

STATES OF JERSEY



Jersey

DRAFT ELECTRONIC COMMUNICATIONS (AMENDMENT OF LAW) (JERSEY) REGULATIONS 201-

**Lodged au Greffe on 20th August 2019
by the Chief Minister**

STATES GREFFE

REPORT

1. Background

At an e-signatures stakeholder meeting on 16th January 2019, it was highlighted that the [Electronic Communications \(Jersey\) Law 2000](#) (“the Law”) was now fairly dated. In the ensuing 18 years since its adoption, the use and acceptance of electronic documentation has progressed significantly, and the Law has failed to keep up. In particular, all of Jersey’s competitor jurisdictions have effective laws for facilitating the electronic execution of documents.

One participant in the stakeholder meeting stated that he is frequently being asked to advise on the electronic execution of documents and whether electronic signature platforms (such as DocuSign) can be used for Jersey documents. Because of the state of the current Law, he has to give very careful advice, given the particular issues where documents have to be signed in writing by enactment. In his view, Jersey comes up short in comparison to other competitor jurisdictions. This is becoming a major sticking-point for the use of Jersey, since all transactions now close electronically.

Ministerial Decision reference MD-C-2019-0001 (9th January 2019) approved the resources necessary for drafting instructions for the necessary amending legislation.

2. Policy decision

The Digital Policy Unit (“DPU”) has appreciated the need for the proposed amendments to ensure that businesses can place confidence in the enforceability of electronic communications, where there does not also exist a requirement which would otherwise prevent the use of electronic communications.

The DPU – with input from the Law Officers’ Department (“LOD”) and Jersey Finance Limited (“JFL”) – has taken the policy decision to focus on and rapidly adopt “avoidance of doubt” amendments to ensure that Jersey is no longer perceived by business as an outlier jurisdiction less conducive to electronic contracts. This supports Jersey’s ambitions to be seen as a digital jurisdiction open to business.

3. Draft Regulations

The Draft Electronic Communications (Amendment of Law) (Jersey) Regulations 201- (the “draft Regulations”) amend the Law to clarify, for the avoidance of doubt, the provisions around electronic information, electronic signatures, and the making of contracts by electronic means.

It is recognised that the States of Jersey wishes to eliminate any legal barriers, real or perceived, to the completion of contracts by electronic means, and to ensure that Jersey’s legislative environment is not perceived by businesses to be less conducive to electronic contracts than its competitor jurisdictions.

The draft Regulations achieve these objectives by –

- removing the requirements for consent under Articles 11 and 12 of the Law to be given by non-States entities before electronic information and electronic signatures can be received;
- removing the uncertain requirement for a ‘reliable and appropriate method’ under Article 12; and
- adding a “for the avoidance of doubt” provision so that any signature, seal, attestation or notarisatio n is not to be denied legal effect, validity, or enforceability only because it is in electronic form.

The proposed draft Regulations have been subject to a human rights audit by the LOD, and have been found to contain no human rights implications.

4. Financial and manpower implications

The Law Officers' Department has indicated that there are no additional financial or manpower implications for the States arising from the adoption of these draft Regulations.

EXPLANATORY NOTE

The Draft Electronic Communications (Amendment of Law) (Jersey) Regulations 201- if passed will amend the Electronic Communications (Jersey) Law 2000 (the “Law”) to make further provision for the giving of information, signatures and documents by electronic means.

Regulation 1 generally provides for the amendment of the Law.

Regulation 2 amends Article 11 of the Law with the effect that a person who is required or permitted by an enactment to give information in writing –

- (a) to another person (other than a States entity or a person acting on behalf of a States entity), may do so by means of electronic communication without the consent of the other person; and
- (b) to a States entity or a person acting on behalf of a States entity, may do so by means of electronic communication only if the entity consents to it and any information technology requirements are met.

Regulation 3 amends Article 12(1) of the Law with the effect that where a person is required by an enactment to provide a signature –

- (a) the signature is taken to have been provided in relation to an electronic communication if a method is used to identify the person and to indicate the person’s approval of the information communicated; and
- (b) in the case where the signature is being provided to a States entity or a person acting on behalf of a States entity, it is taken to have been provided only if the entity consents to the signature being provided by way of an electronic communication and any information technology requirements are met.

Regulation 3 also inserts Article 12(3) of the Law to make it clear that a signature, seal, attestation or notarisation is not to be denied legal effect, validity or enforceability only because it is in electronic form.

Regulation 4 amends Article 13 of the Law with the effect that a person who is required or permitted by an enactment to produce a document may produce the document –

- (a) in electronic form to another person (other than a States entity or a person acting on behalf of a States entity) by means of electronic communication without the consent of the other person; and
- (b) in electronic form to a States entity or a person acting on behalf of a States entity only if the entity consents to it and any information technology requirements are met.

Regulation 5 gives the title by which these Regulations may be cited and provides for them to come into force on the day after they are made.



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Made [date to be inserted]
Coming into force [date to be inserted]

THE STATES make these Regulations under Article 2 of the Electronic Communications (Jersey) Law 2000¹ –

1 Amendment of Electronic Communications (Jersey) Law 2000

The Electronic Communications (Jersey) Law 2000² is amended in accordance with these Regulations.

2 Article 11 (giving information in writing) amended

In Article 11 –

- (a) at the end of paragraph (1)(a) there is inserted “and”;
- (b) for paragraph (1)(b) there is substituted –
 - “(b) in the case of information that is required or permitted to be given to a States entity or to a person acting on behalf of a States entity, only if –
 - (i) the entity consents to the information being given by way of an electronic communication, and
 - (ii) any information technology requirements specified by the entity in relation to the giving of the information are met.”;
- (c) paragraph (1)(c) is deleted;
- (d) in paragraph (3) after “purposes” there is inserted “of”.

3 Article 12 (requirement for signature) amended

In Article 12 –

- (a) at the end of paragraph (1)(a) there is inserted “and”;
- (b) paragraphs (1)(b) and (d) are deleted;
- (c) for paragraph (1)(c) there is substituted –

- “(c) in the case of a signature that is required to be provided to a States entity or to a person acting on behalf of a States entity, only if –
 - (i) the entity consents to the signature being provided by way of an electronic communication, and
 - (ii) any information technology requirements specified by the entity in relation to the provision of the signature are met.”;
- (d) after paragraph (2) there is inserted –
 - “(3) A signature, seal, attestation or notarisation is not to be denied legal effect, validity or enforceability only because it is in electronic form.”.

4 Article 13 (producing a document) amended

In Article 13(1) –

- (a) at the end of paragraph (b) there is inserted “and”;
- (b) for paragraph (c) there is substituted –
 - “(c) in the case of a document that is required or permitted to be produced to a States entity or to a person acting on behalf of a States entity, only if –
 - (i) the entity consents to the document being produced by way of an electronic communication, and
 - (ii) any information technology requirements specified by the entity in relation to the production of the document are met.”;
- (c) paragraph (d) is deleted.

5 Citation and commencement

These Regulations may be cited as the Electronic Communications (Amendment of Law) (Jersey) Regulations 201- and come into force on the day after they are made.

ENDNOTES

Table of Endnote References

<i>1</i>	<i>chapter 04.280</i>
<i>2</i>	<i>chapter 04.280</i>