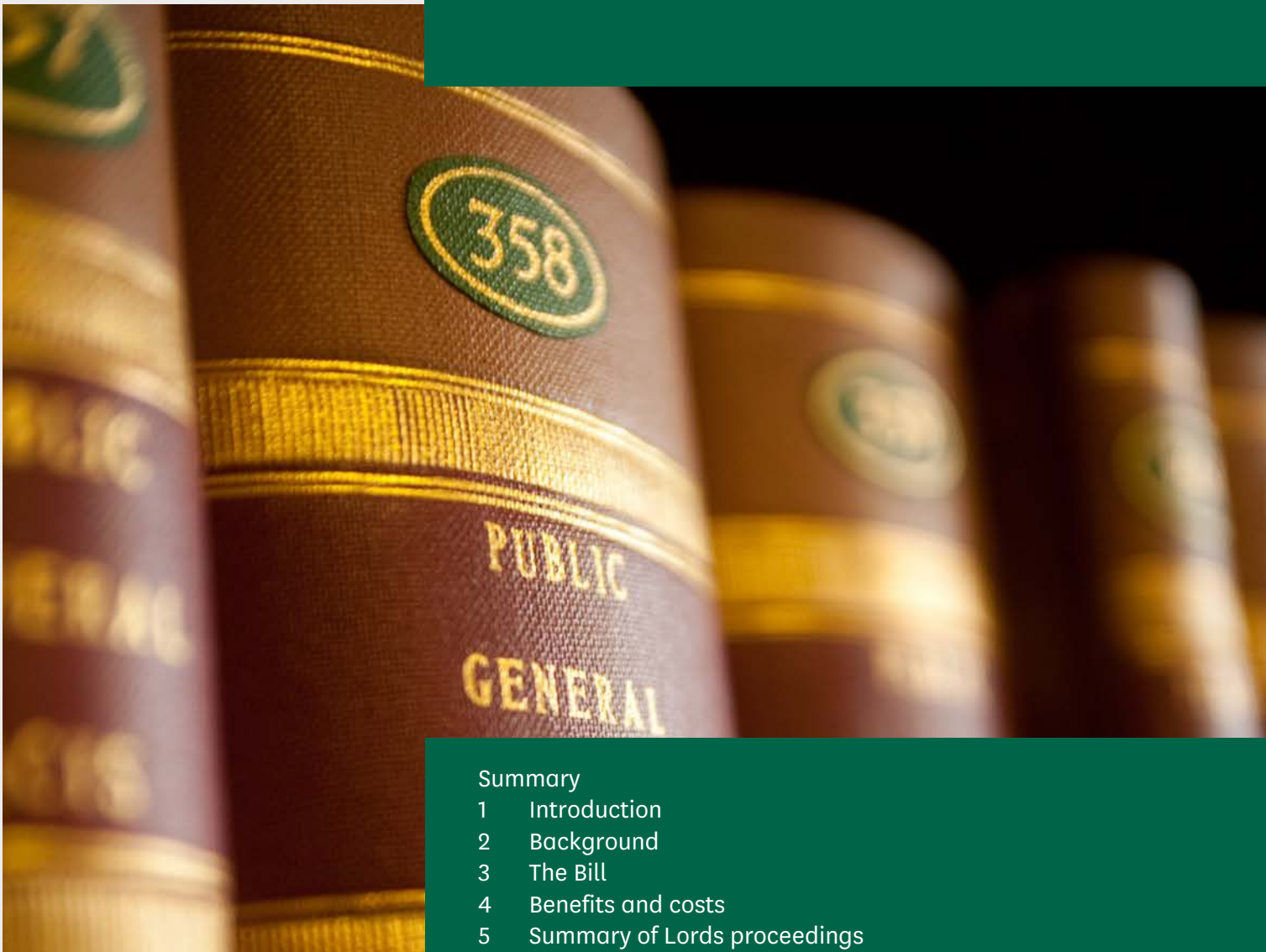


Research Briefing

21 June 2023

By Dominic Webb

Electronic Trade Documents Bill [HL] 2022-23



Summary

- 1 Introduction
- 2 Background
- 3 The Bill
- 4 Benefits and costs
- 5 Summary of Lords proceedings
- 6 Summary of Commons proceedings
- 7 Views of stakeholders and commentators

Image Credits

CRI-8021 by UK Parliament/Mark Crick image. Licensed under CC BY 2.0 / image cropped.

Disclaimer

The Commons Library does not intend the information in our research publications and briefings to address the specific circumstances of any particular individual. We have published it to support the work of MPs. You should not rely upon it as legal or professional advice, or as a substitute for it. We do not accept any liability whatsoever for any errors, omissions or misstatements contained herein. You should consult a suitably qualified professional if you require specific advice or information. Read our briefing [‘Legal help: where to go and how to pay’](#) for further information about sources of legal advice and help. This information is provided subject to the conditions of the Open Parliament Licence.

Sources and subscriptions for MPs and staff

We try to use sources in our research that everyone can access, but sometimes only information that exists behind a paywall or via a subscription is available. We provide access to many online subscriptions to MPs and parliamentary staff, please contact hoclibraryonline@parliament.uk or visit commonslibrary.parliament.uk/resources for more information.

Feedback

Every effort is made to ensure that the information contained in these publicly available briefings is correct at the time of publication. Readers should be aware however that briefings are not necessarily updated to reflect subsequent changes.

If you have any comments on our briefings please email papers@parliament.uk. Please note that authors are not always able to engage in discussions with members of the public who express opinions about the content of our research, although we will carefully consider and correct any factual errors.

You can read our feedback and complaints policy and our editorial policy at commonslibrary.parliament.uk. If you have general questions about the work of the House of Commons email hcenquiries@parliament.uk.

Contents

Summary	4
1 Introduction	5
2 Background	6
2.1 Current arrangements	6
2.2 Law Commission report	7
2.3 International aspects	14
3 The Bill	17
3.1 Overview	17
3.2 Special procedure for Law Commission Bills	18
3.3 The Bill in detail	19
3.4 Territorial extent and application	28
3.5 Delegated powers	31
4 Benefits and costs	32
4.1 Benefits	32
4.2 Costs	33
5 Summary of Lords proceedings	35
5.1 Second reading committee	35
5.2 Second reading	36
5.3 Special Public Bill Committee	36
5.4 Other Lords stages	39
6 Summary of Commons proceedings	40
7 Views of stakeholders and commentators	41

Summary

International trade involves a wide range of processes which rely on paper documents. These include transport, insurance, finance and logistics. It is estimated that 25 billion paper documents are created globally each year to facilitate international container shipping.

Many of these processes and their underlying laws are based on practices which are hundreds of years old. There is particular importance in having “possession” of certain types of trade document, including bills of sale and bills of exchange. But the law does not allow electronic documents to be possessed. This explains why nearly all international trade documents remain paper-based. Trading using electronic documents is now viable as the technology exists to create unique, identifiable electronic documents.

[The Bill](#) removes this legal impediment to allow documents in electronic form to be legally recognised in the same way as paper documents, provided they meet certain tests. The Bill refers to such documents as “electronic trade documents.” The Bill follows a [report and recommendations by the Law Commission](#).

The Government believes the Bill will bring a number of advantages: electronic trade documents will be cheaper, simpler, faster and more secure than paper documents. Use of electronic documents will reduce trade costs, speed up transactions, reduce error and bring environmental benefits. The Bill has generally been welcomed by stakeholders.

There will be no legal requirement for businesses to use electronic trade documents – they can choose between paper and electronic versions.

The Bill was introduced into the Lords and received cross-party support. It was not amended in the Lords. The Bill follows a special procedure for Law Commission Bills. It had its [second reading committee in the Commons on 12 June 2023](#) and its [Public Bill Committee on 19 June](#).

While the Law Commission’s recommendations covered England and Wales only, the Government has extended the Bill to cover the whole of the UK. The vast majority of the Bill applies to all parts of the UK. Part of one clause applies to Scotland only.

Most provisions fall within the devolved competence of the Scottish Parliament. At first, the [Scottish Government did not recommend that the Scottish Parliament give legislative consent](#) due to concerns over delegated powers. Following [amendments made in the Commons Public Bill Committee \(PDF\)](#), the [Scottish Government has now recommended that legislative consent be given](#). The Bill falls outside the legislative competence of the Northern Ireland Assembly and the Senedd Cymru/Welsh Parliament.

1 Introduction

The purpose of the Bill is to make trade easier and quicker by allowing the use of “electronic trade documents”. The law does not currently allow the use of certain trade documents in electronic form. The Bill removes this legal “blocker” to allow electronic trade documents to be used and be treated as equivalent to paper documents. Documents in electronic form must meet certain tests, set out in the Bill, to be used as electronic trade documents.

The Bill follows a [report by the Law Commission](#) (see section 2.2 below).¹ ² The Bill was introduced into the House of Lords in October 2022 under the special parliamentary procedure for Law Commission bills (see section 5 for a summary of Lords proceedings). The Bill completed its Lords stages in March 2023.

It was introduced, unamended, into the House of Commons in March 2023. [Second reading committee](#) took place on 12 June 2023. As this is a Law Commission Bill, debate in this committee took the place of a second reading debate in the House of Commons. The Bill had its second reading, without debate, on 13 June 2023.³

Committee stage took place on 19 June 2023.⁴ A number of Government amendments, addressing the Scottish Government’s concerns over devolved powers, were all agreed to without a vote.⁵

The Bill extends to the whole of the UK, except clause 3(4) which extends to Scotland only (see section 3.4 below).

Key documents relating to the Bill are on the [Bill page](#) of Parliament’s website. In particular:

- [Text of the Bill](#) [Bill 327, 2022-23] (PDF) – as amended in Committee
- [Government’s Explanatory notes](#) (PDF) – for the unamended Bill
- [Government’s Impact Assessment](#) (PDF)

¹ Law Commission, [Electronic trade documents: Report and Bill](#), HC 1188, Law Comm No 405, 15 March 2022

² The Commons Library is grateful to the Law Commission for very helpful comments on an earlier draft of this paper.

³ [HC Deb 13 June 2023 c267](#)

⁴ [PBC Deb 19 June 2023](#)

⁵ House of Commons, [Electronic Trade Documents Bill \[Lords\] \(Committee Stage Decisions\)](#), 19 June 2023 (PDF)

2 Background

2.1 Current arrangements

International trade involves a wide range of processes. These include transport, insurance, finance and logistics. These processes rely on paper documents. It is estimated that 25 billion paper documents are created globally each year to facilitate international container shipping.⁶ A single trade finance transaction can involve 20 entities and between 10 and 20 documents amounting to over 100 pages.⁷

Many of the processes and underlying laws are based on practices which are hundreds of years old. There is particular importance in being the “holder” or having “possession” of certain types of trade document. But the law does not allow electronic documents to be possessed. This explains why nearly all international trade documents remain paper-based.

As the Law Commission points out, technological advances mean that trading using electronic documents is now viable as the technology exists to create unique, identifiable electronic documents. But the law does not recognise such electronic documents as being legally equivalent to their paper counterparts. The Commission says:

Without reform, the law will continue to lag behind, hindering the adoption of electronic trade documents and the significant associated benefits from being achieved.⁸

What are the problems?

The Law Commission described the current system as “archaic”, “inefficient” and not suited to a world where transactions increasingly take place digitally.⁹

The “possession problem”

The way certain trade documents work depends on their being physically held or “possessed”. Certain rights (such as the right to claim payment of a sum of

⁶ DIT, [Impact assessment of the Electronic Trade Documents Bill](#), 8 December 2022, p8. This estimate is based on World Trade Organization, [Briefing note: Trade facilitation — Cutting “red tape” at the border](#), 2013 and United Nations Conference on Trade and Development (UNCTAD), [Review of Maritime Transport 2020](#), p84

⁷ [Explanatory Notes](#) (PDF) para 3

⁸ Law Commission, [Electronic trade documents](#)

⁹ Law Commission, [Electronic trade documents: summary](#), March 2022, p1

money) belong to the person in possession of the document. As the Law Commission explains, “[t]he right is embodied in the document and can be transferred by the (physical) transfer of possession of the document.”¹⁰

UK law does not recognise the possibility of intangible items being “possessed”. Electronic trade documents cannot, therefore, function in the same way as paper documents. The Law Commission calls this the “possession problem”.¹¹

2.2

Law Commission report

In September 2020, the then Department for Digital, Culture, Media and Sport (DCMS) asked the Law Commission of England and Wales to make recommendations relating to the use of electronic documents in international trade and to prepare draft legislation.¹² The [Law Commission published a consultation paper](#) (PDF) in April 2021.¹³ The [Law Commission’s report was published in March 2022](#).¹⁴

The report recommended changes to the law of England and Wales which would allow electronic documents to be used in the same way as paper documents, provided certain criteria were met. The report included a draft bill to implement the recommended changes.

The Law Commission’s report on electronic trade documents is part of its wider work on digital assets.¹⁵

Which documents are covered by the Law Commission’s recommendations?

The Law Commission’s recommendations were concerned with documents where possession is relevant for a person to claim performance of an obligation. Its report said:

They [the Law Commission’s recommendations] cover any paper document used in trade to which possession is relevant (as a matter of law or commercial practice) for a person to claim performance of an obligation, regardless of its

¹⁰ Law Commission, [Electronic trade documents: summary](#), March 2022, p2

¹¹ As above, p2

¹² Law Commission, [Electronic trade documents: Report and Bill](#), HC 1188, Law Comm No 405, 15 March 2022, para 1.13

¹³ Law Commission, [Digital assets: electronic trade documents – a consultation paper](#) (Consultation paper 254), 30 April 2021 (PDF). The Law Commission has also published a [summary of the consultation paper](#) (PDF) and [Responses to the consultation](#) (PDF)

¹⁴ Law Commission, [Electronic trade documents: Report and Bill](#), HC 1188, Law Comm No 405, 15 March 2022

¹⁵ Law Commission, [Digital assets](#)

precise legal nature. We recommend that this “umbrella provision” is set out in legislation.

We also recommend including a list of documents that function on the basis of possession and which we know are routinely used in trade, as we think this will provide certainty to the industry. This list is illustrative, rather than exhaustive, and a document which falls within the list should nevertheless only be caught by our recommendations if possession is required for its operation.¹⁶

In evidence to the House of Lords Special Public Bill Committee, Professor Sarah Green, Law Commissioner for Commercial and Common Law at the Law Commission, explained the special legal characteristics of the trade documents which are the focus of the Bill:

.. the particular focus of this Bill is documents that have a very particular legal function that depends on their characteristics. To give you an example, as Lord Parkinson has already said, the documents that are the focus of this Bill have a sort of legal alchemy attached to them. At the moment, if you hold—in the standard, physical sense—a piece of paper that records the contents of a particular contract, say, it is just evidence of your particular right.

The biggest example, in volume terms, of the type of document we are talking about today is probably bills of lading. Bills of lading refer to, say, goods ownership, and by holding the bill of lading you get the right to those goods. As I said, it is a sort of legal alchemy that gives you not just evidence of the right but the actual right itself, and you get that through having possession of that document.

The problem at the moment is if that document takes an electronic form, it cannot be possessed, and there are all the legal implications that flow from that. Imbuing you with the right cannot follow if that document is electronic. That is the blocker which this Bill is trying to get around.¹⁷

1 Bills of lading

Bills of lading were explained by Professor Sarah Green in evidence to the Lords Special Public Bill Committee:

The Chair: Maybe, Professor Green, you could explain how a bill of lading comes to be issued, what happens to it, and why this matters so much in the practical way in which merchants conduct their business. That may help to clarify this.

Professor Sarah Green: Yes, of course. In law, it is called a document of title. As I have said, if you have that piece of paper, you then have title to the goods, which gives you protection over your interest in those goods. One reason why they are used is in contrast to your standard face-to-face situation: for example, you go into a shop and buy a pint of milk, you pay for the milk, they hand you the milk and you walk away. That is all very simple. The logistics of international trade,

¹⁶ Law Commission, [Electronic trade documents: summary](#), March 2022, p9

¹⁷ Electronic Trade Documents Bill [HL] Special Public Bill Committee, [Oral evidence: Electronic Trade Documents Bill \[HL\]](#), 12 January 2023, Q2

however, are a lot more complicated, apart from anything else there will be quite a large temporal divide between the time when you make the contract and the time when you receive the goods. In fact, in international trade, the person or the organisation that receives those goods is not necessarily the one that originally bought them.

The bill of lading is issued when those goods are dispatched, and it will have a parallel journey to those goods. The goods are put on a ship and taken from one place to another, and the bill of lading, which goes alongside, goes from hand to hand and links those goods with the legal interest to whoever has the bill of lading, for all sorts of reasons—banks, for instance, use them to advance money on the goods to which they relate—and when you hold that bill of lading, you then have the valuable interest in those goods.

In the simplest scenario, when the goods reach their destination, that bill of lading then has to be surrendered in order to get the goods, because that is what proves that you are the one who is entitled to receive those goods. At the moment, in some situations the bill of lading has to go all the way around the planet in paper form before those goods can be passed on.

This is the problem that seems quite strange, particularly to non-lawyers, I suspect. As you might imagine, parties really want to do that in electronic form now. It is easier, it is quicker, it is more efficient. That bill of lading is less likely to get lost, it is less likely to get destroyed, it is certainly harder to forge. Yet, at the moment, those commercial parties are not able to do that; they still have to send a piece of paper to the other side of the world. I can see that is a frustration for non-lawyers, and hopefully I have made clear what the legal barrier is to conducting that trade in a way that seems far more fitting to the 21st century and to the technology we now have available.¹⁸

The Law Commission recommended that some documents be excluded from the scope of the Bill:

We recommend excluding certain types of documents that may otherwise fall within the scope of the Bill. These are instruments which are entered under a “relevant system” under the Uncertificated Securities Regulations 2001, and bearer bonds (debt securities held in physical form). These instruments are principally used in financial markets. They are better dealt with separately rather than in this Bill aimed at international trade.

We think our reforms could lead to significant change in practice, and are conscious that the list of exclusions in the Bill may have to be added to or amended in the future. To cater to this, we recommend that legislation should contain a power to make secondary legislation, subject to the affirmative procedure, to add to, remove from, or otherwise amend the list of the documents which are excluded from the scope of the Bill.¹⁹

¹⁸ Electronic Trade Documents Bill [HL] Special Public Bill Committee, [Oral evidence: Electronic Trade Documents Bill \[HL\]](#), 12 January 2023, Q2

¹⁹ Law Commission, [Electronic trade documents: summary](#), March 2022, p9

Law Commission’s “Gateway criteria”

The Law Commission’s report set out seven tests that documents in electronic form would have to meet to replicate the key features of a paper document.²⁰ The report referred to these seven tests as “gateway criteria”. Documents meeting these tests would count as an “electronic trade document”.

The seven tests related to:

- Information contained in an electronic trade document
- Reliability
- Integrity
- Exclusive control
- Divestibility
- Identification of the document
- Identification of persons who could exercise control

Information contained in an electronic trade document

Some paper trade documents have requirements about the information they must contain to qualify as that trade document. The Law Commission recommended that a document in electronic form should contain the same information as its paper equivalent to qualify as an electronic trade document.

Reliability

The Law Commission recommended that the Bill should include a requirement that an electronic trade document system should be reliable. This would encourage take-up of the system.

The Commission recommended that the Bill set out a non-exhaustive list of factors which could be taken into account in determining whether a system is reliable.

The Commission did not think that the Bill should make separate provision for an accreditation process. A requirement that specific systems be accredited by a regulator would be burdensome and could delay the move to electronic trade documents. The development of industry standards would be a better means of handling this issue.

²⁰ Law Commission, [Electronic trade documents: summary](#), March 2022, pp10-13

Integrity

The Commission recommended that there should be a requirement about the integrity of electronic trade documents. Electronic documents should not be altered or interfered with in an unauthorised manner.

Exclusive control

The Law Commission's recommendation was that a trade document in an electronic form must be susceptible to exclusive control to qualify as an electronic trade document. In other words, only a single person (or persons acting jointly) can exercise control of the document at any given time.

The Commission explained the meaning of "exclusive control" as follows:

We recommend that a person is taken to exercise control of a trade document in electronic form when the person uses, transfers or otherwise disposes of the document. "Use" of a trade document in electronic form should comprise utilising or retaining the document to achieve a particular purpose. It should include causing something to happen (or preventing something from happening) to the document, but should not include merely reading or viewing the document.²¹

The purpose of this requirement is to prevent, for example, two people with access to the document transferring it to two different places independently of each other.

Divestibility

The Law Commission recommended that a trade document in electronic form must be "divestible" to count as an electronic trade document. This means that transferring an electronic trade document necessarily entails the transfer of both the document and the ability to control the document. This would prevent an electronic trade document being transferred more than once by the same person.

Identification

The Law Commission recommended that a document in electronic form should be identifiable so it can be distinguished from any copies.

Identification of persons who could exercise control

The Law Commission also recommended that a trade document in an electronic form "must be capable of being uniquely associated with the person or persons who are able to exercise control of it" in order to count as an electronic trade document.²²

²¹ Law Commission, [Electronic trade documents: summary](#), March 2022, p12

²² As above, p13

Possession of Electronic Trade Documents

The Law Commission recommended that documents in electronic form which meet the seven criteria listed above should be capable of being possessed. This should be explicitly set out in statute. The Commission did not, however, recommend that legislation define what constitutes possession of an electronic trade document. Its view was that possession should be assessed as a matter of common law.²³

Transferring possession of an electronic trade document

Transfer of possession would require a transfer of control from the person making the transfer. The Commission explained how this could happen on distributed ledger technology (DLT) and central registry systems:

We think that, on a DLT-based system, this will generally be effected by the transferor using their private key to send the electronic trade document to the account of the transferee, thereby divesting themselves of the electronic trade document. On a central registry system, it will be similar: once the transfer is effected, only the transferee's security credentials (that is, login details) will provide the ability to transfer or otherwise exercise control over the document.²⁴

Effect of electronic trade document being possessable

The Law Commission recommended that electronic trade documents and paper trade documents “should have the same legal functionality in every respect ...”²⁵

The Commission said the key effect of the concept of possession being applied to electronic trade documents would be that their possession would “determine who is entitled to claim performance of the relevant obligation.”²⁶ In addition, “delivery of the document from one person to another will enable the transfer of relevant rights and entitlements to the latter, in the same way as occurs with paper documents.”²⁷

The Commission summed up the effect of its recommendations:

Our recommended reforms will ensure that users of documents which meet the criteria in the Bill are able use them safe in the knowledge that they will have the same legal effects as their paper counterparts, without the need to engage legal workarounds.²⁸

²³ Law Commission, [Electronic trade documents: summary](#), March 2022, p14

²⁴ As above, p14

²⁵ As above, p15

²⁶ As above, p15

²⁷ As above, p15

²⁸ As above, p15

Other recommendations

The Law Commission's report made a number of other recommendations. Some of the more significant recommendations are summarised below.

Change of form or medium

The Law Commission recommended that provision be made to allow a paper trade document to be converted into an electronic trade document and vice versa. This was because different jurisdictions are likely to recognise electronic trade documents to different degrees so a change from one type of document to another may be required in order to use documents in other jurisdictions.

The Commission recommended two requirements for a valid change of form:

- a statement that the document has been converted must be included in the document in its new form; and
- any contractual or other requirements relating to the conversion of the document must be complied with.

If such a change were to occur, only the form of the document would change. Everything else, such as the rights associated with the document, would remain the same. Where a document is validly converted, the old document should cease to have effect.²⁹

Existing trade documents

The Law Commission recommended that documents issued before the legislation comes into force should not be capable of being electronic trade documents. Also, the Commission's view was that paper documents issued before the legislation was in force should not be capable of being converted into an electronic trade document.³⁰

Amendments to existing legislation

The Law Commission recommended that two pieces of existing legislation be amended:

- repeal of sections 1(5) and 1(6) of the [Carriage of Goods by Sea Act 1992](#). The Law Commission's recommended reforms mean the powers in these sections are redundant.
- Amending section 89B(2) of the [Bills of Exchange Act 1882](#).

²⁹ Law Commission, [Electronic trade documents: summary](#), March 2022, p18

³⁰ As above, p18

2.3

International aspects

As international trade crosses borders, legal changes in other countries are required for the full benefits of electronic trade documents to be realised. The UN Commission on International Trade Law (UNCITRAL) has put forward a Model Law on Electronic Transferable Records (MLETR).³¹ No major economy is fully compliant with MLETR, although some countries (such as Singapore and Bahrain) have introduced legislation which is very closely based on it.³²

According to the Government, “it is widely accepted that UK legal reform in line with MLETR would act as a significant catalyst towards global legal reform and the development of an electronic trade document ecosystem” as many trade transactions throughout the world are based on the Law of England and Wales.³³

The Law Commission referred to MLETR:

In developing our recommended reforms, we have been mindful in particular of the MLETR [Model Law on Electronic Transferable Records produced by the United Nations Commission on International Trade Law], given its international significance. The MLETR provides a prototype for law reform initiatives at a national level. It aims to enable the use of electronic transferable records by establishing legal equivalence between control of an electronic transferable record (such as a bill of exchange) and possession of a transferable paper document or instrument. Our recommendations align with the aims and policy of the MLETR, but are tailored specifically to the law of England and Wales.³⁴

Commentators have observed that other countries will need similar reforms for trade transactions to become fully digital.³⁵ Law firm, Hill Dickinson said:

If such documents are not accepted ‘globally’ this rather mothballs an otherwise progressive and highly desirable mechanism.

The government will need time to liaise with other jurisdictions in respect of cooperation agreements, as there seems little to be gained by individual countries introducing their own legislation in a piecemeal uncoordinated fashion where no reciprocity exists.

The desire of those operating within the marine trade sphere may put the necessary pressure required on other jurisdictions to follow suit.

[...]

³¹ UNCITRAL, [Model Law on Electronic Transferable Records](#) (PDF), 2018

³² DIT, [Impact assessment of the Electronic Trade Documents Bill](#), 8 December 2022, p9

³³ As above, p9

³⁴ Law Commission, [Electronic trade documents: summary](#), March 2022, p6

³⁵ Hill Dickinson, [The Electronic Trade Documents Bill: A revolutionary step](#), 20 October 2022

While this is outwardly a very positive step for many reasons it appears that we are still far from being in a position where any legislation can be enacted to the desirable global degree - which is, after all, its aim.³⁶

Reform in this area is a G7 commitment made under DCMS Secretary of State's Digital Track of the UK G7 Presidency.³⁷

Other countries are introducing legislation. Chris Southworth of International Chamber of Commerce UK said Germany is expected to bring in legislation this year and France in 2024 or 2025. Italy was slightly behind these countries.³⁸

In the Special Public Bill Committee, Lord Bassam of Brighton noted that most countries do not currently recognise electronic trade documents and asked what implications would flow from this. In response, Professor Green said that English Law governs "by far the majority of commercial transactions".³⁹ The Bill would ensure the UK took a lead. Professor Green said other countries would have a greater incentive to follow because of the resulting efficiency gains and because there would be an example on which they could draw.⁴⁰

The provisions of the Electronic Trade Documents Bill will apply only to the extent that the Bill forms part of the law applicable to a particular issue or dispute (that is, where the applicable law is that of England and Wales, Scotland or Northern Ireland). As such, the Bill will not necessarily apply to every dispute affecting or involving electronic trade documents worldwide.

Because trade documents are, by their very nature, used widely in international transactions and are passed between participants in different jurisdictions, questions arise as to which law is applicable to a particular transaction. This engages conflict of laws rules. Conflict of laws (or private international law) is a branch of law that deals with matters involving a foreign element, and determines which jurisdiction's law ought to apply to determine the outcome of a dispute. It is a complex area of law.

The Bill ensures that electronic trade documents are subject to the same rules as apply to paper trade documents (including relevant private international law rules). The Law Commission has expressed the view that the English courts are well-placed to apply the existing private international law rules (applicable to paper trade documents) to electronic trade documents, pending future reform arising from the Law Commission's distinct project considering private international law as it applies to emerging technology.⁴¹

³⁶ Hill Dickinson, [The Electronic Trade Documents Bill: A revolutionary step](#), 20 October 2022

³⁷ Department for Digital, Culture, Media and Sport Press Release, [Paperless trade for UK businesses to boost growth](#), 12 October 2022

³⁸ Electronic Trade Documents Bill [HL] Special Public Bill Committee, [Oral evidence: Electronic Trade Documents Bill \[HL\]](#), 19 January 2023, Q4

³⁹ In a latter evidence session, Chris Southworth, secretary-general of the International Chamber of Commerce, said that [English law governs 80% of bills of lading around the world](#) (Q2).

⁴⁰ Electronic Trade Documents Bill [HL] Special Public Bill Committee, [Oral evidence: Electronic Trade Documents Bill \[HL\]](#), 12 January 2023, Q5

⁴¹ See Law Commission, [Digital assets: which law, which court?](#).

While that project may ultimately suggest law reform in this area, there is no reason why courts cannot apply the existing rules in the interim.

These rules include common law rules and, where applicable, section 72 of the Bills of Exchange Act 1882. There are various questions and issues that might arise in connection with electronic trade documents, some of which would require distinct conflicts analyses.

3 The Bill

3.1 Overview

The Bill's purpose is to remove the current legal obstacle to the use of electronic trade documents. Professor Sarah Green, Law Commissioner for Commercial and Common Law at the Law Commission, told the House of Lords Special Public Bill Committee:

it is really just a question of removing this current legal blocker. In that sense, the Bill attempts to do a very narrow thing: to reach a situation where the law treats paper and electronic trade documents in the same way.⁴²

Currently, certain trade documents must be in paper form. The Bill will make digital documents legally equivalent to paper documents, provided they meet certain tests set out in the Bill. These tests ensure that electronic trade documents replicate important features of paper trade documents.

The Bill allows the use of electronic documents but does not require it: businesses will have a choice over whether to use paper or digital documents.

According to the Government, this will make trade “easier, faster and cheaper” and reduce the volume of paper documentation needed for international trade.⁴³ The Government says this will boost UK business by £1.14 billion over ten years. The Government also quotes figures from Trade Finance Global showing a fall in trade contract processing times from several days to a matter of seconds.⁴⁴

The Bill also contains measures relating to the practical use of electronic trade documents such as indorsement and changing documents between electronic and paper forms.⁴⁵ The Bill repeals parts of the [Carriage of Goods by Sea Act 1992](#) and makes amendments to the [Bills of Exchange Act 1882](#).⁴⁶

⁴² Electronic Trade Documents Bill [HL] Special Public Bill Committee, [Oral evidence: Electronic Trade Documents Bill \[HL\]](#), 12 January 2023, Q1. Others contested whether the Bill was narrow in scope pointing out the large proportion of international trade governed by the law of England and Wales. See Electronic Trade Documents Bill [HL] Special Public Bill Committee, [Oral evidence: Electronic Trade Documents Bill \[HL\]](#), 19 January 2023, Q24

⁴³ Department for Digital, Culture, Media and Sport Press Release, [Paperless trade for UK businesses to boost growth](#), 12 October 2022

⁴⁴ As above

⁴⁵ “Indorsement” is “an annotation in writing on a document of title instructing that the obligation recorded therein be performed to the order of a named person or simply “to order”” ([Explanatory Notes](#) (PDF) para 61

⁴⁶ [Explanatory Notes](#) (PDF) para 2

The Explanatory Notes set out the intended consequences of the Bill:

reduce transaction costs associated with paper trade documents by reducing resourcing and operational costs, and increasing productivity;

increase efficiency and encourage business growth by facilitating the development of digital products and services;

increase environmental benefits due to a reduction in paper documents; and

increase security and transparency in documentation.⁴⁷

3.2 Special procedure for Law Commission Bills

The Bill is following the special procedure for Law Commission Bills. This is used for Bills which are regarded as uncontroversial.⁴⁸ In essence, such Bills are referred to a second reading committee and debated there rather than in the House of Commons as a whole, unless the House orders otherwise.⁴⁹ The second reading committee in the Commons is on 12 June 2023.

For the House of Commons, this procedure is set out in Standing Order 59:

Law Commission bills

(1) Any public bill, the main purpose of which is to give effect to proposals contained in a report by either of the Law Commissions, other than a private Member's bill or a bill to which [Standing Order No. 58 \(Consolidation bills\)](#) applies, shall, when it is set down for second reading, stand referred to a second reading committee, unless—

(a) the House otherwise orders, or

(b) the bill is referred to the Scottish Grand Committee.

(2) If a motion that a bill such as is referred to in paragraph (1) above shall no longer stand referred to a second reading committee is made by a Minister of the Crown at the commencement of public business, the question thereon shall be put forthwith.

(3) The provisions of paragraphs (3) to (5) of [Standing Order No. 90 \(Second reading committees\)](#) shall apply to any bill referred to a second reading committee under paragraph (1) above.⁵⁰

Paragraphs (3) to (5) of Standing Order 90 referred to above, state:

(3) A second reading committee shall report to the House either that it recommends that the bill ought to be read a second time or that it

⁴⁷ [Explanatory Notes](#) (PDF) para 11

⁴⁸ Law Commission, [Implementation of our reports](#)

⁴⁹ [Erskine May](#) para 28.54

⁵⁰ [Standing Orders of the House of Commons, Public Business 2021](#)

recommends that the bill ought not to be read a second time, and in the latter case it shall have power to state its reasons for so recommending.

(4) When a second reading committee shall have made a report to the House in respect of a bill referred to it under paragraph (2) above, the bill shall be ordered to be read a second time upon a future day.

(5) Upon a motion being made for the second reading of a bill reported from a second reading committee, the question thereon shall be put forthwith.⁵¹

Further information on this procedure is in a Commons Library briefing, [The Law Commission and Law Commission Bill Procedures](#). Previous legislation introduced using this procedure includes the [Trusts \(Capital and Income\) Act 2013](#) and the [Charities Act 2022](#).

3.3

The Bill in detail

Clause 1: Definition of “paper trade document”

Clause 1 defines the types of documents which may fall within the Bill’s scope.

Subsection (1) says that a document must satisfy the following criteria to be a paper trade document:

- a) be in paper form
- b) be a document of a type commonly used in at least one part of the UK in connection with (i) trade in or transport of goods or (ii) financing such trade or transport and
- c) possession of the document must be required as a matter of law/commercial custom/usage/practice for a person to claim performance of an obligation.

The purpose of requirement b) is to exclude documents not of a type commonly used in connection with trade or transport goods (or the financing of trade or transport) but which might otherwise be caught by subsection (1), such as documents used in the money markets (bearer bonds etc).⁵²

The purpose of requirement c) is “to ensure that (subject to the remaining clauses of the Bill) any document whose functionality requires it to be possessed falls within the scope of the Bill, regardless of its precise legal or commercial nature.”⁵³

⁵¹ [Standing Orders of the House of Commons, Public Business 2021](#)

⁵² [Explanatory Notes](#) (PDF), para 19

⁵³ As above, para 20

Subsection (2) gives examples of documents commonly used as described in b) above. The examples are:

- a bill of exchange
- a promissory note
- a bill of lading (see Box on pages 8-9 for more detail on bills of lading)
- a ship's delivery order
- a warehouse receipt
- a mate's receipt
- a marine insurance policy
- a cargo insurance certificate

According to the Explanatory Notes, this list is provided for “the sake of certainty and clarity”. It is not an exhaustive list. A document on the list will only be caught by the Bill if it meets the criteria set out in subsection (1).⁵⁴

Clause 2: Definition of “electronic trade document”

Clause 2 defines the criteria that a document in electronic form must meet to count as an “electronic trade document” for the purposes of the Bill. These reflect the “gateway criteria” set out in the Law Commission report (see section 2.2 above).

Same information as paper document

Some paper trade documents have requirements about the information they must contain to count as that trade document. Clause 2(1) provides that a document in electronic form must contain the same information as would be required in the paper equivalent to qualify as an “electronic trade document” for the purposes of the Bill.⁵⁵

As the Explanatory Notes set out, the aim is to establish the link between the document in electronic form and its paper equivalent. This subsection does not bring in new requirements about the information that a document in electronic form should contain.⁵⁶

Concept of a document in electronic form

Clause 2(2) provides that the information in electronic form, as well as any other information with which it is logically associated that is also in electronic

⁵⁴ [Explanatory Notes](#) para 22

⁵⁵ As above, para 25

⁵⁶ As above, para 26

form, constitutes an “electronic trade document” as long as a reliable system⁵⁷ is used to carry out these functions:

- Identifying the document to allow it to be distinguished from any copies
- Protecting the document against unauthorised alteration
- Ensuring it is not possible for more than one person to exercise control of the document at any one time⁵⁸
- Allowing any person who is able to exercise control of the document in electronic form to demonstrate their ability to do so
- Ensuring that the document is divestible: transferring the document must mean a transfer of both the document and the ability to exercise control of it.

These functions are designed to replicate important functions of paper documents.⁵⁹

Clause 2(2) refers to “information, together with any other information with which it is logically associated that is also in electronic form”. As the Explanatory Notes set out, a document in electronic form may have several components:

One component will always be the particular instance of a data string or data structure consisting of functional code, which is logically associated with (and specifically identifies) the human readable part of the document. There might also be other components made up of human readable text (for example, a .pdf file or other type of data that can be accessed and displayed in a human readable way by a computer). Depending on the technology being used, this could be a unique cryptographic “token” allocated to a system user. The data string or data structure is recorded on or across one or more ledgers, structured records or registers.⁶⁰

Clause 2(2) means that the various information components of a trade document in electronic form are treated as a single document even though they may carry out different functions.⁶¹

Paragraph (3)(a) sets out that for the purposes of subsection (2), a person exercises control of a document when that person uses, transfers or otherwise disposes of the document (irrespective of whether the person has a legal right to do so). Paragraph (3)(b) provides that, for the purposes of subsection (2), persons acting jointly are to be treated as one person.

⁵⁷ Clause 2(5) sets out a list of factors which may be taken into account in assessing reliability.

⁵⁸ Clause 2(3) defines exercising control of the document.

⁵⁹ [Explanatory Notes](#) (PDF) para 31

⁶⁰ As above, para 28

⁶¹ As above, para 29

Subsection (4) says that reading or viewing a document is not, in itself, use of the document for the purposes of subsection (3).

Subsection (5) relates to the reliability of the system as referred to in subsection (2). It sets out a non-exhaustive list of factors which may be considered by a court in assessing whether an electronic trade document system is reliable. The Explanatory Notes say:

In requiring a system to be reliable, and in setting out various factors that may be taken into account when assessing reliability, the Bill does not prescribe or endorse any particular type of technology. It simply provides a non-exhaustive list of factors that a court may take into account when assessing the reliability of a particular electronic trade document system.⁶²

The factors set out in subsection (5) are:

- Any rules of the system applying to its operation
- Any measures taken to secure the integrity of information held on the system
- Any measures taken to prevent unauthorised access to and use of the system
- Security of hardware and software
- Regularity and extent of audit by an independent body
- Any assessment of the system's reliability by a body with supervisory or regulatory functions
- Provisions of any voluntary scheme or industry standard that apply in relation to the system.

Clause 3: Possession, indorsement and effect of electronic trade documents

Subsection (1) sets out that a person may possess, indorse or part with possession of an electronic trade document. This removes the current legal impediment which prevents trade documents in electronic form from being possessed.⁶³

The Bill does not set out what constitutes possession of an electronic trade document. This would be assessed as a matter of common law.⁶⁴

⁶² [Explanatory Notes](#) (PDF) para 32

⁶³ As above, para 55

⁶⁴ As above, para 56

The Bill does not set out what constitutes a transfer of possession. Paragraph 2(2)e ensures that when a person transfers an electronic trade document, the transferor can no longer exercise control of the document.⁶⁵

Subsection (1) also provides that a person may “indorse” an electronic trade document. The Explanatory Notes describe indorsement as follows:

Indorsement is an annotation in writing on a document of title instructing that the obligation recorded therein be performed to the order of a named person or simply “to order”. There is a business practice of indorsing paper documents on their reverse, which reflects the origins of the word “indorsement”: the Latin “dorsus”, meaning “back”. Unlike a paper document, an electronic document may not have a “back”.⁶⁶

The reason for an express provision for indorsement of electronic trade documents is to allow an indorsement to be valid irrespective of its location on the document.

The key aim of the Bill is to provide for equivalence between paper and electronic trade documents. They should have the same legal effect and functionality and the same rules should apply to both. Anything done in relation to an electronic trade document should have the same effect as it would in relation to a paper document. Subsections (2) and (3) implement these policy aims.⁶⁷

The Explanatory Notes say that the intention is “to ensure that electronic and paper trade documents have equivalence in all respects, are dealt with in the same way, and that the same substantive law applies to “trade documents” whether in paper or electronic form.”⁶⁸

Subsection (4) relates to the interaction between this Bill and the [Moveable Transactions \(Scotland\) Bill](#) which was passed by the Scottish Parliament in May 2023. There is overlap between these two Bills as some documents may fall within the scope of both Bills. This subsection aims to ensure that the Bill in the Scottish Parliament “will have the same effect as regards an electronic trade document as it would have for the equivalent paper trade document, specifically in relation to the creation of pledges.”⁶⁹

Clause 4: Change of form

Clause 4 relates to converting a trade document from electronic form into paper form and vice versa. Trade documents are used across many countries some of which will recognise electronic documents more than others. There may be cases where an electronic document needs to be replaced by a paper

⁶⁵ [Explanatory Notes](#) (PDF) para 60

⁶⁶ As above, para 61

⁶⁷ As above, para 62

⁶⁸ As above, para 67

⁶⁹ As above, para 70. Paras 68-73 explain the interaction between the Bill and the [Moveable Transactions \(Scotland\) Bill](#).

one.⁷⁰ Clause 4 provides that such a change is allowed, sets out the conditions for such a change to be valid and the consequences of such a change.

Subsection (1) sets out the conditions which must be met for the trade documents to be converted. A document may only be converted if the following two tests are met:

- A statement that the document has been converted is included in the document in its new form. This is to ensure that the person to whom the document is transferred is aware of the change of form.⁷¹
- Any contractual or other requirements relating to the conversion of the document are complied with.

Subsection (2) explains certain consequences where the form of the document changes in accordance with subsection (1):

- The document in its old form ceases to have effect
- All rights and liabilities relating to the document still have effect in relation to the document in its new form.

Clause 5: Exceptions

Government amendments to clause 5

The Government proposed a number of amendments to clause 5. These amendments relate to the role of Scottish Ministers. The Scottish Government had initially raised concerns about the Bill as originally drafted (see section 3.4 below).

These amendments allow regulations to be made by the Secretary of State alone, the Secretary of State and the Scottish Ministers jointly or, in certain circumstances, by the Scottish Ministers acting alone. In the original version of the Bill, only the Secretary of State had these powers. The amendments allow, but do not require, the regulations to be made by the Secretary of State alone “in any case”. Regulations are to be made by statutory instrument and will be subject to the affirmative procedure.

The Government said the amendments would make two substantive changes:

- an amendment which enables Scottish Ministers to make regulations within Scottish devolved competence. This will be in addition to the Secretary of State's regulation-making powers already contained in the Bill, subject to the consultation mechanism under Clause 5(4) of the existing Bill where applicable. The amendment will also introduce an

⁷⁰ [Explanatory Notes](#) (PDF) para 74

⁷¹ As above, para 77

option for the Scottish Ministers and the Secretary of State to act jointly in making regulations; and

- an amendment which provides for regulations under clause 5 to be statutory instruments and to be subject to the affirmative resolution procedure in Parliament and in the Scottish Parliament. Clause 5 sets out the circumstances in which the substantive provisions of the Bill will not apply to a particular document, whether by the intentions of the relevant parties or because they have been carved out through legislation.⁷²

These amendments are discussed below. The amendments were agreed to, without a vote, at Public Bill Committee stage in the Commons.⁷³

Clause 5 in detail, including amendments

Subsection (1) sets out that clauses 3 and 4 do not apply to an electronic trade document if an intention that clause 3 should not apply appears in (or can reasonably be inferred from) the document. This allows parties to “opt out” of the Bill. According to the Explanatory Notes, this means the parties “can continue to rely on other contractual workarounds or mechanisms for using documents in electronic form, rather than relying on the possessory concepts in the Bill.”⁷⁴

Paragraph 2(a) excludes certain documents falling under the [Uncertificated Securities Regulations 2001](#) from the scope of the Bill. This is to avoid possible confusion arising from the fact that two statutory regimes could apply to electronic documents. The Explanatory Notes say:

For example, a type of debt security known as “commercial paper” (which is technically a promissory note) could meet the requirements of the Uncertificated Securities Regulations 2001, and also fall within the scope of the Bill. Since the Uncertificated Securities Regulations 2001 provide for a different statutory regime entirely from one based on possessory concepts, it is preferable for documents or instruments falling under that regime to fall outside the scope of the Bill.⁷⁵

Under paragraph 2(b), the Bill’s provisions will not apply to a document of a type specified by the Secretary of State in regulations. The Explanatory Notes give various examples of where such a power might be used, such as where a type of document “requires more bespoke provisions to allow for its digitalisation”. The Government believes it is important that there be scope for further carve-outs if these are necessary or desirable, as the Bill could bring about considerable change in practice for certain documents.⁷⁶

⁷² [Letter from Paul Scully, Parliamentary Under Secretary of State, Department for Science, Innovation and Technology to Scottish Parliament Delegated Powers and Law Reform Committee](#), 7 June 2023

⁷³ [PBC 19 June 2023](#)

⁷⁴ [Explanatory Notes](#) (PDF), para 83

⁷⁵ As above, para 84.

⁷⁶ As above, para 85

The Government proposed an amendment to paragraph 2(b) substituting “appropriate authority” for “Secretary of State.” “Appropriate authority” is defined by a further proposed amendment as:

- in any case, the Secretary of State or the Secretary of State and the Scottish Ministers acting jointly;
- in a case in which all of the provision made by the regulations is within Scottish devolved competence, the Scottish Ministers.

Under subsection (3), the Secretary of State may amend or remove paragraph 2(a) by regulations. This may be needed if the Uncertificated Securities Regulations 2001 are amended, requiring consequential amendments to this Bill.⁷⁷

Subsection (4) says that if regulations made under paragraph 2(b) affect Scotland, the Secretary of State must consult Scottish Ministers. The Government proposed an amendment which would disapply subsection (4) if the regulations are to be made jointly by the Secretary of State and the Scottish Ministers.

Paragraph (5)(a) states that regulations made under this clause are to be made by statutory instrument. The Government proposed an amendment removing this paragraph but the same provision is to be included in a new clause.

Paragraph 5(b) states that these regulations may include incidental, consequential, transitional or saving provision.

Subsection (6) provides that regulations made under this section are subject to the affirmative procedure.⁷⁸ The Government proposed an amendment removing this subsection but the same provision is to be included in a new clause.

The Government proposed a new clause. This reinstates the provisions, removed by other proposed amendments, in paragraph 5(5)(a) and subsection (6) that regulations made by the Secretary of State are to be made by statutory instrument, subject to the affirmative procedure.

The new clause also provides that powers exercised under this clause by the Secretary of State and the Scottish Ministers acting jointly, or by the Scottish Ministers acting alone, are exercised by statutory instrument, subject to the affirmative procedure at Westminster and in the Scottish Parliament.

The Government’s amendments were all agreed without a vote at Public Bill Committee stage in the Commons.

⁷⁷ [Explanatory Notes](#) (PDF) para 86

⁷⁸ The affirmative procedure requires the SI to be laid in draft before, and approved by a resolution of, each House of Parliament.

Clause 6: Consequential provision

Subsection (1) provides that section 89A of the Bills of Exchange Act 1882 does not apply to anything that is an electronic trade document within the meaning of the Bill.⁷⁹ [Section 89A](#) relates to “Presentation of instruments by electronic means.” The Explanatory Notes say:

Sections 89A and 89B of the Bills of Exchange Act 1882 envisage a different type of electronic presentment from that provided for by the Bill, which does not involve a physical document. It is appropriate therefore that anything constituting an electronic trade document within the meaning of the Bill is excluded from the scope of these provisions.⁸⁰

Subsection (2) repeals sections 1(5) and 1(6) of the Carriage of Goods by Sea Act 1992. The Explanatory Notes set out why these sections are being repealed:

Sections 1(5) and 1(6) of COGSA 1992 give a power to make regulations to enable bills of lading, sea waybills and ship’s delivery orders to be issued, indorsed, delivered or otherwise transferred by electronic means. Given that bills of lading and ship’s delivery orders fall within the scope of the Bill, the powers provided for in these provisions become redundant with respect to those documents.⁸¹

Clause 7: Extent, commencement and short title

Subsection (1) provides that the Bill extends to England and Wales, Scotland and Northern Ireland, except subsection 3(4) which extends only to Scotland.

Subsection (2) provides that the Bill will come into force at the end of the period of two months beginning with the day on which it is passed.

Subsection (3) ensures that the Bill is forward-looking only. Clauses 3 and 4 would not apply in relation to a paper trade document or an electronic trade document issued before the Bill comes into force. This means that an electronic trade document issued before the Bill comes into force cannot be possessed or indorsed or changed into a paper trade document. It also means it would not be possible to bring about a change of form or medium under the Bill from paper to electronic, if the paper document was issued before the Bill comes into force.⁸²

Subsection (4) sets out the short title of the Bill: the Electronic Trade Documents Act 2023.

⁷⁹ [Explanatory Notes](#) (PDF) para 88

⁸⁰ As above, para 88

⁸¹ [Explanatory Notes](#) (PDF) para 89

⁸² As above, para 93

3.4

Territorial extent and application

The Bill extends to the whole of the UK, except subsection 3(4) which extends to Scotland only.

The Law Commission’s recommendations only covered England and Wales as this is the limit of its jurisdiction. The Minister, Lord Parkinson of Whitley Bay, told the Lords Special Public Bill Committee that it had not been possible for the Scottish Law Commission to work collaboratively on this project for reasons of timing and resources.⁸³ He also said:

On Scotland specifically, the Government have undertaken significant legal work, including by engaging independent legal counsel, to analyse and ensure the compatibility of the Bill with both English and Scots law, including that related to the Moveable Transactions (Scotland) Bill currently before the Scottish Parliament.⁸⁴

The Government has extended the Bill to the whole of the UK, “given that much of the relevant legislation in this area (such as the Bills of Exchange Act 1882 and the Carriage of Goods by Sea Act 1992) extends to the whole of the UK, and the position at common law is similar across the UK”.⁸⁵ In the second reading committee debate in the Lords, the Minister, Lord Parkinson, said:

While the Law Commission’s recommendations are for the law of England and Wales, we have worked with the territorial offices and devolved Administrations to ensure that the Bill can be extended to Scotland and Northern Ireland to ensure that businesses across the UK can benefit from this important development.⁸⁶

[...]

The Bill is intended to apply UK-wide, as the issues concerning the legal blocker to possessing electronic documents are broadly the same. Apart from the provision in Clause 3(4), which extends only to Scotland and relates to the interaction between the Bill and the Moveable Transactions (Scotland) Bill, the Bill extends UK-wide. It is reserved in relation to Northern Ireland on the basis that the Bill deals with the reserved matter of trade with any place outside the United Kingdom. We have agreed with officials in the Northern Ireland Executive that the legislative consent Motion process is not therefore engaged.⁸⁷

Scotland

Most of the Bill’s provisions fall within the devolved competence of the Scottish Parliament. In line with the Sewel Convention, the UK Government will seek the legislative consent of the Scottish Parliament for the provisions which

⁸³ [HL Special Public Bill Committee Electronic Trade Documents Bill 20 February 2023 c17](#)

⁸⁴ As above c17

⁸⁵ [Explanatory Notes](#) (PDF) para 8

⁸⁶ [HL Deb 7 November 2022, c146GC](#)

⁸⁷ As above c162GC

engage the Legislative Consent Motion process.⁸⁸ Lord Parkinson said this might mean small amendments are needed to the delegated powers in the Bill (see above).⁸⁹

The Scottish Government is generally supportive of the Bill's aims.⁹⁰ There were, however, disagreements between the Scottish and UK Governments over the delegated powers in the Bill. The Scottish Government's initial position was that it could not recommend that the Scottish Parliament give legislative consent until suitable amendments were made.⁹¹ However, following the publication of amendments by the UK Government, the Scottish Government has, "on balance", recommended that the Scottish Parliament gives legislative consent.⁹²

Initial Legislative Consent Memorandum

The Scottish Government set out its concerns about the Bill as introduced in an initial Legislative Consent Memorandum (LCM) published on 16 May 2023.⁹³

The Scottish Government's concerns related to clause 5. The LCM said:

As introduced, clause 5(2)(b) of the Bill grants UK Ministers sole power to make secondary legislation in devolved areas of competence. This would result in Scottish Ministers being unable to make bespoke changes in devolved areas. The provision would also give UK Ministers the ability to unilaterally dis-apply parts of the Bill's regime in Scotland in devolved areas.⁹⁴

The LCM also noted that while the UK Government is required to consult the Scottish Government before making regulations, there is no requirement for the Scottish Government to consent. As a result the Scottish Government argued that it could not prevent the UK Government from legislating in devolved areas where there is disagreement between the two governments.⁹⁵

The LCM set out the Scottish Government's initial position:

The Scottish Government maintains that the most appropriate position would be for this Bill to require that UK Ministers can act in devolved areas exercisable only with the consent of the Scottish Ministers. At the very least, the Bill should confer powers on the Scottish Ministers in devolved areas.⁹⁶

As noted above, the UK Government proposed amendments to clause 5. These were all agreed to at Committee stage. The UK Government's position was set

⁸⁸ [Explanatory Notes](#) (PDF) para 14

⁸⁹ [HL Special Public Bill Committee Electronic Trade Documents Bill 20 February 2023 c17](#)

⁹⁰ Scottish Government, [Electronic Trade Documents Bill: Legislative Consent Memorandum](#), 16 May 2023, paras 29, 32

⁹¹ As above, para 23

⁹² Scottish Government, [Electronic Trade Documents Bill – Supplementary Legislative Consent Memorandum](#), 13 June 2023

⁹³ Scottish Government, [Electronic Trade Documents Bill: Legislative Consent Memorandum](#), 16 May 2023

⁹⁴ As above, para 19

⁹⁵ As above, para 20

⁹⁶ As above, para 21

out in a letter to the Scottish Parliament’s Delegated Powers and Law Reform Committee. This said:

Achieving the stated aims of the Bill through Scottish Minister’s consent rather than a consultation requirement would limit the Secretary of State’s ability to intervene to remove areas of legal ambiguity and ensure a consistent framework on electronic trade documents across the UK. This is particularly important with a permissive Bill that intends to directly apply the legal concept of possession to electronic trade documents and ensure that new or amended legislation evolves in parallel with legal and technological developments in the market. To hinder such changes would remove the key advantages of the Bill to all UK business, namely that of certainty and adaptability in all potential scenarios.⁹⁷

The UK Government also said that the Bill was very unlikely to need revision in the future and amendments would only be necessary “in very narrow contexts.”⁹⁸

Supplementary Legislative Consent Memorandum

Following the publication of the amendments, the Scottish Government recommended “on balance” that legislative consent be given. Its reasons were set out in a supplementary LCM.⁹⁹

The supplementary LCM noted that the amendments did not provide full statutory consent. However, the Scottish Government said the Bill was technical and non-controversial. There would be advantages in having the same arrangements for trade documents in Scotland as in the rest of the UK. The Scottish Government recommended that legislative consent be granted because:

- it strongly supports the Bill’s objective
- there is no current opportunity in the Scottish Parliament to enact equivalent legislation
- the relevant power involved is very limited
- it is very unlikely that the Scottish Government would want different arrangements for trade documents in Scotland.¹⁰⁰

Wales and Northern Ireland

The Bill falls outside the legislative competence of the Northern Ireland Assembly and Senedd Cymru. [Annex A of the Explanatory Notes](#) (PDF) gives more details of the territorial extent and application of Bill. Lord Parkinson

⁹⁷ [Letter from Paul Scully, Parliamentary Under Secretary of State, Department for Science, Innovation and Technology to Scottish Parliament Delegated Powers and Law Reform Committee](#), 7 June 2023

⁹⁸ As above

⁹⁹ Scottish Government, [Electronic Trade Documents Bill – Supplementary Legislative Consent Memorandum](#), 13 June 2023

¹⁰⁰ As above

said the Government did not expect the Bill to affect the operation of the Northern Ireland Protocol.¹⁰¹

3.5 Delegated powers

The Bill contains three provisions containing delegated powers, in subsections 5(2)(b), 5(3) and 5(5)(b). All are subject to the affirmative procedure.¹⁰² Two of these, those in subsections 5(3) and 5(5)(b) are Henry VIII powers.¹⁰³ Henry VIII powers allow the government to amend or repeal primary legislation by delegated legislation. The use of such powers is sometimes controversial but, in this case, the Lords Delegated Powers and Regulatory Reform Committee did not find anything in the Bill to draw to the attention of the House.¹⁰⁴

¹⁰¹ [HL Deb 7 November 2022, c162GC](#)

¹⁰² DCMS, [Electronic Trade Documents Bill, Memorandum from the Department for Digital, Culture, Media and Sport to the Delegated Powers and Regulatory Reform Committee](#), (PDF) 19 August 2022

¹⁰³ As above

¹⁰⁴ House of Lords Delegated Powers and Regulatory Reform Committee, [13th Report of Session 2022-23](#), 14 October 2022, HL Paper 72. The Government has also published a [Delegated Powers Memorandum](#) (PDF)

4 Benefits and costs

4.1 Benefits

The [Government has published an Impact Assessment of the Bill](#).¹⁰⁵ This lists the following benefits of the use of electronic trade documents:

- Reduced trade costs: in terms of paper, ink, postage and couriering costs but also handling and processing costs. The Digital Container Shipping Association has suggested that the costs of paper trade documents are three times higher than those of digital documents.¹⁰⁶
- Faster trade transaction times: estimated time reduction of between 41% and 99%.¹⁰⁷
- Increased administrative efficiency: digital documents can be transmitted instantaneously rather than being posted or couriered.
- Greater transparency: digital documents allow real-time information to be provided.
- Greater security: according to the Impact Assessment, electronic documents are less susceptible to certain types of fraud as their movements can be immutably recorded on a shared ledger.¹⁰⁸
- Increased access to trade finance for UK small and medium-sized firms: electronic documents allow more visibility of supply chain cash-flow and could therefore allow SMEs greater access to trade finance.
- Fewer errors: paper documents are processed by hand which may lead to error. This is less likely to happen with electronic documents.

¹⁰⁵ DIT, [Impact assessment of the Electronic Trade Documents Bill](#), 8 December 2022. The Regulatory Policy Committee [rated the Impact assessment as “fit for purpose.”](#) It commented that the “assessment of impacts could be improved by providing some clarification around the costs of the proposal and further details on monitoring and evaluation.”

¹⁰⁶ Digital Container Shipping Association, [DCSA takes on eBL standardisation, calls for collaboration](#) (PDF), 2020

¹⁰⁷ United Nations Economic and Social Commission for Asia and the Pacific, [Estimating the Benefits of Cross-Border Paperless Trade](#), (PDF) 2014, p6

¹⁰⁸ DIT, [Impact assessment of the Electronic Trade Documents Bill](#), 8 December 2022, p20

- Environmental benefits: in 2018, the UK emitted 2.5m tonnes of carbon dioxide from paper and printing processes in international trade.¹⁰⁹ Switching to electronic documents is expected to reduce emissions from paper, printing and couriering of paper documents.
- Reduced risk that traders will use law other than that of England and Wales for international trade transactions. For example, Singapore has already passed the Electronic Transactions Act in 2021, providing legal recognition of electronic trade documents. Failure to update the law in the UK could lead to businesses using other countries' law.¹¹⁰

The Government argues these advantages will lead to increased international trade and allow businesses which did not previously export to do so.¹¹¹ The Government's best estimate is that the Bill will bring benefits worth £1.1 billion over 10 years to UK businesses involved in international trade.¹¹² The Government noted that there were 263,000 exporting businesses in the UK in 2020, of which 124,000 exported goods.¹¹³

4.2

Costs

The Government has identified a number of costs which are likely to arise from the greater use of electronic trade documents:

- Initial transactions costs, such as staff training and development of new internal processes.
- Ongoing costs, including staff training and maintenance/upgrading of technology.
- Potential loss of business for companies supporting paper trade documents.
- Environmental costs: possible costs due to energy consumption of some electronic trade document systems, in particular certain types of blockchain platforms.

The Impact Assessment says some of the carbon emissions reduction arising from the move to electronic documents will be offset by emissions from blockchain platforms. The extent of such offsetting will depend on the type of technology used. The Impact Assessment does not attempt to quantify the net impact on carbon emissions because of uncertainty over which types of

¹⁰⁹ OECD, [Carbon dioxide emissions embodied in international trade](#), 2021. This does not include the cost of couriering paper documents.

¹¹⁰ DIT, [Impact assessment of the Electronic Trade Documents Bill](#), 8 December 2022, p11

¹¹¹ As above, p6, p21

¹¹² [PQ HL3329 \[on Electronic Commerce\]](#) 23 November 2022

¹¹³ As above. Data from ONS, [Annual Business Survey exporters and importers](#), 24 August 2022

technology are likely to be used to provide electronic trade document systems.¹¹⁴

The realisation of these costs and benefits will depend on the take-up of electronic trade documents by business. The Government's Impact Assessment cited evidence from the Law Commission's consultation indicating that uptake would be slow until legislation in other countries allows for electronic trade documents. It is also likely to be affected by the development of technological systems to support electronic trade documents and the degree of interoperability between these systems.¹¹⁵

The Impact Assessment made various assumptions about the adoption of electronic trade documents by business, ranging from 1% to 10% in year one to 10% to 80% after ten years. The central estimate was 5% take-up after one year, rising to 45% after ten years.¹¹⁶

¹¹⁴ DIT, [Impact assessment of the Electronic Trade Documents Bill](#), 8 December 2022, p26

¹¹⁵ As above, p16

¹¹⁶ As above, p19

5 Summary of Lords proceedings

5.1 Second reading committee

The Bill had its [second reading committee](#) on 7 November 2022.

The Minister, Lord Parkinson, said the Bill would “allow businesses to use electronic trade documents when buying and selling internationally, making it easier, cheaper, faster and more secure for them to trade”.¹¹⁷ It would bring benefits of £1.1 billion to UK businesses over the next ten years.¹¹⁸

The Minister said the Bill would have the following effects:

- Lowering transactions costs associated with trade
- Facilitating development of digital products and services
- Benefits for the environment through reduced use of paper and lower emissions from couriering paper documents.¹¹⁹

The Minister cited a number of industry estimates of the impact of the Bill:

- Use of electronic trade documents could cut trade contract processing times from 7-10 days to 20 seconds
- There could be global savings of around £3.6 billion a year if 50% of the container shipping industry used electronic bills of lading
- Small and medium-sized businesses could see a 13% increase in international trade if trade is digitised
- Digitising trade documents could reduce global carbon dioxide emissions from logistics by up to 12% according to the World Economic Forum.¹²⁰

Lord Bassam of Brighton (Labour) said the Opposition fully supported the introduction of the Bill, regarding it as “a long overdue reform.”¹²¹ He said the Opposition saw the Bill “as largely uncontroversial and of great value in

¹¹⁷ [HL Deb 7 November 2022, c145GC](#)

¹¹⁸ As above, c146GC

¹¹⁹ As above, c146GC

¹²⁰ As above, c146GC

¹²¹ As above, c159GC

ensuring that the world of trade and commerce operates smoothly and efficiently as possible ...”¹²²

Contributors to the debate generally welcomed the Bill arguing that it would bring economic and environmental benefits.

Lord Lansley (Conservative) welcomed the Bill but said that the risks as well as the benefits of electronic trade documents needed to be considered.¹²³ For example, the risk of duplication, given that documents could be transferred between paper and electronic forms would need to be taken into consideration.¹²⁴

Lord Fox (Liberal Democrat) asked how the Bill would work with respect to Scotland and Northern Ireland. He pointed out that “Scottish law officers said that Scottish law differs from the law of England with respect to possession”. He asked how these differences would be taken into account in a single Bill.¹²⁵

5.2 Second reading

The Bill had its second reading (without debate) on 30 November 2022. The Bill was committed to a Special Public Bill Committee.¹²⁶

5.3 Special Public Bill Committee

A Special Public Bill Committee took evidence on the Bill. [Written evidence submitted to the Committee](#) is available on its website. The Committee also took [oral evidence from stakeholders and legal experts](#) over five sessions.

Debate on the Bill

The Special Public Bill Committee [debated the Bill](#) on 20 February 2023.¹²⁷ The Bill was not amended.

Clause 1 (Definition of “paper trade document”)

Lord Lansley pointed out the slight difference in the list of documents in subsection 1(2) of the Bill and paragraph 38 of the Explanatory Notes on the [Model Law on Electronic Transferable Records](#) (MLETR). A letter from the

¹²² [HL Deb 7 November 2022, c160GC](#)

¹²³ As above, c151GC

¹²⁴ As above, c152GC

¹²⁵ As above, c157GC

¹²⁶ [HL Deb 30 November 2022, c1783](#)

¹²⁷ Before the start of the proceedings on 20 February, [the Senior Deputy Speaker, Lord Gardiner of Kimble, explained how the Special Public Bill procedure would work](#).

Minister, Lord Parkinson, satisfied members of the committee on this point. The letter said:

The list differs slightly from that included in the explanatory document to the MLETR due to the emphasis placed by consultees on certain trade documents and their importance in English law. Nothing material turns on this distinction; both lists are indicative and non-exhaustive.¹²⁸

Clause 2 (Definition of “electronic trade document”)

Lord Lansley tabled a motion to allow a debate on clause 2, in particular on the relationship between the Bill and MLETR. Lord Thomas of Cwmgiedd noted that the Bill adapted the law so that it is consistent and interoperable with MLETR. He also said that the Bill had the advantage of building on existing law and that it was short and simple.¹²⁹

The Minister, Lord Parkinson, said:

As was made clear throughout the committee’s evidence sessions, the structure and the content of the Bill, and Clause 2 in particular, are compatible with the MLETR and with laws in other jurisdictions that have adopted it. It is, however, drafted to cater for the specificities and nuances of UK law, and to take account of feedback to the Law Commission’s consultation paper and draft Bill. So I agree with my noble friend, the noble and learned Lord and others that the salient point here is the interoperability, and I hope that that and the letter I sent to the committee make that clear.¹³⁰

Clause 3: Possession, indorsement and effect of electronic trade documents

There was a debate on clause 3 about the different approaches taken by the UK and Singapore. Lord Lansley tabled a motion to facilitate a debate on clause 3, in particular on why the Bill did not define exclusive control as equivalent in law to possession.¹³¹ He said he supported clause 3 as drafted as it would benefit from the existing law on possession and would not introduce a confusing difference in the legal treatment of trade documents in different forms.¹³²

Lord Thomas said that the approach taken by the Bill enabled electronic documents to be possessed as opposed to the legal technique of using exclusive control as the equivalent of possession (which was the approach taken in Singapore). He emphasised that the result would be the same for practical purposes. Both approaches would ensure interoperability under the common legal regime to be created by MLETR. Lord Thomas also referred to evidence given to the committee by academics which said there were

¹²⁸ [Letter from Lord Parkinson, 17 February 2023](#)

¹²⁹ [HL Special Public Bill Committee Electronic Trade Documents Bill 20 February 2023 cc4-5](#)

¹³⁰ As above, c7

¹³¹ As above, c7

¹³² As above cc7-8

advantages to the use of possession for electronic trade documents as opposed to using exclusive control.¹³³

The Minister set out the Government’s position as follows:

At several points during our deliberations, questions have arisen regarding the Bill’s approach to possession and exclusive control, particularly in comparison with the approach taken by the model law and Singapore. The Bill’s approach provides that a document that satisfies certain criteria, including being capable of exclusive control, qualifies as an electronic trade document, and that an electronic trade document can be possessed. The Singapore legislation and the model law provide that, if an electronic trade document can be exclusively controlled by a person, and if that person can be identified as the person in control, the document can satisfy a possession requirement. The main distinction between the two approaches is that the Singaporean and MLETR approach conceptualises exclusive control as a functional equivalent to possession, whereas the Bill provides expressly and directly that a document that can be exclusively controlled can be possessed.¹³⁴

The Minister said the Bill’s approach was the best for the UK for a number of reasons including:

- It avoided the need to rethink existing concepts of possession for intangible assets
- It provided for equivalence with paper documents in a way which is easy for business to understand
- Electronic trade documents would be able “plug directly into the existing legal framework applicable to paper documents”
- It would take advantage of using the well-established common law concept of possession.¹³⁵

Clause 4 (change of form of trade documents)

There was a discussion about whether there was a risk of duplication.¹³⁶ Lord Lansley said this issue had been acknowledged by the Government but he was satisfied with the Government’s explanation of its approach.¹³⁷

Clause 5 (Exceptions) and Clause 6 (Consequential provision)

There was no debate on these clauses.

¹³³ [HL Special Public Bill Committee Electronic Trade Documents Bill 20 February 2023 c8](#)

¹³⁴ As above, c10

¹³⁵ As above, c10. The Government’s position on this issue is spelt out in more detail [in Lord Parkinson’s letter of 17 February](#).

¹³⁶ As above, c12

¹³⁷ This was set out in [Lord Parkinson’s letter of 17 February 2023](#) (see under “Conversion/change of medium”).

Clause 7 (Extent, commencement and short title)

Lord Thomas noted that it was easy to change the law but more challenging to get people to change their behaviour and make use of it. While there were some encouraging signs, this task would be formidable and the Government should encourage the use of electronic documents.¹³⁸ Other speakers also emphasised the importance of encouraging other countries to bring forward similar legislation so that the benefits of electronic trade documents could be realised.¹³⁹

5.4 Other Lords stages

Report stage took place (without debate) on 14 March 2023.¹⁴⁰

Third reading was on 22 March 2023.¹⁴¹ Contributors generally welcomed the Bill. Lord Bassam said it was important that the Government had a strategy for ensuring that the benefits of the Bill are realised.¹⁴²

¹³⁸ [HL Special Public Bill Committee Electronic Trade Documents Bill 20 February 2023 cc13-14](#)

¹³⁹ As above, cc15-16

¹⁴⁰ [HL Deb 14 March 2023 c1196](#)

¹⁴¹ [HL Deb 22 March 2023 cc1758-61](#)

¹⁴² As above, c1760

6 Summary of Commons proceedings

The Bill was introduced into the House of Commons on 23 March 2023.¹⁴³

[Second reading committee](#) took place on 12 June 2023. As this is a Law Commission Bill, debate in this committee took the place of a second reading debate in the House of Commons.

Only two members spoke in the debate. Paul Scully MP, Parliamentary Under-Secretary of State for Science, Innovation and Technology, reiterated the Government's reasons for introducing the Bill. Shadow minister Alex Davies-Jones MP said that the Opposition supported the Bill in its entirety.

The Bill had its second reading, without debate, on 13 June 2023.¹⁴⁴

Committee stage took place on 19 June 2023.¹⁴⁵ The debate was brief, lasting only 15 minutes. The Government's amendments were all agreed to without a vote.¹⁴⁶ The Minister, Paul Scully MP, confirmed that the powers granted to the "Secretary of State" would be exercised by the Secretary of State for the Business and Trade Department.¹⁴⁷

¹⁴³ [House of Commons Votes and Proceedings](#), 23 March 2023

¹⁴⁴ [HC Deb 13 June 2023 c267](#)

¹⁴⁵ [PBC Deb 19 June 2023](#)

¹⁴⁶ House of Commons, [Electronic Trade Documents Bill \[Lords\] \(Committee Stage Decisions\)](#), 19 June 2023 (PDF)

¹⁴⁷ [PBC Deb 19 June 2023](#)

7

Views of stakeholders and commentators

Stakeholders have generally been positive about the Bill. Logistics UK described the Bill as a “positive step” and said effective implementation would mean reduced costs and delays.¹⁴⁸ Digital technology trade association techUK also welcomed the Bill.¹⁴⁹

Lesley Batchelor of [Exportbootcamps.com](https://www.exportbootcamps.com) described the move towards paperless trade as “great” but noted that trading partners would also need to go paperless for the system to work.¹⁵⁰

The British Chambers of Commerce also welcomed the Bill saying that it would “remove export red tape” and “ease movement of goods from the UK across the world.”¹⁵¹ International Chambers of Commerce UK said the Bill would “change the game for cross border trade transactions and finally enable companies to remove archaic paper processes”.¹⁵²

A paper by the Institute for Export and the consultancy Flint Global described the Bill as a positive step that would increase efficiency, lower costs and bring environmental benefits. It commented that the implementation of digital solutions was necessary for the development of a modern border.¹⁵³

¹⁴⁸ BBC News, [Paperless trade plans put before Parliament](#), 12 October 2022

¹⁴⁹ techUK, [Government plans to introduce Electronic Trade Documents Bill](#), 12 May 2022

¹⁵⁰ As above

¹⁵¹ British Chamber of Commerce, [BCC welcomes paperless trade Bill](#), 12 October 2022

¹⁵² International Chamber of Commerce United Kingdom, [ICC Centre For Digital Trade & Innovation launches Preparations for UK trade to go digital](#), 12 October 2022. Chris Southworth, Secretary General of ICC UK, also gave evidence to the International Trade Committee, [UK trade negotiations: Agreement with New Zealand](#), 18 May 2022, HC 78, 2022-23 (see Qq20-21)

¹⁵³ Institute of Export and International Trade and Flint Global, [Enhanced efficiency Building a UK border fit for the 21st century](#), (PDF) November 2022, pp20-21

The House of Commons Library is a research and information service based in the UK Parliament. Our impartial analysis, statistical research and resources help MPs and their staff scrutinise legislation, develop policy, and support constituents.

Our published material is available to everyone on commonslibrary.parliament.uk.

Get our latest research delivered straight to your inbox. Subscribe at commonslibrary.parliament.uk/subscribe or scan the code below:



 commonslibrary.parliament.uk

 [@commonslibrary](https://twitter.com/commonslibrary)