

Subsidiary Legislation made under s.25.

Electronic Identification and Trust Services for Electronic Transactions Regulations 2017

LN.2017/130

		<i>Commencement</i>	29.6.2017
Amending enactments	Relevant current provisions	Commencement date	
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Implementing:
Regulation (EU) No 910/2014

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SCHEDULE 1

Enforcement powers of supervisory body

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In exercise of the powers conferred upon him and the Government by section 25 of the Electronic Commerce Act 2001 as read with sections 23(g)(i) and (ii) of the Interpretation and General Clauses Act, and all other enabling powers, and for the purposes of implementing in part, into the law of Gibraltar, Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC, the Minister and the Government have made the following Regulations—

PART 1

General

Title.

1. These Regulations may be cited as the Electronic Identification and Trust Services for Electronic Transactions Regulations 2017.

Commencement.

2. These Regulations come into operation on the day of publication.

Interpretation.

3. In these Regulations—

“eIDAS Regulation” means Regulation (EU) No 910/2014 of the European Parliament and of the Council on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC, as amended from time to time;

“conformity assessment body” has the same meaning as given in the eIDAS Regulation;

“supervisory body” has the meaning given in regulation 4.

PART 2

Qualified trust services

Supervisory body.

4.(1) The Gibraltar Regulatory Authority is the supervisory body and must carry out the supervisory body tasks set out in Article 17 of the eIDAS Regulation.

(2) The supervisory body must enforce these Regulations and Chapter III of the eIDAS Regulation.

Trusted lists.

5.(1) A conformity assessment body must establish, maintain and publish trusted lists, including information related to the qualified trust service providers for which it is responsible, together with information related to the qualified trust services provided by them.

(2) A conformity assessment body must establish, maintain and publish, in a secured manner, the electronically signed or sealed trusted lists referred to in subregulation (1), in a form suitable for automated processing.

Data protection.

6.(1) Subject to subregulation (2), nothing in these Regulations must permit the processing of personal data in contravention of the provisions of the Data Protection Act 2004.

(2) Where personal data is transmitted or received pursuant to these Regulations, the eIDAS Regulation or any other applicable European Union measure, the person transmitting, or as the case may be, receiving that data, is responsible for observance of all applicable laws, and in particular must not transmit it other than in pursuance of an obligation to do so.

(3) Schedule 1 shall have effect.

PART 3**Monetary penalties****Monetary penalties.**

7.(1) If the supervisory body is satisfied that a trust service provider has contravened or is contravening Chapter III of the eIDAS Regulation, the supervisory body may issue a trust service provider with a fixed monetary penalty notice in respect of such contravention.

(2) The amount of a fixed monetary penalty under these Regulations is £1000.

(3) Before serving a fixed monetary penalty notice, the supervisory body must serve the trust service provider with a notice of intent.

(4) The notice of intent must-

- (a) state the name and address of the trust service provider;
- (b) state the nature of the contravention;
- (c) indicate the amount of the fixed monetary penalty;
- (d) include a statement informing the trust service provider of the opportunity to discharge liability for the fixed monetary penalty notice;
- (e) indicate the date on which the supervisory body proposes to serve the fixed monetary penalty notice; and
- (f) inform the trust service provider that it may make written representations in relation to the proposal to serve a fixed monetary penalty notice within a period of 21 days beginning with the date of service of the notice of intent.

(5) A trust service provider may discharge liability for the fixed monetary penalty if it pays to the supervisory body the amount of £800 within a period of 21 days beginning with the date of receipt of the notice of intent.

(6) The supervisory body may not serve a fixed monetary penalty notice until the expiry of a period of 21 days beginning with the date of service of the notice of intent.

(7) The fixed monetary penalty notice must state-

- (a) the name and address of the trust service provider;
- (b) details of the notice of intent served on the trust service provider;
- (c) whether there have been any written representations;
- (d) details of any early payment discounts;
- (e) the grounds on which the supervisory body imposes the fixed monetary penalty;
- (f) the date by which the fixed monetary penalty is to be paid; and
- (g) details of, including the time limit for, the trust service provider's right of appeal against the imposition of the fixed monetary penalty.

(8) A trust service provider on whom a fixed monetary penalty is served may appeal under the Data Protection Act 2004, within 21 days of receipt of the notice of intent, to the Magistrates Court against the issue of the fixed monetary penalty notice.

(9) The fixed monetary penalty is recoverable if the Magistrates Court orders that it be recovered under an order of that court.

(10) Any sum received by the supervisory body by virtue of these Regulations must be paid into the Consolidated Fund.

PART 4

Legal effect and admissibility as evidence of electronic certificates

Legal effects of electronic signatures and related certificates.

8.(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,

will 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 regulation an electronic signature is anything in electronic form that-

- (a) is incorporated into or otherwise logically associated with any electronic communication or electronic data; and
- (b) purports to be used by the individual creating it to sign.

(3) For the purposes of this regulation 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,

is, either alone or in combination with other factors, a valid means of signing.

Legal effects of electronic seals.

9.(1) In any legal proceedings-

- (a) an electronic seal incorporated into or logically associated with a particular electronic communication or particular electronic data; and
- (b) the certification by any person of such a seal,

will each be admissible in evidence in relation to any question as to the authenticity of the communication or data, the integrity of the communication or data, or both.

(2) For the purposes of this regulation an electronic seal is anything in electronic form that-

- (a) is incorporated into or otherwise logically associated with electronic communication or electronic data; and
- (b) purports to ensure the origin and integrity of the communication or data.

(3) For the purposes of this regulation an electronic seal 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 seal;
- (b) a means of producing, communicating or verifying the seal; or
- (c) a procedure applied to the seal,

is, either alone or in combination with other factors, a valid means of ensuring the origin of the communication or data, the integrity of the communication or data, or both.

Legal effects of electronic time stamps.

10.(1) In any legal proceedings-

- (a) an electronic time stamp incorporated into or logically associated with a particular electronic communication or particular electronic data; and
- (b) the certification by any person of such a time stamp,

will each be admissible in evidence in relation to any question as to whether the communication or data existed at the time the electronic time stamp was incorporated into or logically associated with such communication or data.

(2) For the purposes of this regulation an electronic time stamp is anything in electronic form that-

- (a) is incorporated into or otherwise logically associated with any electronic communication or electronic data; and
- (b) purports to bind electronic communication or electronic data to a particular time establishing evidence that such data existed at that time.

(3) For the purposes of this regulation an electronic time stamp 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 time stamp;
- (b) a means of producing, communicating or verifying the time stamp; or
- (c) a procedure applied to the time stamp,

is, either alone or in combination with other factors, a valid means of establishing whether the communication or data existed at a particular point in time.

Legal effects of electronic registered delivery service.

11.(1) In any legal proceedings, any electronic communication or electronic data sent and received using an electronic registered delivery service is admissible in evidence.

(2) For the purposes of this regulation an electronic registered delivery service is a service that-

- (a) provides for the transmission of data between third parties by electronic means;

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- (b) provides evidence relating to the handling of the transmitted data, including proof of sending and receiving the data; and
- (c) protects transmitted data against the risk of loss, theft, damage or unauthorised alterations.

Legal effects of electronic documents.

12.(1) In any legal proceedings an electronic document is admissible in evidence in relation to any question as to the authenticity of an electronic transaction.

(2) For the purposes of this regulation an electronic document is anything that is stored in electronic form, including text or sound, and visual or audio-visual recording.

PART 5

Consequential amendments and transitional provision

Amendment and transitional provision to the Electronic Commerce Act 2001.

13.(1) Part II of the Electronic Commerce Act 2001 is repealed.

(2) For the purposes of these Regulations, an accreditation certificate issued pursuant to Part II of the Electronic Commerce Act 2001 is to be treated as a qualified certificate for electronic signature pursuant to Article 3(15) of the eIDAS Regulation until it expires.

Amendments to the Electronic Identity Card Regulations 2015.

14.(1) The Electronic Identity Card Regulations 2015 is amended in accordance with the provisions of this regulation.

(2) Regulation 3 is amended as follows-

- (a) the definition of “accreditation certificate” is deleted;
- (b) after the definition of “Act” insert-

““advanced electronic signature” has the meaning given in the eIDAS Regulation;”;

- (c) the definition of “Certification Service Provider” is deleted;

(d) after the definition of “civilian registration card” insert-

““eIDAS Regulation” means Regulation (EU) No 910/2014 of the European Parliament and of the Council on electronic identification and trust services for electronic transactions in the internal market, as amended from time to time;”;

(e) the definition of “electronic signature” is deleted;

(f) after the definition of “PIN” insert-

““qualified certificate for electronic signature” has the meaning given in the eIDAS Regulation;

“qualified electronic signature creation device” has the meaning given in the eIDAS Regulation;

“qualified trust service provider” has the meaning given in the eIDAS Regulation;”;

(g) the definition of “signature creation device” is deleted.

(3) For every reference to “electronic signature” substitute “advanced electronic signature”.

(4) For every reference to “signature creation device” substitute “qualified electronic signature creation device”.

(5) For every reference to “Certification Service Provider” substitute “qualified trust service provider”.

(6) Regulation 9 is amended as follows-

(a) in the regulation heading for “accreditation certificate” substitute “qualified certificates for electronic signatures”;

(b) subregulation (3) is amended as follows-

(i) for “The issuer of accreditation certificates” substitute “The issuer of a qualified certificate for electronic signature”;

(ii) in paragraph (a) for “accreditation certificate” substitute “qualified certificate for electronic signature”.

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Amendment to Procurement (Defence and Security Public Contracts) Regulations 2012.

15. In regulation 48(6)(a) of the Procurement (Defence and Security Public Contracts) Regulations 2012 for “Electronic Commerce Act 2001” substitute “Electronic Identification and Trust Services for Electronic Transactions Regulations 2017”.

Amendments to Procurement (Public Sector Contracts) Regulations 2016.

16.(1) The Procurement (Public Sector Contracts) Regulations 2016 is amended in accordance with the provisions of this regulation.

(2) Regulation 2 is amended as follows-

(a) after the definition of “electronic auction” insert-

““electronic document” has the meaning given in Article 3(35) of Regulation (EU) No 910/2014 of the European Parliament and of the Council on electronic identification and trust services for electronic transactions in the internal market, as amended from time to time;”;

(b) after the definition of “electronic means” insert-

““electronic signature” has the meaning given in Article 3(35) of Regulation (EU) No 910/2014 of the European Parliament and of the Council on electronic identification and trust services for electronic transactions in the internal market, as amended from time to time;”;

(c) after the definition of “public works contracts” insert-

““qualified certificate for electronic signature” has the meaning given in Article 3(15) of Regulation (EU) No 910/2014 of the European Parliament and of the Council on electronic identification and trust services for electronic transactions in the internal market;”.

(3) Regulation 23(16)(c) is amended as follows-

(a) for “Directive 1999/93/EC of the European Parliament and of the Council” substitute “Regulation (EU) No 910/2014 of the European Parliament and of the Council on electronic identification and trust services for electronic transactions in the internal market”;

- (b) for “qualified certificate”, on each occasion that it appears, substitute “qualified certificate for electronic signature”.

Amendments to Procurement (Utilities Contracts) Regulations 2016.

17.(1) The Procurement (Utilities Contracts) Regulations 2016 is amended in accordance with the provisions of this regulation.

(2) Regulation 2 is amended as follows-

- (a) after the definition of “electronic auction” insert-

““electronic document” has the meaning given in Article 3(35) of Regulation (EU) No 910/2014 of the European Parliament and of the Council on electronic identification and trust services for electronic transactions in the internal market, as amended from time to time;”;

- (b) after the definition of “electronic means” insert-

““electronic signature” has the meaning given in Article 3(35) of Regulation (EU) No 910/2014 of the European Parliament and of the Council on electronic identification and trust services for electronic transactions in the internal market, as amended from time to time;”;

- (c) after the definition of “public works contracts” insert-

““qualified certificate for electronic signature” has the meaning given in Article 3(15) of Regulation (EU) No 910/2014 of the European Parliament and of the Council on electronic identification and trust services for electronic transactions in the internal market;”.

(3) Regulation 38(16)(c) is amended as follows-

- (a) for “Directive 1999/93/EC of the European Parliament and of the Council” substitute “Regulation (EU) No 910/2014 of the European Parliament and of the Council on electronic identification and trust services for electronic transactions in the internal market”;
- (b) for “qualified certificate”, on each occasion that it appears, substitute “qualified certificate for electronic signature”.

SCHEDULE 1**Enforcement powers of supervisory body****Provisions applied for enforcement purposes.**

1. For the purposes of enforcing these Regulations and the eIDAS Regulation, the following provisions of Parts V to VII of the Data Protection Act 2004 apply with the modifications set out in paragraphs 2 to 25-

- (a) section 148 (publication by the Commissioner);
- (b) section 149 (notices from the Commissioner);
- (c) section 150 (information notices);
- (d) section 151 (information notices: restrictions);
- (e) section 152 (false statements made in response to an information notice);
- (f) section 152A (information orders);
- (g) section 153 (assessment notices);
- (h) section 154 (assessment notices: restrictions);
- (i) section 154A (destroying or falsifying information and documents etc);
- (j) section 155 (enforcement notices);
- (k) section 156 (enforcement notices: supplementary);
- (l) section 158 (enforcement notices: restrictions);
- (m) section 159 (enforcement notices: cancellation and variation);
- (n) section 160 and Schedule 15 (powers of entry and inspection);
- (o) section 162 and Schedule 16 (penalty notices);
- (p) section 164 (maximum amount of penalty);

- (q) section 166 (amount of penalties: supplementary);
- (r) section 167 (guidance about regulatory action);
- (s) section 168 (rights of appeal);
- (t) section 169 (determination of appeals);
- (u) section 182 (jurisdiction);
- (v) section 184(1), (2), (4) and (5) (regulations, rules of court and consultation);
- (w) section 192 (penalties for offences);
- (x) section 193 (prosecution);
- (y) section 196 (Court proceedings: contempt);
- (z) section 197 (Court Procedure Rules).

General modification of references to the Data Protection Act 2004.

2. The provisions listed in paragraph 1 have effect as if-

- (a) references to the Data Protection Act 2004 were references to the provisions of that Act as applied by these Regulations;
- (b) references to a particular provision of that Act were references to that provision as applied by these Regulations.

Modification of section 150 (information notices).

3.(1) Section 150 has effect as if subsections (9) and (10) were deleted.

(2) In that section, subsection (1) has effect as if-

- (a) in paragraph (a)-
 - (i) for “controller or processor” there were substituted “trust service provider”;
 - (ii) for “the data protection legislation” there were substituted “the eIDAS Regulation and the EITSET Regulations”;

(b) paragraph (b) were deleted.

(3) In that section, subsection (2) has effect as if paragraph (a) were deleted.

Modification of section 151 (information notices: restrictions).

4.(1) Section 151 has effect as if subsections (1) and (9) were deleted.

(2) In that section-

(a) subsections (3)(b) and (4)(b) have effect as if for “the data protection legislation” there were substituted “the eIDAS Regulation or the EITSET Regulations”;

(b) subsection (7)(a) has effect as if for “this Act” there were substituted “section 152 or 154A or paragraph 15 of Schedule 15”;

(c) subsection (8) has effect as if for “this Act (other than an offence under section 152)” there were substituted “section 154A or paragraph 15 of Schedule 15”.

Modification of section 152A (information orders).

5. Section 152A(2)(b) has effect as if for “section 150(2)(b)” there were substituted “section 150(2)”.

Modification of section 153 (assessment notices).

6.(1) Section 153 has effect as if subsection (10) were deleted.

(2) In that section-

(a) subsection (1) has effect as if-

(i) for “controller or processor” (in both places) there were substituted “trust service provider”;

(ii) for “the data protection legislation” there were substituted “the eIDAS requirements”;

(b) subsection (2) has effect as if paragraphs (g) and (h) were deleted;

- (c) subsections (7), (8) and (9) have effect as if for every instance of “controller or processor” there were substituted “trust service provider”.

Modification of section 154 (assessment notices: restrictions).

7.(1) Section 154 has effect as if subsection (5) was deleted.

(2) In that section, subsections (2)(b) and (3)(b) have effect as if for “the data protection legislation” there were substituted “the eIDAS Regulation or the EITSET Regulations”.

Modification of section 155 (enforcement notices).

8.(1) Section 155 has effect as if subsections (2) to (5) and (7) to (9) were deleted.

(2) In that section-

(a) subsection (1) has effect as if-

(i) for “as described in subsection (2), (3), (4) or (5)” there were substituted “to comply with the eIDAS requirements”;

(ii) for “sections 156 and 157” there were substituted “section 156”;

(b) subsection (6) has effect as if the words “given in reliance on subsection (2), (3) or (5)” were deleted.

Modification of section 156 (enforcement notices: supplementary).

9.(1) Section 156 has effect as if subsection (3) were deleted.

(2) In that section, subsection (2) has effect as if the words “in reliance on section 155(2)” and “or distress” were deleted.

Modification of section 158 (enforcement notices: restrictions).

10. Section 158 has effect as if subsections (1), (2) and (4) were deleted.

Withdrawal notices.

11. The provisions listed in paragraph 1 have effect as if after section 159 there were inserted-

“Withdrawal notices

Withdrawal notices.

159A.(1) The Commissioner may, by written notice (a “withdrawal notice”), withdraw the qualified status from a trust service provider, or the qualified status of a service provided by a trust service provider, if-

- (a) the Commissioner is satisfied that the trust service provider has failed to comply with an information notice or an enforcement notice; and
- (b) the condition in subsection (2) or (3) is met.

(2) The condition in this subsection is met if the period for the trust service provider to appeal against the information notice or enforcement notice has ended without an appeal having been brought.

(3) The condition in this subsection is met if an appeal against the information notice or enforcement notice has been brought and-

- (a) the appeal and any further appeal in relation to the notice has been decided or has otherwise ended; and
- (b) the time for appealing against the result of the appeal or further appeal has ended without another appeal having been brought.

(4) A withdrawal notice must-

- (a) state when the withdrawal takes effect; and
- (b) provide information about the rights of appeal under section 168.”.

Modification of Schedule 15 (powers of entry and inspection).

12.(1) Schedule 15 has effect as if paragraph 3 were deleted.

(2) Paragraph 1(1) of that Schedule (issue of warrants in connection with non-compliance and offences) has effect as if for paragraph (a) (but not the final “and”) there were substituted-

“(a) there are reasonable grounds for suspecting that-

- (i) a trust service provider has failed or is failing to comply with the eIDAS requirements, or

- (ii) an offence under section 152 or 154A or paragraph 15 of Schedule 15 has been or is being committed.”.

(3) Paragraph 2 of that Schedule (issue of warrants in connection with assessment notices) has effect as if-

- (a) in subparagraphs (1) and (2), for “controller or processor” there were substituted “trust service provider”;
- (b) in subparagraph (2), for “the data protection legislation” there were substituted “the eIDAS requirements”.

(4) Paragraph 5 of that Schedule (content of warrants) has effect as if-

- (a) in subparagraph (1)(c), for “the processing of personal data” there were substituted “the provision of trust services”;
- (b) in subparagraph (2)(c)-
 - (i) for “controller or processor” there were substituted “trust service provider”;
 - (ii) for “as described in section 155(2)” there were substituted “to comply with the eIDAS requirements”;
- (c) in subparagraph (3)(a) and (c)-
 - (i) for “controller or processor” there were substituted “trust service provider”;
 - (ii) for “the data protection legislation” there were substituted “the eIDAS requirements”.

(5) Paragraph 11 of that Schedule (privileged communications) has effect as if, in subparagraphs (1)(b) and (2)(b), for “the data protection legislation” there were substituted “the eIDAS Regulation or the EITSET Regulations”.

Modification of section 162 (penalty notices).

13.(1) Section 162 has effect as if subsections (1)(a), (2)(a), (3)(g), (4) and (6) to (8) were deleted.

(2) Subsection (2) of that section has effect as if-

- (a) the words “Subject to subsection (4),” were deleted;
 - (b) in paragraph (b), the words “to the extent that the notice concerns another matter,” were deleted.
- (3) Subsection (3) of that section has effect as if-
- (a) for every instance of “controller or processor” there were substituted “trust services provider”;
 - (b) in paragraph (c), the words “or distress” were deleted;
 - (c) in paragraph (c), for “data subjects” there were substituted “relying parties”;
 - (d) in paragraph (d), for “section 66, 75, 112 or 116” there were substituted “Article 19(1) of the eIDAS Regulation”.

Modification of Schedule 16 (penalties).

14. Schedule 16 has effect as if paragraphs 3(2)(b) and 5(2)(b) were deleted.

Modification of section 164 (maximum amount of penalty).

15. Section 164 has effect as if subsections (1) to (3) and (6) were deleted.

Modification of section 166 (amount of penalties: supplementary).

16. Section 166 has effect as if-

- (a) in subsection (1), the words “Article 83 of the GDPR and” were deleted;
- (b) in subsection (2), the words “Article 83 of the GDPR” and “and section 164” were deleted.

Modification of section 167 (guidance about regulatory action).

17.(1) Section 167 has effect as if subsection (4) was deleted.

(2) In that section, subsection (3)(e) has effect as if for “controllers and processors” there were substituted “trust service providers”.

Modification of section 168 (rights of appeal).

18.(1) Section 168 has effect as if subsection (6) were deleted.

(2) In that section, subsection (1) has effect as if, after paragraph (c), there were inserted-
“(ca) a withdrawal notice;”.

Modification of section 169 (determination of appeals).

19. Section 169 has effect as if subsection (7) were deleted.

Modification of section 182 (jurisdiction).

20. Section 182 has effect as if subsections (2)(c) and (d) were deleted.

Modification of section 184 (regulations, rules of court and consultation).

21. Section 184 has effect as if subsection (3) was deleted.

Modification of section 192 (penalties for offences).

22.(1) Section 192 has effect as if subsections (3) to (5) were deleted.

(2) In that section-

(a) subsection (1) has effect as if the words “section 128, 161 or 178 or” were deleted;

(b) subsection (2) has effect as if for “section 140, 152, 154A, 175, 176 or 186” there were substituted “section 152 or 154A”.

Modification of section 193 (prosecution).

23. Section 193 has effect as if subsections (2) to (5) were deleted.

Modification of section 196 (Court proceedings: contempt).

24. Section 196 has effect as if in subsection (1)(a), for subparagraphs (i) and (ii) there were substituted “on an appeal under section 168”.

Modification of section 197 (Court Procedure Rules).

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25. Section 197 has effect as if-

- (a) in subsection (2), for paragraphs (a) and (b) there were substituted “the exercise of the rights of appeal conferred by section 168”;
- (b) in subsection (3)(a) and (b), for “the processing of personal data” there were substituted “the provision of trust services”.

Interpretation.

26. In this Schedule-

“the eIDAS requirements” means the requirements of Chapter III of the eIDAS Regulation;

“the EITSET Regulations” means these Regulations;

“withdrawal notice” has the meaning given in section 159A of the Data Protection Act 2004 (as inserted in that Act by this Schedule).