

**2011 No. 170**

**CRIMINAL LAW**

**ELECTRONIC COMMUNICATIONS**

**The Extreme Pornography (Electronic Commerce Directive)  
(Scotland) Amendment Regulations 2011**

<i>Made</i>	- - - -	<i>1st March 2011</i>
<i>Laid before the Scottish Parliament</i>		<i>1st March 2011</i>
<i>Coming into force</i>	- -	<i>28th March 2011</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a) and all other powers enabling them to do so.

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Extreme Pornography (Electronic Commerce Directive) (Scotland) Amendment Regulations 2011 and come into force on 28th March 2011.

(2) These Regulations extend to Scotland only.

**Amendment of the Extreme Pornography (Electronic Commerce Directive) (Scotland) Regulations 2011**

2. The Extreme Pornography (Electronic Commerce Directive) (Scotland) Regulations 2011(b) are amended in accordance with regulation 3.

3. In regulation 4 (exception for mere conduits), in paragraph (2)(b) for “or” substitute “and”.

*KENNY MACASKILL*  
A member of the Scottish Executive

St Andrew’s House,  
Edinburgh  
1st March 2011

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(a) 1972 c.68. Section 2(2) was amended by paragraph 15(3) of Schedule 8 to the Scotland Act 1998 (c.46), section 27(1) of the Legislative and Regulatory Reform Act 2006 (c.51) and by Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c.7). The functions conferred on a Minister of the Crown under section 2(2) of the European Communities Act 1972, insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.

(b) S.S.I. 2011/137.

## EXPLANATORY NOTE

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

These Regulations amend regulation 4(2)(b) of the Extreme Pornography (Electronic Commerce Directive) (Scotland) Regulations 2011 (“the principal Regulations”).

The principal Regulations give effect to Directive 2000/31/EC of the European Parliament and of the Council of 8th June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market in relation to the offence of possessing an extreme pornographic image. The offence of possessing an extreme pornographic image is contained in section 51A of the Civic Government (Scotland) Act 1982<sup>(a)</sup>.

Regulation 4 of the principal Regulations sets out the circumstances in which a “service provider” may be exempt from liability as a “mere conduit” (both terms are defined in the principal Regulations). The amendment to regulation 4(2)(b) of the principal Regulations makes clear that the “transmission condition” (as defined in the principal Regulations) consists of cumulative, not alternative requirements.

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(a) 1982 c.45; section 51A was inserted by section 42(2) of the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13).