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## 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 the offences of stirring up hatred against persons on religious grounds or on the grounds of sexual orientations contained in Part 3A of the Public Order Act 1986 (“the 1986 Act”). Part 3A was originally inserted into the 1986 Act by the Racial and Religious Hatred Act 2006, which created a number of offences in England and Wales relating to the stirring up of religious hatred. The Directive was given effect in relation to those offences by The Electronic Commerce Directive (Racial and Religious Hatred Act 2006) Regulations 2007 (“the 2007 Regulations”), which these Regulations revoke. Section 74 of and Schedule 16 to the Criminal Justice and Immigration Act 2008 (“the 2008 Act”) amend Part 3A of the 1986 Act so as to extend the offences in England and Wales which previously related to the stirring up of religious hatred so that they now relate also to the stirring up of hatred on the grounds of sexual orientation.

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.

Regulation 8 revokes the 2007 Regulations, although the revocation does not have effect in relation to offences committed wholly or partly before these Regulations come into force. This means that the 2007 Regulations will continue to apply to any offences of stirring up religious hatred committed wholly or partly before these Regulations come into force.

A Transposition Note has been prepared for these Regulations. This is available from the Criminal Law Policy Unit, Ministry of Justice, 102 Petty France, London, SW1H 9AJ. 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 the latter is available from the Europe and International Competitiveness Unit, Department for Business Innovation and Skills, 1 Victoria Street, London SW1H 0ET.

**Changes to legislation:**

There are currently no known outstanding effects for the The Electronic Commerce Directive (Hatred against Persons on Religious Grounds or the Grounds of Sexual Orientation) Regulations 2010.