

The Electronic Transactions
(Commencement and Cheque Imaging)
(Sark) Ordinance, 2017

THE CHIEF PLEAS OF SARK, in exercise of the powers conferred on them by sections 9(2), 14, 21, 23(1) and (2) and 25 of the Electronic Transactions (Sark) Law, 2001, as amended^a and all other powers enabling them in that behalf, hereby order:-

PART I
COMMENCEMENT OF
ELECTRONIC TRANSACTIONS LAW, 2001

1. The Electronic Transactions (Sark) Law, 2001, other than section 20 thereof, shall come into force on the 18th October, 2017.

PART II
AMENDMENT OF ELECTRONIC TRANSACTIONS LAW, 2001

Amendment of 2001 Law.

2. After section 9 of the Electronic Transactions (Sark) Law, 2001 ("**the Electronic Transactions Law**") insert the following section -

^a Order in Council No. X of 2001; as amended by the Sark General Purposes and Advisory Committee (Transfer of Functions) Ordinance, 2001 (Sark Ordinance No. 125); the Sark General Purposes and Advisory and Finance and Commerce Committees (Transfer of Functions) Ordinance, 2015 (Sark Ordinance No. II of 2015).

"Provision as to electronic imaging of cheques and other instruments.

9A. (1) The provisions of this Law are, in respect of the presentment of bills of exchange within the meaning of the Bills of Exchange (Guernsey) Law, 1958 (as that Law has effect in the island of Sark), subject to any provision made by or under -

- (a) Part IVA of that Law (presentment of cheques and other instruments by electronic means), and
- (b) the Electronic Transactions (Commencement and Cheque Imaging) (Sark) Ordinance, 2017.

(2) The Committee may by order make such provision as it thinks fit -

- (a) for the purposes of authorising or facilitating, or otherwise in respect of, the implementation (including the introduction, use, administration, execution, recognition and enforcement) of electronic cheque imaging, and
- (b) to the extent relevant for those purposes, for carrying this Law (and the Bills of Exchange (Guernsey) Law, 1958, as it has effect in the island of Sark) into effect.

(3) An order of the Committee under this section may, without prejudice to the generality of the provisions of subsection (2), direct

that all or any of the provisions of any order made under section 9A of the Electronic Transactions (Guernsey) Law, 2000 shall extend to the island of Sark with such exceptions, adaptations and modifications as may be specified in the order, and the provisions as so extended shall have the same effect as if they were contained in an order of the Committee under this section."

3. After section 22(4) of the Electronic Transactions Law insert the following subsection -

"(5) Any reference in this Law to an enactment or statutory instrument is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied."

PART III

AMENDMENT OF BILLS OF EXCHANGE LAW, 1958

Amendment of 1958 Law.

4. In section 1(1) of the Bills of Exchange (Guernsey) Law, 1958^b as it has effect in the island of Sark ("**the Bills of Exchange Law**"), after the definition of "business day" insert the following definition -

"**the Committee**", in relation to the island of Sark, means the Policy and Performance Committee of the Chief Pleas of Sark,".

5. After section 44(9) of the Bills of Exchange Law (presentment for payment) insert the following subsection -

^b Ordres en Conseil Vol. XVII, p. 384; amended by Vol. XXIV, p. 84; Vol. XXXIV, p. 504; and Vol. XXXV(1), p. 367. Modified, in part, by Vol. XXII, p. 560.

"(10) This section is subject to Part IVA (presentment of cheques, etc, by electronic means).".

6. In section 51(4) of the Bills of Exchange Law (duties of holder as respects drawee or acceptor) for the words "Where the holder" substitute "Subject to Part IVA (presentment of cheques and other instruments by electronic means), where the holder".

7. After section 90(3) of the Bills of Exchange Law (presentment of note for payment) insert the following subsection -

"(4) This section is subject to Part IVA (presentment of cheques and other instruments by electronic means).".

8. Immediately prior to Part V of the Bills of Exchange Law insert the following section -

"Application of Part IVA to the Island of Sark."

92F. Part IVA, as it has effect in the Bailiwick excluding the islands of Alderney and Sark, has effect in the island of Sark subject to the following modifications and adaptations -

(a) in the heading to Part IVA ("Presentment of cheques and other instruments by electronic means : Guernsey") for the word "Guernsey" substitute "Sark",

(b) for the words "the Electronic Transactions

(Guernsey) Law, 2000" wherever those words occur, substitute the words "the Electronic Transactions (Sark) Law, 2001",

(c) for the words "the Electronic Transactions (Cheque Imaging) (Guernsey) Ordinance, 2017", wherever those words appear, substitute the words "the Electronic Transactions (Commencement and Cheque Imaging) (Sark) Ordinance, 2017",

(d) in section 92A(1) for the words "section 8" substitute the words "section 9",

(e) in section 92A(5) for the words "Part III" substitute the words "Part IV",

(f) in section 92D(2) for the words "section 10(4)" substitute the words "section 11(4)" and for the words "section 10" substitute the words "section 11".

PART IV
POWER OF COMMITTEE TO MAKE ORDERS IN RESPECT OF
CHEQUE IMAGING

Orders as to presentment of cheques.

9. (1) The Committee may by order prescribe circumstances in which section 92A(1) of the Bills of Exchange Law does not apply.

(2) An order under subsection (1) may in particular prescribe circumstances by reference to -

- (a) descriptions of instrument,
- (b) arrangements under which presentment is made,
- (c) descriptions of persons by or to whom presentment is made,
- (d) descriptions of persons receiving payment or on whose behalf payment is received.

Copies of instruments and evidence of payment.

10. (1) The Committee may by order make provision for -

- (a) requiring a copy of an instrument paid as a result of presentment under section 92A of the Bills of Exchange Law to be provided, on request, to the creator of the instrument by the banker who paid the instrument,

(b) a copy of an instrument provided in accordance with the order to be evidence of receipt by a person identified in accordance with the order of the sum payable by the instrument.

(2) An order under subsection (1)(a) may in particular -

(a) prescribe the manner and form in which a copy is to be provided,

(b) require the copy to be certified to be a true copy of the electronic image provided to the banker making the payment on presentment under section 92A of the Bills of Exchange Law,

(c) provide for the copy to be accompanied by prescribed information,

(d) require any copy to be provided free of charge or permit charges to be made for the provision of copies in prescribed circumstances.

(3) The reference in subsection (1)(a) to the creator of the instrument is -

(a) in the case of a bill of exchange, a reference to the drawer,

- (b) in the case of a promissory note, a reference to the maker.

Compensation in cases of presentment by electronic means.

11. (1) The Committee may by order make provision for the responsible banker to compensate any person for any loss of a kind specified by the order which that person incurs in connection with electronic presentment or purported electronic presentment of an instrument.

(2) In this section "**electronic presentment or purported electronic presentment of an instrument**" includes -

- (a) presentment of an instrument to which section 92A of the Bills of Exchange Law applies under that section,
- (b) presentment of any other instrument by any means involving provision of an electronic image by which it may be presented for payment,
- (c) purported presentment for payment by any means involving provision of an electronic image of an instrument that may not be presented for payment in that way,
- (d) provision, in purported presentment for payment, of -
 - (i) an electronic image that purports to be, but is not, an image of a physical instrument

(including an image that has been altered electronically), or

(ii) an electronic image of an instrument which has no legal effect, or

(e) provision, in presentment or purported presentment for payment, of an electronic image which has been stolen.

(3) In this section, the "**responsible banker**", in relation to electronic presentment or purported electronic presentment of an instrument, means

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(a) the banker who is authorised to collect payment of the instrument on a customer's behalf, or

(b) if the holder of the instrument is a banker, that banker.

(4) In this section -

(a) references to an instrument include references to an instrument which has no legal effect (whether because it has been fraudulently altered or created, or because it has been discharged, or otherwise),

(b) in relation to an electronic image which is not an image of a physical instrument, references to the instrument

are to a purported instrument (of which it purports to be an image), and

- (c) in relation to an instrument which is not a bill of exchange or promissory note, references to the holder are to the payee or indorsee of the instrument who is in possession of it or, if it is payable to bearer, the person in possession of it.

(5) An order under this section may in particular make provision for -

- (a) the responsible banker to be required to pay compensation irrespective of fault,
- (b) the amount of compensation to be reduced by virtue of anything done, or any failure to act, by the person to whom compensation is payable.

(6) Nothing in this section or an order under it is to be taken to -

- (a) prevent the responsible banker claiming a contribution from any other person, or
- (b) affect any remedy available to the responsible banker in contract or otherwise.

(7) Except so far as an order under this section provides expressly, nothing in this section or an order under it is to be taken to affect any

liability of the responsible banker which exists apart from this section or any such order.

General provisions as to orders.

12. (1) An order of the Committee under this Part of this Ordinance -
- (a) may be amended or repealed by a subsequent order hereunder,
 - (b) may contain such consequential, incidental, supplementary, savings, transitional and other ancillary provision as may appear to the Committee to be necessary or expedient, including (without limitation) provision -
 - (i) amending, or applying exceptions, adaptations and modifications to, any of the provisions of the Bills of Exchange Law or any other enactment, and
 - (ii) repealing, replacing, amending, extending, adapting, modifying or disapplying any rule of customary or common law,
 - (c) may, without prejudice to the generality of the foregoing provisions of this Ordinance, direct that all or any of the provisions of any order made under Part III of the Electronic Transactions (Cheque Imaging) (Guernsey) Ordinance, 2017, shall extend to the island

of Sark with such exceptions, adaptations and modifications as may be specified in the order, and the provisions as so extended shall have the same effect as if they were contained in an order of the Committee under this Part of this Ordinance, and

- (d) shall be laid before a meeting of the Chief Pleas as soon as possible and shall, if at that or the next meeting the Chief Pleas resolve to annul it, cease to have effect, but without prejudice to anything done under it or to the making of a new order.

(2) Any power conferred by this Part of this Ordinance to make any order may be exercised -

- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases,
- (b) so as to make, as respects the cases in relation to which it is exercised -
 - (i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),
 - (ii) the same provision for all cases, or different provision for different cases or classes of cases,

or different provision for the same case or class of case for different purposes,

- (iii) any such provision either unconditionally or subject to any prescribed conditions.

PART V
GENERAL PROVISIONS

Interpretation.

13. (1) In this Ordinance -

"Bills of Exchange Law" means the Bills of Exchange (Guernsey) Law, 1958, as it has effect in the island of Sark,

"Committee" means the Policy and Performance Committee of the Chief Pleas of Sark or such other Committee of the Chief Pleas as the Chief Pleas may by Ordinance determine,

"Electronic Transactions Law" means the Electronic Transactions (Sark) Law, 2001,

and, unless the contrary intention appears, other expressions have the same meanings as in the Bills of Exchange Law.

- (2) Any reference in this Ordinance to an enactment or statutory instrument is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

(3) The Interpretation (Guernsey) Law, 1948^c shall apply to the interpretation of this Ordinance as it applies to the interpretation of a Guernsey enactment.

Extent.

14. This Ordinance has effect in the island of Sark.

Citation.

15. This Ordinance may be cited as the Electronic Transactions (Commencement and Cheque Imaging) (Sark) Ordinance, 2017.

Commencement and transitional provision.

16. (1) Subject to subsection (2), this Ordinance shall come into force on the 18th October, 2017.

(2) This Ordinance and the amendments made by it have effect in relation to presentment of instruments after it comes into force, including instruments created before that time.

^c Ordres en Conseil Vol. XIII, p. 355.