- establishing the principle that electronic data sent and received using an electronic registered delivery service is to be admissible in evidence in proceedings; and
- details of technical requirements for qualified certificates for website authentication, which can be used to guarantee the authenticity of a website.

Consolidation

- 7.4 This instrument makes amendments to section 7 of the Electronic Communications Act 2000. It also makes small consequential amendments to a number of other statutory instruments. The Department is not planning to consolidate these pieces of legislation.

8. Consultation outcome

- 8.1 Throughout the development of this instrument, the Department informally consulted interested parties on the supervisory body and penalty requirements. Stakeholders were informed of policy developments and their views helped inform the drafting process.

9. Guidance

- 9.1 The Department is developing guidance to update existing guidance on electronic signatures. This will be issued shortly.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 There is no impact on the public sector.
- 10.3 An Impact Assessment has not been prepared for this instrument. The costs associated with this instrument fall below the relevant threshold.

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by small businesses. The Government considers that the legislation will not impose a disproportionate cost on small business.

12. Monitoring & review

- 12.1 This instrument will be reviewed by the UK in July 2021, five years after coming into force.

13. Contact

- 13.1 Mike Archer at the Department for Business, Innovation and Skills (telephone: 020 7215 6483 or email: mike.archer@bis.gsi.gov.uk) can answer any queries regarding the instrument.