

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Fifth Delegated Legislation Committee

DRAFT ELECTRONIC COMMERCE
DIRECTIVE (MISCELLANEOUS PROVISIONS)
REGULATIONS 2018

Tuesday 6 March 2018

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The Committee consisted of the following Members:

Chair: IAN AUSTIN

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| † Adams, Nigel (<i>Lord Commissioner of Her Majesty's Treasury</i>) | † James, Margot (<i>Minister of State, Department for Digital, Culture, Media and Sport</i>) |
| † Aldous, Peter (<i>Waveney</i>) (Con) | † Newlands, Gavin (<i>Paisley and Renfrewshire North</i>) (SNP) |
| † Beresford, Sir Paul (<i>Mole Valley</i>) (Con) | † Seely, Mr Bob (<i>Isle of Wight</i>) (Con) |
| † Byrne, Liam (<i>Birmingham, Hodge Hill</i>) (Lab) | Smeeth, Ruth (<i>Stoke-on-Trent North</i>) (Lab) |
| † Clark, Colin (<i>Gordon</i>) (Con) | † Smith, Royston (<i>Southampton, Itchen</i>) (Con) |
| † Coyle, Neil (<i>Bermondsey and Old Southwark</i>) (Lab) | † Woodcock, John (<i>Barrow and Furness</i>) (Lab/Co-op) |
| † Duguid, David (<i>Banff and Buchan</i>) (Con) | |
| † Elmore, Chris (<i>Ogmore</i>) (Lab) | Kenneth Fox, <i>Committee Clerk</i> |
| † Evans, Chris (<i>Islwyn</i>) (Lab/Co-op) | |
| † Green, Kate (<i>Stretford and Urmston</i>) (Lab) | † attended the Committee |
| † Huddleston, Nigel (<i>Mid Worcestershire</i>) (Con) | |

The following also attended, pursuant to Standing Order No. 118(2):

Bowie, Andrew (*West Aberdeenshire and Kincardine*) (Con)

Fifth Delegated Legislation Committee

Tuesday 6 March 2018

[IAN AUSTIN *in the Chair*]

Draft Electronic Commerce Directive (Miscellaneous Provisions) Regulations 2018

8.55 am

The Minister of State, Department for Digital, Culture, Media and Sport (Margot James): I beg to move,

That the Committee has considered the draft Electronic Commerce Directive (Miscellaneous Provisions) Regulations 2018.

It is a great pleasure to serve under your chairmanship, Mr Austin. The regulations, which were laid in both Houses on 30 January, seek to implement two parts of the electronic commerce directive, or e-commerce directive, in relation to various offences: the country of origin principle and provisions relating to the liability of intermediary service providers. When new legislation is introduced in a particular policy area and an element of it relates to offences or requirements that could apply to an information society service, such as intimate images on an online platform, the directive must be implemented to apply the rules. That must be done for the UK to be compliant with European Union law.

The statutory instrument does not create new policy; it is a technical measure to ensure that the offences are consistent with the e-commerce directive. The directive has already been implemented in UK law for 34 offences, along with regulations where that has been necessary to comply with EU law. The regulations under discussion implement the directive in relation to various offences, including those concerning extreme pornography and restricting the publication of material by which a child involved in an inquiry may be identified. The Committee should be aware that my Department worked closely with officials in the Scottish Government and the Northern Ireland Assembly on the draft instrument, and the Scottish Government are keen to see it come into law.

I will go into a little more detail about what the e-commerce directive is and what the statutory instrument aims to achieve. The directive seeks to contribute to the proper functioning of the internal market by ensuring the free movement of information society services within the European economic area. The SI implements the country of origin principle in relation to the offences, where relevant. For example, articles 3(2) and 3(4) of the directive, which relate to the extreme pornography offence, were implemented in the Extreme Pornography (Electronic Commerce Directive) (Scotland) Regulations 2011. Under the country of origin principle, information society services should be under only the jurisdiction of the member state in which the service is established, not the European economic area country that the service targets. The country of origin rules are described in more detail in paragraph 4.2 of the explanatory memorandum. The implementation also allows for the

prosecution of a UK-based provider if it carries out the offences in the statutory instrument in another European economic area state.

Finally, the statutory instrument also implements articles 12 to 14 of the directive where relevant, which limit, in specified circumstances, the liability of intermediary service providers that carry out certain activities essential for the operation of the internet, namely those that act as mere conduits and those that cache or host information.

I emphasise that the sole intention and outcome of the statutory instrument is to implement the parts of the EC directive in relation to various offences where it has not been done before. It will not create or set new policy; it is a technical measure to ensure compliance with EU law. I hope that the Committee will allow the statutory instrument to become law.

8.59 am

Liam Byrne (Birmingham, Hodge Hill) (Lab): This is the first time I have had the privilege of serving under your chairmanship, Mr Austin, and it is of note that we have not only a Chairman from the west midlands but two Front Benchers as well.

I am grateful to the Minister for her speech. It was almost as long as her speech last night in winding up five hours of debate on the Data Protection Bill. I am sorry that we none the less managed to stretch business to 10 o'clock.

The regulations are important, but the e-commerce directive is hopelessly outmoded and outdated. It regulates internet service providers, but was written before most of them came to enjoy the force and stature they do today. None the less, it is what we have, and if we can use regulations attached to it to make progress, in particular in the defence of children and their safety online, we must seize those opportunities with both hands. We will not, therefore, divide the Committee today. However, I ask the Minister to reflect, in her winding-up remarks, on why it has taken so long for those necessary defences to be brought to the House, and invite her to look to the future and tell us how long we will have to wait for proposals for the e-commerce directive to be modernised. Now that we are leaving the European Union, there are all sorts of opportunities to modernise laws in a way that maintains a degree of regulatory harmony, and therefore trade, with our biggest continental market and that also brings regulation of this important industry up to date.

9.1 am

Gavin Newlands (Paisley and Renfrewshire North) (SNP): It is a pleasure to see you for the first time in the Chair, Mr Austin.

As the Minister pointed out, the Scottish Government support the measure, so I will comment only briefly. We have no problems with the statutory instrument, but one of the offences it would affect in Scotland is in the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012, which the Scottish Opposition have, sadly, decided to repeal, for reasons that pass understanding, to be perfectly honest—that is just an aside. We look forward to implementing EU rules and regulations for many years to come, but with that I will sit down and let us get on with it.

9.2 am

Margot James: I will first respond to the comments made by the right hon. Member for Birmingham, Hodge Hill. I agree that parts of the e-commerce directive, particularly in respect of its limiting the liability of service providers, are out of date. It was passed long before the service providers had the power they now have. It is important to note that it limits their liability in three categories, but I agree with him about the limits on hosting services' liabilities. Perhaps there is also a measure of agreement with him elsewhere in the EU, in that the German Government's regulation requiring internet hosting services to take down within 24 hours content that is agreed to be illegal, as far as the Germans are concerned, is not considered to be an infraction.

On the question why this has not been done before, I agree with the right hon. Gentleman: when I read my brief, I too was mystified by the timing. In answer to his question, in 2016—almost two years ago—the Scottish Government requested that we implement the EC directive in relation to the intimate image offence. Although we would like to have done this sooner, the process has been delayed in part by last year's general election and

in part by the Scottish Government subsequently coming to the UK Government with a list of additional offences to be included.

On proposals to modernise the EC directive, the right hon. Gentleman should probably address those questions elsewhere in Government, possibly to the Cabinet Office or the Department for Exiting the European Union. It is not my place to comment on that, although I watch with great interest what has happened in Germany, as we propose to respond to our consultation on internet safety. The Government are determined to make the UK the safest place to be online and there is clearly a lot of work to be done to realise that ambition.

I am grateful to the hon. Member for Paisley and Renfrewshire North, who represents the Scottish National party, for his support of the proposals. I had better not comment on the particular offence of football—that is definitely a Scottish matter for the Scottish Government and the SNP in the Scottish Parliament.

These regulations will provide legal certainty to online services to enable them to trade across the EU with confidence and I commend them to the Committee.

Question put and agreed to.

9.6 am

Committee rose.

