

Subsidiary Legislation made under s.9.

## **Communications (Combating Child Pornography) Regulations 2013**

### **LN.2013/187**

	<i>Commencement</i>	<b>18.12.2013</b>
Amending enactments	Relevant current provisions	Commencement date
LN. 2014/225	rr. 4(2)(b), (3)-(4), 6(4)	1.12.2014

**Transposing:**

Directive 2011/93/EU

Council Decision 2000/375/JHA

**EU Legislation/International Agreements involved:**

Council Framework Decision 2004/68/JHA

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**ARRANGEMENT OF REGULATIONS**

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*In exercise of the powers conferred upon him by section 9 of the Communications Act 2006 and section 23(g)(i) of the Interpretation and General Clauses Act, and for the purposes of transposing, in part, Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA, the Minister has made the following Regulations—*

**Title and commencement.**

1. These Regulations may be cited as the Communications (Combating Child Pornography) Regulations 2013 and come into operation on 18 December 2013.

**Interpretation.**

2. In these Regulations—

“Act” means the Communications Act 2006;

“Authority” has the meaning given to it in section 2 of the Act;

“child” means—

- (a) a person under 18 years of age; and
- (b) a person whose age cannot be ascertained and there are reasons to believe that the person is under 18 years of age;

“child pornography” means—

- (a) any material that visually depicts a child engaged in real or simulated sexually explicit conduct;
- (b) any depiction of the sexual organs of a child for primarily sexual purposes;
- (c) any material that visually depicts any person appearing to be a child engaged in real or simulated sexually explicit conduct or any depiction of the sexual organs of any person appearing to be a child, for primarily sexual purposes; or
- (d) realistic images of a child engaged in sexually explicit conduct or realistic images of the sexual organs of a child, for primarily sexual purposes;

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“Directive” means Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA, as the same may be amended from time to time.

(2) Any term used in these Regulations and in the Directive which is not defined in these Regulations shall have the meaning given to it in the Directive.

**Best interests of the child.**

3. A person who exercises a duty under these Regulations shall do so having regard to the best interests of the child.

**Measures against websites containing or disseminating child pornography.**

4.(1) An internet service provider shall, upon receipt of information that a web page contains child pornography inform the Authority and provide it with such technical information regarding the location and properties of the web page as it may reasonably require.

(2) Where the Authority receives a report pursuant to subregulation (1), it shall–

- (a) promptly investigate the matter and consult the law enforcement agencies as necessary;
- (b) subject to a law enforcement agency’s advice under subregulation (3), if the page is hosted in Gibraltar, advise the internet service provider to take the necessary measures to ensure the prompt removal of the web pages containing or disseminating child pornography; and
- (c) endeavour to obtain the removal of that page if it is hosted outside Gibraltar.

(3) The Authority, prior to advising the internet service provider to remove the web page containing or disseminating child pornography, as provided for under subregulation (2)(b), if advised by a law enforcement agency that the internet service provider must continue to host the web page containing or disseminating child pornography, may advise the internet service provider to continue to host the web page containing or disseminating child pornography, until such time as it is advised to remove the web page under subregulation (2)(b).

(4) A law enforcement agency may only advise the Authority to suspend the removal of the web page containing and disseminating child pornography, under subregulation (3) if–

- (a) the suspension is necessary in order to carry out an investigation;

- (b) the law enforcement agency immediately take steps to apprehend a suspect; and
- (c) it is necessary for the web page containing or disseminating child pornography to continue to be hosted in order to apprehend a suspect or widen the search for another suspect.

**Extension of powers.**

5.(1) The powers vested in the Minister and in the Authority under sections 4 and 10 of the Act may be exercised in connection with the prevention and combating of child pornography, and shall be available for the purpose of securing compliance with a code of practice issued under regulation 7.

(2) The powers available under subregulation (1) may be exercised by the Minister or the Authority to require measures to block access to web pages containing or disseminating child pornography towards the Internet users in Gibraltar.

(3) Where the Minister or the Authority exercises a power referred to in subregulation (1) for the purposes of subregulation (2) the Minister or the Authority shall ensure that any requirements are-

- (a) transparent;
- (b) provide adequate safeguards, in particular to ensure that the restriction is limited to what is necessary and proportionate; and
- (c) ensure that users are informed of the reason for the restriction,

and section 91 of the Act shall apply for the purposes of appealing against any such measure.

**Immunity from suit.**

6.(1) An internet service provider who, pursuant to these Regulations, removes a web page shall not be liable for any damage-

- (a) suffered by the person who is or is attempting to access or view that web page; or
- (b) any other person who is affected by the removal of a web page containing child pornography if the internet service provider has taken reasonable steps to prevent damage to that person.

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(2) In subsection (1) “removal” includes any steps that blocks access to the webpage.

(3) Subregulation (1) applies to any other web pages that are affected by the removal of the relevant web page, notwithstanding that those other pages may not contain child pornography.

(4) An internet service provider who, pursuant to regulation 4(3), continues to host a web page containing or disseminating child pornography is not liable under civil or criminal law for continuing to host the web page containing or disseminating child pornography.

**Codes of practice.**

7.(1) The Authority may issue codes of practice for the purposes of combating child pornography.

(2) A code of practice issued under this Regulation shall state to which authorised persons it applies.

(3) If the Authority is satisfied that an authorised person has failed to comply with a code of practice, the Authority may (subject to the following provisions) serve on him a notice requiring him to pay, within a specified period, a specified financial penalty to the Government.

(4) The amount of any financial penalty imposed on any authorised person in pursuance of subsection (3) shall not exceed 5 per cent of the relevant turnover for the authorised person’s last complete accounting period.

(5) The Authority shall not serve on any authorised person such a notice as is mentioned in subsection (3) unless it has given the authorised person a reasonable opportunity of making representations to the Authority about the matter in question.

**Appeals.**

8.(1) A person who is aggrieved with the imposition of a financial penalty imposed under regulation 7 may appeal to the Magistrates’ Court within 21 days of receipt of the notice imposing the financial penalty.

(2) After considering an appeal under subregulation (1) the court may uphold, vary or quash the financial penalty.