

*Status: Point in time view as at 24/04/2017. This version of this  
schedule contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Abusive  
Behaviour and Sexual Harm (Scotland) Act 2016, SCHEDULE 1. (See end of Document for details)*

VALID FROM 03/07/2017

## SCHEDULE 1

*(introduced by section 4)*

### SECTION 2: SPECIAL PROVISION IN RELATION TO PROVIDERS OF INFORMATION SOCIETY SERVICES

#### *Exceptions for mere conduits*

- 1 (1) A service provider is not capable of being guilty of an offence under section 2 in respect of anything done in the course of providing so much of an information society service as consists in—
- (a) the provision of access to a communication network, or
  - (b) the transmission in a communication network of information provided by a recipient of the service,
- if the transmission condition is satisfied.
- (2) The transmission condition is satisfied 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.
- (3) For the purposes of sub-paragraph (1)—
- (a) the provision of access to a communication network, and
  - (b) the transmission of information in a communication network,
- includes the automatic, intermediate and transient storage of the information transmitted as far as the storage is solely for the purpose of carrying out the transmission in the network.
- (4) Sub-paragraph (3) does not apply if the information is stored for longer than is reasonably necessary for the transmission.

#### *Exception for caching*

- 2 (1) This paragraph applies where an information society service consists in the transmission in a communication network of information provided by a recipient of the service.
- (2) The service provider is not capable of being guilty of an offence under section 2 in respect of the automatic, intermediate and temporary storage of information so provided, if—
- (a) the storage of the information is solely for the purpose of making more efficient the onward transmission of the information to other recipients of the service at their request, and
  - (b) the condition in sub-paragraph (3) is satisfied.
- (3) The condition is that the service provider—
- (a) does not modify the information,

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(b) complies with any conditions attached to having access to the information, and

(c) where sub-paragraph (4) applies, expeditiously 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 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*

3 (1) A service provider is not capable of being guilty of an offence under section 2 in respect of anything done in the course of providing so much of an information society service as consists of the storage of information provided by a recipient of the service, if sub-paragraph (2) or (3) is satisfied.

(2) This sub-paragraph is satisfied if the service provider had no actual knowledge when the information was provided that the provision of the information amounted to an offence under section 2.

(3) This sub-paragraph is satisfied if, on obtaining such knowledge, the service provider expeditiously removed the information or disabled access to it.

(4) Sub-paragraph (1) does not apply if the recipient of the service is acting under the authority or control of the service provider.

#### *Interpretation*

4 (1) In this schedule—  
“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”,

“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,

“service provider” means a person providing an information society service.

(2) In sub-paragraph (1), “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).

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