

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 possessing an extreme pornographic image. This offence is contained in section 51A of the Civic Government (Scotland) Act 1982 (“section 51A of the 1982 Act”).

The Directive (which has been incorporated into the EEA agreement) seeks to contribute to the proper functioning of the internal market by ensuring the free movement of information society services (“ISS”) between EEA states. In particular, 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.

Regulation 3 means that service providers who are established in an EEA state other than the UK can only be prosecuted for this offence where the conditions laid down in Article 3(4) of the Directive are satisfied.

Regulations 4, 5 and 6 create exceptions from liability for the offence under section 51A of the 1982 Act for intermediary ISS providers when they provide mere conduit, caching or hosting services in the circumstances specified by Articles 12 to 14 of the Directive.