Draft Regulations laid before Parliament under section 2(2) of the European Communities Act 1972, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2010 No. ***

ELECTRONIC COMMUNICATIONS CRIMINAL LAW, ENGLAND AND WALES

The Electronic Commerce Directive (Hatred against Persons on Religious Grounds or the Grounds of Sexual Orientation) Regulations 2010

Made - - - -	**** 2010*
Coming into force - -	**** 2010*

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.

Citation and commencement

1. These Regulations may be cited as the Electronic Commerce Directive (Hatred against Persons on Religious Grounds or the Grounds of Sexual Orientation) Regulations 2010 and shall come into force on the day after the day on which they are made.

Interpretation

2.—(1) In these Regulations—

"the 1986 Act" means the Public Order Act 1986(**3**);

(**1**) 1972 c. 68. The powers conferred by section 2(2) of that Act were extended by virtue of the amendment of section 1(2) by section 1 of the European Economic Area Act 1993 (c. 51), and modified by section 143(1) of the Coroners and Justice Act 2009 (c. 25).
(**2**) S.I. 2001/2555.
(**3**) 1986 c. 64.

"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**);

"hatred on the grounds of sexual orientation" has the meaning given by section 29AB of the 1986 Act (meaning of "hatred on grounds of sexual orientation")(**5**);

"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(**6**)); 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 Part 3A of the 1986 Act (hatred against persons on religious grounds or grounds of sexual orientation);

"religious hatred" has the meaning given by section 29A of the 1986 Act (meaning of "religious hatred"); and

"service provider" means a person providing an information society service.

(2) For the purposes of these Regulations—

(a) a service provider is established in a particular EEA state if he effectively pursues an economic activity using a fixed establishment in that EEA state for an indefinite period and he 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;

(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 the establishment where the service provider has the centre of his activities relating to the service,

and references to a person being established in any place must be construed accordingly.

Internal market: England and Wales service providers

3.—(1) If—

(a) in the course of providing information society services, a service provider established in England and Wales does anything in an EEA state other than the United Kingdom, and

(b) his action, if done in England and Wales, would constitute a relevant offence,

he shall be guilty in England and Wales of the offence.

(**4**) O.J. No. L 178, 17.7.2000, p. 1. The Directive has been incorporated into the EEA agreement by Decision 91/2000 of the EEA Joint Committee (O.J. No. L 7, 11.1.2001, p 13).
(**5**) Section 29AB was inserted by paragraph 4 of Schedule 16 to the Criminal Justice and Immigration Act 2008 (c. 4).
(**6**) O.J. No. L 204, 21.7.1998, p. 37, as amended by Directive 98/48/EC (O.J. No. L 217, 5.8.1998, p. 18); there are other amendments but none is relevant.

(2) If paragraph (1) 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) 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.

(2) 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.

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

(4) In this regulation "non-UK service provider" means a service provider who is established in an EEA state other than the United Kingdom.

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.