



Communications Act 2003

2003 CHAPTER 21

[^{F1}PART 4A

ON-DEMAND PROGRAMME SERVICES

Duties of service providers

[^{F1}368H Prohibition of product placement and exceptions

- (1) “Product placement”, in relation to a programme included in an on-demand programme service, means the inclusion in the programme of, or of a reference to, a product, service or trade mark, where the inclusion—
 - (a) is for a commercial purpose,
 - (b) is in return for the making of any payment, or the giving of other valuable consideration, to any relevant provider or any connected person, and
 - (c) is not prop placement.
- (2) “Prop placement”, in relation to a programme included in an on-demand programme service, means the inclusion in the programme of, or of a reference to, a product, service or trade mark where—
 - (a) the provision of the product, service or trade mark has no significant value; and
 - (b) no relevant provider, or person connected with a relevant provider, has received any payment or other valuable consideration in relation to its inclusion in, or the reference to it in, the programme, disregarding the costs saved by including the product, service or trademark, or a reference to it, in the programme.
- [^{F2}(3) Product placement is prohibited in any of the following included in on-demand programme services—
 - (a) children’s programmes;
 - (b) news and current affairs programmes;
 - (c) consumer affairs programmes;

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- (d) religious programmes.]
- (4) Product placement is prohibited in on-demand programme services if—
- (a) it is of cigarettes or other tobacco products,
 - (b) it is by or on behalf of an undertaking whose principal activity is the manufacture or sale of cigarettes or other tobacco products, ^{F3}...
 - ^{F4}(ba) [it is of electronic cigarettes or electronic cigarette refill containers, ^{F5}...]
 - ^{F6}(bb) [it is by or on behalf of an undertaking whose principal activity is the manufacture or sale of electronic cigarettes or electronic cigarette refill containers, or]
 - (c) it is of prescription-only medicines.
- (5) Product placement of alcoholic drinks must not —
- (a) be aimed specifically at persons under the age of eighteen;
 - (b) encourage immoderate consumption of such drinks.
- (6) Product placement is otherwise permitted in programmes included in on-demand programme services provided that—
- (a) conditions [^{F7}B] to F are met, and
 - (b) if subsection (14) applies, condition G is also met.
- ^{F8}(7)
- (8) Condition B is that the product placement has not influenced the content of the programme in a way that affects the editorial independence of the provider of the service.
- (9) Condition C is that the product placement does not directly encourage the purchase or rental of goods or services, whether by making promotional reference to those goods or services or otherwise.
- (10) Condition D is that the programme does not give undue prominence to the products, services or trade marks concerned.
- (11) Condition E is that the product placement does not use techniques which exploit the possibility of conveying a message subliminally or surreptitiously.
- (12) Condition F is that the way in which the product, service or trade mark, or the reference to it, is included in the programme by way of product placement does not—
- (a) prejudice respect for human dignity;
 - (b) promote discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation;
 - (c) encourage behaviour prejudicial to health or safety;
 - (d) encourage behaviour grossly prejudicial to the protection of the environment;
 - (e) cause physical [^{F9}, mental] or moral detriment to persons under the age of eighteen;
 - ^{F10}(ea) [directly exhort such persons to purchase or rent goods or services in a manner which exploits their inexperience or credulity;]
 - (f) directly encourage such persons to persuade their parents or others to purchase or rent goods or services;
 - (g) exploit the trust of such persons in parents, teachers or others; or
 - (h) unreasonably show such persons in dangerous situations.

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- (13) Condition G is that the on-demand programme service in question signals appropriately the fact that product placement is contained in a programme, no less frequently than—
- (a) at the start and end of such a programme, and
 - (b) in the case of an on-demand programme service which includes advertising breaks within it, at the recommencement of the programme after each such advertising break.
- (14) This subsection applies where the programme featuring the product placement has been produced or commissioned by the provider of the service or any connected person.
- (15) [^{F11}Subject to [^{F12}subsections (15A), (15B) and (15C)],] this section applies only in relation to programmes the production of which begins after 19th December 2009.
- ^{F13}[Subsection (4)(ba) applies only in relation to programmes the production of which (15A) begins after 19th May 2016.]
- ^{F14}[Subsection (4)(bb) applies only in relation to programmes the production of which (15B) begins after 31 October 2020.]
- (15C) This section applies in relation to a programme the production of which began before 1 November 2020 as if—
- (a) subsection (3)(b) to (d) were omitted, and
 - (b) subsection (6)(a) included a reference to a condition that the programme in which the product, service or trademark, or the reference to it, is included is—
 - (i) a film made for cinema,
 - (ii) a film or series made for a television programme service or for an on-demand programme service,
 - (iii) a sports programme, or
 - (iv) a light entertainment programme.]
- (16) In this section—
- “connected” has the same meaning as it has in the Broadcasting Act 1990 by virtue of section 202 of that Act;
- “film made for cinema” means a film made with a view to its being shown to the general public first in a cinema;
- “producer”, in relation to a programme, means the person by whom the arrangements necessary for the making of the programme are undertaken;
- [^{F15}“programme” does not include an advertisement;]
- “relevant provider”, in relation to a programme, means—
- (a) the provider of the on-demand programme service in which the programme is included; and
 - (b) the producer of the programme;
- “residual value” means any monetary or other economic value in the hands of the relevant provider other than the cost saving of including the product, service or trademark, or a reference to it, in a programme;
- “significant value” means a residual value that is more than trivial; and
- “trade mark”, in relation to a business, includes any image (such as a logo) or sound commonly associated with that business or its products or services.]

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Textual Amendments

- F1** Pt. 4A inserted (19.12.2009) by [Audiovisual Media Services Regulations 2009 \(S.I. 2009/2979\)](#), regs. 1(1), **2**
- F2** [S. 368H\(3\)](#) substituted (1.11.2020) by [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\)](#), regs. 1(2), **35(a)** (with Pt. 7)
- F3** Word in s. 368H(4)(b) omitted (20.5.2016) by virtue of [The Tobacco and Related Products Regulations 2016 \(S.I. 2016/507\)](#), regs. 1(2), **46(4)(a)**
- F4** [S. 368H\(4\)\(ba\)](#) inserted (20.5.2016) by [The Tobacco and Related Products Regulations 2016 \(S.I. 2016/507\)](#), regs. 1(2), **46(4)(b)**
- F5** Word in s. 368H(4) omitted (1.11.2020) by virtue of [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\)](#), regs. 1(2), **35(b)(i)** (with Pt. 7)
- F6** [S. 368H\(4\)\(bb\)](#) inserted (1.11.2020) by [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\)](#), regs. 1(2), **35(b)(ii)** (with Pt. 7)
- F7** Word in s. 368H(6)(a) substituted (1.11.2020) by [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\)](#), regs. 1(2), **35(c)** (with Pt. 7)
- F8** [S. 368H\(7\)](#) omitted (1.11.2020) by virtue of [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\)](#), regs. 1(2), **35(d)** (with Pt. 7)
- F9** Word in s. 368H(12)(e) inserted (1.11.2020) by [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\)](#), regs. 1(2), **35(e)** (with Pt. 7)
- F10** [S. 368H\(12\)\(ea\)](#) inserted (1.11.2020) by [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\)](#), regs. 1(2), **35(f)** (with Pt. 7)
- F11** Words in s. 368H(15) inserted (20.5.2016) by [The Tobacco and Related Products Regulations 2016 \(S.I. 2016/507\)](#), regs. 1(2), **46(4)(c)**
- F12** Words in s. 368H(15) substituted (1.11.2020) by [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\)](#), regs. 1(2), **35(g)** (with Pt. 7)
- F13** [S. 368H\(15A\)](#) inserted (20.5.2016) by [The Tobacco and Related Products Regulations 2016 \(S.I. 2016/507\)](#), regs. 1(2), **46(4)(d)**
- F14** [S. 368H\(15B\)\(15C\)](#) inserted (1.11.2020) by [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\)](#), regs. 1(2), **35(h)** (with Pt. 7)
- F15** Words in s. 368H(16) inserted (16.4.2010) by [The Audiovisual Media Services \(Product Placement\) Regulations 2010 \(S.I. 2010/831\)](#), regs. 1(1), **7**

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Changes and effects yet to be applied to :

- specified provision(s) amendment to earlier commencing SI 2003/1900, art. 3(2) by [S.I. 2003/3142 art. 1\(3\)](#)
- specified provision(s) amendment to earlier commencing SI 2003/3142 by [S.I. 2004/1492 art. 2](#)
- specified provision(s) amendment to earlier commencing SI 2003/3142 by [S.I. 2004/697 art. 2](#)
- specified provision(s) amendment to earlier commencing SI 2003/3142 art. 4 Sch. 2 by [S.I. 2004/545 art. 2](#)

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 124Q(7)(a) words substituted by [2013 c. 22 Sch. 9 para. 52](#)
- s. 148A and cross-heading inserted by [2022 c. 46 s. 73\(2\)](#)
- s. 368E(5)(d)(e) inserted by [2017 c. 30 s. 94\(3\)](#)
- s. 402(2A)(za)(zb) inserted by [2022 c. 46 Sch. para. 2](#)
- Sch. 3A para. 21(6) inserted by [2022 c. 46 Sch. para. 3\(5\)\(b\)](#)
- Sch. 3A para. 37(3)(aza) inserted by [2022 c. 46 Sch. para. 3\(9\)](#)
- Sch. 3A para. 84(1)(aza) inserted by [2022 c. 46 Sch. para. 3\(10\)](#)
- Sch. 3A para. 103(1)(ca) inserted by [2022 c. 46 s. 70](#)
- Sch. 3A para. 119A inserted by [2022 c. 46 s. 72](#)
- Sch. 3A Pt. 4ZA inserted by [2022 c. 46 s. 67\(1\)](#)