

CRIMINAL JUSTICE AND COURTS ACT 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3 – Courts and Tribunals

Reporting restrictions

Section 80 and Schedule 15: Reporting restrictions: providers of information society services

593. [Schedule 15](#) addresses the position of providers of information society services in respect of the offences under section 39 of the Children and Young Persons Act 1933, as amended by section 79, and under section 49 of the Youth Justice and Criminal Evidence Act 1999, as amended by section 78.
594. *Paragraph 1* of the Schedule inserts new Schedule 1A into the Children and Young Persons Act 1933.
595. Paragraph 1 of the new Schedule 1A extends liability to a service provider established in England and Wales (a “domestic service provider”) in respect of matter published in an EEA state other than the UK.
596. Sub-paragraph (2) of paragraph 1 makes it clear that section 39 of the Children and Young Persons Act 1933 applies to a “domestic service provider” who includes a matter in a publication in the course of providing information society services in a European Economic Area state that is not the United Kingdom.
597. Sub-paragraph (3) of paragraph 1 provides for proceedings in respect of offences under section 39 of the Children and Young Persons Act 1933 to be dealt with in any place in England and Wales as if it had been committed in that place.
598. [Paragraph 2](#) restricts when proceedings may be instituted against non-UK service providers in the European Economic Area.
599. Sub-paragraph (1) of paragraph 2 applies paragraph 2 to a service provider established in a European Economic Area state other than the United Kingdom (a “non-UK service provider”).
600. Sub-paragraphs (2) to (4) of paragraph 2 set out the derogation conditions that must be satisfied for proceedings against a non-UK service provider to be instituted. These are where proceedings are necessary for the purposes of the pursuit of public policy, an information society service prejudices or presents a serious or grave risk of prejudice to the pursuit of public policy and is proportionate to the pursuit of public policy.
601. [Paragraph 3](#) sets out exceptions for mere conduits.
602. Sub-paragraphs (1) to (3) of paragraph 3 set out when a service provider is not capable of being guilty of an offence under section 39 of the Children and Young Persons Act 1933. The circumstances are where the information society service provided consists of the

*These notes refer to the Criminal Justice and Courts Act 2015
(c.2) which received Royal Assent on 12 February 2015*

provision of access to a communication network or the transmission in a communication network of information provided by a recipient of the service. In such circumstances the service provider is not capable of being guilty of an offence if it does not initiate the transmission, select the recipient of the transmission or select or modify the information contained in the transmission.

603. Sub-paragraph (4) of paragraph 3 sets out that if a service provider stores the information for longer than is reasonably necessary for the transmission it is capable of being guilty of an offence.
604. [Paragraph 4](#) sets out exceptions for caching.
605. Sub-paragraph (1) of paragraph 4 sets out that paragraph 4 applies where an information society service consists of the transmission in a communication network of information provided by a recipient of the service.
606. Sub-paragraph (2) to (4) of paragraph 4 sets out the circumstances in which a service provider is not capable of being guilty of an offence under section 39 of the Children and Young Persons Act 1933 in respect of the automatic, intermediate and temporary storing of information. The circumstances are where: the storage of information is solely for the purpose of making more efficient the onward transmission of information to other recipients of the service at their request; and the service provider does not modify the information, complies with any conditions attached to having access to the information and expeditiously removes the information or disables access to it. The service provider should expeditiously remove the information where it obtains actual knowledge that the information at the initial source of the transmission has been removed from the network, access to the information has been disabled or a court or administrative authority has ordered its removal or disablement.
607. [Paragraph 5](#) sets out an exception for hosting.
608. Sub-paragraphs (1) to (4) of paragraph 5 set out the circumstances in which a service provider is not guilty of an offence under section 39 of the Children and Young Persons Act 1933 where in the course of providing an information society service it stores information provided by a recipient of the service. These circumstances apply where the recipient of the service is not acting under the authority or control of the service provider. The service provider must have no actual knowledge when the information was provided that it consisted of or included matter whose inclusion in a publication is prohibited by a direction under section 39 of the Children and Young Persons Act 1933. The service provider must, on obtaining knowledge that the matter is so prohibited, expeditiously remove the information or disable access to it.
609. For the purposes of Schedule 1A, paragraph 6 defines “publication”, “information society services”, “recipient”, “service provider”, and when a service provider is established in England and Wales or a European Economic Area state.
610. [Paragraph 2](#) of Schedule 15 inserts new Schedule 2A into the Youth Justice and Criminal Evidence Act 1999.
611. Paragraph 1 of new Schedule 2A extends liability to a service provider established in England and Wales, Scotland or Northern Ireland (a “domestic service provider”) in respect of matter published in an EEA state other than the UK.
612. Sub-paragraph (2) of paragraph 1 applies section 49 of the Youth Justice and Criminal Evidence Act 1999, so far as it relates to a publication falling within section 49(1A) (a) of that Act, to a “domestic service provider” who includes a matter in a publication in the course of providing information society services in a European Economic Area state.
613. Sub-paragraph (3) of paragraph 1 provides for proceedings in respect of offences under section 49 of the Youth Justice and Criminal Evidence Act 1999 to be dealt with in any

*These notes refer to the Criminal Justice and Courts Act 2015
(c.2) which received Royal Assent on 12 February 2015*

place in England and Wales, Scotland and Northern Ireland as if it had been committed in that place.

614. Sub-paragraphs (4) and (5) of paragraph 1 set out that section 49 of the Youth Justice and Criminal Evidence Act 1999, so far as it relates to a publication falling within section 49(1A)(b) of that Act, applies to a domestic service provider established in England and Wales who in the course of providing information society services includes a matter in a publication in a European Economic Area state other than the UK. Proceedings in respect of an offence under section 49 of the Youth Justice and Criminal Evidence Act 1999 will be dealt with in any place in England and Wales as if it had been committed in that place.
615. [Paragraph 2](#) restricts when proceedings may be instituted against non-UK service providers in the European Economic Area.
616. Sub-paragraph (1) of paragraph 2 applies paragraph 2 to a service provider established in a European Economic Area state other than the United Kingdom (a “non-UK service provider”).
617. Sub-paragraphs (2) to (4) of paragraph 2 set out the derogation conditions that must be satisfied for proceedings against a non-UK service provider to be instituted in respect of a publication that includes matter in contravention of a direction under section 45A(2) of the Youth Justice and Criminal Evidence Act 1999. These are where proceedings are necessary for the purposes of the pursuit of public policy, an information society service prejudices or presents a serious or grave risk of prejudice to the pursuit of public policy and is proportionate to the pursuit of public policy.
618. [Paragraph 3](#) sets out exceptions for mere conduits.
619. Sub-paragraphs (1) to (3) of paragraph 3 set out when a service provider is not capable of being guilty of an offence under section 49 of the Youth Justice and Criminal Evidence Act 1999 in respect of a publication that includes matter in contravention of a direction under section 45A(2) of that Act. The circumstances are where the information society service provided consists of the provision of access to a communication network or the transmission in a communication network of information provided by a recipient of the service. In such circumstances the service provider is not capable of being guilty of an offence if it does not initiate the transmission, select the recipient of the transmission or select or modify the information contained in the transmission.
620. Sub-paragraph (4) of paragraph 3 sets out that if a service provider stores the information for longer than is reasonably necessary for the transmission it is capable of being guilty of an offence.
621. [Paragraph 4](#) sets out exceptions for caching.
622. Sub-paragraph (1) of paragraph 4 sets out that paragraph 4 applies where an information society service is the transmission in a communication network of information provided by a recipient of the service.
623. Sub-paragraphs (2) to (4) of paragraph 4 set out the circumstances in which a service provider is not capable of being guilty of an offence under section 49 of the Youth Justice and Criminal Evidence Act 1999, so far as it relates to a publication that includes matter in contravention of a direction under section 45A(2) of that Act, in respect of the automatic, intermediate and temporary storing of information. The circumstances are where: the storage of information is solely for the purpose of making more efficient the onward transmission of information to other recipients of the service at their request; and the service provider does not modify the information, complies with any conditions attached to having access to the information and expeditiously removes the information or disables access to it. The service provider should expeditiously remove the information where it obtains actual knowledge that the information at the initial source of the transmission has been removed from the network, access to the

*These notes refer to the Criminal Justice and Courts Act 2015
(c.2) which received Royal Assent on 12 February 2015*

information has been disabled or a court or administrative authority has ordered its removal or disablement.

624. [Paragraph 5](#) sets out an exception for hosting.
625. Sub-paragraphs (1) to (4) of paragraph 5 set out the circumstances in which a service provider is not guilty of an offence under section 49 of the Youth Justice and Criminal Evidence Act 1999, so far as it relates to a matter in contravention of section 45A(2) of that Act, where in the course of providing an information society service it stores information provided by a recipient of the service. These circumstances apply where the recipient of the service is not acting under the authority or control of the service provider. The service provider must have no actual knowledge when the information was provided that it consisted of or included matter whose inclusion in a publication is prohibited by a direction under section 45A(2) of the Youth Justice and Criminal Evidence Act 1999. The service provider must, on obtaining knowledge that the matter is so prohibited, expeditiously remove the information or disable access to it.
626. For the purposes of new Schedule 2A, paragraph 6 defines “information society services”, “recipient”, “service provider”, and when a service provider is established in England and Wales, Scotland or Northern Ireland or a European Economic Area state. “Publication” is defined in section 63(1) of the Youth Justice and Criminal Evidence Act 1999 (for the purposes of Part 2 of that Act).