

EXPLANATORY MEMORANDUM TO
THE SPECIAL MEASURES FOR CHILD WITNESSES (SEXUAL OFFENCES)
REGULATIONS 2013

2013 No. 2971

1. This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 These Regulations are made as part of the implementation in England and Wales of Directive 2011/93/EU of the European Parliament and of the Council of 13th December 2011, on combating the sexual abuse and sexual exploitation of children and child pornography and replacing Council Framework Decision 2004/68/JHA (“the Directive”). They amend Section 33 of the Youth Justice and Criminal Evidence Act 1999 (the “1999 Act”) by extending the age presumption for determining eligibility for special measures, which applies currently only to victims of human trafficking offences, to relevant offences for the purposes of the Directive.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 The UK opted into the Directive at the beginning of negotiations in June 2010 and it was adopted on 13th December 2011. The implementation date of the Directive is 18th December 2013.

4.2 A Transposition Note in respect of the Directive is set out in Annex A.

4.3 The scrutiny history of the Directive is set out in Annex B.

4.4 A further set of regulations, the Working with Children (Exchange of Criminal Conviction Information) (England and Wales and Northern Ireland) Regulations 2013 (S.I. 2013/2945)¹, were laid by the Home Office on 22 November 2013 in respect of transposition of Article 10 (Disqualification arising from convictions) of the Directive.

5. Territorial Extent and Application

5.1 This instrument extends to England and Wales.

¹ <http://www.legislation.gov.uk/ukxi/2013/2945/contents/made>

6. European Convention on Human Rights

6.1 The Minister for Policing, Criminal Justice and Victims, Damian Green, has made the following statement regarding Human Rights:

‘In my view the provisions of the Special Measures for Child Witnesses (Sexual Offences) Regulations 2013 are compatible with the Convention rights’.

7. Policy background

- What is being done and why

7.1 These Regulations implement Article 18(3) of the Directive by amending section 33 of the 1999 Act. Article 18 (3) requires where the age of a person subject to the offences referred to in Articles 3 to 7 is uncertain and there are reasons to believe that the person is a child, that person is presumed to be a child in order to receive immediate access to assistance, support and protection in accordance with Articles 19 and 20.

7.2 The revised Victims’ Code (<https://www.gov.uk/government/publications/the-code-of-practice-for-victims-of-crime>), which was laid before Parliament on 29 October 2013, implements the age presumption in relation to other criminal justice agencies named in the Code. These Regulations follow the approach of the Trafficking People for Exploitation Regulations 2013 (S.I. 2013/554)² in making provision for the age presumption to apply to any determination of eligibility for protective measures when giving evidence at court (known as ‘Special Measures’) for relevant offences.

7.3 The effect is that in addition to victims of human trafficking offences, the age presumption will now apply to victims of sexual offences (as defined in section 62 of the 1999 Act) and victims of the indecent image offences contained in section 1 of the Protection of Children Act 1978 and section 160 of the Criminal Justice Act 1988. Under section 16 of the 1999 Act witnesses who are under 18 are eligible for special measures when giving evidence.

7.4 Child sexual abuse and exploitation are very serious crimes and the Government considers it right that we and our EU partners coordinate a response to combat such activities. It therefore supports the principle of this Directive. The main objective of the Directive (and its intended effect) is to improve the way in which the EU and its Member States tackle the problems of child sexual exploitation by ensuring a common minimum standard of protection for victims of these offences, in this area across the European Union, as well as for those facing proceedings for child sex offences. It attempts to reflect the misuse of new technologies in the exploitation of children. The UK is legally bound to implement the Directive in domestic law.

7.5 As part of the Ministry of Justice’s Transforming the CJS: A Strategy and Action Plan to Reform the Criminal Justice System (<https://www.gov.uk/government/publications/transforming-the-criminal-justice->

² <http://www.legislation.gov.uk/ukSI/2013/554/contents/made>

[system](#)), further efforts are being undertaken to improve the application of special measures in order to reduce the number of witnesses dropping out of court cases and possibly leading to different trial outcomes. Of note is the Strategy and Action Plan's action 39 aiming to 'improve the consistency and take-up of special measures for vulnerable and intimidated witnesses'.

8. Consultation outcome

8.1 No consultation has been considered necessary in relation to these Regulations.

9. Guidance

9.1 The Crown Prosecution Service Legal Guidance on Special Measures (http://www.cps.gov.uk/legal/s_to_u/special_measures/) is currently being revised to notably reflect these regulations. The new guidance, which will be made available online, will be published by the end of the year.

10. Impact

10.1 No impact is foreseen for business, charities or voluntary bodies, or for the public sector.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 There is no present intention to formally review this instrument although the monitoring of its application in practice will remain subject to internal review.

13. Contact

George Radice at the Ministry of Justice Tel: 02033344437 or email: george.radice@justice.gsi.gov.uk can answer any queries regarding the instrument.