

Subsidiary Legislation made under s.25.

**ELECTRONIC IDENTIFICATION AND TRUST
SERVICES FOR ELECTRONIC TRANSACTIONS
REGULATIONS 2017**

(LN. 2017/130)

Commencement **29.6.2017**

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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.

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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;

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- (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 section 32 of 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-

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- (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;
- (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

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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”.

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(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”.

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;”;

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- (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-

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““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

1.(1) For the purposes of enforcing these Regulations and the eIDAS Regulation, the following sections of the Data Protection Act 2004 apply subject to the modifications in this Schedule-

- (a) section 25 (Investigations, Mediation and Compensation);
- (b) section 26 (Enforcement Notices);
- (c) section 27 (Information Notices);
- (d) section 28 (Information and Codes of Practice);
- (e) section 29 (Authorised Officers);
- (f) section 32 (Appeals);
- (g) section 34 (Proceedings);
- (h) section 35 (Penalties).

(2) The sections referred to in paragraph (1) are to apply as if for “data controller”, on each occasion that it appears, there were substituted “trust service provider”.

(3) Section 25 is to apply as if for “this Act”, “this Act in relation to him”, and “the Act concerned”, on each occasion that they appear, there were substituted “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”.

(4) Section 26 is to apply as if-

- (a) for subsection (1) there were substituted-

“ (1) If the supervisory body is of the opinion that a person has contravened or is contravening a provision of 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

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Directive 1999/93/EC, he may, by notice in writing (referred to in this Act as an “enforcement notice”) served on the trust service provider require the trust service provider to take such steps to comply with the provisions concerned as are specified in the notice, within such time as is specified.”.

- (b) subsection (2) were deleted;
 - (c) subsection (3) were amended as follows-
 - (i) in paragraph (a) for “this Act” there were substituted “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”;
 - (ii) in paragraph (b) for “person” there were substituted “trust service provider”;
 - (d) in subsections (4), (5)(b)(ii) and (7) for “person”, on each occasion that it appears, there were substituted “trust service provider”;
 - (e) subsection (6) were deleted.
- (5) Section 27 is to apply as if-
- (a) in subsection (1)-
 - (i) for “this Act” there were substituted “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”;
 - (ii) for “person”, on each occasion that it appears, there were substituted “trust service provider”;
 - (b) in subsection (2)-
 - (i) in paragraph (a)-

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- (aa) for “person” there were substituted “trust service provider”;
 - (bb) “and” were deleted;
 - (ii) in paragraph (b) for the full stop there were substituted “; and”;
 - (iii) after paragraph (b) there were inserted-
 - “(c) shall contain a statement that the supervisory body regards the specified information as relevant for the purpose of determining whether the trust service provider has complied or is complying with the relevant requirements and the Commission’s reasons for regarding it as relevant for that purpose.”
 - (c) in subsections (3)(b)(ii), (4)(a) and (5) for “person”, on each occasion that it appears, there were substituted “trust service provider”.
- (6) Section 28 is to apply as if-
- (a) for subsection (1) there were substituted-
 - “(1)The supervisory body may, in such manner and by such means as he considers most effective, promote the following good practice by trust service providers so as to promote compliance with 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-
 - (a) drawing up Codes of Practice as to good practice in processing personal data in consultation with interested parties;
 - (b) disseminating information to trust service providers and the public about data protection;
 - (c) giving advice with regard to data protection and matters covered by this Act and Regulation (EU) No 910/2014 of the European Parliament and of the Council

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of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC.”.

- (b) in subsection (3) for “data controllers” there were substituted “trust service providers”;
- (c) in subsection (4)-
 - (i) for “a category of data controller” there were substituted “trust service providers”;
 - (ii) for paragraph (a) there were substituted-

“(a)he considers that the Code of Practice provides appropriate protections for the rights of data subjects under this Act and 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, he shall approve the code and encourage its dissemination to the trust service providers and data subjects concerned;”.

(7) Section 29 is to apply as if-

- (a) in subsection (1) for “this Act” there were substituted “meeting the requirements of 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”;
- (b) in subsection (2) for “persons” there were substituted “trust service providers”;
- (c) for subsection (3) there were substituted-

“(3)A trust service provider who obstructs or impedes an authorised officer in the exercise of a power, without reasonable excuse, does not comply with a requirement under this section or who in purported compliance with such a requirement gives information to an authorised officer that he knows to be false or misleading in a material respect, shall be guilty of an offence.”.

(8) Section 32 is to apply as if-

(a) for subsection (1)-

(i) paragraphs (b), (c) and (d) were deleted;

(ii) after paragraph (f) there were inserted-

“(g) a fixed monetary penalty served under the Electronic Identification and Trust Services for Electronic Transactions Regulations 2017,”;

(b) in subsection (2) for “person” there were substituted “trust service provider”;

(c) for subsection (3) there were substituted-

“(3) Notwithstanding any provision of this Act or the Electronic Identification and Trust Services for Electronic Transactions Regulations 2017, where-

(a) a person appeals to the Court pursuant to subsection (1), and

(b) the supervisory body has included an urgency statement in the relevant notice or notification,

then the Court may, on application to it, determine that non-compliance by the trust service provider with a requirement or prohibition specified in the notice, during the period ending with the determination or withdrawal of the appeal or during such other period as may be determined, does not constitute an offence.”.

(9) Section 34 is to apply as if-

(a) for subsection (1) there were substituted-

“(1) A trust service provider responsible for any act or omission contrary to the provisions of 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

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market and repealing Directive 1999/93/EC shall be guilty of an offence.”;

- (b) in subsections (2) and (3) for “this Act” there were substituted “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”.

(10) Section 35 is to apply as if for “person”, on each occasion that it appears, there were substituted “trust service provider”.