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STATUTORY INSTRUMENTS

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**2002 No. 2013**

**The Electronic Commerce (EC Directive) Regulations 2002**

**Derogations from Regulation 4**

5.—(1) Notwithstanding regulation 4(3), an enforcement authority may take measures, including applying any requirement which would otherwise not apply by virtue of regulation 4(3) in respect of a given information society service, where those measures are necessary for reasons of—

- (a) public policy, in particular the prevention, investigation, detection and prosecution of criminal offences, including the protection of minors and the fight against any incitement to hatred on grounds of race, sex, religion or nationality, and violations of human dignity concerning individual persons;
- (b) the protection of public health;
- (c) public security, including the safeguarding of national security and defence, or
- (d) the protection of consumers, including investors,

and proportionate to those objectives.

(2) Notwithstanding regulation 4(3), in any case where an enforcement authority with responsibility in relation to the requirement in question is not party to the proceedings, a court may, on the application of any person or of its own motion, apply any requirement which would otherwise not apply by virtue of regulation 4(3) in respect of a given information society service, if the application of that enactment or requirement is necessary for and proportionate to any of the objectives set out in paragraph (1) above.

(3) Paragraphs (1) and (2) shall only apply where the information society service prejudices or presents a serious and grave risk of prejudice to an objective in paragraph (1)(a) to (d).

(4) Subject to paragraphs (5) and (6), an enforcement authority shall not take the measures in paragraph (1) above, unless it—

- (a) asks the member State in which the service provider is established to take measures and the member State does not take such measures or they are inadequate; and
- (b) notifies the Commission and the member State in which the service provider is established of its intention to take such measures.

(5) Paragraph (4) shall not apply to court proceedings, including preliminary proceedings and acts carried out in the course of a criminal investigation.

(6) If it appears to the enforcement authority that the matter is one of urgency, it may take the measures under paragraph (1) without first asking the member State in which the service provider is established to take measures and notifying the Commission and the member State in derogation from paragraph (4).

(7) In a case where a measure is taken pursuant to paragraph (6) above, the enforcement authority shall notify the measures taken to the Commission and to the member State concerned in the shortest possible time thereafter and indicate the reasons for urgency.

(8) In paragraph (2), “court” means any court or tribunal.