

SCHEDULES

SCHEDULE 3

Section 69

PAEDOPHILE MANUALS: PROVIDERS OF INFORMATION SOCIETY SERVICES

Interpretation of this Schedule

- 1 (1) “Prohibited item” means an item within section 69(1).
- (2) “Information society services”—
 - (a) has the meaning given in Article 2(a) of the E-Commerce Directive (which refers to Article 1(2) of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations), and
 - (b) is summarised in recital 17 of the E-Commerce Directive as covering “any service normally provided for remuneration, at a distance, by means of electronic equipment for the processing (including digital compression) and storage of data, and at the individual request of a recipient of a service”.
- (3) “The E-Commerce Directive” means Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce).
- (4) “Recipient”, in relation to a service, means a person who, for professional ends or otherwise, uses an information society service, in particular for the purposes of seeking information or making it accessible.
- (5) “Service provider” means a person providing an information society service.
- (6) “Domestic service provider” means a service provider established in England and Wales or Northern Ireland.
- (7) “Non-UK service provider” means a service provider established in an EEA state other than the United Kingdom.
- (8) For the purposes of sub-paragraphs (6) and (7)—
 - (a) a service provider is established in a particular part of the United Kingdom, or in a particular EEA state, if the service provider—
 - (i) effectively pursues an economic activity using a fixed establishment in that part of the United Kingdom, or that EEA state, for an indefinite period, and
 - (ii) is a national of an EEA state or a company or firm mentioned in Article 54 of the Treaty on the Functioning of the European Union;
 - (b) the presence or use in a particular place of equipment or other technical means of providing an information society service does not, of itself, constitute the establishment of a service provider;

- (c) where it cannot be determined from which of a number of establishments a given information society service is provided, that service is to be regarded as provided from the establishment at the centre of the service provider’s activities relating to that service.

Domestic service providers: extension of liability

- 2 (1) Section 69(1) applies to a domestic service provider who, in the course of providing information society services, is in possession of a prohibited item in an EEA state other than the United Kingdom (as well as to a person, of any description, who is in possession of a prohibited item in England and Wales or Northern Ireland).
- (2) Proceedings for an offence under section 69(1), as it applies to a domestic service provider by virtue of sub-paragraph (1), may be taken at any place in England and Wales or Northern Ireland.
- (3) Nothing in this paragraph affects the operation of any of paragraphs 4 to 6.

Non-UK service providers: restriction on institution of proceedings

- 3 (1) Proceedings for an offence under section 69(1) may not be taken against a non-UK service provider in respect of anything done in the course of the provision of information society services unless the derogation condition is met.
- (2) The derogation condition is that taking proceedings—
 - (a) is necessary for the purposes of the public interest objective,
 - (b) relates to an information society service that prejudices that objective or presents a serious and grave risk of prejudice to that objective, and
 - (c) is proportionate to that objective.
- (3) “The public interest objective” means the pursuit of public policy.

Exception for mere conduits

- 4 (1) A service provider does not commit an offence under section 69(1) by providing access to a communication network or by transmitting, in a communication network, information provided by a recipient of the service, if the service provider does not—
 - (a) initiate the transmission,
 - (b) select the recipient of the transmission, or
 - (c) select or modify the information contained in the transmission.
- (2) For the purposes of sub-paragraph (1)—
 - (a) providing access to a communication network, and
 - (b) transmitting information in a communication network,
 include the automatic, intermediate and transient storage of the information transmitted so far as the storage is solely for the purpose of carrying out the transmission in the network.
- (3) Sub-paragraph (2) does not apply if the information is stored for longer than is reasonably necessary for the transmission.

Exception for caching

- 5 (1) A service provider does not commit an offence under section 69(1) by storing information provided by a recipient of the service for transmission in a communication network if the first and second conditions are met.
- (2) The first condition is that the storage of the information—
- (a) is automatic, intermediate and temporary, and
 - (b) is solely for the purpose of making more efficient the onward transmission of the information to other recipients of the service at their request.
- (3) The second condition is that the service provider—
- (a) does not modify the information,
 - (b) complies with any conditions attached to having access to the information, and
 - (c) if sub-paragraph (4) applies, promptly removes the information or disables access to it.
- (4) This sub-paragraph applies if the service provider obtains actual knowledge that—
- (a) the information at the initial source of the transmission has been removed from the network,
 - (b) access to it has been disabled, or
 - (c) a court or administrative authority has ordered the removal from the network of, or the disablement of access to, the information.

Exception for hosting

- 6 (1) A service provider does not commit an offence under section 69(1) by storing information provided by a recipient of the service if—
- (a) the service provider had no actual knowledge when the information was provided that it was, or contained, a prohibited item, or
 - (b) on obtaining actual knowledge that the information was, or contained, a prohibited item, the service provider promptly removed the information or disabled access to it.
- (2) Sub-paragraph (1) does not apply if the recipient of the service is acting under the authority or control of the service provider.