

**DRAFT ELECTRONIC COMMUNICATIONS (JERSEY) LAW 200-**

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**Lodged au Greffe on 20th June 2000  
by the Policy and Resources Committee**

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**STATES OF JERSEY**

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**Report**

One of the four priorities identified within the strategic framework developed for Jersey by the Policy and Resources Committee last year is the Information Economy and within that is the States of Jersey's commitment to support e-business by, among others, "developing a legislative framework that will adapt swiftly to the needs of a rapidly changing commercial world."

If approved by the States the draft Electronic Communications (Jersey) Law 200- will provide an environment in which electronic business can flourish and businesses can take advantage of the opportunities presented within a stable yet flexible legal framework, enabling the growth of this sector of the economy whilst maintaining the highest standards. The law will help build confidence in electronic business and the technology underlying it.

The legislation will also provide for the recognition of electronic records and electronic signatures, for certainty in the creation of electronic contracts and protection of electronic intermediaries. Secondary legislation already exists which provides for data protection, copyright, proceeds of crime, trade marks and computer misuse.

The need for an Electronic Communications Law for Jersey was formally noted in correspondence between the Internet Working Party of the Jersey Financial Services Commission (FSC) and the Law Draftsman's Office in late March 1999. A member of the working party, Advocate Peter Harris, drafted the first instructions for the law, based on the United Nations model law (UNCITRAL) which was being adopted by other major jurisdictions.

When the Jersey Information Society Commission (JISC) was established in the third quarter 1999 and a working group was formed to specifically set out guidelines for, and promote, e-commerce and e-business, the responsibility for developing the draft law was transferred from the FSC to JISC. A draft law was completed just prior to Christmas 1999 and was submitted for public consultation for a period of three weeks. Wide interest was generated by the law, with international press contacting the IS/IT Adviser almost on a daily basis. Responses were received from law firms, based both locally and internationally, members of the public with an interest in e-business and from Internet service providers and other parties associated with Internet driven business. A favourable response was generally received, with respondents commending the "light" touch approach of the law. It was always the view of the working party that the law should be seen to facilitate e-business, not restrict it. It was also recognised that Jersey had secondary laws and regulations in place to cover areas of concern.

The responses were collated and a redraft finalised in February 2000. Coinciding with the redraft was a chance meeting in the USA between Advocate Peter Harris and one of the architects of the UNCITRAL model law. The UN lawyer informed Advocate Harris that they were nearing completion of their model rules on electronic signatures and that if the Policy and Resources Committee were prepared to wait it might be able to incorporate the model rules and thus have the only complete UNCITRAL based electronic communications law in the world.

The IS/IT Adviser was informed just before Easter that the model rules were still incomplete and, aware of the commitment given to this law by the Policy & Resources Committee, not to say the urgency being placed on similar laws by other jurisdictions, the Committee approved the draft Law.

The draft Law also contains amendments that address the concerns expressed by the Health and Social Services that the Law might impose a requirement for a States department to use electronic communications before it would wish to implement such systems. There were also concerns that requirements under enactment would be brought into effect before subordinate legislation had been prepared. Orders made under the draft law will be made by the Industries Committee but the draft law provides that any necessary Orders made in respect of enactments will not be made unless the relevant Committee has been consulted. Conversely, the Industries Committee would be required to make an Order under the Law when requested to do so by the Committee administering a particular enactment. Clearly this gives the Health and Social Services Committee a degree of control over Orders under the Law.

## Explanatory Note

The purpose of the Law is to help build confidence in electronic business and the technology underlying it by providing for -

- (a) legal certainty in respect of certain aspects of electronic transactions;
- (b) the admissibility into evidence of information in electronic form (including electronic transactions, electronic records and electronic signatures authenticating such communications or records);
- (c) the removal of obstacles in other legislation to the use of electronic communications and storage in place of paper;
- (d) a flexibility in application and approach provided by Regulations made by the States, Orders made by the Industries Committee and by Rules of Court.

A flow on effect will be to provide people with far easier access to Departments of the States and to the Parishes.

The proposed Law will be in 6 parts.

**Part 1 - Interpretation.** This Part contains the general interpretative provisions. These interpretative provisions may however become out-of-date as technology progresses and so become a hindrance to the Law expanding to take into account new technology. Provision is therefore made both for defined expressions to be reinterpreted and for other expressions to be given a definition to allow the Law take into account advances in technology. This will be done by Regulations made by the States.

**Part 2 - General provisions.** This Part establishes various default rules in respect of electronic transactions that can be varied by agreement between the parties. It also provides for the admission in evidence of information in electronic form.

**Part 3 - Requirements under enactments.** An “enactment” is defined by the Interpretation (Jersey) Law 1954 to mean, unless a contrary intention appears, “any provision of any Law passed by the States and confirmed by Her Majesty in Council and any provision of any regulations, order, rules, bye-laws, scheme or other instrument passed or made in the Island under the authority of any Order in Council or under any such Law as aforesaid.”

This Part provides that where an enactment requires or permits information to be provided or retained in writing electronic means may be used to provide or store the information. It also makes provision for the recognition of electronic means of identifying a person in relation to an electronic communication where an enactment would otherwise require his signature.

In most cases the requirement contained in an enactment to provide or retain information is in respect of the States or a States agency but the Part equally has effect where, for example, a company is required by an enactment to supply information to a shareholder. In this instance so long as the shareholder agrees that the information can be provided in electronic form it can be provided in that form, so effecting a potential saving in time, cost and materials.

**Part 4 - Service providers.** This Part will provide Internet Service Providers with an additional defence in certain criminal and civil proceedings in respect of information their services handle.

It is generally acknowledged that an Internet Service Provider (ISP) is not reasonably able to monitor the voluminous amount of information his service handles. In practice, therefore, his service may be unlawfully disseminating material, which could leave the service provider open to either a criminal charge or civil action, or both.

The protection this Part will give will only apply if the ISP can show -

- (a) that he could not reasonably have known that his system was handling the unlawful material; or
- (b) that immediately on becoming aware that his system is or could be doing so, he took measures to stop it doing so and, in the case of a possible criminal offence, informed the police.

The protection this Part will provide to ISPs may encourage them to establish businesses in the Island.

**Part 5 - Rules and Orders.** Certain of the provisions of the Law will allow into evidence material that was previously not readily admissible (information in electronic form) under the best evidence rule. For this reason it may be necessary for Rules of Court to be made in respect of the manner of admission of this material. The Rules may, for example, provide for the use

of computers to display the material.

The general provisions of the Law, which will allow certain information to be submitted in electronic form, do not generally apply to the practice and proceedings of the courts.

However there is no reason why in some instances they should not do so, but this is a matter for the courts to decide, which they will be able to do by Rules of Court.

Certain things (for example which documents referred to in enactments must remain in paper form) may be prescribed under the Law. This will be done by Orders made by the Industries Committee.

Where an Order relates to an enactment the Industries Committee cannot make the Order without the approval of the Committee responsible for that enactment.

Conversely a Committee with responsibility of an enactment can require the Industries Committee to make an Order in respect of the enactment (for example that it be exempted from the provisions of this Law until the Committee is able to implement the provisions in respect of the enactment).

**Part 6 - Short title and commencement.** It is obviously the case that certain administrative arrangements will need to be made before the Law can be brought fully into force. For this reason it is particularly import to have a commencement provision in the Law that will allow it to be brought into force in stages.

Each provision of the proposed Law is now considered.

### **Part 1 - Interpretation**

*Article 1* provides for the interpretation of various expressions used in the Law.

In particular it makes it clear that even where an enactment enacted after this enactment requires or allows information to be provided or retained in paper form it may be provided or retained in an electronic form.

The Article also provides a meaning for the expression "States entity". This illustrates the intention that in many cases it will be States entities that are expected to lead the way in the adoption of electronic communications.

*Article 2* gives the States the power to make Regulations to redefine defined terms or to give a definition to terms used in the Law to take account of changes in technology.

### **Part 2 - General provisions**

*Article 3* confirms that information (which is very widely defined) will not be denied legal effect, validity or enforceability solely because it is in electronic form.

*Article 4* confirms that contracts may be entered into using electronic communications.

*Article 5* determines the time of dispatch of an electronic communication, unless the parties involved decide otherwise.

*Article 6* determines the time of receipt of an electronic communication, unless the parties involved decide otherwise.

*Article 7* determines the place of dispatch and receipt of electronic communications, unless the parties involved decide otherwise.

*Article 8* deals with problems attributable to the fact that by the use of an electronic communication a person may purport to be someone else when sending the communication. In certain instances a person has authority to act on behalf of another person. These are provided for and protected in the Article.

*Article 9* provides for the admissibility into evidence of information in electronic form. It is, however, always for the court to decide in a particular case the evidential value of evidence, whether it is in electronic form or otherwise.

### **Part 3 - Requirements under enactments**

*Article 10* provides for exemptions from all or any of the provisions of Part 3.

In some instances (applications for passports, for instance) it may be thought that original documents should be produced. But no hard and fast rules are laid down in the Law in a particular instance since technology is changing so fast that they may become obstacles to progress.

In other instances it may not be physically possible for awhile for a States entity to receive information in electronic form but this should not stop other entities that are able to do so from going ahead. Therefore a phased implementation of the Law is provided for by this Article.

Generally information provided to a court will not be covered by this Part. However there is no reason why, for instance, in due course, certain documents should not be filed with a court by electronic means.

The Law allows for its phased implementation in respect of court procedure by Rules of Court made by the Royal Court.

*Article 11* sets out how and when information that an enactment requires or permits to be given in writing can be given in electronic form.

Generally in each case the information has to be readily accessible for subsequent reference and, in the case of information provided to a States entity, it has to be provided in any form specified by the entity (for example, by the use of a particular type of software).

In the case of information that an enactment requires or permits to be supplied to a person who is not a States entity (for example, a company's notice of its annual general meeting to be dispatched to its shareholders) the receiver has to agree to receiving the information in electronic form (for example, by providing his email address for the purpose).

*Article 12* provides that where an enactment requires or permits a signature to be given the signature may be given in an electronic form.

Generally the signature given in electronic form must identify the person giving it and indicate his approval of the information communicated. Also the method used for the electronic communication must, having regard to the particular circumstances, be reliable and appropriate.

In the case of a signature provided to a States entity it has to be provided in any form specified by the entity.

In the case of a signature that an enactment requires or permits to be supplied to a person who is not a States entity the receiver has to agree to receiving the signature in electronic form.

*Article 13* sets out how and when a document that an enactment requires or permits to be produced can be produced in electronic form.

Generally the method of producing the document in electronic form must be appropriate in the circumstances to maintain the integrity of the information contained in it.

*Article 14* sets out how and when information that an enactment requires to be recorded in writing can be recorded in electronic form.

*Article 15* provides that where, for example, a States entity is required to maintain a register which is to be available for public inspection and it maintains the register in an electronic form it may make the information on the register available on a computer terminal. It may also make the information available on a web site. The information could, for example, be information contained in a planning register or list.

*Article 16* sets out how and when a document that an enactment requires to be retained can be retained in electronic form.

Generally the method of retaining the document in electronic form must be appropriate in the circumstances to maintain the integrity of the information it contains.

Also the retained document has to be readily accessible for subsequent reference and must be retained in any form prescribed by the Committee by Order.

*Article 17* sets out how, when an enactment requires information received in an electronic form is to be retained for a specified period, that requirement is met.

*Article 18* provides that where a document is generated in an electronic form for the purposes of Part 3 copyright in the document is not infringed.

#### **Part 4 - Service providers**

*Article 19* provides protection for internet service providers from criminal liability.

*Article 20* provides protection for internet service providers from civil liability.

*Article 21* sets out the obligations of service providers.

#### **Part 5 - Rules and Orders**

*Article 22* provides for the making of Rules of Court.

*Article 23* provides for the making of Orders by the Industries Committee and places certain obligations on the Committee to work with other Committees in implementing the Law.

#### **Part 6 - Short title and commencement**

*Article 24* provides the Short title of the Law and allows it to be phased into force.

# **ELECTRONIC COMMUNICATIONS (JERSEY) LAW 200-**

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**ELECTRONIC COMMUNICATIONS (JERSEY) LAW 200-**

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**A LAW** to facilitate electronic business and the use of electronic communications and electronic storage, and to make other provisions in similar respects; sanctioned by Order of Her Majesty in Council of the

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*(Registered on the            day of            200-)*

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**STATES OF JERSEY**

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The            day of            200-

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**THE STATES**, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law -

*PART I*

INTERPRETATION

ARTICLE 1

**Interpretation**

(1) In this Law, unless the context otherwise requires -

“Committee” means the Industries Committee;

“company” means a body corporate incorporated with or without limited liability in any part of the world, and includes any similar or equivalent structure or arrangement howsoever called;

“consent” includes consent that can reasonably be inferred from the conduct of the person concerned;

“data storage device” means any article or material (for example, a disk) from which information is capable of being reproduced, with or without the aid of any other article or device;

“document” includes a map, plan, design, drawing, picture or other image whether on paper or other material;

“electronic” includes electrical, digital, magnetic, electromagnetic, or any other technology that entails capabilities similar to those technologies;

“electronic communication” means a communication of information transmitted -

(a) by means of guided or unguided electromagnetic energy or of both; or

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

“electronic record” means information generated, communicated, received or stored by electronic means in an information system;

“electronic signature” means a signature in electronic form attached to or logically associated with an electronic communication or electronic record;

“enactment” includes an enactment enacted after the date of this enactment;

“handle”, in relation to an electronic communication, means to dispatch, receive, store or otherwise process the communication;

“information” includes data, text, sounds, images, codes, computer programs, software and databases;

“information system” means a system designed to generate, dispatch, receive, store or otherwise process information;

“information technology requirements” includes software requirements;

“intermediary”, in respect of an electronic communication or electronic record, means a person who, on behalf of another person, handles the electronic communication or electronic record or provides other services with respect to the electronic communication or electronic record;

“modification” includes an alteration, addition or omission;

“non-profit body” means a body that is carrying on an operation or activity that is not for the purpose of profit or gain to its individual members and is, by the terms of its constitution, prohibited from making a distribution, whether in money, property or otherwise, to its members;

“originator”, in respect of an electronic communication or an electronic record, means a person by whom or on whose behalf the electronic communication or electronic record purports to have been dispatched or generated but does not include a person acting as an intermediary with respect to the electronic communication or electronic record;

“place of business”, in respect of a States entity, a government, an authority of a government or a non-profit body, means a place where any operations or activities are carried out by that States entity, that government, authority or body;

“prescribed” means prescribed by the Committee by Order;

“service provider” means -

- (a) a person who owns or operates an information system by means of which, on behalf of another, he handles electronic communications; and
- (b) an employee or agent of a person referred to in sub-paragraph (a) acting in the course of his employment or agency;

“signature” or “signed” includes any symbol executed or adopted, or any security procedure employed or adopted, using electronic means or otherwise by or on behalf of a person with intent to authenticate an electronic communication or electronic record;

“States entity” means -

- (a) a Committee of the States;
- (b) an officer or employee of the States;
- (c) a person who holds or performs the duties of an office under an enactment;
- (d) an authority of the States created by an Act of the States or an enactment;
- (e) an employee or officer of such an authority; or
- (f) a Parish or an employee or officer of a Parish.

(2) In this Law a reference to the integrity of information is a reference to whether there has been any tampering with or modification of the information apart from -

- (a) the addition of an endorsement; or
- (b) an immaterial change,

that arises in the normal course of handling by an information system.

(3) A reference in this Law to something's being put into a legible form includes a reference to its being restored to the condition in which it was before any encryption or similar process was applied to it.

(4) A reference in this Law to a Part or Article by number only and without further identification is a reference to the Part or Article of that number in this Law.

(5) A reference in an Article or other division of this Law to a paragraph, sub-paragraph or clause by number or letter only and without further identification is a reference to the paragraph, sub-paragraph or clause of that number or letter in the Article or other division of this Law.

(6) Unless the context otherwise requires, a reference in this Law to an enactment is a reference to that enactment as amended from time to time and includes a reference to that enactment as extended or applied under another enactment, including another provision of this Law.

## ARTICLE 2

### **Changes and advancements in technology**

(1) The States may make Regulations amending or extending the interpretation of any expression defined in this Law or defining any expression used in this Law if the States considers it necessary to do so to take into account a change or advancement in technology.

(2) Regulations made under paragraph (1) may contain incidental, supplemental, consequential and transitional provisions.

## *PART 2*

### GENERAL PRINCIPLES

## ARTICLE 3

### **Legal recognition**

Information shall not be denied legal effect, validity or enforceability, solely on the grounds that it is in electronic form.

## ARTICLE 4

### **Formation of contract**

(1) In the formation of a contract, unless the parties have otherwise agreed, the offer and the acceptance of the offer may be expressed by means of an electronic communication.

(2) Paragraph (1) does not apply where the law expressly or impliedly otherwise provides.

## ARTICLE 5

### **Time of dispatch of electronic communications**

Unless otherwise agreed between the originator of the electronic communication and its addressee, the dispatch of an electronic communication occurs when it enters an information system outside the control of its originator or a person dispatching the electronic communication on behalf of its originator.

## ARTICLE 6

### **Time of receipt of electronic communications**

Unless otherwise agreed between the originator of the electronic communication and its addressee, the time of receipt of an electronic communication is -

- (a) if its addressee has designated an information system to receive the electronic communication, when it enters that information system; and
- (b) in any other case, when it is retrieved by the addressee.

### ARTICLE 7

#### **Place of dispatch and receipt of electronic communications**

(1) Unless otherwise agreed between the originator of the electronic communication and its addressee, an electronic communication is to be taken -

- (a) to have been dispatched at the place where its originator has his place of business; and
- (b) to have been received at the place where its addressee has his place of business.

(2) For the purposes of applying paragraph (1) to an electronic communication -

- (a) if its originator or addressee has more than one place of business, and one of those places has a closer relationship to the underlying transaction, it is to be assumed that that place of business is the originator's or addressee's only place of business;
- (b) if its originator or addressee has more than one place of business, but paragraph (a) does not apply, it is to be assumed that the originator's or addressee's principal place of business is the originator's or addressee's only place of business; and
- (c) if its originator or addressee does not have a place of business, it is to be assumed that the originator's or addressee's place of business is -
  - (i) the place where the originator or addressee ordinarily resides; or
  - (ii) in the case of a company, its registered or similar address.

### ARTICLE 8

#### **Attribution of electronic communications**

(1) An electronic communication is that of its originator if it was dispatched -

- (a) by its originator;
- (b) by a person who had the authority to act on behalf of its originator in respect of the communication; or
- (c) by an information system programmed by or on behalf of its originator to operate automatically.

(2) An addressee of an electronic communication may assume that a particular person was its originator and may act on that assumption if -

- (a) the addressee properly applied a procedure previously agreed with that person to ascertain whether the communication was from that person and the procedure indicated that it was; or
- (b) the communication as received by the addressee was the result of the action of a person whose relationship with the particular person or his agent enabled him to gain access to a method used by the particular person to identify himself as the originator of electronic communications.

(3) Paragraph (2) does not apply -

- (a) from the time when the addressee -
    - (i) receives notice from the person assumed to be the originator of the electronic communication that he was not its originator; and
    - (ii) has had a reasonable time to act on that information;
  - (b) in the case of paragraph (2)(b), at any time when the addressee knew or ought to have known had he exercised reasonable care or used an agreed procedure that the person assumed to be the originator of the electronic communication was not its originator; or
  - (c) if in the circumstances it would be unconscionable for the addressee to regard the person assumed to be the originator of the electronic communication to be its originator and to act on that assumption.
- (4) Where paragraph (1) or (2) applies the addressee is entitled to assume that the electronic communication received was what its originator intended to dispatch, and to act on that assumption.
- (5) Paragraph (4) does not apply if the addressee knew or ought to have known had he exercised reasonable care or used an agreed procedure that the transmission of the electronic communication resulted in the communication as received being different from the communication as dispatched.
- (6) An addressee is entitled to assume that each electronic communication he receives is a separate communication unless he knew or could have known had he exercised reasonable care or used an agreed procedure that an electronic communication he has received is a duplicate of one he had already received.
- (7) Nothing in this Article affects the law of agency or the law on the formation of contracts.

## ARTICLE 9

### **Admissibility in evidence of information in electronic form**

- (1) In legal proceedings nothing in the application of the rules of evidence shall be taken to apply so as to deny the admissibility into evidence of information that is in electronic form -
- (a) solely on the grounds that it is in electronic form; or
  - (b) if it is the best evidence that the person adducing it could reasonably be expected to obtain, solely on the grounds that it is not in its original form or that it is not an original.
- (2) Evidence in electronic form shall be given due evidential weight by the court.
- (3) When assessing the evidential value of information in electronic form the court may have regard to any relevant information or circumstances including -
- (a) the manner in which the information was generated and stored;
  - (b) the reliability of the manner in which its integrity was maintained; and
  - (c) the manner in which its originator was identified or the information was signed or otherwise accredited or authenticated.

## *PART 3*

### REQUIREMENTS UNDER ENACTMENTS

## ARTICLE 10

### **Exemptions - Part 3**

- (1) The Committee may by Order provide that this Part, or a specified provision of this Part -

- (a) does not apply to a specified enactment or to a specified class of enactments; or
- (b) does not apply -
  - (i) unless a specified condition or requirement is complied with; or
  - (ii) in specified circumstances.
- (2) Except to any extent provided by Rules of Court this Part does not apply to the practice and procedure of a court or tribunal.
- (3) In this Article -
  - “practice and procedure of a court or tribunal” includes all matters in relation to which Rules of Court may be made;
  - “specified” means specified in the Order.

## ARTICLE 11

### **Giving information in writing**

- (1) A person required or permitted by an enactment to give information in writing may give that information by means of an electronic communication -
  - (a) in every case, if it is reasonable to expect that the information will be readily accessible so as to be useable for subsequent reference;
  - (b) where the information is required or permitted to be given to a States entity or to a person acting on behalf of a States entity and the entity requires that the information be given in accordance with particular information technology requirements by means of a particular kind of electronic communication, if the entity’s requirement is met; and
  - (c) where the information is required or permitted to be given to a person who is neither a States entity nor a person acting on behalf of a States entity, if the person to whom the information is required or permitted to be given consents to the information being given by way of an electronic communication.
- (2) Paragraph (1) applies whether the expression used in the enactment is give, dispatch, send, serve, or some other similar expression.
- (3) For the purposes paragraph (1) to give information includes but is not limited to the following -
  - (a) to make an application;
  - (b) to make or lodge a claim;
  - (c) to give, dispatch, send or serve a notice;
  - (d) to lodge a return;
  - (e) to make a request;
  - (f) to make a declaration;
  - (g) to lodge or issue a certificate;
  - (h) to make, vary or cancel an election;
  - (i) to lodge an objection;
  - (j) to give a statement of reasons.

(4) Paragraph (1) does not affect the operation of any other enactment that requires or permits information to be given in accordance with particular information technology requirements on a particular kind of data storage device or by means of a particular kind of electronic communication.

## ARTICLE 12

### **Requirement for signature**

(1) A person required by an enactment to provide a signature is to be taken to have met that requirement in relation to an electronic communication -

- (a) in every case, if a method is used to identify the person and to indicate the person's approval of the information communicated;
- (b) in every case, if the method used is as reliable as is appropriate for the purposes for which the information is communicated;
- (c) where the signature is to be provided to a States entity or to a person acting on behalf of a States entity and the entity requires that the method used as mentioned in sub-paragraph (a) be in accordance with particular information technology requirements, if the entity's requirement is met; and
- (d) where the signature is to be provided to a person who is neither a States entity nor a person acting on behalf of a States entity, if the person to whom the signature is to be provided consents to that requirement being met by the use of a method that identifies the person and indicates his approval of the information communicated.

(2) Paragraph (1) does not affect the operation of any other enactment that requires -

- (a) an electronic communication to contain an electronic signature (however described);
- (b) an electronic communication to contain a unique identification in an electronic form; or
- (c) a particular method to be used in relation to an electronic communication to identify its originator and to indicate his approval of the information communicated.

## ARTICLE 13

### **Producing a document**

(1) A person required or permitted by an enactment to produce a document may produce an electronic form of the document -

- (a) in every case, if the method used to generate the electronic form of the document assures the integrity of the information contained in the document;
- (b) in every case, if it is reasonable to expect that the information contained in the electronic form of the document will be readily accessible so as to be useable for subsequent reference;
- (c) where the document is required or permitted to be produced to a States entity or to a person acting on behalf of a States entity and the entity requires that an electronic form of the document be produced in accordance with particular information technology requirements by means of a particular kind of electronic communication, if the entity's requirement is met; and
- (d) where the document is required or permitted to be produced to a person who is neither a States entity nor a person acting on behalf of a States entity, if the person to whom the document is required or permitted to be produced consents to its production by means of an electronic form of the document.

(2) Paragraph (1) does not affect the operation of any other enactment that requires or permits a document to be produced in electronic form -

- (a) in accordance with particular information technology requirements;

- (b) on a particular kind of data storage device; or
- (c) by means of a particular kind of electronic communication.

#### ARTICLE 14

##### **Recording of information**

A person required by an enactment to record information in writing may record the information in electronic form -

- (a) in every case, if the information will be readily accessible so as to be useable for subsequent reference; and
- (b) where the Committee by Order requires that the information is to be recorded in electronic form on a particular kind of data storage device, if that requirement is met.

#### ARTICLE 15

##### **Inspection of information**

A person who is required by an enactment to make a document available for inspection (whether to the public or to a particular person or group of people) and who keeps the document or a copy of it in electronic form meets that requirement if -

- (a) the method used to keep the document in electronic form assures the integrity of the information contained in the document; and
- (b) he makes a copy of the document available for inspection in a visible and legible form.

#### ARTICLE 16

##### **Retention of document**

A person required by an enactment to retain a document meets that requirement by retaining an electronic form of the document -

- (a) in every case, if the method used to generate the electronic form of the document assures the maintenance of the integrity of the information contained in the document;
- (b) in every case, if the electronic form of the document will be readily accessible so as to be useable for subsequent reference; and
- (c) where the Committee by Order requires that the electronic form of the document is to be retained on a particular kind of data storage device, if that requirement is met.

#### ARTICLE 17

##### **Retention of information contained in electronic communication**

A person required by an enactment to retain for a particular period information that was the subject of an electronic communication meets that requirement by retaining or causing another person to retain the information in an electronic form -

- (a) in every case, if it is reasonable to expect that the information will be readily accessible so as to be useable for subsequent reference;
- (b) in every case, if the method used to retain the information assures the maintenance of the integrity of the information;
- (c) in every case, if throughout the period in which it is maintained in electronic form, the person also retains (or causes the other person to retain) in electronic form any additional information he has that identifies -

- (i) the originator of the electronic communication;
  - (ii) its addressee;
  - (iii) its time of dispatch; and
  - (iv) its time of receipt;
- (d) in every case, if the method used to retain the additional information assures the maintenance of the integrity of the information and it is reasonable to expect that this additional information will be readily accessible so as to be useable for subsequent reference; and
- (e) where the Committee by Order requires that the information and additional information are to be retained in electronic form on a particular kind of data storage device, if that requirement is met throughout that period.

## ARTICLE 18

### **Copyright**

(1) The generation of an electronic form of a document for the purposes of this Part does not constitute an infringement of the copyright in a work or other subject matter embodied in the document.

(2) The production, by means of an electronic communication, of an electronic form of a document for the purposes of this Part does not constitute an infringement of the copyright in a work or other subject matter embodied in the document.

## *PART 4*

### SERVICE PROVIDERS

## ARTICLE 19

### **Protection of service providers from criminal liability**

(1) If a service provider is charged with an offence arising out of the handling of an electronic communication it shall be a defence, in addition to any other defence he may have, for the service provider to show -

- (a) that he did not know and had no reasonable cause to suspect from the information known to him that the handling of the communication would (but for this Article) constitute or give rise to the offence; or
- (b) that as soon as was reasonably practicable after he knew or had reasonable cause to suspect that the handling of the communication would (but for this Article) give rise to the offence -
  - (i) he took such steps as were reasonable to prevent the handling by means of the information system he owns or operates; and
  - (ii) he notified a police officer of any relevant facts in his possession.

(2) A service provider is not subject to civil liability for action he takes in good faith pursuant to paragraph (1)

(b).

## ARTICLE 20

### **Protection of service providers from civil liability**

(1) A service provider is not subject to civil liability arising out of the handling of an electronic communication if -

- (a) he did not know and had no reasonable cause to suspect from the information known to him that the handling of the communication would (but for this Article) give rise to that liability; or

- (b) as soon as was reasonably practicable after he knew or had reasonable cause to suspect that the handling of the communication would (but for this Article) give rise to that liability, he took such steps as were reasonable to prevent the handling by means of the information system he owns or operates.
  - (2) A service provider is not subject to civil liability for action he takes in good faith pursuant to paragraph (1)
- (b).

## ARTICLE 21

### **Obligations of service providers**

(1) A service provider is not required to monitor an electronic communication handled by means of an information system he owns or operates to ascertain whether its handling by him would (but for Article 19 or 20) give rise to an offence or civil liability.

(2) Except as may be necessary to comply with a provision of this Part nothing in this Part relieves a service provider from -

- (a) an obligation to comply with an order or direction of a court or other competent authority;
- (b) an obligation under any other enactment; or
- (c) a contractual obligation.

## *PART 5*

### RULES AND ORDERS

## ARTICLE 22

### **Rules of Court**

- (1) Rules of Court may make provisions necessary or expedient for the purposes of this Law.
- (2) Rules of Court made for the purposes of Article 9 may, in particular, make provision in respect of -
  - (a) the manner in which information in electronic form is to be provided to a court, which may include the use of an information system; and
  - (b) the provision in hard form or in a legible and visible form of information provided in electronic form.
- (3) The power to make Rules of Court under Article 12 of the Royal Court (Jersey) Law 1948<sup>[1]</sup> shall include a power to make Rules under this Article.

## ARTICLE 23

### **Orders**

- (1) The Committee may by Order prescribe anything which may be prescribed under this Law.
- (2) The Committee shall not make an Order for a purpose of Part 3 in respect of an enactment without the approval of the relevant Committee.
- (3) The Committee shall make an Order for a purpose of Part 3 in respect of an enactment if requested to do so by the relevant Committee.
- (4) An Order made by the Committee under this Law -
  - (a) may make different provision for different cases; and

- (b) may contain incidental, supplemental, consequential and transitional provision.
- (5) The Subordinate Legislation (Jersey) Law 1960<sup>[2]</sup> applies to Orders made under this Law.
- (6) In this Article “relevant Committee”, in respect of an enactment, means the Committee with responsibility for the administration of the enactment.

*PART 6*

CITATION AND COMMENCEMENT

ARTICLE 24

**Citation and commencement**

- (1) This Law may be cited as the Electronic Communications (Jersey) Law 200-.
- (2) This Law shall come into force on such day or days as the States may by Act appoint and different days may be appointed for different purposes or different provisions of this Law.

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<sup>[1]</sup> Tome VII, page 511.

<sup>[2]</sup> Tome VIII, page 849.