

DELEGATED POWERS AND REGULATORY REFORM COMMITTEE
ELECTRONIC TRADE DOCUMENTS BILL

**Supplementary memorandum by the Department for Science, Innovation and
Technology**

Introduction

1. This supplementary memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee by the Department for Science, Innovation and Technology (“DSIT”).
2. It identifies proposals for amendments to existing delegated powers in the Electronic Trade Documents Bill (“the Bill”), principally by expanding the class of persons that the power is conferred on. It explains why the amendments to existing powers have been proposed, as well as the nature of, and reason for, the procedure selected.
3. DSIT has considered the amendments to the Bill as set out below, and is satisfied that they are necessary and justified.
4. All references to the Bill in this document refer to Bill 280, ordered by the House of Commons to be printed on 23 March 2023.

Clause 5(2)(b) - Amendment to regulation-making power to confer power on the Secretary of State and the Scottish Ministers to specify further types of documents or instruments that are outside the scope of the Bill.

Power conferred on: Secretary of State, Scottish Ministers or the Secretary of State acting jointly with the Scottish Ministers

Power exercisable by: Regulations made by Statutory Instrument

Parliamentary Procedure: Affirmative resolution procedure

Context and purpose of the amendment

5. The Electronic Trade Documents Bill as introduced included a delegated power in Clause 5(2)(b) that would enable the Secretary of State to specify further types of documents or instruments that are outside the scope of the substantive provisions of the Bill, in addition to uncertificated securities already cited in Clause 5(2)(a). Acknowledging the Bill’s potential to spur further digitalisation of documents and

related practises, this power may need to be exercised in circumstances where it is determined that a type of document or instrument which falls within the scope of the Bill requires more bespoke provisions to allow for its digitalisation, or where a type of document or instrument should not be capable of being used in electronic form.

6. Although the Bill extends to England and Wales, Scotland and Northern Ireland and, in particular, affects the private law relating to property in Scotland - a matter that is generally devolved - this delegated power was initially only exercisable by the Secretary of State. Having considered the matter further it was considered prudent to also confer this power on the Scottish Ministers, both to exercise the power alone within areas of devolved competence and also to act jointly with the Secretary of State.
7. By including the option for the Scottish Ministers to act alone and also to act jointly with the Secretary of State the delegated powers can be exercised in a flexible manner that best suits the prevailing need for secondary legislation. Moreover, it avoids any future uncertainty as to whether matters are within the devolved competence of the Scottish Ministers, particularly if there is a cut across devolved and reserved matters. This is a particular possibility here given the overarching theme of international trade.
8. The requirement in Clause 5(4) for the Secretary of State to consult the Scottish Ministers before exercising the power in Clause 5(2)(b) when the regulations would have contained provision having effect in relation to Scotland will be disapplied in circumstances when the Secretary of State and Scottish Ministers act jointly to make regulations.

Justification for taking the power

9. The justification for taking this particular power in the context of the Bill is set out in paragraphs 9 - 13 of the Delegated Powers Memorandum dated 19 August 2022, and the justification is the same for conferring the power on Scottish Ministers.

Justification for procedure selected

10. The justification for the procedure adopted in the context of the Bill is set out in paragraph 14 of the Delegated Powers Memorandum dated 19 August 2022, and the same justification applies to the decision to apply the affirmative procedure in the context of the Scottish Ministers.

Department for Science, Innovation and Technology

14 July 2023