



Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **The Electronic Commerce Directive (Adoption and Children) (Amendment etc) (EU Exit) Regulations 2019**

DATE **26 June 2019**

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

The Electronic Commerce Directive (Adoption and Children) (Amendment etc) (EU Exit) Regulations 2019

The law which is being amended

The Electronic Commerce Directive (Adoption and Children) (Amendment etc) (EU Exit) Regulations 2019 amends the following pieces of legislation:

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

The 2019 Regulations contain provisions which fall within devolved competence.

Any impact the SI may have on the Assembly's legislative competence and/or the Welsh Ministers' executive competence

There is potentially an impact on competence as the SI only partly removes certain provisions derived from the Directive from Schedule 11B to the Education 2002 Act and from the Electronic Commerce Directive (Adoption and Children Act 2002) Regulations 2005. It leaves provisions relating to exceptions (from the offence) for conduits, caching and hosting. The effect of this is that those provisions that remain will become retained in EU law. The effect of that is that the Assembly will not have powers to modify retained EU law if a UK Government Minister of the Crown makes regulations to that effect under s.109A of the Government of Wales Act 2006.

The purpose of the amendments

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 provider (ISSP) operates from an establishment in an EEA state, the law of that particular state will apply to the ISSP's activities.

Once the UK is no longer a member of the EU, and in the event of a no deal scenario, the removal of the CoO concept will mean that ISSPs will be required to comply with the rules that govern online activities in each EEA state in which they operate. ISSPs operating from EEA states will cease to benefit from the current exemption from prosecution in the UK, Wales and England for offences established by the Adoption and Children Act 2002 (section 92 and 123) and Schedule 11B to the 2002 Act. ISSPs operating in the UK that commit a section 92, 123 or 2002 Act offence in an EEA state will no longer be automatically treated as having committed those offences in the UK, or England and Wales, respectively.

The 2019 Regulations remove fully the CoO principle from UK legislation that implements the eCD and as a result the provisions giving effect to the CoO principle in the 2002 Act and 2005 Regulations are being removed by this instrument. Post EU withdrawal, UK laws will apply to all EEA based online service providers when operating in the UK. Providers, irrespective of origin, will be subject to UK laws when providing services in the UK. The SI also makes other consequential amendments necessary to reflect the fact that the UK will no longer be a member of the EU.

The SI and accompanying Explanatory Memorandums, setting out the effect of each amendment is available here: <https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments/the-electronic-commerce-directive-adoption-and-children-amendment-etc-eu-exit-regulations-2019-revised>

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 nature of the amendments to retain operability of the legislation on exit day. The amendments have been considered fully; and there is no divergence in policy. These 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.

A Statutory Instrument Consent Memorandum has also been laid in the National Assembly in respect of the amendments to The Education Act 2002.