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**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)

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## 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.

#### **Commencement Information**

**II** Sch. 1 para. 1 in force at 3.7.2017 by S.S.I. 2017/183, reg. 2(c)

#### *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.

#### Commencement Information

**I2** Sch. 1 para. 2 in force at 3.7.2017 by S.S.I. 2017/183, reg. 2(c)

#### *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.

#### Commencement Information

**I3** Sch. 1 para. 3 in force at 3.7.2017 by S.S.I. 2017/183, reg. 2(c)

#### *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”,

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“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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**Commencement Information**

**I4**    [Sch. 1 para. 4](#) in force at 3.7.2017 by [S.S.I. 2017/183](#), [reg. 2\(c\)](#)

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