

**2007 No. 2497**

**ELECTRONIC COMMUNICATIONS**

**CRIMINAL LAW, ENGLAND AND WALES**

**The Electronic Commerce Directive (Racial and Religious  
Hatred Act 2006) Regulations 2007**

<i>Made</i> - - - -	<i>24th August 2007</i>
<i>Laid before Parliament</i>	<i>31st August 2007</i>
<i>Coming into force</i> - -	<i>1st October 2007</i>

The Secretary of State makes the following 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 (Racial and Religious Hatred Act 2006) Regulations 2007 and shall come into force on 1st October 2007.

**Interpretation**

2.—(1) In these Regulations—

“the 1986 Act” means the Public Order Act 1986(c);

“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

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(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) 1986 c. 64. Part 3A of the 1986 Act was inserted by section 1 of, and the Schedule to, the Racial and Religious Hatred Act 2006 (c. 1).

(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<sup>(a)</sup>); 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;

“relevant offence” means an offence under Part 3A of the 1986 Act (hatred against persons on religious grounds);

“religious hatred” has the meaning given by section 29A of the 1986 Act (meaning of “religious hatred”); and

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

(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: England and Wales service providers**

3.—(1) If—

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

he shall be guilty in England and Wales of the offence.

(2) If paragraph (1) applies—

- (a) proceedings for the offence may be taken at any place in England and Wales; and
- (b) the offence may for all incidental purposes be treated as having been committed at any such place.

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

(4) The appropriate period is—

- (a) in the case of a conviction for an offence committed after the commencement of section 154(1) of the Criminal Justice Act 2003<sup>(b)</sup>, 12 months;

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(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 is relevant.

(b) 2003 c.44.

- (b) in any other case, 3 months.
- (5) 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) The derogation condition is satisfied where the institution of proceedings—
  - (a) is necessary to pursue the public interest objective;
  - (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.

(3) The public interest objective is public policy, in particular the prevention, investigation, detection and prosecution of a relevant offence.

(4) In this regulation “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) 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;
  - (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 only 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 knew when the information was provided that it was threatening and was provided with the intention of stirring up religious hatred; or
- (b) upon obtaining actual knowledge that the information was threatening and was provided with the intention of stirring up religious hatred, the service provider did not expeditiously remove the information or disable access to it.

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

Home Office  
24th August 2007

*Tony McNulty*  
Minister of State

## 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.

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