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(**1**) in relation to information society services(**2**).

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(**3**), 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—

(**1**) 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).

(**2**) S.I. 2001/2555.

(**3**) 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)(**4**);

"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(**5**)); 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(**6**) (trafficking people for sexual exploitation); or

(b) section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004(**7**) (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(**8**) 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(**9**);

(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;

(**4**) 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).
(**5**) 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.
(**6**) 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).
(**7**) 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.
(**8**) 1981 c. 61.
(**9**) Cm 7310.

(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 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,