
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 matters within the scope of the Racial and Religious Hatred Act 2006 (“the 2006 Act”). The 2006 Act inserts a new Part 3A into the Public Order Act 1986 (“the 1986 Act”) which creates a number of offences in England and Wales relating to the stirring up of religious hatred.

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. Article 3 provides for the regulation of ISS on a “country of origin” basis and 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.

Regulations 3 and 4 ensure that offences under Part 3A of the 1986 Act apply on a country of origin basis. Regulation 3 extends the application of the offences under Part 3A of the 1986 Act so that these offences apply to ISS providers established in England and Wales not only where they provide ISS in England and Wales, but also where they provide ISS in EEA states other than the UK. Regulation 4 means that service providers who are established in an EEA state other than the UK can only be prosecuted for an offence under Part 3A of the 1986 Act where the conditions laid down in Article 3(4) of the Directive are satisfied.

Regulations 5, 6 and 7 create exceptions from liability for the offences under Part 3A of the 1986 Act for intermediary ISS providers when they provide mere conduit, caching or hosting services in the circumstances specified by Articles 12, 13 and 14 of the Directive.

A Transposition Note has been prepared for these Regulations and a Regulatory Impact Assessment was prepared for the Electronic Commerce (EC Directive) Regulations 2002 ([SI 2002/2013](#)) (which generally implemented the Directive in relation to legislation already passed or made when those Regulations were made). A copy of each of these documents has been placed in the libraries of both Houses of Parliament and are available from the International Communications Unit, Department of Trade and Industry, Bay 202, 151 Buckingham Palace Road, London SW1W 9SS.