
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations give effect to the European Parliament and Council Directive of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce) (Directive [2000/31/EC](#)) (“the Directive”), in respect of matters within the scope of sections 92 and 93 (*restriction on arranging adoptions*), and sections 123 and 124 (*restriction on advertising adoption*) of the Adoption and Children Act 2002 (“the Act”).

Article 3 of the Directive provides, inter alia, for the regulation of information society services (defined in article 2(a)) (“ISS”) on a “country of origin” basis. Member States are required to ensure that providers of ISS established on their territories comply with national legal requirements falling within the “co-ordinated field” (as defined in article 2(h) of the Directive). Article 3.2 prohibits Member States from restricting, for reasons falling within the co-ordinated field, the freedom to provide information society services from other Member States. Articles 3.4 and 3.5 of the Directive create a derogation from the country of origin approach in relation to individual information society services, to be exercised on public policy grounds, and subject to certain procedures. Articles 12, 13 and 14 of the Directive provide for limitations on the liability of internet intermediaries providing services consisting of mere conduit, caching and hosting intended to safeguard the free flow of information in the network.

Regulation 3 of these Regulations makes provision as to the application of sections 92, 93, 123 and 124 of the Act to providers of ISS established in the United Kingdom in order to give effect to the country of origin principles of the Directive.

Regulation 4 of these Regulations gives effect to the prohibition in article 3.2 of the Directive, by excluding the application of sections 92, 93, 123 and 124 of the Act to persons carrying on incoming electronic commerce activities (“incoming providers”).

Regulation 5 gives effect to the derogation in article 3.4 of the Directive. Regulation 5 permits a responsible authority, in cases where the policy and procedural conditions in article 3.4 (set out in regulations 6 and 7) are met, to apply the restrictions in sections 92, 93, 123 and 124 of the Act to anything done by the incoming provider. Regulation 8 gives effect to article 3.5 of the Directive and provides that a responsible authority may dispense with the need to satisfy the conditions in regulation 7 in urgent cases.

Regulations 9, 10 and 11 give effect to articles 12, 13 and 14 of the Directive and provide a defence to section 124 of the Act where an ISS provider is a mere conduit, caching or hosting the information in question.

These Regulations were notified in draft to the Commission of the European Communities in accordance with Directive [98/34/EC](#), as amended by Directive [98/48/EC](#).

Changes to legislation:

There are currently no known outstanding effects for the The Electronic Commerce Directive (Adoption and Children Act 2002) Regulations 2005.