
SCOTTISH STATUTORY INSTRUMENTS

2011 No. 137

The Extreme Pornography (Electronic Commerce Directive) (Scotland) Regulations 2011

Interpretation

2.—(1) In these Regulations—

“the 1982 Act” means the Civic Government (Scotland) Act 1982⁽¹⁾;

“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)⁽²⁾;

“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 1988 laying down a procedure for the provision of information in the field of technical standards and regulations⁽³⁾); 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 section 51A of the 1982 Act (extreme pornography)⁽⁴⁾;

“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 part of the United Kingdom or in a particular EEA state, if the service provider effectively pursues an economic activity using a fixed establishment in that part of the United Kingdom or that EEA state, for an indefinite period and is a national of an EEA state or a company or firm mentioned in Article 54 of the Treaty on the Functioning of the European Union⁽⁵⁾;

(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;

(1) [1982 c.64](#).

(2) 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).

(3) O.J. No. L 24, 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 are relevant.

(4) Section 51A to C were inserted into the 1982 Act by section 42(2) of the Criminal Justice and Licensing (Scotland) Act [2010 \(asp 13\)](#).

(5) 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 their activities relating to the service,

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