

2007 No. 1550

ELECTRONIC COMMUNICATIONS

PREVENTION AND SUPPRESSION OF TERRORISM

**The Electronic Commerce Directive (Terrorism Act 2006)
Regulations 2007**

<i>Made</i> - - - -	<i>23rd May 2007</i>
<i>Laid before Parliament</i>	<i>31st May 2007</i>
<i>Coming into force</i> - -	<i>21st June 2007</i>

The Secretary of State makes these Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a).

The Secretary of State has been designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to information society services(b).

Citation and commencement

1. These Regulations may be cited as the Electronic Commerce Directive (Terrorism Act 2006) Regulations 2007 and shall come into force on 21st June 2007.

Interpretation

2.—(1) In these Regulations—

“the Act” means the Terrorism Act 2006(c);

“article” has the meaning given in section 20(2) of the Act;

“the Directive” means 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)(d);

“information society services”—

(a) has the meaning given in Article 2(a) of the Directive (which refers to Article 1(2) of Directive 98/34/EC of the European Parliament and of the Council of 22nd June 1998

(a) 1972 c.68. The enabling powers of section 2(2) of this Act were extended by virtue of the amendment of section 1(2) by section 1 of the European Economic Area Act 1993 (c.51).

(b) S.I. 2001/2555.

(c) 2006 c.11.

(d) O.J. No. L 178, 17.7.2000, p.1. The Directive has been incorporated into the EEA agreement by Decision 91/2000 of the EEA Joint Committee (O.J. L 7, 11.1.2001, p.13).

laying down a procedure for the provision of information in the field of technical standards and regulations^(a)); and

- (b) is summarised in recital 17 of the Directive as covering “any service normally provided for remuneration, at a distance, by means of electronic equipment for the processing (including digital compression) and storage of data, and at the individual request of a recipient of a service”;

“recipient of the 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;

“record” has the meaning given in section 20(2) of the Act;

“relevant offence” is an offence under section 1 or 2 of the Act;

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

“statement” is to be construed in accordance with section 20(6) of the Act.

(2) For the purposes of these Regulations—

- (a) a service provider is established in a particular EEA state if he effectively pursues an economic activity using a fixed establishment in that EEA state for an indefinite period and he is a national of an EEA state or a company or firm as 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 where the service provider has the centre of his activities relating to the service,

and references to a person being established in any place must be construed accordingly.

Internal market: UK service providers

3.—(1) If—

- (a) in the course of providing information society services, a service provider established in the United Kingdom does anything in an EEA state other than the United Kingdom, and
- (b) his action, if done in a part of the United Kingdom, would constitute a relevant offence,

he shall be guilty in that part of the United Kingdom of the offence.

(2) If paragraph (1) applies—

- (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.

(3) Paragraph (1) does not apply to a case to which section 17 of the Act applies.

(4) If a person commits a relevant offence only by virtue of paragraph (1) he is liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding two years;
- (b) on summary conviction, to imprisonment for a term not exceeding the appropriate period or to a fine not exceeding the appropriate amount.

(a) O.J. No. L 204, 21.7.1998, p.37, as amended by Directive 98/48/EC (O.J. L 217, 5.8.1998, p.18); there are other amendments but none are relevant.

- (5) The appropriate period is—
 - (a) in the case of a conviction in England and Wales if the offence is committed after the commencement of section 154(1) of the Criminal Justice Act 2003^(a), 12 months;
 - (b) in any other case, three months.
- (6) The appropriate amount is—
 - (a) if calculated on a daily basis, £100 per day;
 - (b) if not calculated on a daily basis, level 5 on the standard scale.

Internal market: non-UK service providers

4.—(1) Proceedings for a relevant offence shall not be instituted against a non-UK service provider unless the derogation condition is satisfied.

(2) A notice under section 3(3) of the Act shall not be given to a non-UK service provider unless the derogation and cooperation conditions are satisfied.

(3) The derogation condition is that the step mentioned in paragraph (1) or (2) (as the case may be)—

- (a) is necessary to pursue any of the public interest objectives;
- (b) relates to an information society service that prejudices that objective or presents a serious and grave risk of prejudice to it; and
- (c) is proportionate to that objective.

(4) The public interest objectives are—

- (a) public policy, in particular the prevention, investigation, detection and prosecution of a relevant offence;
- (b) public security, including the safeguarding of national security and defence.

(5) The cooperation condition is that—

- (a) a constable has requested the EEA state in which the service provider is established to take appropriate measures and the EEA state has failed to do so; and
- (b) a constable has notified the Commission and the EEA state that it is proposed to take the step mentioned in paragraph (2).

(6) The requirement in paragraph (2) to satisfy the cooperation condition does not apply if—

- (a) it appears to a constable that the step mentioned in paragraph (2) should be taken as a matter of urgency; and
- (b) in the shortest possible time after that step is taken, a constable notifies the Commission and the EEA state in which the service provider is established that the step has been taken, indicating the reason for the urgency.

(7) Appropriate measures are measures which appear to the constable to have equivalent effect under the law of the EEA state to the giving of a notice under section 3(3) of the Act.

(8) In this regulation—

- (a) “the Commission” means the Commission of the European Communities;
- (b) “non-UK service provider” means a service provider who is established in an EEA state other than the United Kingdom.

Exception for mere conduits

5.—(1) A service provider is not capable of being guilty of a relevant offence in respect of anything done in the course of providing so much of an information society service as consists in—

(a) 2003 c.44.

- (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 transmission condition is satisfied.

(2) The transmission 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) Paragraph (1)(b) does not apply if the information is information to which regulation 6 applies.

(4) For the purposes of this regulation, the provision of access to a communication network and the transmission of information in the network includes the automatic, intermediate and transient storage of information for the purpose of carrying out the transmission in the network.

(5) Paragraph (4) does not apply if the information is stored for longer than is reasonably necessary for the transmission.

Exception for caching

6.—(1) This regulation applies to information which—

- (a) is provided by a recipient of the service; and
- (b) is the subject of automatic, intermediate and temporary storage which is solely for the purpose of making the onward transmission of the information to other recipients of the service at their request more efficient.

(2) A service provider is not capable of being guilty of a relevant offence in respect of anything done in the course of providing so much of an information society service as consists in the transmission in a communication network of information to which this regulation applies if—

- (a) the service provider does not modify the information;
- (b) he complies with any conditions attached to having access to the information; and
- (c) in a case to which paragraph (3) applies, the service provider expeditiously removes the information or disables access to it.

(3) This paragraph applies 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 such information has been disabled; or
- (c) a court or administrative authority has ordered the removal from the network of, or the disablement of access to, such information.

Exception for hosting

7.—(1) A service provider is not capable of being guilty of a relevant offence 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—

- (a) the service provider did not know when the information was provided that it was unlawfully terrorism-related; or
- (b) upon obtaining actual knowledge that the information was unlawfully terrorism-related, the service provider expeditiously removed the information or disabled access to it.

(2) For the purposes of paragraph (1), information is unlawfully terrorism-related if it is constituted by a statement, or contained in an article or record, which is unlawfully terrorism-related by virtue of section 3(7) of the Act.

(3) Paragraph (1) does not apply if the recipient of the service is acting under the authority or control of the service provider.

23rd May 2007

Margaret Hodge
Minister of State for Industry and the Regions
Department of Trade and Industry

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 sections 1 to 4 of the Terrorism Act 2006 (“the Terrorism Act”).

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 sections 1 to 4 of the Terrorism Act apply on a country of origin basis. Section 1 of the Terrorism Act creates an offence of publishing a statement that is likely to be understood as encouraging terrorism and section 2 creates an offence relating to the dissemination of terrorist publications. Sections 3 and 4 make specific provision for the application of sections 1 and 2 to internet activity. In particular, section 3 provides for the issue by a constable of a notice requiring the removal or amendment of a statement, article or record that, in the opinion of the constable issuing the notice, is unlawfully terrorism-related.

Regulation 3 extends the application of the offences in sections 1 and 2 of the Terrorism Act so that these offences apply to UK established ISS providers where they provide ISS in EEA states other than the UK. This means that sections 3 and 4 of the Terrorism Act also apply in such a case. Regulation 3 does not apply where section 17 of the Terrorism Act (commission of offences abroad) already applies.

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 section 1 or 2 of the Terrorism Act, or given a notice under section 3, where the conditions laid down in Article 3(4) of the Directive are satisfied.

Regulations 5 to 7 create exceptions from liability for the offences under sections 1 and 2 of the Terrorism Act for intermediary ISS providers when they provide mere conduit, caching or hosting services in the circumstances specified by Articles 12 to 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.

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£3.00

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E0792 6/2007 170792T 19585