Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Electronic Identification and Trust Services for Electronic Transactions Regulations 2016. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

STATUTORY INSTRUMENTS

2016 No. 696

ELECTRONIC COMMUNICATIONS

The Electronic Identification and Trust Services for Electronic Transactions Regulations 2016

Made - - - -	*30th June 2016*
Laid before Parliament	*1st July 2016*
Coming into force - -	*22nd July 2016*

The Secretary of State is a Minister designated [F1] for the purposes of section 2(2) of the European Communities Act 1972 [F2] in relation to electronic trust services and other systems to facilitate electronic transactions in the internal market.

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears to the Secretary of State that it is expedient for the reference to Regulation (EU) No 910/2014 [F3] of the European Parliament and of the Council on electronic identification and trust services for electronic transactions in the internal market to be construed as a reference to that instrument as amended from time to time.

The Secretary of State makes these Regulations in exercise of the powers conferred by section 2(2) of, and paragraph 1A [F4] of Schedule 2 to, the European Communities Act 1972.

F1 S.I. 2015/1770.

F2 1972 c.68; section 2(2) was amended by the Legislative and Regulatory Reform Act 2006 (c.51), **section 27(1)** and the European Union (Amendment) Act 2008 (c.7), **Sch**edule, Part 1.

F3 OJ No L 257, 28.8.2014, p73.

F4 Paragraph 1A of Schedule 2 was inserted by the Legislative and Regulatory Reform Act 2006, section 28 and amended by the European Union (Amendment) Act 2008, Schedule, Part 1.

PART 1

Introduction

Citation and Commencement

1. These Regulations may be cited as the Electronic Identification and Trust Services for Electronic Transactions Regulations 2016 and come into force on 22nd July 2016.

Interpretation

2.—(1) In these Regulations—

F5 …

the "2002 Regulations" means the Electronic Signatures Regulations 2002 F6;

"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 F7, as amended from time to time;

"supervisory body" has the meaning given in regulation 3(1) of these Regulations;

"the Tribunal" has the meaning given in section 70(1) F8 of the 1998 Act.

(2) Other expressions used in these Regulations, which are used in the eIDAS Regulation, have the same meaning as in the eIDAS Regulation.

F5 Words in reg. 2(1) omitted (25.5.2018) by virtue of Data Protection Act 2018 (c. 12), s. 212(1), **Sch. 19 para. 404** (with ss. 117, 209, 210); S.I. 2018/625, reg. 2(1)(g)
F6 S.I. 2002/318.
F7 OJ No L 257, 28.8.2014, p73.
F8 1998 c.29; section 70(1) was amended by S.I. 2010/22.

PART 2

Supervisory body

Supervision

3.—(1) The Information Commissioner 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.

(3) Schedules 1 (monetary penalties) and 2 (enforcement powers of the Information Commissioner F9...) have effect.

F9 Words in reg. 3(3) omitted (25.5.2018) by virtue of Data Protection Act 2018 (c. 12), s. 212(1), **Sch. 19 para. 405** (with ss. 117, 209, 210); S.I. 2018/625, reg. 2(1)(g)

PART 3

Miscellaneous

Transitional provisions and revocations

4.—(1) The Electronic Signatures Regulations 2002 are revoked.

(2) For the purposes of these Regulations, a qualified certificate issued pursuant to regulation 2 of the 2002 Regulations is to be treated as a qualified certificate for electronic signature pursuant to Article 3(15) of the eIDAS Regulation until it expires.

Consequential amendments

5. Schedule 3 has effect.

Review

6.—(1) The Secretary of State must from time to time—

(a) carry out a review of these Regulations;

(b) set out the conclusions of the review in a report; and

(c) publish the report.

(2) In carrying out the review the Secretary of State must, so far as is reasonable, have regard to how the eIDAS Regulation is implemented in other Member States.

(3) The report must in particular—

(a) set out the objectives intended to be achieved by the regulatory system established by these Regulations;

(b) assess the extent to which those objectives are achieved; and

(c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved by a system that imposes less regulation.

(4) The first report under this regulation must be published before the end of the period of 5 years beginning with the day on which these Regulations come into force.

(5) Reports under this regulation are afterwards to be published at intervals not exceeding 5 years.

Neville-Rolfe
Parliamentary Under Secretary of State for
Business, Innovation and Skills

Department for Business, Innovation and Skills

SCHEDULE 1

Regulation 3(3)

Monetary penalties

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;

(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 to the Tribunal against the issue of the fixed monetary penalty notice.

9. Any sum received by the supervisory body by virtue of this Schedule must be paid into the Consolidated Fund.

10. In England and Wales and Northern Ireland, the fixed monetary penalty is recoverable—

(a) if a county court so orders, under an order of that court;

(b) if the High Court so orders, under an order of that court.

11. In Scotland, the penalty may be enforced in the same manner as an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.

[F10SCHEDULE 2

Information Commissioner's enforcement powers

F10 Sch. 2 substituted (25.5.2018) by Data Protection Act 2018 (c. 12), s. 212(1), **Sch. 19 para. 406** (with ss. 117, 209, 210); S.I. 2018/625, reg. 2(1)(g) (with reg. 4)

Provisions applied for enforcement purposes

1 For the purposes of enforcing these Regulations and the eIDAS Regulation, the following provisions of Parts 5 to 7 of the Data Protection Act 2018 apply with the modifications set out in paragraphs 2 to 26—

(a) section 140 (publication by the Commissioner);
(b) section 141 (notices from the Commissioner);
(c) section 142 (information notices);
(d) section 143 (information notices: restrictions);
(e) section 144 (false statements made in response to an information notice);
(f) section 145 (information orders);
(g) section 146 (assessment notices);
(h) section 147 (assessment notices: restrictions);
(i) section 148 (destroying or falsifying information and documents etc);
(j) section 149 (enforcement notices);
(k) section 150 (enforcement notices: supplementary);
(l) section 152 (enforcement notices: restrictions);
(m) section 153 (enforcement notices: cancellation and variation);
(n) section 154 and Schedule 15 (powers of entry and inspection);
(o) section 155 and Schedule 16 (penalty notices);
(p) section 156(4)(a) (penalty notices: restrictions);
(q) section 157 (maximum amount of penalty);
(r) section 159 (amount of penalties: supplementary);
(s) section 160 (guidance about regulatory action);
(t) section 161 (approval of first guidance about regulatory action);
(u) section 162 (rights of appeal);
(v) section 163 (determination of appeals);
(w) section 164 (applications in respect of urgent notices);
(x) section 180 (jurisdiction);
(y) section 182(1), (2), (5), (7) and (13) (regulations and consultation);
(z) section 196 (penalties for offences);