

EXPLANATORY MEMORANDUM TO
THE WORKING WITH CHILDREN (EXCHANGE OF CRIMINAL CONVICTION
INFORMATION) (ENGLAND AND WALES AND NORTHERN IRELAND)
REGULATIONS 2013

2013 No. 2945

1. This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 These Regulations are made as part of the implementation in England and Wales and Northern Ireland of Directive 2011/93/EU of the European Parliament and of the Council of 13th December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography and replacing Council Framework Decision 2004/68/JHA (the “Directive”).

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 The UK opted into the Directive at the beginning of negotiations in June 2010 and it was adopted on 13th December 2011. The implementation date of the Directive is 18th December 2013.

4.2 A Transposition Note in respect of the Directive is set out in Annex A.

4.3 The scrutiny history of the Directive is set out in Annex B.

4.4 A further set of regulations are being laid by the Ministry of Justice in respect of transposition of Article 18 (general provisions on assistance, support, and protection measures for child victims) of the Directive.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales and Northern Ireland.

6. European Convention on Human Rights

6.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- ***What is being done and why***

7.1 Article 10(3) of the Directive requires the UK to disclose the all court convictions arising out of offences criminalised by Article 3 to 7 of the Directive and disqualification information arising out of these convictions. The UK is required to do so pursuant to a request under Article 6 of the Framework Decision 2009/315/JHA, provided that the person concerned has consented for this to happen.

7.2 All requests made under Article 10(3) of the Directive will be received by the UK Central Authority for the Exchange of Criminal Records (the “UKCA-ECR”). For the purposes of complying with Article 10(3), the UKCA-ECR is a Chief Officer of a police force identified by the Secretary of State. The UKCA-ECR has access to convictions on a names database held by the Secretary of State and also has access to convictions from Northern Ireland. If checks of these databases reveal convictions for offences set out in the Directive the UKCA-ECR will request information about whether a person is disqualified from working with children from the Disqualification and Barring Service (the “DBS”). This is the body which is legally tasked with maintaining a record of that information for England and Wales and Northern Ireland. The Disclosure and Barring Service must, if it maintains that information, comply with the request.

7.3 The Government believe that it is right that those who will be working with children, on a paid or unpaid basis, should be required to disclose convictions for child sex offences to employers’ or voluntary organisations. It also believes that it is right that a person should be required to disclose disqualifications arising out of child sex offence convictions.

7.4 The Scottish Government are implementing their obligations under the Directive separately.

- ***Consolidation***

7.5 Consolidation is not considered necessary on this occasion.

8. Consultation outcome

8.1 No consultation, other than with those bodies who will be replying to requests, has been considered necessary in relation to this instrument.

9. Guidance

9.1 No guidance will be provided to other stakeholders as the process by which requests are answered will involve only the UKCA-ECR and the DBS.

10. Impact

10.1 The impact on business, charities or voluntary bodies is nil.

10.2 The impact on the public sector is small. These Regulations set out how requests from other EU countries should be answered by the United Kingdom. As such, there will be a very small impact on the public sector who will have to reply to requests. The number of requests in which the applicant has previous child sex offence convictions is expected to be extremely low and so the number of times barring information is sought from the DBS is also expected to be extremely low.

10.3 An impact assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 There is no present intention to formally review this instrument although the monitoring of its application in practice will remain subject to internal review.

13. Contact

Robert Butlin at the Home Office Tel: 020 7035 4897 or email:
Robert.Butlin@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.

Transposition Note

Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA.

Article	Detail	Implementation	Responsibility
10 Disqualification arising from convictions.	10(3) provides that where a request for information is made under Article 6 of the Council Framework Decision 2009/315/JHA of 26 February 2009 on the organisation and content of the exchange of information extracted from the criminal record between Member States, information about any convictions mentioned in Articles 3 to 7 of the Directive is sent to the requesting Member State, provided that the individual concerned has consented to this happening. Article 10(3) also provides that alongside this conviction information, information about any disqualification from the right to work with children as a result of those convictions are provided to the requesting Member State.	<p>Article 10(3) is implemented by the Working with Children (Exchange of Criminal Conviction Information) (England and Wales and Northern Ireland) Regulations 2013. Regulation 3 obliges a chief officer of a police force identified by the Secretary of State to disclose the conviction and disqualification information mentioned in Article 10(3) of the Directive pursuant to a request under Article 6 of the Framework Decision 2009/315/JHA, provided that the person concerned has consented for this to happen.</p> <p>Under regulation 4, the Secretary of State must identify a chief officer of a police force to exercise the obligation in regulation 3.</p> <p>Regulation 5 allows the chief officer of a police force to request information about whether a person is disqualified from working with children from the Disqualification and Barring Service. This is the body who is legally tasked with maintaining a record of that information. The Disclosure and Barring Service must, if it maintains that information, comply with the request.</p>	The Chief Officer of a Police Force identified by the Secretary of State.

<p>18 General provisions on assistance, support, and protection measures for child victims.</p>	<p>18(3) provides that where the age of person subject to any of the offences referred to in Article 3 to 7 is uncertain, and there are reasons to believe the person is a child, that person is presumed to be a child in order to receive immediate access to assistance, support and protection in accordance with Articles 19 and 20.</p>	<p>Article 18(3) is implemented by the Special Measures for Child Witnesses (Sexual Offences) Regulations 2013.</p> <p>Regulation 2 amends section 33 of the Youth Justice and Criminal Evidence Act 1999 so that the age presumption for the purpose of determining eligibility for special measures when giving evidence extends to complainants of sexual offences (as defined in section 62 of the 1999 Act), and the indecent image offences under section 1 of the Protection of Children Act 1978 and section 160 of the Criminal Justice Act 1988.</p> <p>Separately, the revised Code of Practice for Victims of Crime, which was laid before Parliament on 29th October 2013, applies the age presumption in relation to services provided under the Code to victims of criminal conduct.</p>	<p>Judiciary.</p>
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Scrutiny History

Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA (“the Directive”)

On 13 April 2010 a factual EM on the Directive was submitted to the parliamentary scrutiny committees during purdah, with a full EM submitted on 25 May 2010 by the then Secretary of State for Justice (Kenneth Clarke QC). He subsequently wrote on 30 June 2010 informing Parliament of the Government’s decision to opt in to this Directive. A supplementary EM was subsequently submitted on 19 July 2010 in response to questions posed by the House of Lords EU Committee.

On 9 September 2010 the report of the European Scrutiny Committee of the House of Commons was published. An EM on specific articles 1-13 (except art 10) was submitted on 14 October 2010. The European Scrutiny Committee published further reports on 27 October and on 24 November 2010.

On 15 December 2010 an unnumbered EM and Impact Assessment were submitted to Parliament. The European Scrutiny Committee published a report on 2 February 2011. The Committee cleared this proposal from scrutiny following a debate held on 26 April 2011. The House of Lords Sub-Committee E cleared this proposal from scrutiny on 22 June 2011.

On 3 November 2011 a Written Ministerial Statement about the October JHA Council meeting reported that the European Parliament adopted the text agreed by the Council on 27 October, following agreement between the Council, the European Parliament and the Commission.