

# STATES OF JERSEY



Jersey

## **DRAFT ELECTRONIC COMMUNICATIONS (AMENDMENT No. 2) (JERSEY) LAW 202-**

---

**Lodged au Greffe on 10th August 2021  
by the Minister for Economic Development, Tourism, Sport and Culture  
Earliest date for debate: 5th October 2021**

---

**STATES GREFFE**





Jersey

## **DRAFT ELECTRONIC COMMUNICATIONS (AMENDMENT No. 2) (JERSEY) LAW 202-**

### **European Convention on Human Rights**

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000, the Minister for Economic Development, Tourism, Sport and Culture has made the following statement –

In the view of the Minister for Economic Development, Tourism, Sport and Culture, the provisions of the Draft Electronic Communications (Amendment No. 2) (Jersey) Law 202- are compatible with the Convention Rights.

Signed: **Senator L.J. Farnham**

*Minister for Economic Development, Tourism, Sport and Culture*

Dated: 5th August 2021



---

## REPORT

---

### 1. Purpose

If approved by the States, these amendments to the [Electronic Communications \(Jersey\) Law 2000](#) (the “EComms Law”) will modernise the framework under which business is conducted in Jersey digitally. The amendments are required to enable businesses to take advantage of new technologies; to reflect common business practices; and provide greater certainty to the law whilst taking into consideration lessons learnt from COVID-19 and remote working.

### 2. Background

The EComms Law, which *inter alia* provides validity to the use of electronic signatures, has been in force for over two decades. In that time there have been rapid and significant developments to technology and digital user behaviour. In 2020 Government started to engage with a working group orchestrated by Government of Jersey and Jersey Finance Limited (“JFL”) to consider the EComms Law in light of new technologies, increasingly common business practices and lessons learned from the accelerated move to remote working as a result of COVID-19. The working group also gave consideration to clarifying certain aspects of the EComms Law where industry felt it would benefit from greater certainty.

### 3. Proposed amendments

The conclusions of the working group resulted in the following key findings:

- There is a need to introduce a long-term solution for remote witnessing of signatures. As a result of COVID-19 measures were introduced, but these measures are temporary and restricted in their application.
- Due to developments in common business practices and remote working the application of one’s electronic signature is not always provided by the signatory themselves, for example, a junior member of staff reproducing a senior member of staff’s signature for administrative purposes. Certainty under the law is therefore required that signatures provided by another, where they have authority to do so, are valid.
- There is a need for greater clarity that a signature, seal, attestation or notarisation is not to be denied legal effect, validity or enforceability only because it is in electronic form, whether such a requirement is as a result of statute or otherwise.
- There needs to be greater clarity that the EComms Law applies both to documents sent to another, and documents which are simply stored after execution.

In considering these proposals the Digital Economy Team identified that new rules on remote witnessing and providing a signature on behalf of another with authority to do so could result in new or increased risks such as: fraud, duress and the potential for vulnerable individuals to be disadvantaged. In developing the proposed amendments officials have given consideration as to how to mitigate these risks. Exemptions to the application of the new rules will therefore be applied by way of Order to mitigate these risks.

A public consultation, including direct contact with relevant stakeholders, reaffirmed the conclusions of the working group, as well as the proposed exemptions.

#### 4. Articles

- Article 1(1) and (2) are interpretation provisions. Article 1(2) inserts the definition of “electronic storage” and clarifies that the EComms Law applies to both documents which are immediately communicated, as well as those which are stored and not communicated.
- Article 1(3) inserts the new provisions of Articles 9A, 9B, 9C and 9D:
  - Article 9A – Validity of electronic signatures: the wording of this general provision relating to the legal effect, validity or enforceability of electronic signatures etc (which currently appears at Article 12(3) of the EComms Law) is moved from Part 3 of the EComms Law (requirements under enactments) to Part 2 of the EComms Law (general principles).
  - Article 9B – Remote witnessing of signatures: this Article provides for the manner in which remote witnessing can occur for any signature with a witnessing requirement (noting the provision that allows for exclusions to be made by Order, discussed below). Article 9B(1) sets out the standard requirements which must be met before remote witnessing can occur. Article 9B(2) and (3) provide two methods for remote witnessing:
    - Article 9B(2) provides for a scenario where the signatory is signing either a hard copy or electronic copy of a document, and either applying a wet ink signature or an electronic signature to that document. The witnessing of such signatures can occur under (2) via the audio-visual link, such as a webcam, and the signatory then provides an electronic copy of the document to the witness so that the witness may attest to the signature. In instances where the witness is unable to attest to the signature in the manner described under Article 9B(2) then Article 9B(4) may be relied upon.
    - Article 9B(3) provides for a screen-sharing scenario where both the signatory and witness can see and manipulate the same document. The witnessing of the signature occurs via the screen-sharing itself, although an audio-visual link must still be maintained (as per Article 9B(1)). After the signatory has signed the document with their electronic signature, the witness then attests to the signature on the document also. In instances where the witness is unable to attest to the signature in the manner described under Article 9B(3) then Article 9B(4) may be relied upon.
  - Article 9B(4) provides for scenarios where remote witnessing occurs:
    - under Article 9B(2) but where the signatory is unable to provide an electronic copy of the document to the witness, or the witness is unable to return an electronic copy of the document; or
    - under Article 9B(3) but where the witness is unable to apply their attestation to a document under a screen-sharing scenario,thus providing an alternative mechanism for attestation.

- Article 9C – Authority to make electronic signature for another: Article 9C(1) and (2) provide certainty that an electronic signature provided by a person (B) on behalf of another person (A) where A has given B authority to do so, is a valid method of meeting a signature requirement. Article 9C(3) ensures that the authority provided under Article 9C(2) is sufficient to deal with rules relating to agency and delegation which may exist in a corporate setting, for example. Article 9C(4) ensures, however, that where the signature is required or authorised to be provided to a States entity (as defined under the EComms Law) that the States entity can require that the signature does in fact come from a certain individual. Article 9C(5) make express that Article 9C does not apply to the signature of a Minister required for the purpose of making Jersey subordinate legislation (within the meaning of the Legislation (Jersey) Law 2021).
- Article 9D – Power to exclude application of Article 9B and 9C: Article 9D gives the Minister the power to exclude the application of the new rules under Articles 9B and 9C to a specific matter. As noted, a draft Order has been produced to exclude the application of the new rules from wills and Lasting Powers of Attorney. Through a combined application of amended Article 10(2) (see below), this will exclude the new rules from wills and Lasting Powers of Attorney in their entirety.
- Article 1(4) – amends Article 2 by removing the wording “*delivered as a deed or*” as deeds are not a recognised legal instrument in Jersey.
- Article 1(5) – expands the application of Article 10’s Order making power (power to exclude the application of the EComms Law to certain matters) to include the new rules under Articles 9A, 9B and 9C, and ensures the caveat relating to the practice and procedure of a court or tribunal under Article 10(2) also applies to the new rules.
- Article 1(6) – ensures that Article 12 is joined up with the States entity provision under new Article 9C, and that the general provision relating to signatures under Article 9A is not unnecessarily replicated under Article 12(3).

## **5. Financial and manpower implications**

There are no additional financial or manpower implications for the States arising from the adoption of this draft Law.

## **6. Human Rights**

The draft Law has been reviewed by the Law Officers’ Department to ensure compliance with the European Convention on Human Rights, and it was determined that, due to the nature of the amendments made, the draft Law does not give rise to any human rights issues. There is therefore no separate Human Rights Note appended to this report.





## EXPLANATORY NOTE

---

This Law if passed will make new provision in relation to the use of electronic signatures.

*Article 1* makes amendments to the Electronic Communications (Jersey) Law 2000 (the “2000 Law”). It relocates Article 12(3) of the 2000 Law (which declares that a signature, seal, attestation or notarisatio n is not denied legal effect only because it is in electronic form) as a free-standing Article 9A to make it clear that it has general application. It makes new provision for the remote witnessing by electronic means of the signing of documents in new Article 9B. New Article 9C enables a person (A) who is required or authorised to sign a document to give authority to another person to attach A’s signature to the document on A’s behalf. Article 9C does not apply to the signature of a Minister required for the purpose of making Jersey subordinate legislation under the Legislation (Jersey) Law 2021. It also makes consequential amendments to Articles 1, 2, 10 and 12 of the 2000 Law.

*Article 2* provides for the citation and for the Law to come into force 14 days after it is registered.





Jersey

## DRAFT ELECTRONIC COMMUNICATIONS (AMENDMENT No. 2) (JERSEY) LAW 202-

A **LAW** to enable the witnessing of signatures to be effected by electronic means; and for connected purposes.

---

<i>Adopted by the States</i>	<i>[date to be inserted]</i>
<i>Sanctioned by Order of Her Majesty in Council</i>	<i>[date to be inserted]</i>
<i>Registered by the Royal Court</i>	<i>[date to be inserted]</i>
<i>Coming into force</i>	<i>[date to be inserted]</i>

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

### 1 Electronic signatures

- (1) The [Electronic Communications \(Jersey\) Law 2000](#) is amended as follows.
- (2) In Article 1 (interpretation), in paragraph (1) –
  - (a) in the definition of “electronic communication”, after subparagraph (b) there is inserted –

“and a reference to an electronic communication includes a reference to an electronic record;”;
  - (b) after the definition of “electronic signature” there is inserted –

““electronic storage” means storage of an electronic record;”.
- (3) In Article 2 (power for Regulations to modify legislation), in paragraph (3)(b) “delivered as a deed or” is deleted.
- (4) After Article 9 there is inserted –

#### “9A Validity of electronic signatures

A signature, seal, attestation or notarisation is not to be denied legal effect, validity or enforceability only because it is in electronic form.

## PART 2A

### ELECTRONIC SIGNATURES

#### 9B Remote witnessing of signatures

- (1) A requirement, whether under an enactment or otherwise, that the signature of a person on a document must be witnessed may, in addition to any other lawful means of witnessing that signature, be satisfied if –
  - (a) at the time the document is signed, the person who signs the document (the signatory) and the person who witnesses the signature (the witness) are able to see one another by means of an audio-visual link; and
  - (b) either paragraph (2) or (3) applies.
- (2) This paragraph applies if –
  - (a) by means of that link, the witness positively identifies the signatory and sees the signatory sign the document;
  - (b) the signatory sends an electronic copy of the document to the witness; and
  - (c) the witness signs the document attesting to the signature of the signatory on the document.
- (3) This paragraph applies if –
  - (a) at the time the document is signed the signatory and the witness are also in communication by any other electronic means;
  - (b) the signatory and the witness can both see the document;
  - (c) the signatory makes his or her electronic signature on or in relation to the document; and
  - (d) the witness signs the document attesting to the signature of the signatory on the document.
- (4) Despite paragraphs (2)(c) and (3)(d), a person who has witnessed electronically the signature of a signatory to a document may at any time make a declaration in writing attesting to that fact.

#### 9C Authority to attach electronic signature for another

- (1) This Article applies where a person is required or authorised to sign a document.
- (2) The person (A) may authorise another person to attach A's electronic signature to the document on A's behalf.
- (3) Paragraph (2) applies despite any rule or presumption relating to –
  - (a) agency;
  - (b) delegation.
- (4) In the case of a signature required or authorised to be provided to a States entity or to a person acting on behalf of a States entity, despite

paragraph (2), the entity may require that the signature is attached by –

- (a) a specified individual;
- (b) an individual of a specified description.

- (5) This Article does not apply to the signature of a Minister required for the purpose of making Jersey subordinate legislation (within the meaning of the Legislation (Jersey) Law 2021).

#### **9D Power to exclude application of Articles 9B and 9C**

The Minister may by Order provide that Article 9B or 9C does not apply to such cases or in such circumstances as are specified in the Order.”.

- (5) In Article 10 (exemptions – Part 3) –
- (a) in the heading, “– Part 3” is deleted;
  - (b) in paragraph (1) for “this Part, or a specified provision of this Part” there is substituted “a relevant provision”;
  - (c) in paragraph (2) for “this Part does” there is substituted “the relevant provisions do”;
  - (d) after paragraph (2) there is inserted –  
“(2A) The relevant provisions are –
    - (a) the provisions of this Part;
    - (b) Articles 9A, 9B and 9C.”.
- (6) In Article 12 (requirement for signature) –
- (a) after paragraph (1)(c)(ii) there is inserted –
    - “(iii) any requirements specified by the entity as to the identity of the person by whom the signature is to be provided are met.”;
  - (b) paragraph (3) is deleted.

## **2 Citation and commencement**

This Law may be cited as the Electronic Communications (Amendment No. 2) (Jersey) Law 202- and comes into force 14 days after it is registered.