

*Status: Point in time view as at 18/06/2009.*

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## SCHEDULES

### [<sup>F1</sup>SCHEDULE 8A

#### OFFENCE UNDER SECTION 58A: SUPPLEMENTARY PROVISIONS

##### Textual Amendments

- F1** Sch. 8A inserted (16.2.2009) by Counter-Terrorism Act 2008 (c. 28), ss. 76(4), 100(5), Sch. 8 (with s. 101(2)); S.I. 2009/58, art. 2(d)

##### *Introduction*

- 1 (1) This Schedule makes supplementary provision relating to the offence in section 58A (eliciting, publishing or communicating information about members of the armed forces etc).
- (2) The purpose of this Schedule is to comply with Directive [2000/31/EC](#) of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (“the E-Commerce Directive”).

##### *Domestic service providers: extension of liability*

- 2 (1) This paragraph applies where a service provider is established in the United Kingdom (a “domestic service provider”).
- (2) Section 58A applies to a domestic service provider who—
- (a) commits any of the acts specified in subsection (1) of that section in an EEA state other than the United Kingdom, and
  - (b) does so in the course of providing information society services, as it applies to a person who commits such an act in the United Kingdom.
- (3) In such a case—
- (a) proceedings for the offence may be taken at any place in the United Kingdom, and
  - (b) the offence may for all incidental purposes be treated as having been committed at any such place.

##### *Non-UK service providers: restriction on proceedings*

- 3 (1) This paragraph applies where a service provider is established in an EEA state other than the United Kingdom (a “non-UK service provider”).
- (2) Proceedings for an offence under section 58A must not be brought against a non-UK service provider in respect of anything done in the course of the provision of information society services unless the following conditions are met.

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- (3) The conditions are—
- (a) that the bringing of proceedings is necessary for one of the following reasons—
    - (i) public policy,
    - (ii) public security, including the safeguarding of national security and defence;
  - (b) that the proceedings are brought against an information society service that prejudices the objectives referred to in paragraph (a) or presents a serious and grave risk of prejudice to those objectives;
  - (c) that the bringing of the proceedings is proportionate to those objectives.

*Exceptions for mere conduits*

- 4 (1) A service provider is not guilty of an offence under section 58A in respect of anything done in the course of providing so much of an information society service as consists in—
- (a) the provision of access to a communication network, or
  - (b) the transmission in a communication network of information provided by a recipient of the service,
- if the following condition is satisfied.
- (2) The condition is that the service provider does not—
- (a) initiate the transmission,
  - (b) select the recipient of the transmission, or
  - (c) select or modify the information contained in the transmission.
- (3) For the purposes of sub-paragraph (1)—
- (a) the provision of access to a communication network, and
  - (b) the transmission of information in a communication network,
- includes the automatic, intermediate and transient storage of the information transmitted so far as the storage is solely for the purpose of carrying out the transmission in the network.
- (4) Sub-paragraph (3) does not apply if the information is stored for longer than is reasonably necessary for the transmission.

*Exception for caching*

- 5 (1) This paragraph applies where an information society service consists in the transmission in a communication network of information provided by a recipient of the service.
- (2) The service provider is not guilty of an offence under section 58A in respect of the automatic, intermediate and temporary storage of information so provided, if—
- (a) the storage of the information is solely for the purpose of making more efficient the onward transmission of the information to other recipients of the service at their request, and
  - (b) the following conditions are satisfied.
- (3) The first condition is that the service provider does not modify the information.

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- (4) The second condition is that the service provider complies with any conditions attached to having access to the information.
- (5) The third condition is that if the service provider obtains actual knowledge that—
  - (a) the information at the initial source of the transmission has been removed from the network,
  - (b) access to it has been disabled, or
  - (c) a court or administrative authority has ordered the removal from the network of, or the disablement of access to, the information,the service provider expeditiously removes the information or disables access to it.

#### *Exception for hosting*

- 6 (1) A service provider is not guilty of an offence under section 58A in respect of anything done in the course of providing so much of an information society service as consists in the storage of information provided by a recipient of the service, if the condition is met.
  - (2) The condition is that—
    - (a) the service provider had no actual knowledge when the information was provided that it contained offending material, or
    - (b) on obtaining actual knowledge that the information contained offending material, the service provider expeditiously removed the information or disabled access to it.
  - (3) “Offending material” means information about a person who is or has been—
    - (a) a member of Her Majesty's forces,
    - (b) a member of any of the intelligence services, or
    - (c) a constable,which is of a kind likely to be useful to a person committing or preparing an act of terrorism.
  - (4) This paragraph does not apply if the recipient of the service is acting under the authority or control of the service provider.
  - (5) In this paragraph “the intelligence services” means the Security Service, the Secret Intelligence Service and GCHQ (within the meaning of section 3 of the Intelligence Services Act 1994 (c. 13)).

#### *Interpretation*

- 7 (1) In this Schedule—

“information society services”—

  - (a) has the meaning given in Article 2(a) of the E-Commerce Directive (which refers to Article 1(2) of Directive [98/34/EC](#) of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations), and
  - (b) is summarised in recital 17 of the E-Commerce Directive as covering “any service normally provided for remuneration, at a distance, by means of electronic equipment for the processing (including digital

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compression) and storage of data, and at the individual request of a recipient of a service”;

“recipient”, in relation to a 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;

“service provider” means a person providing an information society service.

- (2) For the purposes of this Schedule whether a service provider is established in the United Kingdom, or in some other EEA state, shall be determined in accordance with the following provisions—
- (a) a service provider is established in the United Kingdom, or in a particular EEA state, if the service provider—
    - (i) effectively pursues an economic activity using a fixed establishment in the United Kingdom, or that EEA state, for an indefinite period, and
    - (ii) is a national of an EEA state or a company or firm mentioned in Article 48 of the EEC Treaty;
  - (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;
  - (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 at the centre of the service provider's activities relating to that service.]

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