
STATUTORY INSTRUMENTS

2020 No. 1062

The Audiovisual Media Services Regulations 2020

PART 4

Video-sharing platform services

46. The Communications Act 2003⁽¹⁾ is amended in accordance with this Part.
47. After Part 4A insert—

“PART 4B

VIDEO-SHARING PLATFORM SERVICES

Preliminary

368S Meaning of “video-sharing platform service”

(1) In this Part “video-sharing platform service” means a service or dissociable section of a service which meets the conditions in subsection (2), where the provision of videos to members of the public is—

- (a) the principal purpose of the service or of the dissociable section of the service, or
 - (b) an essential functionality of the service.
- (2) The conditions in relation to the service or dissociable section of the service are—
- (a) it is provided by means of an electronic communications network;
 - (b) it is provided on a commercial basis;
 - (c) the person providing it—
 - (i) does not have general control over what videos are available on it, but
 - (ii) does have general control over the manner in which videos are organised on it (and in this sub-paragraph “organised” includes being organised automatically or by way of algorithms, in particular by displaying, tagging and sequencing); and
 - (d) that person is under the jurisdiction of the United Kingdom for the purposes of the Audiovisual Media Services Directive.

368T The appropriate regulatory authority

(1) OFCOM may designate any body corporate to be, to the extent provided by the designation, the appropriate regulatory authority for the purposes of any provision of this Part, subject to subsection (9).

(2) To the extent that no body is designated for a purpose, OFCOM is the appropriate regulatory authority for that purpose.

(3) Where a body is designated for a purpose, OFCOM may act as the appropriate regulatory authority for that purpose concurrently with or in place of that body.

(4) OFCOM may provide a designated body with assistance in connection with any of the functions of the body under this Part.

(5) A designation may in particular—

- (a) provide for a body to be the appropriate regulatory authority in relation to video-sharing platform services of a specified description;
- (b) provide that a function of the appropriate regulatory authority is exercisable by the designated body—
 - (i) to such extent as may be specified;
 - (ii) either generally or in such circumstances as may be specified; and
 - (iii) either unconditionally or subject to such conditions as may be specified.

(6) The conditions that may be specified pursuant to subsection (5)(b)(iii) include a condition to the effect that a function may, generally or in specified circumstances, be exercised by the body only with the agreement of OFCOM.

(7) A designation has effect for such period as may be specified and may be revoked by OFCOM at any time.

(8) OFCOM must publish any designation in such manner as they consider appropriate for bringing it to the attention of persons who, in their opinion, are likely to be affected by it.

(9) OFCOM may not designate a body unless, as respects that designation, they are satisfied that the body—

- (a) is a fit and proper body to be designated;
- (b) has consented to being designated;
- (c) has access to financial resources that are adequate to ensure the effective performance of its functions as the appropriate regulatory authority;
- (e) is sufficiently independent of providers of video-sharing platform services; and
- (f) will, in performing any function to which the designation relates, have regard in all cases—
 - (i) to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed; and
 - (ii) to such of the matters mentioned in section 3(4) as appear to the body to be relevant in the circumstances.

(10) Subject to any enactment or rule of law restricting the disclosure or use of information by OFCOM or by a designated body—

- (a) a designated body may supply information to another designated body for use by that other body in connection with any of its functions as the appropriate regulatory authority;

- (b) a designated body may supply information to OFCOM for use by OFCOM in connection with any of their functions under this Part;
 - (c) OFCOM may supply information to a designated body for use by that body in connection with any of its functions as the appropriate regulatory authority;
 - (d) OFCOM may supply information to the video works authority, within the meaning of section 368E, for use by the video works authority in connection with functions of OFCOM as the appropriate regulatory authority;
 - (e) a designated body may supply information to the video works authority, within the meaning of section 368E, for use by the video works authority in connection with functions of the designated body as the appropriate regulatory authority.
- (11) In carrying out their functions as the appropriate regulatory authority, a designated body may carry out, commission or support (financially or otherwise) research.
- (12) In this section—
- “designation” means a designation under this section and cognate expressions are to be construed accordingly;
 - “specified” means specified in a designation.

List of providers

368U Maintenance of list of providers

- (1) OFCOM must establish and maintain an up to date list of persons providing a video-sharing platform service.
- (2) The list must indicate in respect of each person which of the criteria set out in paragraphs 1 to 4 of Article 28a of the Audiovisual Media Services Directive is the basis for the decision that they are under the jurisdiction of the United Kingdom (see section 368S(2) (d)).
- (3) OFCOM must notify the European Commission of the contents of the list and of any updates to it.

Notification by providers

368V Advance notification to appropriate regulatory authority

- (1) A person must not provide a video-sharing platform service unless, before beginning to provide it, that person has given a notification to the appropriate regulatory authority of the person’s intention to provide that service.
- (2) A person who has given a notification for the purposes of subsection (1) must, before—
- (a) providing the notified service with any significant differences; or
 - (b) ceasing to provide it,
- give a notification to the appropriate regulatory authority of the differences or (as the case may be) of the intention to cease to provide the service.
- (3) A notification for the purposes of this section must—
- (a) be sent to the appropriate regulatory authority in such manner as the authority may require; and
 - (b) contain all such information as the authority may require.

(4) In this section, “significant differences” includes any change that may affect the determination of jurisdiction in accordance with paragraphs 1 to 4 of Article 28a of the Audiovisual Media Services Directive.

368W Enforcement of section 368V

(1) Where the appropriate regulatory authority determine that a provider of a video-sharing platform service has contravened section 368V, they may do one or both of the following—

- (a) give the provider an enforcement notification under this section;
- (b) impose a financial penalty on the provider in accordance with section 368Z4.

(2) The appropriate regulatory authority must not make a determination as mentioned in subsection (1) unless there are reasonable grounds for believing that a contravention of section 368V has occurred and they have allowed the provider an opportunity to make representations about that apparent contravention.

(3) An enforcement notification under this section is a notification which specifies the determination made as mentioned in subsection (1) and imposes a requirement on the provider to take all such steps for remedying the contravention of section 368V as may be specified in the notification.

(4) An enforcement notification must—

- (a) include reasons for the appropriate regulatory authority’s decision to give the enforcement notification, and
- (b) fix a reasonable period for taking the steps required by the notification.

(5) It is the duty of a person to whom an enforcement notification has been given to comply with it.

(6) That duty is enforceable in civil proceedings by the appropriate regulatory authority—

- (a) for an injunction;
- (b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988; or
- (c) for any other appropriate remedy or relief.

Duties of the appropriate regulatory authority

368X Duties of the appropriate regulatory authority

(1) It is the duty of the appropriate regulatory authority to take such steps as appear to them best calculated to secure that every provider of a video-sharing platform service complies with the requirements of sections 368Y and 368Z1(6) and (7).

(2) The appropriate regulatory authority must encourage providers of video-sharing platform services to develop codes of conduct regarding standards concerning the appropriate promotion of food or beverages in audiovisual commercial communications which are included in, or accompany, videos containing material which is likely to appeal to children.

(3) The appropriate regulatory authority must draw up, and from time to time review and revise, guidance for providers of video-sharing platform services concerning the measures set out in Schedule 15A which may be appropriate for the purposes mentioned in section 368Z1(1), and the implementation of such measures.

Duties of service providers

368Y Duties of service providers

(1) The provider of a video-sharing platform service must ensure that the service complies with the requirements of section 368Z.

(2) The provider of a video-sharing platform service (“P”) must publish the following information on a publicly accessible part of that service’s website—

- (a) P’s name;
- (b) P’s address;
- (c) P’s electronic address;
- (d) a statement that P is under the jurisdiction of the United Kingdom for the purposes of the Audiovisual Media Services Directive;
- (e) the name, address and electronic address of any body which is the appropriate regulatory authority for any purpose in relation to P or the video-sharing platform service that P provides.

(3) The provider of a video-sharing platform service must—

- (a) pay to the appropriate regulatory authority such fee as that authority may require under section 368Z9;
- (b) comply with any requirement under section 368Z10;
- (c) co-operate fully with the appropriate regulatory authority for any purpose mentioned in section 368Z10(3).

(4) In this section “electronic address” means an electronic address to which electronic communications may be sent, and includes any number or address used for the purposes of receiving such communications.

368Z Advertising etc controlled by service providers

(1) In this section, references to audiovisual commercial communications, in relation to a video-sharing platform service, are to audiovisual commercial communications that are marketed, sold or arranged by the person providing that service.

(2) Audiovisual commercial communications for the following products are prohibited in a video-sharing platform service—

- (a) cigarettes or other tobacco products;
- (b) electronic cigarettes or electronic cigarette refill containers;
- (c) any prescription-only medicine.

(3) Audiovisual commercial communications for alcoholic drinks are only permitted in a video-sharing platform service if—

- (a) they are not aimed specifically at persons under the age of 18, and
- (b) they do not encourage immoderate consumption of alcohol.

(4) Audiovisual commercial communications included in a video-sharing platform service—

- (a) must be readily recognisable as such, and
- (b) must not use techniques which exploit the possibility of conveying a message subliminally or surreptitiously.

(5) Audiovisual commercial communications included in a video-sharing platform service must not—

- (a) prejudice respect for human dignity;
- (b) include or 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, mental or moral detriment to persons under the age of 18;
- (f) directly exhort such persons to purchase or rent goods or services in a manner which exploits their inexperience or credulity;
- (g) directly encourage such persons to persuade their parents or others to purchase or rent goods or services;
- (h) exploit the trust of such persons in parents, teachers or others; or
- (i) unreasonably show such persons in dangerous situations.

(6) In this section—

“electronic cigarette” means a product that—

- (a) can be used for the consumption of nicotine-containing vapour via a mouth piece, or any component of that product, including a cartridge, a tank and the device without cartridge or tank (regardless of whether the product is disposable or refillable by means of a refill container and a tank, or rechargeable with single use cartridges), and
- (b) is not a medicinal product within the meaning of regulation 2 of the Human Medicines Regulations 2012 (S.I. 2012/1916)(2) or a medical device within the meaning of regulation 2 of the Medical Devices Regulations 2002 (S.I. 2002/618)(3);

“electronic cigarette refill container” means a receptacle that—

- (a) contains a nicotine-containing liquid, which can be used to refill an electronic cigarette, and
- (b) is not a medicinal product within the meaning of regulation 2 of the Human Medicines Regulations 2012 or a medical device within the meaning of regulation 2 of the Medical Devices Regulations 2002;

“prescription-only medicine” means a prescription only medicine within the meaning of regulation 5(3) of the Human Medicines Regulations 2012;

“tobacco product” has the meaning given in section 1 of the Tobacco Advertising and Promotion Act 2002(4).

368Z1 Duty to take appropriate measures

(1) A person who provides a video-sharing platform service must, in relation to that service, take such of the measures set out in Schedule 15A as are appropriate for the purposes of—

- (a) protecting persons under the age of 18 from videos and audiovisual commercial communications containing restricted material;

(2) S.I. 2012/1916; there are amending instruments but none is relevant.

(3) S.I. 2002/618; there are amending instruments but none is relevant.

(4) 2002 c. 36.

- (b) protecting the general public from videos and audiovisual commercial communications containing relevant harmful material; and
- (c) in relation to audiovisual commercial communications that are not marketed, sold or arranged by the person providing the service, ensuring that—
 - (i) audiovisual commercial communications for a product mentioned in section 368Z(2) are not included in the service,
 - (ii) audiovisual commercial communications for alcoholic drinks are only included in the service if they meet the requirements in section 368Z(3), (4) and (5), and
 - (iii) audiovisual commercial communications for anything else are only included in the service if they meet the requirements in section 368Z(4) and (5).

(2) Where a provider of a video-sharing platform service takes a measure set out in Schedule 15A, the provider must implement the measure in such a way as to carry out the purpose or purposes mentioned in subsection (1) for which the measure is appropriate.

(3) The requirement in subsection (2) is not to be regarded as imposing on a provider of a video-sharing platform service a general obligation of the description given in Article 15(1) of [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⁽⁵⁾.

(4) Whether a measure is appropriate for any of the purposes mentioned in subsection (1) must be determined by whether it is practicable and proportionate for the measure to be taken, taking into account—

- (a) the size and nature of the video-sharing platform service;
- (b) the nature of the material in question;
- (c) the harm the material in question may cause;
- (d) the characteristics of the category of persons to be protected;
- (e) in relation to audiovisual commercial communications that are not marketed, sold or arranged by a person providing a video-sharing platform service, the fact that the provider exercises limited control over such communications;
- (f) the rights and legitimate interests at stake, including those of the person providing the video-sharing platform service and the persons having created or uploaded the material, as well as the general public interest;
- (g) any other measures which have been taken, or are to be taken.

(5) When determining whether a measure is appropriate for the purpose mentioned in subsection (1)(a), the principle that restricted material that has the most potential to harm the physical, mental or moral development of persons under the age of 18 must be subject to the strictest access control measures must be applied.

(6) Where a person uploading a video to a video-sharing platform service declares that the video contains an audiovisual commercial communication, or the provider of the service knows that such a video contains an audiovisual commercial communication, the provider must clearly inform viewers that the video contains an audiovisual commercial communication.

(7) A person who provides a video-sharing platform service must provide for an impartial out-of-court procedure for the resolution of any dispute between a person using the service and the provider relating to—

- (a) the implementation of any measure set out in Schedule 15A, or
- (b) a decision to take, or not to take, any such measure,

but the provision of or use of this procedure must not affect the ability of a person using the service to bring a claim in civil proceedings.

(8) In this section—

“access control measures” means measures designed to control whether or how individuals are able to access videos or audiovisual commercial communications included in a video-sharing platform service;

“relevant harmful material” means—

- (a) material referred to in section 368E(1), or
- (b) material referred to in section 368E(3)(za) (read as if the reference to an on-demand programme service were to a video-sharing platform service);

“restricted material” means—

- (a) material which is prohibited material within the meaning of section 368E by virtue of falling within paragraph (a) or (b) of subsection (3) of that section, or
- (b) specially restricted material within the meaning of section 368E (see subsection (5) of that section).

Enforcement

368Z2 Enforcement of sections 368Y and 368Z1(6) and (7)

(1) Where the appropriate regulatory authority determine that a provider of a video-sharing platform service is contravening or has contravened section 368Y or 368Z1(6) or (7) they may do one or both of the following—

- (a) give the provider an enforcement notification under this section;
- (b) impose a financial penalty on the provider in accordance with section 368Z4.

(2) The appropriate regulatory authority must not make a determination as mentioned in subsection (1) unless there are reasonable grounds for believing that a contravention of section 368Y or 368Z1(6) or (7) is occurring or has occurred and they have allowed the provider an opportunity to make representations about that apparent contravention.

(3) An enforcement notification under this section is a notification which specifies the determination made as mentioned in subsection (1) and imposes requirements on the provider to take such steps for complying with section 368Y or 368Z1(6) or (7) and for remedying the consequences of the contravention as may be specified in the notification.

(4) The requirements specified in an enforcement notification may in particular include requirements to do one or more of the following—

- (a) cease providing or restrict access to—
 - (i) a specified video, or
 - (ii) videos of a specified description;
- (b) cease showing or restrict access to—
 - (i) a specified audiovisual commercial communication, or

- (ii) audiovisual commercial communications of a specified description;
 - (c) provide additional information about the content of a specified video or videos of a specified description prior to the selection of that video or a video of that description by an individual for viewing;
 - (d) provide an out-of-court procedure of a specified description for resolving disputes between the provider and a person using the service;
 - (e) show an audiovisual commercial communication marketed, sold or arranged by the provider on the service only with specified modifications; or
 - (f) publish a statement of the findings of the appropriate regulatory authority in the form and place and for the time period specified.
- (5) An enforcement notification must—
- (a) include reasons for the appropriate regulatory authority’s decision to give the enforcement notification, and
 - (b) fix a reasonable period for taking the steps required by the notification.
- (6) Where a person is required by an enforcement notification to publish a statement of findings, the person may publish with the statement of findings a statement that it is published in pursuance of the enforcement notification.
- (7) It is the duty of a person to whom an enforcement notification has been given to comply with it.
- (8) That duty is enforceable in civil proceedings by the appropriate regulatory authority—
- (a) for an injunction;
 - (b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988(6); or
 - (c) for any other appropriate remedy or relief.
- (9) If a person to whom an enforcement notification has been given does not comply with it within the period fixed by the appropriate regulatory authority in that enforcement notification, the appropriate regulatory authority may impose a financial penalty on that person in accordance with section 368Z4.

368Z3 Enforcement of section 368Z1(1) and (2)

- (1) Where the appropriate regulatory authority determine that a provider of a video-sharing platform service—
- (a) has failed to take a measure set out in Schedule 15A which the authority consider to be appropriate in relation to that service for any of the purposes mentioned in subsection (1) of section 368Z1, or
 - (b) has failed to comply with subsection (2) of that section,
- the authority may take one or both of the actions mentioned in subsection (2).
- (2) The actions are—
- (a) give the provider an enforcement notification under this section;
 - (b) impose a financial penalty on the provider in accordance with section 368Z4.
- (3) The appropriate regulatory authority must not make a determination as mentioned in subsection (1) unless there are reasonable grounds for believing that a failure mentioned

in paragraph (a) or (b) of subsection (1) is occurring or has occurred and they have allowed the provider an opportunity to make representations about that apparent failure.

(4) An enforcement notification under this section is a notification which specifies the determination made as mentioned in subsection (1) and imposes requirements on the provider to take such steps for complying with section 368Z1(1) or (2) and for remedying the failure as may be specified in the notification.

(5) The requirements specified in an enforcement notification may in particular include requirements to do one or more of the following—

- (a) cease providing or restrict access to—
 - (i) a specified video, or
 - (ii) videos of a specified description;
- (b) cease showing or restrict access to—
 - (i) a specified audiovisual commercial communication, or
 - (ii) audiovisual commercial communications of a specified description;
- (c) provide additional information about the content of a specified video or videos of a specified description prior to the selection of that video or a video of that description by an individual for viewing;
- (d) provide additional information about the content of a specified audiovisual commercial communication or audiovisual commercial communications of a specified description included in or accompanying a video prior to the selection of that video by an individual for viewing;
- (e) take a specified measure set out in Schedule 15A that the appropriate regulatory authority consider to be appropriate for any of the purposes mentioned in section 368Z1(1);
- (f) make specified changes to the way in which a provider implements a measure set out in Schedule 15A;
- (g) show a video or an audiovisual commercial communication on the service only with specified modifications; or
- (h) publish a statement of the findings of the appropriate regulatory authority in the form and place and for the time period specified.

(6) An enforcement notification must—

- (a) include reasons for the appropriate regulatory authority's decision to give the enforcement notification, and
- (b) fix a reasonable period for taking the steps required by the notification.

(7) Where a person is required by an enforcement notification to publish a statement of findings, the person may publish with the statement of findings a statement that it is published in pursuance of the enforcement notification.

(8) It is the duty of a person to whom an enforcement notification has been given to comply with it.

(9) That duty is enforceable in civil proceedings by the appropriate regulatory authority—

- (a) for an injunction;
- (b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988; or
- (c) for any other appropriate remedy or relief.

(10) If a person to whom an enforcement notification has been given does not comply with it within the period fixed by the appropriate regulatory authority in that enforcement notification, the appropriate regulatory authority may impose a financial penalty on that person in accordance with section 368Z4.

368Z4 Financial penalties

(1) The amount of a penalty imposed on a provider of a video-sharing platform service under section 368W, 368Z2 or 368Z3 is to be such amount not exceeding 5% of the provider's applicable qualifying revenue or £250,000, whichever is the greater amount, as the appropriate regulatory authority determine to be—

- (a) appropriate; and
- (b) proportionate to the contravention or failure in respect of which it is imposed.

(2) In determining the amount of a penalty under subsection (1) the appropriate regulatory authority must have regard to any statement published by OFCOM under section 392 (guidelines to be followed in determining amount of penalties).

(3) The “applicable qualifying revenue”, in relation to a provider, means—

- (a) the qualifying revenue for the provider's last complete accounting period falling within the period during which the provider has been providing the service to which the contravention or failure relates; or
- (b) in relation to a person whose first complete accounting period falling within that period has not ended when the penalty is imposed, the amount that the appropriate regulatory authority estimate to be the qualifying revenue for that period.

(4) For the purposes of subsection (3) the “qualifying revenue” for an accounting period consists of the aggregate of all the amounts received or to be received by the provider of the service to which the contravention or failure relates or by any connected person in the accounting period—

- (a) for the inclusion in that service of audiovisual commercial communications;
- (b) in respect of charges made in that period for the provision of videos by that service; and
- (c) which in any other way arise from the provision of that service.

(5) For the purposes of subsection (4), “connected” has the same meaning as it has in the Broadcasting Act 1990 by virtue of section 202(7) of that Act.

(6) A financial penalty imposed under this section must be paid into the appropriate Consolidated Fund.

(7) For the purposes of subsections (3) and (6)—

- (a) the amount of a person's qualifying revenue for an accounting period, or
- (b) the amount of any payment to be made into the appropriate Consolidated Fund by any person in respect of any such revenue,

is, in the event of a disagreement between the appropriate regulatory authority and that person, the amount determined by the appropriate regulatory authority.

(8) The references in this section to the payment of an amount into the appropriate Consolidated Fund—

(7) 1990 c. 42. The definition of “connected” in section 202 was amended by paragraph 21 of Schedule 10 to the Broadcasting Act 1996 (c. 55); there are other amendments to section 202 but none is relevant.

- (a) in the case of an amount received in respect of matters appearing to OFCOM to have no connection with Northern Ireland, is a reference to the payment of the amount into the Consolidated Fund of the United Kingdom;
- (b) in the case of an amount received in respect of matters appearing to OFCOM to have a connection with Northern Ireland but no connection with the rest of the United Kingdom, is a reference to the payment of the amount into the Consolidated Fund of Northern Ireland; and
- (c) in any other case, is a reference to the payment of the amount, in such proportions as OFCOM consider appropriate, into each of those Funds.

Suspension or restriction of service

368Z5 Suspension or restriction of service for contraventions or failures

(1) The appropriate regulatory authority must serve a notice under subsection (2) on a provider of a video-sharing platform service if they are satisfied—

- (a) that the provider—
 - (i) has contravened section 368V, 368Y or 368Z1(6) or (7),
 - (ii) has failed to take a measure which the authority consider to be appropriate in relation to that service for any of the purposes mentioned in section 368Z1(1), or
 - (iii) has failed to implement such a measure as mentioned in section 368Z1(2);
- (b) that the imposition of one or more financial penalties or enforcement notifications under section 368W, 368Z2 or 368Z3 has not resulted in the remedying of the contravention or failure in question; and
- (c) that the giving of a direction under this section would be appropriate and proportionate to the seriousness of the contravention or failure.

(2) A notice under this subsection must—

- (a) state that the appropriate regulatory authority are satisfied as mentioned in subsection (1);
- (b) state the reasons why they are satisfied as mentioned in subsection (1);
- (c) state that the appropriate regulatory authority will give a direction under this section unless the provider takes, within a period specified in the notice, such steps to remedy the contravention or failure within subsection (1)(a) as are so specified;
- (d) specify any conditions that the appropriate regulatory authority propose to impose in the proposed direction under section 368Z7(5)(b); and
- (e) inform the provider that the provider has the right to make representations to the appropriate regulatory authority about the matters appearing to the authority to provide grounds for giving the proposed direction within the period specified for the purposes of paragraph (c).

(3) If, after considering any representations made to them by the provider within that period, the appropriate regulatory authority are satisfied that the provider has failed to take the steps specified in the notice for remedying the contravention or failure and that it is necessary in the public interest to give a direction under this section, the appropriate regulatory authority must give such of the following as appears to them appropriate and proportionate as mentioned in subsection (1)(c)—

- (a) a direction that the entitlement of the provider to provide a video-sharing platform service is suspended (either generally or in relation to a particular service);
- (b) a direction that that entitlement is restricted in the respects set out in the direction.

368Z6 Suspension or restriction of service for inciting crime or disorder

(1) The appropriate regulatory authority must serve a notice under subsection (2) on a provider of a video-sharing platform service if they are satisfied—

- (a) that—
 - (i) the service has failed to comply with a requirement of section 368Z and that accordingly the provider has contravened section 368Y(1),
 - (ii) the provider has failed to take a measure which the authority consider to be appropriate in relation to that service for any of the purposes mentioned in section 368Z1(1), or
 - (iii) the provider has failed to implement such a measure as mentioned in section 368Z1(2);
- (b) that the failure is due to, or has resulted in, the inclusion in the service of material likely to encourage or to incite the commission of crime, or to lead to disorder; and
- (c) that the contravention or failure is such as to justify the giving of a direction under this section.

(2) A notice under this subsection must—

- (a) state that the appropriate regulatory authority are satisfied as mentioned in subsection (1);
- (b) give details about the matters which, in their opinion, constitute the contravention or failure in question;
- (c) specify the effect of the notice in accordance with subsection (3);
- (d) state that the appropriate regulatory authority may give a direction under this section after the end of the period of 21 days beginning with the day on which the notice is served on the provider; and
- (e) inform the provider of the provider's right to make representations to the appropriate regulatory authority within that period about the matters appearing to the appropriate regulatory authority to provide grounds for giving a direction under this section.

(3) A notice under subsection (2) has the effect specified under subsection (2)(c), which may be either—

- (a) that the entitlement of the provider to provide a video-sharing platform service is suspended (either generally or in relation to a particular service), or
- (b) that that entitlement is restricted in the respects set out in the notice.

(4) The suspension or restriction has effect as from the time when the notice is served on the provider until either—

- (a) a direction given under this section takes effect; or
- (b) the appropriate regulatory authority decide not to give such a direction.

(5) If, after considering any representations made to them by the provider within the period mentioned in subsection (2)(d), the appropriate regulatory authority are satisfied that it is necessary in the public interest to give a direction under this section, they must give such of the following as appears to them justified as mentioned in subsection (1)(c)—

- (a) a direction that the entitlement of the provider to provide a video-sharing platform service is suspended (either generally or in relation to a particular service);
- (b) a direction that that entitlement is restricted in the respects set out in the direction.

368Z7 Supplementary provision about directions

- (1) This section applies to a direction given to a provider under section 368Z5 or 368Z6.
- (2) A direction must specify the service to which it relates or specify that it relates to any video-sharing platform service provided or to be provided by the provider.
- (3) A direction, except so far as it otherwise provides, takes effect for an indefinite period beginning with the time at which it is notified to the provider.
- (4) A direction under section 368Z6 must specify a time for it to take effect, and that time must not fall before the end of 28 days beginning with the day on which the direction is notified to the provider.
- (5) A direction—
 - (a) may provide for the effect of a suspension or restriction to be postponed by specifying that it takes effect only at a time determined by or in accordance with the terms of the direction; and
 - (b) in connection with the suspension or restriction contained in the direction or with the postponement of its effect, may impose such conditions on the provider as appear to the appropriate regulatory authority to be appropriate for the purpose of protecting individuals using the provider’s service.
- (6) If the appropriate regulatory authority consider it appropriate to do so (whether or not in consequence of representations or proposals made to them), they may revoke a direction or modify its conditions—
 - (a) with effect from such time as they may direct;
 - (b) subject to compliance with such requirements as they may specify; and
 - (c) to such extent and in relation to such services as they may determine.

368Z8 Enforcement of directions under section 368Z5 or 368Z6

- (1) A person (“P”) is guilty of an offence if P provides a video-sharing platform service—
 - (a) while P’s entitlement to do so is suspended by a direction under section 368Z5 or 368Z6, or
 - (b) in contravention of a restriction contained in such a direction.
- (2) A person guilty of an offence under this section is liable—
 - (a) on summary conviction—
 - (i) in England and Wales, to a fine;
 - (ii) in Scotland, to a fine not exceeding £5,000;
 - (iii) in Northern Ireland, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to a fine.

Fees

368Z9 Fees

- (1) In this section “the authority” means each of these—
 - (a) the appropriate regulatory authority;
 - (b) (where they are not the appropriate regulatory authority) OFCOM.
- (2) The authority may require a provider of a video-sharing platform service to pay them a fee.
- (3) The authority must be satisfied that the amount of any fee required under subsection (2)—
 - (a) represents the appropriate contribution of the provider towards meeting the likely costs described in subsection (5)(a), and
 - (b) is justifiable and proportionate having regard to the provider who will be required to pay it and the functions in respect of which it is imposed.
- (4) A different fee may be required in relation to different cases or circumstances.
- (5) The authority must, for each financial year—
 - (a) prepare such estimate as it is practicable for them to make of the likely costs of carrying out the relevant functions during that year;
 - (b) ensure that the aggregate amount of the fees that are required to be paid to them under subsection (2) during that year is sufficient to enable them to meet, but not exceed, the costs estimated under paragraph (a);
 - (c) consult in such manner as they consider appropriate the providers likely to be required to pay them a fee under subsection (2) during that year;
 - (d) publish in such manner as they consider appropriate the amount of the fees they will require providers to pay to them under subsection (2) during that year.
- (6) As soon as reasonably practicable after the end of the financial year, the authority must publish a statement setting out, for that year—
 - (a) the aggregate amount received by them during that year in respect of fees required to be paid under subsection (2);
 - (b) the aggregate amount outstanding and likely to be paid or recovered in respect of fees that were required to be so paid under subsection (2); and
 - (c) the costs to them of carrying out the relevant functions during that year.
- (7) Any deficit or surplus shown (after applying this subsection for all previous years) by a statement under subsection (6) is to be—
 - (a) carried forward; and
 - (b) taken into account in determining what is required to satisfy the requirement imposed by virtue of subsection (5)(b) in relation to the following year.
- (8) The authority may repay to a person some or all of a fee paid to them by a person under subsection (2) if—
 - (a) that person has ceased to provide a video-sharing platform service at some time during the period to which the fee relates;
 - (b) before ceasing to provide that service, that person gave the appropriate regulatory authority a notification under section 368V(2); and

(c) that person did not cease to provide the service following a direction given by the appropriate regulatory authority under section 368Z5 or 368Z6.

(9) The authority may make arrangements with any body designated under section 368T for that body to provide the authority with assistance in connection with the collection or repayment of fees required by them under this section.

(10) For the purposes of this section, the authority's costs of carrying out the relevant functions during a financial year include their costs of preparing to carry out the relevant functions incurred during that year.

(11) In this section "relevant functions" means—

- (a) in relation to the appropriate regulatory authority, their functions as the appropriate regulatory authority;
- (b) in relation to OFCOM (where they are not the appropriate regulatory authority), their other functions under this Part.

(12) In this section "financial year" means a period of 12 months ending with 31 March.

(13) The authority may not charge a fee for any period in relation to a financial year which begins before 1 April 2022.

Information and reports

368Z10 Power to demand information

(1) The appropriate regulatory authority may require a person who appears to be or to have been a provider of a video-sharing platform service to provide them with all such information relating to that service as the authority require for the purpose of carrying out their functions under this Part.

(2) The appropriate regulatory authority may also require a person who appears to have or to be able to generate information that the authority reasonably require for the purpose of carrying out their functions under this Part to provide them with that information.

(3) The information that may be required by the appropriate regulatory authority under subsection (1) or (2) includes, in particular, information that they require for any one or more of the following purposes—

- (a) the purpose of determining whether a person falls under the jurisdiction of the United Kingdom for the purposes of the Audiovisual Media Services Directive;
- (b) the purpose of determining whether there has been any change of circumstance that may affect a determination mentioned in paragraph (a);
- (c) the purpose of determining the appropriate fee that a provider of a video-sharing platform service is required to pay under section 368Z9;
- (d) the purpose of assessing compliance with section 368V, 368Y or 368Z1(1), (2), (6) or (7);
- (e) the purpose of determining which of the measures set out in Schedule 15A the authority consider to be appropriate in relation to a video-sharing platform service for any of the purposes mentioned in section 368Z1(1);
- (f) the purposes of an investigation being carried out by the authority to determine—
 - (i) whether a contravention of section 368V, 368Y or 368Z1(6) or (7) has occurred or is occurring,
 - (ii) whether a provider of a video-sharing platform service has failed to take a measure set out in Schedule 15A which the authority consider to be

- appropriate in relation to that service for any of the purposes mentioned in subsection (1) of section 368Z1, or
- (iii) whether a provider of a video-sharing platform service has failed to comply with subsection (2) of section 368Z1;
 - (g) the purpose of monitoring which of the measures set out in Schedule 15A are taken by providers of video-sharing platform services for the purposes mentioned in section 368Z1(1), and how such measures are implemented;
 - (h) the purpose of producing a report under section 368Z11;
 - (i) the purpose of ascertaining or calculating applicable qualifying revenue under section 368Z4.
- (4) A requirement imposed on a person to provide information under this section includes a requirement that the person must, if necessary, generate the information.
- (5) The appropriate regulatory authority may only require the provision of information under this section if—
- (a) the demand for the information is contained in a notice served on the person from whom the information is required that describes the required information and sets out the purpose or purposes for which it is required,
 - (b) the demand for the information is proportionate to the use to which the information is to be put in the carrying out of the authority's functions, and
 - (c) the authority have given the person from whom the information is required the opportunity to make representations to the authority concerning the demand.
- (6) A person who is required to provide information under this section must provide it in such manner and form and within such reasonable period as may be specified by the authority in the demand for information.
- (7) Sections 368Z2 and 368Z5 apply in relation to a failure by a provider of a video-sharing platform service to comply with a demand for information under this section as if that failure were a contravention of section 368Y.
- (8) Section 368Z2 applies in relation to a failure by a person other than a provider of a video-sharing platform service to comply with a demand for information under this section as if that failure were a contravention of section 368Y, but where section 368Z2 applies by virtue of this subsection—
- (a) references in that section and in section 368Z4 to a provider of a video-sharing platform service are to be read as references to the person who has failed to comply with the demand for information, and
 - (b) section 368Z4(1) is to apply as if, for the words “5% of the provider’s applicable qualifying revenue or £250,000, whichever is the greater amount,” there were substituted “£250,000”.
- (9) In this section “information” includes technical information and material such as videos, audiovisual commercial communications, screenshots and archived material.

368Z11 Reports by OFCOM

- (1) OFCOM may from time to time produce and publish reports about—
 - (a) the steps taken by providers of video-sharing platform services to comply with sections 368Y and 368Z1(6) and (7);

- (b) the measures taken by providers for the purposes mentioned in section 368Z1(1), and the ways in which such measures are implemented so as to carry out those purposes;
- (c) the systems adopted by providers for the reporting, flagging or rating of material on the service and the handling of complaints or the resolution of disputes relating to the service.

(2) In publishing a report under this section, OFCOM must have regard to the need to exclude from publication, so far as that is practicable, the matters which are confidential in accordance with subsections (3) and (4).

- (3) A matter is confidential under this subsection if—
 - (a) it relates specifically to the affairs of a particular body, and
 - (b) publication of that matter would or might, in OFCOM’s opinion, seriously and prejudicially affect the interests of that body.
- (4) A matter is confidential under this subsection if—
 - (a) it relates to the private affairs of an individual, and
 - (b) publication of that matter would or might, in OFCOM’s opinion, seriously and prejudicially affect the interests of that individual.

368Z12 Co-operation with member States and the European Commission

368Z12. OFCOM must take all necessary steps to provide such information and assistance to member States and to the European Commission as is required in order to comply with the Audiovisual Media Services Directive as it applies in relation to providers of video-sharing platform services.

Interpretation of Part 4B

368Z13 Interpretation of Part 4B

368Z13. In this Part—

“appropriate regulatory authority” is to be construed in accordance with section 368T;
 “audiovisual commercial communication” means a set of moving or still images, or of legible text, or of a combination of those things (with or without sounds), which—

- (a) is designed to promote (directly or indirectly) the goods, services or image of a person pursuing an economic activity, and
- (b) accompanies or is included in a video in return for payment, or for other valuable consideration, or for self-promotional purposes,

and forms of audiovisual commercial communication include advertising, sponsorship, teleshopping and product placement;

“product placement” means the inclusion of, or of a reference to, a product, a service or a trade mark within a video in return for payment or for other valuable consideration;

“sponsorship” means any contribution made by a person not engaged in providing video-sharing platform services to the financing of video-sharing platform services or videos with a view to promoting the name, trade mark, image, activities, services or products of that person or another person;

“teleshopping” means direct offers broadcast to the public for the supply of goods, services, immovable property, rights or obligations, in return for payment;

“trade mark”, in relation to a person, includes any image (such as a logo) or sound commonly associated with that person, or that person’s products or services;

“video” means a set of moving or still images, or of legible text, or of a combination of those things (with or without sounds), which constitutes an individual item irrespective of its length (and which is not an audiovisual commercial communication);

“video-sharing platform service” has the meaning given by section 368S.”

48. After Schedule 15 insert—

“SCHEDULE 15A

Section 368Z1(1)

Video-sharing platform services: appropriate measures for the purposes of section 368Z1(1)

Appropriate measures

1. Paragraphs 2 to 9 set out the measures which it may be appropriate for a person who provides a video-sharing platform service to take in relation to that service for the purposes mentioned in section 368Z1(1).

2. Include terms and conditions to the effect that if a person uploads to the service a video that contains any restricted material, that person must bring it to the attention of the person who is providing the service.

3. Include terms and conditions to the effect that a person must not upload to the service a video containing relevant harmful material.

4. Include terms and conditions to the effect that—

- (a) a person must not upload to the service a video containing an audiovisual commercial communication for a product mentioned in section 368Z(2),
- (b) a person must not upload to the service a video containing an audiovisual commercial communication for an alcoholic drink unless that communication meets the requirements in section 368Z(3), (4) and (5), and
- (c) a person must not upload to the service a video containing an audiovisual commercial communication for anything else unless that communication meets the requirements in section 368Z(4) and (5).

5. Provide functionality for a person uploading a video to the service to declare whether, as far as they know or can reasonably be expected to know, the video contains an audiovisual commercial communication, and include terms and conditions to the effect that a person uploading a video must use the functionality to make such a declaration.

6. Establish and operate—

- (a) transparent and user-friendly mechanisms for viewers to report or flag harmful material which is available on the service to the person providing the service;
- (b) systems through which the person providing the service explains to persons using the service what effect has been given to the reporting and flagging referred to in subparagraph (a);
- (c) systems for obtaining assurance as to the age of potential viewers;
- (d) easy to use systems allowing viewers to rate harmful material.

7. Provide for parental control systems in relation to restricted material.

8. In relation to the implementation of the measures set out in paragraphs 6 and 7, establish and operate a complaints procedure which must be transparent, easy to use and effective, and must not affect the ability of a person to bring a claim in civil proceedings.

9. Provide information and tools for individuals using the service with the aim of improving their media literacy, and raise awareness of the availability of such information and tools.

Interpretation

10. In this Schedule—

“audiovisual commercial communication” has the meaning given by section 368Z13;

“harmful material” means—

- (a) relevant harmful material, or
- (b) restricted material;

“parental control systems” means systems designed to be used by an adult responsible for a person under the age of 18, to control whether or how such persons are able to access videos or audiovisual commercial communications included in a video-sharing platform service;

“relevant harmful material” means—

- (a) material referred to in section 368E(1), or
- (b) material referred to in section 368E(3)(za) (read as if the reference to an on-demand programme service were to a video-sharing platform service);

“restricted material” means—

- (a) material which is prohibited material within the meaning of section 368E by virtue of falling within paragraph (a) or (b) of subsection (3) of that section, or
- (b) specially restricted material within the meaning of section 368E (see subsection (5) of that section);

“video” has the meaning given by section 368Z13;

“video-sharing platform service” has the meaning given by section 368S.”.