

STATUTORY INSTRUMENTS

2005 No. 3222

**CHILDREN AND YOUNG PERSONS
ELECTRONIC COMMUNICATIONS**

The Electronic Commerce Directive (Adoption
and Children Act 2002) Regulations 2005

Made - - - - 17th November 2005
Laid before Parliament 29th November 2005
Coming into force - - 30th December 2005

The Secretary of State for Education and Skills ^{M1}, being designated for the purposes of section 2(2) of the European Communities Act 1972 ^{M2} in relation to information society services, in exercise of the powers conferred by that section makes the following Regulations—

Marginal Citations

- M1** [Section 57\(1\) of the Scotland Act 1998 \(c. 46\)](#) allows a Minister of the Crown to implement EC obligations despite the transfer of powers to Scottish Ministers.
- M2** [1972 c. 68](#). The Secretary of State is designated for these purposes by Article 2 of, and Schedule 1 to, [The European Communities \(Designations\) \(No. 2\) Order 2001 \(S.I. 2001/2555\)](#).

[^{F1}Citation and commencement]

1.—(1) These Regulations may be cited as the Electronic Commerce Directive (Adoption and Children Act 2002) Regulations 2005 and shall come into force on 30th December 2005.

^{F2}(2)

- F1** [Reg. 1 heading substituted \(3.3.2021\) by The Electronic Commerce Directive \(Education, Adoption and Children\) \(Amendment etc.\) Regulations 2021 \(S.I. 2021/222\), regs. 1\(1\), 3\(2\)\(a\)](#)
- F2** [Reg. 1\(2\) omitted \(3.3.2021\) by virtue of The Electronic Commerce Directive \(Education, Adoption and Children\) \(Amendment etc.\) Regulations 2021 \(S.I. 2021/222\), regs. 1\(1\), 3\(2\)\(b\)](#)

Interpretation

2.—(1) In these Regulations—

“the Act” means the Adoption and Children Act 2002;

F3 ...

F4 ...

F5 ...

F6 ...

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

F7 ...

F8 ...

“information society service” means an information society service within the meaning of article 2(a) of the electronic commerce directive;

F9 ...

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

F10 ...

(2) For the purposes of these Regulations—

F11 (a)

F12 (b)

F13 (c)

(d) the responsible authorities are—

(i) in relation to England, the Secretary of State;

(ii) in relation to Wales, the National Assembly for Wales;

(iii) in relation to Scotland, the Scottish Ministers;

(iv) in relation to Northern Ireland, the Department of Health, Social Services and Public Safety;

(v) in relation to England, [F14 Her Majesty’s Chief Inspector of Education, Children’s Services and Skills]; and

(vi) in relation to Scotland, [F15 Social Care and Social Work Improvement Scotland].

F3	Words in reg. 2(1) omitted (3.3.2021) by virtue of The Electronic Commerce Directive (Education, Adoption and Children) (Amendment etc.) Regulations 2021 (S.I. 2021/222) , regs. 1(1), 3(3)(a)(i)
F4	Words in reg. 2(1) omitted (3.3.2021) by virtue of The Electronic Commerce Directive (Education, Adoption and Children) (Amendment etc.) Regulations 2021 (S.I. 2021/222) , regs. 1(1), 3(3)(a)(ii)
F5	Words in reg. 2(1) omitted (3.3.2021) by virtue of The Electronic Commerce Directive (Education, Adoption and Children) (Amendment etc.) Regulations 2021 (S.I. 2021/222) , regs. 1(1), 3(3)(a)(iii)
F6	Words in reg. 2(1) omitted (3.3.2021) by virtue of The Electronic Commerce Directive (Education, Adoption and Children) (Amendment etc.) Regulations 2021 (S.I. 2021/222) , regs. 1(1), 3(3)(a)(iv)
F7	Words in reg. 2(1) omitted (3.3.2021) by virtue of The Electronic Commerce Directive (Education, Adoption and Children) (Amendment etc.) Regulations 2021 (S.I. 2021/222) , regs. 1(1), 3(3)(a)(v)
F8	Words in reg. 2(1) omitted (3.3.2021) by virtue of The Electronic Commerce Directive (Education, Adoption and Children) (Amendment etc.) Regulations 2021 (S.I. 2021/222) , regs. 1(1), 3(3)(a)(vi)

- F9** Words in reg. 2(1) omitted (3.3.2021) by virtue of The Electronic Commerce Directive (Education, Adoption and Children) (Amendment etc.) Regulations 2021 (S.I. 2021/222), regs. 1(1), **3(3)(a)(vii)**
- F10** Words in reg. 2(1) omitted (3.3.2021) by virtue of The Electronic Commerce Directive (Education, Adoption and Children) (Amendment etc.) Regulations 2021 (S.I. 2021/222), regs. 1(1), **3(3)(a)(viii)**
- F11** Reg. 2(2)(a) omitted (3.3.2021) by virtue of The Electronic Commerce Directive (Education, Adoption and Children) (Amendment etc.) Regulations 2021 (S.I. 2021/222), regs. 1(1), **3(3)(b)**
- F12** Reg. 2(2)(b) omitted (3.3.2021) by virtue of The Electronic Commerce Directive (Education, Adoption and Children) (Amendment etc.) Regulations 2021 (S.I. 2021/222), regs. 1(1), **3(3)(b)**
- F13** Reg. 2(2)(c) omitted (3.3.2021) by virtue of The Electronic Commerce Directive (Education, Adoption and Children) (Amendment etc.) Regulations 2021 (S.I. 2021/222), regs. 1(1), **3(3)(b)**
- F14** Words in reg. 2(2)(d)(v) substituted (1.4.2007) by The Education and Inspections Act 2006 (Consequential Amendments) Regulations 2007 (S.I. 2007/603), regs. 1, **16**
- F15** Words in reg. 2(2)(d)(vi) substituted (28.10.2011) by The Public Services Reform (Scotland) Act 2010 (Consequential Modifications of Enactments) Order 2011 (S.I. 2011/2581), art. 1(2)(b), **Sch. 2 para. 50**

Application of sections 92, 93, 123 and 124 of the Act to UK-established providers

F163.

- F16** Regs. 3-8 omitted (3.3.2021) by virtue of The Electronic Commerce Directive (Education, Adoption and Children) (Amendment etc.) Regulations 2021 (S.I. 2021/222), regs. 1(1), **3(4)**

Restrictions on arranging adoption and advertising not to apply to incoming providers

F164.

- F16** Regs. 3-8 omitted (3.3.2021) by virtue of The Electronic Commerce Directive (Education, Adoption and Children) (Amendment etc.) Regulations 2021 (S.I. 2021/222), regs. 1(1), **3(4)**

Regulation 4 not to apply in certain circumstances

F165.

- F16** Regs. 3-8 omitted (3.3.2021) by virtue of The Electronic Commerce Directive (Education, Adoption and Children) (Amendment etc.) Regulations 2021 (S.I. 2021/222), regs. 1(1), **3(4)**

The policy conditions

F166.

- F16** Regs. 3-8 omitted (3.3.2021) by virtue of The Electronic Commerce Directive (Education, Adoption and Children) (Amendment etc.) Regulations 2021 (S.I. 2021/222), regs. 1(1), **3(4)**

The procedural conditions

F167.

F16 Regs. 3-8 omitted (3.3.2021) by virtue of [The Electronic Commerce Directive \(Education, Adoption and Children\) \(Amendment etc.\) Regulations 2021 \(S.I. 2021/222\)](#), regs. 1(1), **3(4)**

Urgent cases

F16g.

F16 Regs. 3-8 omitted (3.3.2021) by virtue of [The Electronic Commerce Directive \(Education, Adoption and Children\) \(Amendment etc.\) Regulations 2021 \(S.I. 2021/222\)](#), regs. 1(1), **3(4)**

Defence to section 124 for mere conduits

9.—(1) A person providing an information society service which consists of the transmission in a communication network of information provided by a recipient of the service or the provision of access to a communication network shall not be guilty of an offence under section 124 of the Act (*offence of breaching restriction under section 123*) as a result of that transmission where that person—

- (a) did not initiate the transmission;
- (b) did not select the receiver of the transmission; and
- (c) did not select or modify the information contained in the transmission.

(2) For the purposes of paragraph (1) above, the acts of transmission and of provision of access include the automatic, intermediate and transient storage of the information transmitted where—

- (a) this takes place for the sole purpose of carrying out the transmission in the communication network; and
- (b) the information is not stored for any period longer than is reasonably necessary for the transmission.

Defence to section 124 for caching

10. A person providing an information society service which consists of the transmission in a communication network of information provided by a recipient of the service shall not be guilty of an offence under section 124 of the Act as a result of that transmission where—

- (a) the information is the subject of automatic, intermediate and temporary storage where that storage is for the sole purpose of making more efficient onward transmission of the information to other recipients of the service upon their request; and
- (b) that person—
 - (i) did not modify the information;
 - (ii) complied with conditions on access to the information;
 - (iii) complied with any rules regarding the updating of the information, specified in a manner widely recognised and used by industry;
 - (iv) did not interfere with the lawful use of technology, widely recognised and used by industry, to obtain data on the use of the information; and
 - (v) acted expeditiously to remove or to disable access to the stored information upon becoming aware that the information at the initial source of the transmission had been removed from the network, or access to it had been disabled, or that a court or a responsible authority had ordered such removal or disablement.

Defence to section 124 for hosting

11.—(1) Notwithstanding section 124(2) of the Act and unless paragraph (2) applies, a person providing an information society service which consists of the storage of information provided by a recipient of the service shall not be guilty of an offence under section 124 of the Act as a result of that storage unless—

- (a) it is proved that he knew that section 123 applied to the information; or
- (b) upon becoming aware that section 123 applied to the information, that person failed to act expeditiously to remove or to disable access to the information.

(2) This paragraph applies where the recipient of the service was acting under the authority or the control of the service provider.

Maria Eagle
Parliamentary Under Secretary of State
Department for Education and Skills

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations give effect to the European Parliament and Council Directive of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce) (Directive [2000/31/EC](#)) (“the Directive”), in respect of matters within the scope of sections 92 and 93 (*restriction on arranging adoptions*), and sections 123 and 124 (*restriction on advertising adoption*) of the Adoption and Children Act 2002 (“the Act”).

Article 3 of the Directive provides, inter alia, for the regulation of information society services (defined in article 2(a)) (“ISS”) on a “country of origin” basis. Member States are required to ensure that providers of ISS established on their territories comply with national legal requirements falling within the “co-ordinated field” (as defined in article 2(h) of the Directive). Article 3.2 prohibits Member States from restricting, for reasons falling within the co-ordinated field, the freedom to provide information society services from other Member States. Articles 3.4 and 3.5 of the Directive create a derogation from the country of origin approach in relation to individual information society services, to be exercised on public policy grounds, and subject to certain procedures. Articles 12, 13 and 14 of the Directive provide for limitations on the liability of internet intermediaries providing services consisting of mere conduit, caching and hosting intended to safeguard the free flow of information in the network.

Regulation 3 of these Regulations makes provision as to the application of sections 92, 93, 123 and 124 of the Act to providers of ISS established in the United Kingdom in order to give effect to the country of origin principles of the Directive.

Regulation 4 of these Regulations gives effect to the prohibition in article 3.2 of the Directive, by excluding the application of sections 92, 93, 123 and 124 of the Act to persons carrying on incoming electronic commerce activities (“incoming providers”).

Regulation 5 gives effect to the derogation in article 3.4 of the Directive. Regulation 5 permits a responsible authority, in cases where the policy and procedural conditions in article 3.4 (set out in regulations 6 and 7) are met, to apply the restrictions in sections 92, 93, 123 and 124 of the Act to anything done by the incoming provider. Regulation 8 gives effect to article 3.5 of the Directive and provides that a responsible authority may dispense with the need to satisfy the conditions in regulation 7 in urgent cases.

Regulations 9, 10 and 11 give effect to articles 12, 13 and 14 of the Directive and provide a defence to section 124 of the Act where an ISS provider is a mere conduit, caching or hosting the information in question.

These Regulations were notified in draft to the Commission of the European Communities in accordance with Directive [98/34/EC](#), as amended by Directive [98/48/EC](#).

Changes to legislation:

There are currently no known outstanding effects for the The Electronic Commerce Directive (Adoption and Children Act 2002) Regulations 2005.