Draft Regulations laid before Parliament under paragraph 2(2)of Schedule 2 to the European Communities Act 1972, as modified by section 143(2)(a) of the Coroners and Justice Act 2009, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2013 No.

ELECTRONIC COMMUNICATIONS

CRIMINAL LAW, ENGLAND AND WALES

The Electronic Commerce Directive (Trafficking People for Exploitation) Regulations 2013

Made - - - -	***
Coming into force - -	***

The Secretary of State is designated for the purposes of section 2(2) of the European Communities Act 1972(**a**) in relation to information society services(**b**).

The Secretary of State makes the following Regulations in exercise of the powers conferred by that section.

In accordance with paragraph 2(2) of Schedule 2 to the European Communities Act 1972, as modified by section 143(2)(a) of the Coroners and Justice Act 2009(**c**), a draft of these Regulations was laid before Parliament and approved by a resolution of each House of Parliament.

Citation, commencement and extent

1. These Regulations—

(a) may be cited as the Electronic Commerce Directive (Trafficking People for Exploitation) Regulations 2013;

(b) shall come into force on the day after the day on which they are made;

(c) extend to England and Wales.

Interpretation

2.—(1) In these Regulations—

(**a**) 1972 c. 68. The powers conferred by section 2(2) of that Act were extended, in particular, by virtue of the amendment of section 1(2) by section 1 of the European Economic Area Act 1993 (c. 51). They were modified by section 143(1) of the Coroners and Justice Act 2009 (c. 25).
(**b**) S.I. 2001/2555.
(**c**) 2009 c. 25.

"the Directive" means Directive 2000/31/EC of the European Parliament and of the Council of 8th June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce)(**a**);

"information society services"—

(a) has the meaning given in Article 2(a) of the Directive (which refers to Article 1(2) of Directive 98/34/EC of the European Parliament and of the Council of 22nd June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations(**b**)); and

(b) is summarised in recital 17 of the Directive as covering "any service normally provided for remuneration, at a distance, by means of electronic equipment for the processing (including digital compression) and storage of data, and at the individual request of a recipient of a service";

"recipient of the service" means any person who, for professional ends or otherwise, uses an information society service, in particular for the purposes of seeking information or making it accessible;

"relevant offence" means an offence under—

(a) section 59A of the Sexual Offences Act 2003(**c**) (trafficking people for sexual exploitation); or

(b) section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004(**d**) (trafficking people for labour and other exploitation);

"service provider" means a person providing an information society service; and

"UK national" means—

(a) a British citizen;

(b) a person who is a British subject by virtue of Part 4 of the British Nationality Act 1981(**e**) and who has the right of abode in the United Kingdom; or

(c) a person who is a British overseas territories citizen by virtue of a connection with Gibraltar.

(2) For the purpose of construing references in these Regulations to a service provider who is established in England and Wales or in an EEA state other than the United Kingdom—

(a) a service provider is established in England and Wales, or in a particular EEA state other than the United Kingdom, if the service provider—

(i) effectively pursues an economic activity using a fixed establishment in England Wales, or that EEA state, for an indefinite period; and

(ii) is a national of an EEA state or a company or firm as mentioned in Article 54 of the Treaty on the Functioning of the European Union(**f**);

(b) the presence or use in a particular place of equipment or other technical means of providing an information society service does not, of itself, constitute the establishment of a service provider;

(c) where it cannot be determined from which of a number of establishments a given information society service is provided, that service is to be regarded as provided from

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(**a**) OJ L 178, 17.7.2000, p.1. The Directive has been incorporated into the Agreement on the European Economic Area by Decision 91/2000 of the EEA Joint Committee of 27 October 2000 (OJ L 7, 11.1.2001, p.13).

(**b**) OJ L 204, 21.7.1998, p.37, as amended by Directive 98/48/EC (OJ L 217, 5.8.1998, p.18); there are other amendments but none is relevant.

(**c**) 2003 c. 42. Section 59A is inserted into the Sexual Offences Act 2003 by section 109 of the Protection of Freedoms Act 2012 (c. 9).

(**d**) 2004 c. 19. In relation to England and Wales, section 4 was amended by paragraph 7 of Schedule 6 to the Human Tissue Act 2004 (c. 30), section 31(1) of the UK Borders Act 2007 (c. 30) and section 54 of the Borders, Citizenship and Immigration Act 2009 (c. 11) and is amended by section 110 of the Protection of Freedoms Act 2012.

(**e**) 1981 c. 61.

(**f**) Cm 7310.

the establishment where the service provider has the centre of its activities relating to the service.

Internal market: England and Wales service providers

3.—(1) This regulation applies to a service provider established in England and Wales who is not a UK national (an "EWSP").

(2) An EWSP acting in the course of providing information society services commits an offence under section 59A of the Sexual Offences Act 2003 if—

(a) all of the arranging or facilitating takes place outside the United Kingdom and any part of the arranging or facilitating takes place in another EEA state, or

(b) an EEA state other than the United Kingdom is the country of arrival, entry, travel or (as the case may be) departure.

(3) An EWSP acting in the course of providing information society services commits an offence under section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 if—

(a) all of the arranging or facilitating takes place outside the United Kingdom and any part of the arranging or facilitating takes place in another EEA state, or

(b) an EEA state other than the United Kingdom is the country of arrival, entry, travel or (as the case may be) departure.

(4) If paragraph (2) or (3) applies—

(a) proceedings for the offence may be taken at any place in England and Wales; and

(b) the offence may for all incidental purposes be treated as having been committed at any such place.

Internal market: non-UK service providers

4.—(1) This regulation applies where a service provider is established in an EEA state other than the United Kingdom (a "non-UK service provider").

(2) Proceedings for a relevant offence shall not be instituted against a non-UK service provider in respect of anything done in the course of provision of information society services unless the derogation condition is satisfied.

(3) The derogation condition is satisfied where the institution of proceedings—

(a) is necessary for the purposes of the public interest objective;

(b) relates to an information society service that prejudices that objective or presents a serious and grave risk of prejudice to it; and

(c) is proportionate to that objective.

(4) The public interest objective means the pursuit of public policy.

Exception for mere conduits

5.—(1) A service provider is not capable of being guilty of a relevant offence in respect of anything done in the course of providing so much of an information society service as consists in—

(a) the provision of access to a communication network; or

(b) the transmission in a communication network of information provided by a recipient of the service,

if the transmission condition is satisfied.

(2) The transmission condition is that the service provider does not—

(a) initiate the transmission;

(b) select the recipient of the transmission; or

(c) select or modify the information contained in the transmission.

(3) Paragraph (1)(b) does not apply if the information is information to which regulation 6 applies.

(4) For the purposes of this regulation, the provision of access to a communication network and the transmission of information in the network includes the automatic, intermediate and transient storage of information for the purpose of carrying out the transmission in the network.

(5) Paragraph (4) does not apply if the information is stored for longer than is reasonably necessary for the transmission.

Exception for caching

6.—(1) This regulation applies to information which—

(a) is provided by a recipient of the service; and

(b) is the subject of automatic, intermediate and temporary storage which is solely for the purpose of making the onward transmission of the information to other recipients of the service at their request more efficient.

(2) A service provider is not capable of being guilty of a relevant offence in respect of anything done in the course of providing so much of an information society service as consists in the transmission in a communication network of information to which this regulation applies if—

(a) the service provider does not modify the information;

(b) the service provider complies with any conditions attached to having access to the information;

(c) in a case to which paragraph (3) applies, the service provider expeditiously removes the information or disables access to it.

(3) This paragraph applies if the service provider obtains actual knowledge that—

(a) the information at the initial source of the transmission has been removed from the network;

(b) access to such information has been disabled; or

(c) a court or administrative authority has ordered the removal from the network of, or the disablement of access to, such information.

Exception for hosting

7.—(1) A service provider is not capable of being guilty of a relevant offence in respect of anything done in the course of providing so much of an information society service as consists in the storage of information provided by a recipient of the service if—

(a) the service provider had no actual knowledge when the information was provided that the information was part of the commission of a relevant offence; or

(b) where the service provider subsequently obtained such knowledge, the service provider expeditiously removed the information or disabled access to it.

(2) Paragraph (1) does not apply if the recipient of the service is acting under the authority or control of the service provider.

Review

8.—(1) The Secretary of State must from time to time—

(a) carry out a review of these Regulations;

(b) set out the conclusions of the review in a report; and

(c) publish the report.

(2) In carrying out the review, the Secretary of State must, so far as is reasonable, have regard to how the Directive is implemented in other member States.

(3) The report must in particular—

(a) set out the objectives intended to be achieved by the regulatory system established by these Regulations;

(b) assess the extent to which those objectives are achieved; and

(c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(4) The first report under this regulation must be published before the end of the period of five years beginning with the day on which these Regulations come into force.

(5) Reports under this regulation are afterwards to be published at intervals not exceeding five years.

Home Office — *Name*
Date — Minister of State

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations give effect to Directive 2000/31/EC of the European Parliament and of the Council of 8th June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce) ("the Directive") in relation to the offence of trafficking people for sexual exploitation contained in section 59A of the Sexual Offences Act 2003 and the offence of trafficking people for labour and other exploitation in section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 ("trafficking offences"), following amendments made by the Protection of Freedoms Act 2012.

The Directive (which has been incorporated into the Agreement on the European Economic Area) seeks to contribute to the proper functioning of the internal market by ensuring the free movement of information society services ("ISS") between EEA states. Article 3 provides for the regulation of ISS on a "country of origin" basis and Articles 12 to 14 require EEA states to limit, in specified circumstances, the liability of intermediary ISS providers when they provide mere conduit, caching or hosting services.

Regulations 3 and 4 ensure that trafficking offences apply on a country of origin basis. Regulation 3 extends the application of the offences so that they apply to ISS providers established in England and Wales not only where they provide ISS in England and Wales, but also where they provide ISS in EEA states other than the UK. Regulation 4 means that service providers who are established in an EEA state other than the UK can only be prosecuted for a trafficking offence where the conditions laid down in Article 3(4) of the Directive are satisfied.

Regulations 5, 6 and 7 create exceptions from liability for trafficking offences for intermediary ISS providers when they provide mere conduit, caching or hosting services in the circumstances specified by Articles 12, 13 and 14 of the Directive.

Regulation 8 requires the Secretary of State to review the operation and effect of these Regulations and publish a report within five years after they come into force and within every five years after that. Following a review, it will fall to the Secretary of State to consider whether the Regulations should remain as they are, or be revoked or be amended. A further instrument would be needed to revoke the Regulations or to amend them.

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