



Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

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

DATE **19 January 2021**

BY **Rebecca Evans MS, Minister for Finance and Trefnydd**

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

The Law which is being amended:

The Electronic Commerce Directive (Education, Adoption and Children) (Amendment etc.) Regulations 2021 (“the Regulations”) amend the following pieces of legislation:

- The Education Act 2002 (2002 Act)
- The Electronic Commerce Directive (Adoption and Children Act 2002) Regulations 2005 (2005 Regulations)

The Regulations contain provisions which are considered to fall within devolved competence.

The purpose of the amendments

The Regulations make technical amendments to the 2002 Act and the 2005 Regulations to correct provisions which are deficient following the UK’s withdrawal from the EU, ensuring the law continues to function effectively. The provisions in question engage the country of origin principle, a reciprocal arrangement between EU Member States, which no longer applies to the United Kingdom following its exit from the EU. The amendment of these provisions is necessary, therefore, to reflect the ending of this reciprocity, and to ensure that domestic legislation continues to operate effectively post-exit.

The Electronic Commerce Directive (eCD) regulates certain legal aspects of “information society services” across the European Economic Area (EEA) that aim to remove obstacles to cross-border online services in the European Union (EU) and to provide legal certainty to business and citizens in cross-border online transactions. In effect, it creates a mutual recognition scheme.

The eCD makes specific provision referred to as the 'Country of Origin' (CoO) principle. In the field of electronic commerce, this is a reciprocal arrangement which means that where an online information society service provider (ISSP) operates from an establishment in an EEA state, the law of that particular state will apply to the ISSP's activities, rather than the law of the EEA state in which the services are received.

This reciprocal arrangement no longer applies to UK based ISSPs as the UK has left the EEA and the transition period is over. This means that UK based ISSPs are required to comply with the rules that govern online activities in each EEA state in which they operate, and EEA based ISSPs will be required to comply with the law of the UK when providing services in the UK. ISSPs from EEA states operating in the UK will therefore be liable to prosecution in the UK for offences established by the Adoption and Children Act 2002 (sections 92 and 123) and Schedule 11B to the 2002 Act, and ISSPs based in the UK that commit such offences in an EEA state will be liable to prosecution in that EEA State.

The SI and accompanying Explanatory Memorandums, setting out the effect of each amendment is available here:

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

Why consent was given

Consent has been given for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency, expediency and due to the technical nature of the amendments to retain operability of the legislation following EU exit. The amendments have been considered fully; and there is no divergence in policy. These technical amendments are to ensure that the statute book remains functional following the UK's exit from the EU. This is in line with the principles for correcting agreed by the Cabinet Sub-Committee on European Transition.