

CYPE(5)-03-20 - Paper to note 1

**Julie Morgan AS/MS**  
Y Dirprwy Weinidog Iechyd a Gwasanaethau Cymdeithasol  
Deputy Minister for Health and Social Services



Llywodraeth Cymru  
Welsh Government

Our ref MA-P JM 0048/21

Lynne Neagle MS  
Chair  
Children, Young People and Education Committee  
Senedd Cymru  
Cardiff Bay  
CF99 1SN  
SeneddCYPE@senedd.wales

19 January 2021

Dear Lynne,

This letter is to inform you that I have laid a Statutory Instrument Consent Memorandum in the Senedd in respect of the Electronic Commerce Directive (Education, Adoption and Children) (Amendment etc.) Regulations 2021, as required by Standing Order 30A (SO30A).

I am also writing to inform you that I am not minded to table a motion for a debate about this SI in this instance. I have reached this decision on the basis that this SI is restricted to making corrections to the deficiencies in law that arise as a result of the UK having left the EU. The provisions of the SI are technical in nature, introduce no new policy, and there is no divergence in policy between the Welsh Government and the UK Government in this case.

SO30A.10 provides that any Member may table a motion for a debate on this SI. Given the volume of legislation that the Senedd is considering, and the technical nature of the SI, I will not myself be seeking to initiate such a debate.

Yours sincerely

**Julie Morgan AS/MS**  
Y Dirprwy Weinidog Iechyd a Gwasanaethau Cymdeithasol  
Deputy Minister for Health and Social Services

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:  
0300 0604400

Bae Caerdydd • Cardiff Bay  
Caerdydd • Cardiff  
CF99 1SN

[Gohebiaeth.Julie.Morgan@llyw.cymru](mailto:Gohebiaeth.Julie.Morgan@llyw.cymru)  
[Correspondence.Julie.Morgan@gov.wales](mailto:Correspondence.Julie.Morgan@gov.wales)

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

## **STATUTORY INSTRUMENT CONSENT MEMORANDUM**

### **The Electronic Commerce Directive (Education, Adoption and Children) (Amendment etc.) Regulations 2021**

1. This Statutory Instrument Consent Memorandum is laid under Standing Order (“SO”) 30A.2. SO 30A.2 prescribes that a Statutory Instrument Consent Memorandum must be laid in relation to any relevant statutory instrument laid before the UK Parliament by UK Ministers. A “relevant statutory instrument” means a statutory instrument or draft statutory instrument laid before the UK Parliament by UK Ministers which makes provision in relation to Wales amending primary legislation within the legislative competence of Senedd Cymru (the Senedd).
2. Under S.O 30A.10, any member may table a Statutory Instrument Consent Motion before the Senedd seeking the Senedd’s agreement to the inclusion of a relevant provision in a relevant statutory instrument.
3. The Electronic Commerce Directive (Education, Adoption and Children) (Amendment etc.) Regulations 2021 were laid before Parliament on 18<sup>th</sup> January 2021 [and is now being laid before the Senedd]. A copy of the Regulations has been laid with this memorandum and can also be found at:

<http://www.legislation.gov.uk/id/ukdsi/2021/9780348219210>

#### **Summary of the Statutory Instrument and its objective**

4. The objective of the SI is to correct deficiencies in legislation arising from the UK leaving the European Union. This SI amends Schedule 11B to the Education Act 2002 and provisions in the Electronic Commerce Directive (Adoption and Children Act 2002) Regulations 2005 to disapply the “country of origin” principle, and makes other consequential amendments to reflect the fact that the UK is no longer a member of the EU.
5. These corrections are required to ensure that the statute book will continue to operate effectively after exit.

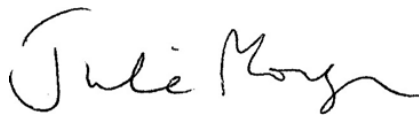
#### **Relevant provision to be made by the SI**

6. The primary legislation being amended by these Regulations is the Education Act 2002 (c. 32) (“the 2002 Act”). The amendments provide for the disapplication of the “country of origin” principle in respect of certain provision in Schedule 11B to the 2002 Act.
7. Schedule 11B deals with offences for a breach of reporting restrictions under section 141G of the 2002 Act, namely reporting alleged offences by teachers. The effect of the amendments is to disapply the country of origin principle in respect of information society services which have potentially breached the reporting restrictions under section 141F.

8. It is Welsh Government's view that the provisions described in paragraphs 5 to 6 above fall within the legislative competence of the Senedd in so far as they relate to education.

**Why it is appropriate for the SI to make this provision**

9. In these exceptional circumstances, we consider it appropriate that the UK Government legislates on our behalf in this instance, for reasons of efficiency and expediency. There is no divergence between the Welsh Government and the UK Government on the policy for the correction. Consenting to an England and Wales wide SI ensures that there is a single legislative framework across England and Wales, which promotes clarity and accessibility during this unprecedented period of change.



**Julie Morgan MS**  
**Deputy Minister for Health and Social Services**  
**19 January 2021**



- (ii) omit (“the E-Commerce Directive”);
- (b) omit paragraphs 2 and 3;
- (c) omit paragraph 7(2).

**Amendment of the Electronic Commerce Directive (Adoption and Children Act 2002) Regulations 2005**

3.—(1) The Electronic Commerce Directive (Adoption and Children Act 2002) Regulations 2005(a) are amended as follows.

- (2) In regulation 1—
  - (a) for the heading substitute “Citation and commencement”;
  - (b) omit paragraph (2).
- (3) In regulation 2 (interpretation)—
  - (a) in paragraph (1), omit the definitions of the following—
    - (i) “the Commission”;
    - (ii) “co-ordinated field”;
    - (iii) “country of origin”;
    - (iv) “EEA State”;
    - (v) “incoming electronic commerce activity”;
    - (vi) “incoming provider”;
    - (vii) “prohibited measure”;
    - (viii) “relevant EEA authority”;
  - (b) in paragraph (2), omit sub-paragraphs (a), (b) and (c).
- (4) Omit regulations 3 to 8.

Date

*Name*  
Parliamentary Under Secretary of State  
Department for Education

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations are made in exercise of the powers conferred by section 8(1) of, and paragraph 21(b) of Schedule 7 to, the European Union (Withdrawal) Act 2018 (c. 16) in order to address failures of retained EU law to operate effectively and other deficiencies (in particular under section 8(2)(a), (c) and (d) of that Act) arising from the withdrawal of the United Kingdom from the European Union.

These Regulations amend the Education Act 2002 (c. 32) (“the 2002 Act”) and the Electronic Commerce Directive (Adoption and Children Act 2002) Regulations 2005 (S.I. 2005/3222) (“the 2005 Regulations”). Together, the amendments provide for the disapplication of the “country of origin” principle in relation to information society services (defined in Article 2(a) of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market) in respect of certain matters under the 2002 Act and the 2005 Regulations respectively.

The amendments to the 2002 Act relate to provision in Schedule 11B to that Act (which supplements section 141G of that Act in relation to publishing a matter in breach of restrictions on reporting alleged offences by teachers in section 141F(3)); those provisions extend to England and Wales

---

(a) S.I. 2005/3222, amended by S.I. 2011/1043, 2012/1809; there are other amending instruments but none is relevant.

only). The effect of the amendments is to disapply the country of origin principle in respect of information society services which have potentially breached the reporting restrictions under section 141F of the 2002 Act.

The amendments to the 2005 Regulations provide for the disapplication of the country of origin principle in relation to information society services in the application of sections 92 and 93 of the Adoption and Children Act 2002 (c. 38) (restriction on arranging adoptions) and sections 123 and 124 of that Act (restriction on advertising adoptions).

An impact assessment has not been published for this instrument as no, or no significant, impact on the private, public or voluntary sector is foreseen.