Electronic Communications Act (Northern Ireland) 2001

2001 CHAPTER 9

N.I.

An Act to make provision to facilitate the use of electronic communications and electronic data storage. 5th April 2001

Power to modify legislation **N.I.**

1.—(1) Subject to subsection (3), the appropriate department may by order modify—

(a) any statutory provision; or

(b) any provision of a scheme, licence, authorisation or approval issued, granted or given by or under any statutory provision,

in such manner as it 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 provision 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 provision 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 provision 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 provision 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 provision, of any account, record, notice, instrument or other document;

(f) the provision, production or publication under any such provision of any information or other matter;

(g) the making of any payment that is required to be or may be made under any such provision.

(3) The appropriate department shall not make an order under this section authorising the use of electronic communications or electronic storage for any purpose, unless it 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;

(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 order 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

(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.

Modifications etc. (not altering text)

C1 S. 1(4)(5) modified by 1992 c. 8, s.165(5B) as inserted (2.5.2016) by The Welfare Reform (Northern Ireland) Order 2015 (S.I. 2015/2006), **arts. 2(2)**, 108(1); S.R. 2016/215, **art. 2(6)(a)**

C2 S. 1(4)(5) modified by S.I. 1998/1506 (N.I. 10), art. 74(5B) as inserted (2.5.2016) by The Welfare Reform (Northern Ireland) Order 2015 (S.I. 2015/2006), **arts. 2(2)**, 108(2); S.R. 2016/215, **art. 2(6)(a)**

Orders under section 1 N.I.

2.—(1) In this Act "the appropriate department", in relation to any matter, means (subject to subsection (2)) the Northern Ireland department which is responsible for that matter.

(2) In the case of any matter for which more than one Northern Ireland department is responsible, references to the appropriate department are references to any one or more of those departments acting (in the case of more than one) jointly.

(3) Subject to subsection (4), an order under section 1 shall be subject to negative resolution.

(4) Subsection (3) does not apply in the case of an order a draft of which has been laid before, and approved by a resolution of, the Assembly.

(5) An order under section 1 may—

(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) An order under section 1 may include incidental, supplemental, consequential and transitional provision, including provision modifying any statutory provision or any scheme, licence, authorisation or approval issued, granted or given by or under any statutory provision.

Modifications etc. (not altering text)

C3 S. 2(5) modified by 1992 c. 8, **s.165(5B)** as inserted (2.5.2016) by The Welfare Reform (Northern Ireland) Order 2015 (S.I. 2015/2006), **arts. 2(2)**, 108(1); S.R. 2016/215, **art. 2(6)(a)**

C4 S. 2(5) modified by S.I. 1998/1506 (N.I. 10), art. 74(5B) as inserted (2.5.2016) by The Welfare Reform (Northern Ireland) Order 2015 (S.I. 2015/2006), **arts. 2(2)**, 108(2); S.R. 2016/215, **art. 2(6)(a)**

Prohibition on key escrow requirements N.I.

3.—(1) Subject to subsection (2), an order under section 1 shall not impose a requirement on any person to deposit a key for electronic data with another person.

(2) Subsection (1) shall not prohibit the imposition by an order under section 1 of—

(a) a requirement to deposit a key for electronic data with the intended recipient of electronic communications comprising the data; or

(b) a requirement for arrangements to be made, in cases where a key for data is not deposited with another person, which otherwise secure that the loss of a key, or its becoming unusable, does not have the effect that the information contained in a record kept in pursuance of any provisions made by or under any statutory provision becomes inaccessible or incapable of being put into an intelligible form.

(3) In this section "key", in relation to electronic data, means any code, password, algorithm, key or other data the use of which (with or without other keys)—

(a) allows access to the electronic data; or

(b) facilitates the putting of the electronic data into an intelligible form;

and references in this section to depositing a key for electronic data with a person include references to doing anything that has the effect of making the key available to that person.

Interpretation N.I.

4.—(1) In this Act—

"document" includes a map, plan, design, drawing, picture or other image;

"communication" includes a communication comprising sounds or images or both and a communication effecting a payment;

"electronic communication" means a communication transmitted (whether from one person to another, from one device to another or from a person to a device or vice versa)—

(a) by means of**[**[F1] an electronic communications network**]**; or

(b) by other means but while in an electronic form;

"modification" includes any alteration, addition or omission;

"record" includes an electronic record; and

"statutory provision" has the meaning assigned by section 1(f) of the Interpretation Act (Northern Ireland) 1954 (c. 33).

(2) In this Act—

(a) 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;

(b) 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; and

(c) references to a statutory provision—

(i) include references to a statutory provision passed or made after the coming into operation of this Act; but

(ii) do not include references to this Act.

(3) References in this Act to something's being put into an intelligible form include references to its being restored to the condition in which it was before any encryption or similar process was applied to it.

F1 2003 c. 21

Short title **N.I.**

5. This Act may be cited as the Electronic Communications Act (Northern Ireland) 2001.

Changes to legislation:
There are currently no known outstanding effects for the Electronic Communications Act (Northern Ireland) 2001.