



Expert commentary

BS 10008-1:2020 — *Evidential weight and legal admissibility of electronically stored information (ESI) Part 1: Specification*

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Suggested keywords for Search Engine Optimization:

ESI, evidential weight, legal admissibility, dispute resolution, e-discovery, e-disclosure, electronic evidence

1 Overview

This British Standard specification addresses how electronically stored information (ESI) needs to be managed in order that it can be demonstrated to be trustworthy and challenge resistant, in terms of its authenticity and integrity, in the event of it being used as evidence in the resolution of a dispute.

Much is unchanged since the previous version of BS 10008 was published in 2014 (now withdrawn) but there are some significant additions; consequently, if the organization complied with the earlier version then the vast majority of the requirements of this new version will be met. An organization that met the requirements before will have little difficulty in understanding and complying with the requirements of the new version but does need to consider the new content.

This specification, BS 10008-1:2020, is complemented by a code of practice, BS 10008-2:2020, containing guidance and good practice to support compliance with it. The 2014 version of the code of practice was in three parts whereas the revised version is a single document that has the same structure as the specification.

1.1 Reasons for change

To quote from the Latin 'tempus fugit'; much has changed in the period since the last version of this specification and therefore a full revision is highly appropriate and pertinent.

However, because all organizations change to a certain extent at their own pace, the change is evolutionary rather than revolutionary.

Significantly the title of the specification now uses the term ESI rather than electronic information. This aligns better with other standards and international practice which has, to a certain extent, been led by the US where ESI has become legally defined for the purposes of the Federal Rules of Civil Procedure (FRCP) as information created, manipulated, communicated and stored in digital form.

1.2 Summary

- General update of previous version
- Change of document title, etc., to ESI (in line with common practice)
- Addition of content regarding:
 - blockchain and distributed ledger technology (DLT) systems;
 - information classification, marking and handling systems; and
 - information redaction, especially with regard to the protection of privacy of personal information in content disclosed as evidence during disputes.
- Greater emphasis on:
 - evaluation of authenticity when information captured by the organization, and especially information from Internet of Things (IoT) devices and systems

2 Main commentary

2.1 Terminology – ESI

The document title and the rest of the document uses the term ESI rather than **electronic information**.

This now aligns with other standards¹ where ESI is defined as 'data or information of any kind and from any source, whose temporal existence is evidenced by being stored in or on any electronic medium'. It is further noted that 'ESI includes traditional email, memos, letters, spreadsheets, databases, office documents, presentations and other electronic formats commonly found on a computer. ESI also includes system, application and file-associated metadata such as timestamps, revision history, file type, etc.'

The use of the term ESI in standards follows international marketplace practice which has, to a certain extent, been led by the US where ESI has become legally defined for the purposes of the FRCP as 'information created, manipulated, communicated, and stored in digital form'.

¹ Other standards such as BS EN ISO/IEC 27040:2016, BS ISO/IEC 27050-1:2019, PD ISO/TR 15801:2017, BS ISO 18829:2017