

## UK MINISTERS ACTING IN DEVOLVED AREAS

### **137 - The Electronic Commerce Directive (Adoption and Children) (Amendment etc.) (EU Exit) Regulations 2019**

*Laid in the UK Parliament: 20 June 2019<sup>1</sup>*

#### **Sifting**

Subject to sifting in UK Parliament?	Yes
Procedure:	Proposed negative
Date of consideration by the House of Commons European Statutory Instruments Committee	02 July 2019
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known
Date sifting period ends in UK Parliament	09 July 2019
Written statement under SO 30C:	Paper 18
SICM under SO 30A (because amends primary legislation)	Paper 14

#### **Scrutiny procedure**

Outcome of sifting	Not known
Procedure	Negative or affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

#### **Commentary**

These Regulations are proposed to be made by the UK Government pursuant to section 8(1) of the European Union (Withdrawal) Act 2018.

These Regulations amend two pieces of legislation, which stem from 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, commonly referred to as the Electronic Commerce Directive (“the Directive”). The pieces of legislation amended by these Regulations are Schedule 11B to the Education Act 2002 (“2002 Act”), and the Electronic Commerce Directive (Adoption and Children Act 2002) Regulations 2005 (“the 2005 Regulations”).

<sup>1</sup>

The regulations laid on 20 June 2019 were withdrawn and a revised version laid before the UK Parliament on 25 June 2019, with the sifting period ending on 11 July 2019. The Welsh Government’s statement links to the revised regulations. (Footnote added, 18 July 2019)

The Directive seeks to contribute to the proper functioning of the internal market by ensuring the free movement of information society services (“ISS”) between EEA states and approximating EEA states’ laws concerning the regulation and provision of ISS.

Article 3 of the Directive sets out the country of origin (“CoO”) principle in relation to the regulation of ISS. Generally, this principle provides that ISS must be regulated by the law of the EEA state in which the provider of the services is established, rather than the law of the EEA state in which the services are received. The CoO principle is a reciprocal arrangement between EEA states, from which the UK will no longer benefit in a no deal exit. These Regulations disapply that principle as it relates to the subject matter of the 2005 Regulations and Schedule 11B to the 2002 Act.

The 2005 Regulations and Schedule 11B to the 2002 Act gave effect to the CoO principle in two particular contexts. Specifically, they made provision relating to the prosecution of certain criminal offences (“relevant offences”) created by the 2002 Act and, further to modifications made by the 2005 Regulations, the Adoption and Children Act 2002 (“ACA 2002”).

The amendments will mean that domestic ISS (i.e. those based in England and Wales) will no longer be automatically treated as having committed a relevant publishing offence in England and Wales/UK if they publish prohibited information in an EEA state. They will instead be subject to the laws of the EEA state in which they are operating. Equally, it will mean that any EEA ISS will not automatically be exempt from prosecution in England and Wales/UK.

Legal Advisers agree with the statement laid by the Welsh Government dated 26 June 2019 regarding the effect of these Regulations.

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect and the extent to which these Regulations would enact new policy in devolved areas.