



**Law**  
**Commission**  
Reforming the law

## Reforming English Law to Enable Electronic Bills of Lading: The Law Commission's Electronic Trade Documents Project

### Moderator:

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### Panellists:

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- » Prof Sarah Green, Law Commissioner for Commercial and Common Law
- » Stewart Jeacocke, Senior Member of the TradeLens Collaboration, Chair, the Foundation Carrier Council
- » Nick Austin, Partner, Reed Smith
- » Mark Brattman, Claims Director, ITIC
- » Michael Howard QC, Barrister, Quadrant Chambers
- » Stephen Chapman, Marine Claims Manager, Ascot Group





# Reforming English Law to Enable Electronic Bills of Lading: The Law Commission's Electronic Trade Documents Project



1



# LISW

**13<sup>th</sup> September, 2021**

2

1

- The Law Commission
- Electronic trade documents
  - What is the project?
  - The draft Bill
  - Difficult issues

3

- An independent statutory law reform body at arm's length from government.
- We are not part of government, but we provide recommendations to government for law reform.
- Consultation is at the heart of our process.

4

2



## Electronic trade documents

5



## What is the project?

- The UK Government has asked us to make recommendations to remove the legal block to digitisation of trade documentation.
- Our remit is the law of England and Wales, but we are conscious of international implications and developments.

6

## Why digitalise trade?

- International trade is worth £1.153 trillion to the UK.
- Approximately four billion paper documents are used in the international trade industry every year.
- Digitising trade documents could:
  - Save costs
  - Increase efficiency
  - Increase security
  - Benefit the environment.

7

## The legal problem

- The special nature of certain documents used in international trade means that there is a significance attached to possessing them.
- The law of England and Wales does not currently recognise the possibility of possessing electronic documents. As a result, electronic trade documents can't function in law the same way as paper trade documents.
- The draft Bill sets out criteria to make certain types of electronic documents possessable, and therefore capable of having the same legal function as their paper counterparts.

8



### The test for whether an electronic document can be possessed

- Is it a “trade document”?
  - Falls within the list in clause 1(2)
- Is it an “electronic trade document?”
  - In electronic form
  - Contains the relevant information
  - Exclusive control
  - Divestible
- If these criteria are fulfilled, the electronic document can be possessed.

9



**Clause 1(2):** A document is a “trade document” if it is—

- (a) a bill of exchange,
- (b) a promissory note,
- (c) a bill of lading,
- (d) a ship’s delivery order,
- (e) a marine insurance policy,
- (f) a cargo insurance certificate, or
- (g) a warehouse receipt.

10

5



## Electronic Trade Documents

**Clause 1(3):** An “electronic trade document” is a trade document that—

- (a) is in electronic form,
- (b) contains the information that would be required to be contained in the equivalent trade document in paper form, and
- (c) is held by means of a system that secures that—
  - (i) no more than one person has control of the document at any one time, and
  - (ii) after the document is transferred from one person to another person, the transferor no longer has control of it.

11



## Definition of “control”

**Clause 1(4):** A person has “control” of a document if the person is able to—

- (a) use the document, and
- (b) transfer or otherwise dispose of it.

12



**The test for whether the electronic trade document is possessed.**

**Clause 2(1):** The person who has control of an electronic trade document is the person who has possession of it for the purposes of any statutory provision or rule of law.

**Clause 2(2):** Accordingly, for those purposes—

- (a) Possession of the electronic trade document is transferred from one person to another when the transferee gains control of it.



**The test for whether the electronic trade document is possessed.**

**Clause 2(2)(b):** anything done in relation to the electronic trade document that corresponds to indorsement of the equivalent trade document in paper form has the same effect in relation to the electronic trade document as indorsement has in relation to the document in paper form, and

**Clause 2(2)(c):** anything else done in relation to the electronic trade document that corresponds to something that could be done in relation to the equivalent trade document in paper form has the equivalent effect in relation to the electronic trade document.





### Clause 3

- (1) A trade document in paper form may be replaced by an electronic trade document, and an electronic trade document may be replaced by a trade document in paper form, if the replacement document contains a statement that it is a replacement document.
- (2) Where a document is replaced under this section—
  - (a) the original document ceases to have effect, and
  - (b) all rights and liabilities relating to the original document continue to have effect in relation to the replacement document.

15

TRADELENS

# TRADELENS

## AN EXAMPLE OF EBILLS IN THE LINER TRADE

STEWART JEACOCKE – TRADELENS COUNCIL CHAIR

13TH SEP 2021

16

# TRADE+LENS

## TRADE MADE EASY

TRANSFORM CONTAINER LOGISTICS BY FREEING YOURSELF FROM LEGACY DATA SYSTEMS, MANUAL DOCUMENT HANDLING AND POOR VISIBILITY

17

### THE TRADELENS ECOSYSTEM TODAY

#### CUSTOMERS

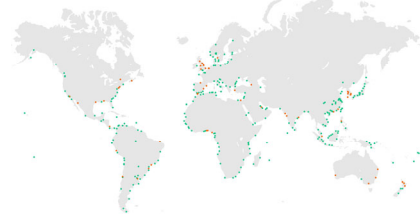
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- + Gliq repq i xepiyq
- + Garwyq iv'ehyqpw
- + Vibepq i l'epiwel'fmaxif'yxar

#### BANKS

- + 54/ m'xvrex'qeg'ferow

#### PORTS AND TERMINALS

- + Gziveki'q'gusw'q'q's'x'm'ir'w
- + 5<4/ \$'sw'q'rh'q'q' rep'q'w'ix'q'q'x'k'vex'h'q'q'q'v'ehi'P'ir'w



#### CARRIERS

4) \$'q'q'f'ep'q'x'em'iv'w'it'rk'q'q'q' i



#### INTERMODAL + RAIL



#### GOVERNMENT AUTHORITIES



18

# eBL CHALLENGES

1. LEGAL FRAMEWORK IMPLIES  
PAPER BILLS → **RULEBOOK**

2. SOME CUSTOMS AGENCIES  
REQUIRE PAPER BILLS → **COVID**

19

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20

10