

LEGISLATIVE COUNCIL BRIEF

ELECTRONIC TRANSACTIONS ORDINANCE (AMENDMENT OF SCHEDULE 3) ORDER 2021

ELECTRONIC TRANSACTIONS (EXCLUSION) (AMENDMENT) ORDER 2021

INTRODUCTION

The Secretary for Innovation and Technology made the Electronic Transactions Ordinance (Amendment of Schedule 3) Order 2021 (the ETO(A)O 2021) at Annex A pursuant to Section 50 of the Electronic Transactions Ordinance (Cap. 553) (ETO) to add a provision to Schedule 3 to the ETO.

2. The Permanent Secretary for Innovation and Technology made the Electronic Transactions (Exclusion) (Amendment) Order 2021 (the ET(E)(A)O 2021) at Annex B pursuant to Section 11(1) of the ETO to repeal certain provisions from Schedule 1 to the Electronic Transactions (Exclusion) Order (Cap. 553 sub. leg. B) (Exclusion Order).

JUSTIFICATIONS

3. To facilitate the digitalisation of government services, amendments to the ETO are required to provide necessary legal backing to the implementation. The inclusion of a new provision to Schedule 3 to the ETO enables the service of documents in the form of electronic records and satisfies the requirement for documents that are required or permitted to be served by post or in person.

4. The repeal of provisions from the Exclusion Order withdraws the exemptions that are no longer necessary in order to provide the same legal status to electronic records and electronic/digital signatures used in electronic transactions as their paper-based counterparts.

PROPOSAL

5. We propose the following amendments to Schedule 3 to the ETO and Schedule 1 to the Exclusion Order:

- (a) adding Section 28(3) of the Ferry Services Ordinance (Cap. 104) to Schedule 3 to the ETO, which relates to the service of a notice on a licensee in relation to the minimum frequency of a licensed service; and
- (b) remove Regulations 11(2) and 12(2) of the Reserved Commodities (Control of Imports, Exports and Reserve Stocks) Regulations (Cap. 296 sub. leg. A) from Schedule 1 to the Exclusion Order, which respectively relate to applications for a licence to import and export any reserved commodity and for registration as a stockholder of a reserved commodity.

6. The operational details of the above proposals are set out at Annex C and Annex D respectively.

THE AMENDMENT ORDERS

7. The ETO(A)O 2021 at Annex A adds Section 28(3) of the Ferry Services Ordinance (Cap. 104) to Schedule 3 to the ETO, as proposed in paragraph 5(a) above.

8. The ET(E)(A)O 2021 at Annex B removes Regulations 11(2) and 12(2) of the Reserved Commodities (Control of Imports, Exports, and Reserve Stocks) Regulations (Cap. 296 sub. leg. A) from Schedule 1 to the Exclusion Order, as proposed in paragraph 5(b) above.

LEGISLATIVE TIMETABLE

9. The ETO(A)O 2021 and ET(E)(A)O 2021 will be gazetted on 27

August 2021 and will be tabled before the Legislative Council on 1 September 2021. The commencement dates are set out in the respective orders.

IMPLICATIONS OF THE PROPOSAL

10. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. The amendments proposed in the ETO(A)O 2021 and the ET(E)(A)O 2021 will not affect the current binding effect of the ETO and the Exclusion Order. Allowing the service of certain documents in the form of electronic records and allowing information to be given in the form of electronic records (as a result of removing the exclusions that have become unnecessary) do not give rise to any financial or staffing implications.

PUBLIC CONSULTATION

11. At the Legislative Council Panel on Information Technology and Broadcasting meeting on 8 February 2021, Members urged the Government to step up efforts in providing more convenient public services and facilitating more government departments to explore the adoption of technologies in enhancing existing public services. The proposed amendments will give the Government and the public the option of satisfying the requirements under certain statutory provisions by electronic records, in addition to the existing option of using the paper form.

PUBLICITY

12. The government departments concerned will publicise their readiness to accept electronic submissions through their websites and other communication channels to inform the affected parties as the case may be.

ENQUIRY

13. Enquiry on this brief can be addressed to Ms Daisy Lo, Principal Assistant Secretary for Innovation and Technology (4) of the Innovation and Technology Bureau at 2810 2394.

Innovation and Technology Bureau
25 August 2021

Electronic Transactions Ordinance (Amendment of Schedule 3) Order 2021

(Made by the Secretary for Innovation and Technology under section 50 of the Electronic Transactions Ordinance (Cap. 553))

1. Commencement

This Order comes into operation on 30 June 2022.

2. Electronic Transactions Ordinance amended

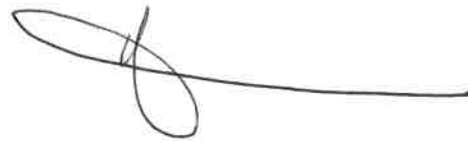
The Electronic Transactions Ordinance (Cap. 553) is amended as set out in section 3.

3. Schedule 3 amended (service of documents)

Schedule 3—

Add

“12. Ferry Services Ordinance (Cap. 104) Section 28(3)”.



Secretary for Innovation and
Technology

23 August 2021

Explanatory Note

Section 5A of the Electronic Transactions Ordinance (Cap. 553) (*ETO*) allows a rule of law under a statutory provision that requires or permits a document to be served by personal service or by post to be satisfied by service of the document in the form of an electronic record. Schedule 3 to ETO sets out the provisions to which section 5A of ETO applies.

2. This Order adds section 28(3) of the Ferry Services Ordinance (Cap. 104) to Schedule 3 to ETO, so that section 5A of ETO applies to that section 28(3).

**Electronic Transactions (Exclusion) (Amendment)
Order 2021**

(Made by the Permanent Secretary for Innovation and Technology under section 11(1) of the Electronic Transactions Ordinance (Cap. 553))

1. Commencement

This Order comes into operation on 29 October 2021.

2. Electronic Transactions (Exclusion) Order amended

The Electronic Transactions (Exclusion) Order (Cap. 553 sub. leg. B) is amended as set out in section 3.

3. Schedule 1 amended (provisions excluded from application of section 5 of Ordinance)

Schedule 1—

Repeal item 38.


Acting Permanent Secretary for Innovation
and Technology

20 August 2021

Explanatory Note

Section 5 of the Electronic Transactions Ordinance (Cap. 553) (*Ordinance*) allows the use of an electronic record to satisfy a rule of law that requires or permits any information to be or given in writing. Schedule 1 to the Electronic Transactions (Exclusion) Order (Cap. 553 sub. leg. B) (*principal Order*) specifies the provisions that are excluded from the application of section 5 of the Ordinance.

2. This Order amends Schedule 1 to the principal Order to remove regulations 11(2) and 12(2) of the Reserved Commodities (Control of Imports, Exports and Reserve Stocks) Regulations (Cap. 296 sub. leg. A) from that Schedule, so that those regulations are no longer excluded from the application of section 5 of the Ordinance.

**Provision Proposed to be Added to Schedule 3
to the Electronic Transactions Ordinance**

Details of the provision containing the requirement of serving documents by post or in person which is proposed to be added to Schedule 3 to the Electronic Transactions Ordinance (Cap. 553) are set out below.

Serving of notice specifying the minimum frequency of a licensed service

2. Under Section 28(3) of the Ferry Services Ordinance (Cap. 104), the Commissioner for Transport may, after consultation with a licensee and having regard to the financial circumstances of the licensee, specify by notice in writing served by post on the licensee the minimum frequency of a licensed service. As the Transport Department is planning to provide an option for the delivery of the notice specifying the minimum frequency of a licensed service in electronic form, it is proposed that Section 28(3) of the Ferry Services Ordinance (Cap. 104) be added to Schedule 3 to the ETO so that such notice may be served on the licensee in the form of an electronic record.

**Exclusions Proposed to be Removed from
Schedule 1 to the Electronic Transactions (Exclusion) Order**

Details of the provisions to be removed from Schedule 1 to the Electronic Transactions (Exclusion) Order (Cap. 553 sub. leg. B) are set out below –

Application for a licence to import or export any reserved commodity and for registration as a stockholder of a reserved commodity

2. Under Regulation 11(2) of the Reserved Commodities (Control of Imports, Exports, and Reserve Stocks) Regulations (Cap. 296 sub. leg. A) (RC(CIERS)R), an application for a licence to import or export any reserved commodity shall be made in writing to the Director-General of Trade and Industry or any Deputy or Assistant Director-General of Trade and Industry. Under Regulation 12(2) of the RC(CIERS)R, an application for registration as a stockholder of a reserved commodity shall be made in writing in a form approved by the Director-General of Trade and Industry or any Deputy or Assistant Director-General of Trade and Industry. After the removal of the exclusion of Regulations 11(2) and 12(2) of the RC(CIERS)R from Schedule 1 to the Electronic Transactions (Exclusion) Order (Cap. 553 sub. leg. B) and the completion of an Electronic Transaction System to handle the concerned electronic applications, applicants under both Regulations 11(2) and 12(2) will be able to fill in e-fillable forms and submit them to the Trade and Industry Department for further vetting. The trade will be informed of the readiness of the e-arrangement upon the completion of the relevant Electronic Transaction System.