

SCHEDULES

SCHEDULE 4

PROVIDERS OF INFORMATION SOCIETY SERVICES

PART 1

OFFERING TO SUPPLY A PSYCHOACTIVE SUBSTANCE

Domestic service providers: extension of liability

- 1 (1) If—
- (a) a service provider established in a particular part of the United Kingdom does anything in an EEA state other than the United Kingdom in the course of providing information society services, and
 - (b) the action, if done in that part of the United Kingdom, would constitute an offence under section 5(2),
- the service provider is guilty in that part of the United Kingdom of such an offence.
- (2) Nothing in this paragraph affects the operation of paragraphs 3 to 5.

Non-UK service providers: restriction on institution of proceedings

- 2 (1) Proceedings for an offence under section 5(2) may not be instituted 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) In this paragraph—
- “non-UK service provider” means a service provider established in an EEA state other than the United Kingdom;
 - “the public interest objective” means the pursuit of public policy.

Exceptions for mere conduits

- 3 (1) A service provider does not commit an offence under section 5(2) 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

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- (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

- 4 (1) A service provider does not commit an offence under section 5(2) 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

- 5 (1) A service provider does not commit an offence under section 5(2) 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 its provision constituted an offence under section 5(2), or
 - (b) on obtaining actual knowledge that the provision of the information constituted such an offence, 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.