

Subsidiary Legislation made under s.311.

Child Victims of Sexual Abuse and Exploitation Regulations 2013

LN.2013/188

Commencement **18.12.2013**

Transposing:

Directive 2011/93/EU

EU Legislation/International Agreements involved:

Council Framework Decision 2004/68/JHA

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SCHEDULE

2011-23

Crimes

2013/188

**Child Victims of Sexual Abuse and Exploitation
Regulations 2013**

In exercise of the powers conferred upon him by section 311 of the Crimes Act 2011 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 Child Victims of Sexual Abuse and Exploitation Regulations 2013 and come into operation on 18 December 2013.

Interpretation.

2. In these Regulations—

“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 victim” means a child who has been the victim of any of the offences described in Articles 3 to 7 of the Directive;

“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;

“Framework Decision 2001/220/JHA” means Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings;

“relevant body” any person, government department, authority or statutory body that comes into contact with a child victim and who has a statutory duty in respect of that child.

(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. Where these Regulations impose obligations on a relevant body those obligations shall be discharged having regard to the best interests of the child.

General provisions on assistance, support and protection measures for child victims.

4. A child must be provided with assistance and support as soon as a relevant body has a reasonable-grounds indication for believing that a child is a child victim.

Assistance and support to victims.

5.(1) The Government shall ensure that assistance and support is provided to a child victim before, during and for an appropriate period of time after the conclusion of criminal proceedings in order to enable the child victim to exercise the rights set out in-

- (a) Framework Decision 2001/220/JHA; and
- (b) the Directive.

(2) Where a child victim reports a case of abuse within the family the Government shall take the necessary steps to ensure the protection of that child.

(3) The assistance and support referred to in subregulations (1) and (2) shall not be made conditional on the child victim's willingness to cooperate in the criminal investigation, prosecution or trial.

(4) For the purpose of this regulation the Government shall ensure that a child victim receives an individual assessment of the special circumstances of that child and that due account is taken of the child's views, needs and concerns.

(5) Child victims shall be considered as particularly vulnerable victims pursuant to Article 2(2), Article 8(4) and Article 14(1) of Framework Decision 2001/220/JHA.

(6) A relevant body shall take measures, where appropriate and possible, to provide assistance and support to the family of the child victim in enjoying the rights under these Regulations when the family is in Gibraltar, and in particular, where appropriate and possible, a relevant body shall apply Article 4 of Framework Decision 2001/220/JHA to the family of the child victim.

Protection of child victims in criminal investigations and proceedings.

6.(1) The Government shall ensure that in criminal investigations and proceedings, in accordance with the role of victims in the justice system, the competent authorities appoint a special representative for the child victim if the holders of parental responsibility are precluded

from representing the child as a result of a conflict of interest between them and the child victim, or where the child is unaccompanied or separated from the child's family.

(2) The Government shall ensure that a child victim has, without delay, access to legal counselling and, in accordance with the role of victims in the relevant justice system, to legal representation, including for the purpose of claiming compensation.

(3) The legal counselling and legal representation referred to in subregulation (2) shall be free of charge where the child victim does not have sufficient financial resources.

(4) Without prejudice to the rights of the defence, in criminal investigations relating to any of the offences referred to in Articles 3 to 7 of the Directive—

- (a) interviews with the child victim shall—
 - (i) take place without unjustified delay after the facts have been reported to the police;
 - (ii) take place, where necessary, in premises designed or adapted for this purpose;
 - (iii) be carried out by or through professionals trained for this purpose; and
 - (iv) be conducted by the same persons, if possible and where appropriate;
- (b) the number of interviews shall be as few as possible and interviews shall be carried out only where strictly necessary for the purpose of the criminal investigations and proceedings; and
- (c) the child victim may be accompanied by a legal representative or, where appropriate, by an adult, of the child victim's choosing, unless a reasoned decision has been made to the contrary in respect of that person.

Additional programmes and measures.

7. The Government shall ensure that the matters set out in the Schedule are undertaken in accordance with and for the purposes of implementing Articles 22 to 24 of the Directive.

Directions.

8.(1) The Government may issue directions for the purpose of securing compliance with the provisions of these Regulations or the Directive.

(2) A direction issued under subregulation (1) shall be in writing and may state the time by which the direction must be complied with.

(3) A direction issued under subregulation (1) may be amended or revoked.

Appeal.

9. A person to whom a direction is addressed may, within 7 days from the date of receipt, appeal to the Magistrate's Court and the court may, if it upholds the appeal, quash the Direction, amend it or remit it back to the issuer with recommendations.

SCHEDULE

Regulation 7.

The matters referred to in regulation 7 are–

Preventive intervention programmes or measures.

1. The Government shall take such measures as a necessary to ensure that persons who fear that they might commit any of the offences referred to in Articles 3 to 7 of the Directive may have access, where appropriate, to effective intervention programmes or measures designed to evaluate and prevent the risk of such offences being committed.

Prevention.

2.(1) Appropriate measures, such as education and training, to discourage and reduce the demand that fosters all forms of sexual exploitation of children.

(2) Appropriate action, including through the Internet, such as information and awareness-raising campaigns, research and education programmes, where appropriate in cooperation with relevant civil society organisations and other stakeholders, aimed at raising awareness and reducing the risk of children, becoming victims of sexual abuse or exploitation.

(3) The promotion of regular training for officials likely to come into contact with child victims of sexual abuse or exploitation, including front-line police officers, aimed at enabling them to identify and deal with child victims and potential child victims of sexual abuse or exploitation.

Intervention programmes or measures on a voluntary basis in the course of or after criminal proceedings.

3.(1) The Government shall take the necessary measures to ensure that effective intervention programmes or measures are made available to the persons described in subparagraph (3), to prevent and minimise the risks of repeated offences of a sexual nature against children.

(2) Such programmes or measures shall be accessible at any time during the criminal proceedings, inside and outside prison, in accordance with national law and shall meet the specific developmental needs of children who sexually offend.

(3) The persons to whom this subparagraph applies are–

- (a) persons subject to criminal proceedings for any of the offences referred to in Articles 3 to 7 of the Directive, under conditions which are neither detrimental nor

contrary to the rights of the defence or to the requirements of a fair and impartial trial, and, in particular, in compliance with the principle of the presumption of innocence; and

- (b) persons convicted of any of the offences referred to in Articles 3 to 7 of the Directive.

(4) The Government shall take the necessary measures to ensure that the persons referred to in subparagraph (3) are subject to an assessment of the danger that they present and the possible risks of repetition of any of the offences referred to in Articles 3 to 7 of the Directive, with the aim of identifying appropriate intervention programmes or measures.

(5) Persons referred to in subparagraph (3) to whom intervention programmes or measures in accordance with subparagraph (4) have been proposed—

- (a) must be fully informed of the reasons for the proposal;
- (b) must consent to participation in the programmes or measures with full knowledge of the facts;
- (c) may refuse and, in the case of convicted persons, be aware of the possible consequences of such a refusal.