



Communications Act 2003

2003 CHAPTER 21

[^{F1}PART 4A

ON-DEMAND PROGRAMME SERVICES

Textual Amendments

- F1** Pt. 4A inserted (19.12.2009) by [Audiovisual Media Services Regulations 2009 \(S.I. 2009/2979\)](#), regs. 1(1), 2

Preliminary

[^{F2}368ZA **Audiovisual programmes**

This Part applies in relation to the provision of programmes with or without sounds which consist of moving or still images, or of legible text, or of a combination of those things.]

Textual Amendments

- F2** S. 368ZA inserted (1.11.2020) by [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\)](#), regs. 1(2), 22 (with Pt. 7)

368A Meaning of “on-demand programme service”

- (1) For the purposes of this Act, a service [^{F3}(or a dissociable section of a service)] is an “on-demand programme service” if—
- its principal purpose is the provision of programmes [^{F4}(as described in section 368ZA)];
 - access to it is on-demand;
 - there is a person who has editorial responsibility for it;

Status: Point in time view as at 21/12/2020.

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- (d) it is made available by that person for use by members of the public; and
 - (e) that person is under the jurisdiction of the United Kingdom for the purposes of the Audiovisual Media Services Directive.
- (2) Access to a service [^{F5}(or dissociable section of a service)] is on-demand if—
- (a) the service [^{F6}(or dissociable section of the service)] enables the user to view, at a time chosen by the user, programmes selected by the user from among the programmes included in the service [^{F6}(or dissociable section of the service)]; and
 - (b) the programmes viewed by the user are received by the user by means of an electronic communications network (whether before or after the user has selected which programmes to view).
- (3) For the purposes of subsection (2)(a), the fact that a programme may be viewed only within a period specified by the provider of the service [^{F7}(or dissociable section of the service)] does not prevent the time at which it is viewed being one chosen by the user.
- (4) A person has editorial responsibility for a service [^{F8}(or dissociable section of a service)] if that person has general control—
- (a) over what programmes are included in the range of programmes offered to users; and
 - (b) over the manner in which the programmes are organised in that range;
- and the person need not have control of the content of individual programmes or of the broadcasting or distribution of the service [^{F9}(or dissociable section of the service)] (and see section 368R(6)).
- (5) If an on-demand programme service (“the main service”) offers users access to a relevant ancillary service, the relevant ancillary service is to be treated for the purposes of this Part as a part of the main service.
- (6) In subsection (5), “relevant ancillary service” means a service or facility that consists of or gives access to assistance for disabled people in relation to some or all of the programmes included in the main service.
- (7) In this section “assistance for disabled people” has the same meaning as in Part 3.

Textual Amendments

- F3** Words in s. 368A(1) inserted (1.11.2020) by [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\)](#), regs. 1(2), **23(a)(i)** (with Pt. 7)
- F4** Words in s. 368A(1)(a) substituted (1.11.2020) by [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\)](#), regs. 1(2), **23(a)(ii)** (with Pt. 7)
- F5** Words in s. 368A(2) inserted (1.11.2020) by [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\)](#), regs. 1(2), **23(b)(i)** (with Pt. 7)
- F6** Words in s. 368A(2)(a) inserted (1.11.2020) by [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\)](#), regs. 1(2), **23(b)(ii)** (with Pt. 7)
- F7** Words in s. 368A(3) inserted (1.11.2020) by [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\)](#), regs. 1(2), **23(c)** (with Pt. 7)
- F8** Words in s. 368A(4) inserted (1.11.2020) by [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\)](#), regs. 1(2), **23(d)(i)** (with Pt. 7)
- F9** Words in s. 368A(4) inserted (1.11.2020) by [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\)](#), regs. 1(2), **23(d)(ii)** (with Pt. 7)

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368B The appropriate regulatory authority

[OFCOM is the appropriate regulatory authority for all purposes of this Part in relation ^{F10}(A1) to the BBC (and, in relation to the BBC, OFCOM may not designate any other body to be the appropriate regulatory authority for any of those purposes).]

- (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 ^{F11}subsections (A1) and (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 on-demand programme 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;
 - (d) is sufficiently independent of providers of on-demand programme services; and
 - (e) 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

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- (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.
 - ^{F12}(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.

Textual Amendments

- F10** S. 368B(A1) inserted (1.11.2020) by [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\)](#), regs. 1(2), **24(a)** (with Pt. 7)
- F11** Words in s. 368B(1) substituted (1.11.2020) by [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\)](#), regs. 1(2), **24(b)** (with Pt. 7)
- F12** S. 368B(10)(d)(e) inserted (1.12.2014) by [The Audiovisual Media Services Regulations 2014 \(S.I. 2014/2916\)](#), regs. 1(1), **3**

^{F13}List of providers

Textual Amendments

- F13** S. 368BZA and cross-heading inserted (1.11.2020) by [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\)](#), regs. 1(2), **25** (with Pt. 7)

368BZAMaintenance of list of providers

- (1) OFCOM must establish and maintain an up to date list of persons providing an on-demand programme service.

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- (2) The list must indicate in respect of each person which of the criteria set out in paragraphs 2 to 5 of Article 2 of the Audiovisual Media Services Directive is the basis for the decision that they are under the jurisdiction of the United Kingdom (see section 368A(1)(e)).
- (3) OFCOM must notify the European Commission of the contents of the list and of any updates to it.]

[^{F14}Notification by providers

Textual Amendments

F14 Ss. 368BA, 368BB and cross-heading inserted (18.3.2010) by [The Audiovisual Media Services Regulations 2010 \(S.I. 2010/419\)](#), regs. 1(1), 4

368BA Advance notification to appropriate regulatory authority

- (1) A person must not provide an on-demand programme 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 an 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.

368BB Enforcement of section 368BA

- (1) Where the appropriate regulatory authority determine that the provider of an on-demand programme service has contravened section 368BA, they may do one or both of the following—
 - (a) give the provider an enforcement notification under this section;
 - (b) impose a penalty on the provider in accordance with section 368J.
- (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 368BA 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 368BA as may be specified in the notification.

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- (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.]

[^{F15} Accessibility

Textual Amendments

F15 Ss. 368BC, 368BD and cross-heading inserted (31.7.2017) by [Digital Economy Act 2017 \(c. 30\)](#), ss. [93\(2\)](#), [118\(6\)](#); S.I. 2017/765, reg. 2(y)

368BC Accessibility for people with disabilities

- (1) The Secretary of State may by regulations impose requirements on providers of on-demand programme services for the purpose of ensuring that [^{F16}such services] are accessible to people with disabilities [^{F17}, including, in particular, people with disabilities affecting their sight or hearing, or both].
- (2) The requirements that may be imposed include—
 - (a) requirements for programmes included in the services to be accompanied by subtitling;
 - (b) requirements for such programmes to be accompanied by audio-description for the blind;
 - (c) requirements for such programmes to be presented in, or translated into, sign language;
 - [requirements for providers of on-demand programme services to report
 - ^{F18}(d) annually to the appropriate regulatory authority about the accessibility of such services.]
- (3) The steps set out in subsections (4) to (6) must be taken before regulations are made under this section.
- (4) The Secretary of State must ask the appropriate regulatory authority to consult such persons as appear to the authority likely to be affected by regulations under this section, including—
 - (a) providers of on-demand programme services, and
 - (b) representatives of people with disabilities ^{F19}....
- (5) The appropriate regulatory authority must inform the Secretary of State of—
 - (a) the outcome of the consultation, and

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- (b) any other matters that they think should be taken into account by the Secretary of State for the purposes of the regulations.
- (6) Where OFCOM are not the appropriate regulatory authority, the Secretary of State must consult OFCOM.
- (7) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

Textual Amendments

- F16** Words in s. 368BC(1) substituted (1.11.2020) by [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\)](#), regs. 1(2), **27(a)(i)** (with Pt. 7)
- F17** Words in s. 368BC(1) substituted (1.11.2020) by [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\)](#), regs. 1(2), **27(a)(ii)** (with Pt. 7)
- F18** S. 368BC(2)(d) inserted (1.11.2020) by [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\)](#), regs. 1(2), **27(b)** (with Pt. 7)
- F19** Words in s. 368BC(4)(b) omitted (1.11.2020) by virtue of [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\)](#), regs. 1(2), **27(c)** (with Pt. 7)

368BD Enforcement of regulations under section 368BC

- (1) Where the appropriate regulatory authority determine that a provider of an on-demand programme service is contravening or has contravened regulations under section 368BC, they may do one or both of the following—
 - (a) give the provider an enforcement notification under this section;
 - (b) impose a penalty on the provider in accordance with section 368J.
- (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 the regulations 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 a requirement on the provider to take all such steps for complying with the regulations and for remedying the consequences of the contravention of the regulations 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 provider to whom an enforcement notification is 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.

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- (7) If a provider 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 the provider in accordance with section 368J.]

Duties of the appropriate regulatory authority

368C 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 an on-demand programme service complies with the requirements of [F20sections 368CB and 368D].
- [F21(2) The appropriate regulatory authority must encourage providers of on-demand programme services to develop accessibility action plans with a view to continuously and progressively making such services more accessible to people with disabilities.
- (2A) The appropriate regulatory authority must provide a single, easily accessible (including by people with disabilities), online point of contact for providing information and receiving complaints regarding accessibility of on-demand programme services to people with disabilities.]
- F22(3)
- (4) The appropriate regulatory authority must encourage providers of on-demand programme services to develop codes of conduct regarding standards concerning the appropriate promotion of food or beverages by sponsorship of, or in advertising which accompanies or is included in, children’s programmes.
- [F23(5) The appropriate regulatory authority must draw up, and from time to time review and revise, guidance for providers of on-demand programme services concerning measures that may be appropriate for the purposes of section 368E(4) (ensuring specially restricted material is not available to under-18s).]

Textual Amendments

- F20** Words in s. 368C(1) substituted (1.11.2020) by [The Audiovisual Media Services Regulations 2020](#) (S.I. 2020/1062), regs. 1(2), **28(a)** (with Pt. 7)
- F21** S. 368C(2)(2A) substituted for s. 368C(2) (1.11.2020) by [The Audiovisual Media Services Regulations 2020](#) (S.I. 2020/1062), regs. 1(2), **28(b)** (with Pt. 7)
- F22** S. 368C(3) omitted (1.11.2020) by virtue of [The Audiovisual Media Services Regulations 2020](#) (S.I. 2020/1062), regs. 1(2), **28(c)** (with Pt. 7)
- F23** S. 368C(5) inserted (1.11.2020) by [The Audiovisual Media Services Regulations 2020](#) (S.I. 2020/1062), regs. 1(2), **28(d)** (with Pt. 7)

[F24] 368CA Code on accessibility for people with disabilities

- (1) It is the duty of the appropriate regulatory authority to draw up, and from time to time review and revise, a code giving guidance as to—
- (a) the steps to be taken by providers of on-demand programme services so as to meet the requirements of regulations under section 368BC, and

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- (b) other steps to be taken by providers who are subject to requirements under the regulations to ensure that [^{F25}on-demand programme services] are made progressively more accessible to people with disabilities ^{F26}....
- (2) The appropriate regulatory authority must publish the code drawn up under this section, and every revision of it, in such manner as, having regard to the need to make the code or revision accessible to [^{F27}people with disabilities, in particular]—
 - (a) persons who are deaf or hard of hearing,
 - (b) persons who are blind or partially sighted, and
 - (c) persons with a dual sensory impairment,they consider appropriate.]

Textual Amendments

- F24** S. 368CA inserted (31.7.2017) by [Digital Economy Act 2017 \(c. 30\)](#), **ss. 93(4)**, 118(6); S.I. 2017/765, reg. 2(y)
- F25** Words in s. 368CA(1)(b) substituted (1.11.2020) by [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\)](#), regs. 1(2), **29(a)(i)** (with Pt. 7)
- F26** Words in s. 368CA(1)(b) omitted (1.11.2020) by virtue of [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\)](#), regs. 1(2), **29(a)(ii)** (with Pt. 7)
- F27** Words in s. 368CA(2) inserted (1.11.2020) by [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\)](#), regs. 1(2), **29(b)** (with Pt. 7)

Duties of service providers

Quota for European works

^{F28}**368CB**

- (1) A person providing an on-demand programme service must secure that, in each year, on average at least 30% of the programmes included in the service are European works.
- (2) A person providing an on-demand programme service must ensure the prominence of European works in the service.
- (3) Subsections (1) and (2) do not apply to a person providing an on-demand programme service in relation to any period throughout which—
 - (a) the service has a low turnover or a low audience, or
 - (b) it is impracticable or unjustified for those subsections to apply because of the nature or theme of the service.
- (4) An exemption under subsection (3)(b) is at the discretion of the appropriate regulatory authority.
- (5) Where a person does not provide an on-demand programme service for a whole year, compliance with subsection (1) is to be assessed in relation to the period in that year during which the person does provide the service.
- (6) In assessing a provider's compliance with subsection (1), any period for which an exemption under subsection (3)(a) or (b) applies to the provider is to be discounted.
- (7) In this section—

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“European works” has the same meaning as in the Audiovisual Media Services Directive (see Article 1(1)(n), (2) and (3) of that Directive) and includes works deemed to be European works by Article 1(4) of that Directive;
“programmes” does not include advertisements, news programmes, sports events, games, teletext services or teleshopping.

- (8) This section is to be interpreted in accordance with the Communication from the European Commission (2020/C223/03) “Guidelines pursuant to Article 13(7) of the Audiovisual Media Services Directive on the calculation of the share of European works in on-demand catalogues and on the definition of low audience and low turnover” published in Volume 63 of the Official Journal of the European Union on 7 July 2020.]

Textual Amendments

F28 S. 368CB inserted (1.11.2020) by [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\)](#), regs. 1(2), **30** (with Pt. 7)

368D Duties of service providers

- (1) The provider of an on-demand programme service must ensure that the service complies with the requirements of sections [^{F29}368E(1) and (2) and 368F to 368H].
- (2) The provider of an on-demand programme service (“P”) must supply the following information to users of the service—
- (a) P’s name;
 - (b) P’s address;
 - (c) P’s electronic address;
 - [a statement that P is under the jurisdiction of the United Kingdom for the purposes of the Audiovisual Media Services Directive;]
 - ^{F30}(ca) the name, address and electronic address of any body which is the appropriate regulatory authority for any purpose in relation to P or [^{F31}the on-demand programme service] that P provides.
- (3) The provider of an on-demand programme service must—
- [provide the appropriate regulatory authority with a copy of any accessibility action plan drawn up by the provider as mentioned in section 368C(2);]
 - ^{F32}(zza)
 - [pay to the appropriate regulatory authority such fee as that authority may require under section 368NA;]
 - ^{F33}(za)
 - (zb) retain a copy of every programme included in the service for at least forty-two days after the day on which the programme ceases to be available for viewing;]
 - (a) comply with any requirement under section 368O (provision of information);
 - (b) co-operate fully with the appropriate authority for any purpose within section 368O(2) or (3).
- [A copy of a programme retained for the purposes of subsection (3)(zb) must be of a ^{F34}(3A) standard and in a format which allows the programme to be viewed as it was made available for viewing.]

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

Textual Amendments

- F29** Words in s. 368D(1) substituted (1.11.2020) by [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\)](#), regs. 1(2), **31(a)** (with Pt. 7)
- F30** S. 368D(2)(ca) inserted (1.11.2020) by [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\)](#), regs. 1(2), **31(b)(i)** (with Pt. 7)
- F31** Words in s. 368D(2)(d) substituted (1.11.2020) by [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\)](#), regs. 1(2), **31(b)(ii)** (with Pt. 7)
- F32** S. 368D(3)(zza) inserted (1.11.2020) by [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\)](#), regs. 1(2), **31(e)** (with Pt. 7)
- F33** S. 368D(3)(za)(zb) inserted (18.3.2010) by [The Audiovisual Media Services Regulations 2010 \(S.I. 2010/419\)](#), regs. 1(1), **5(1)**
- F34** S. 368D(3A) inserted (18.3.2010) by [The Audiovisual Media Services Regulations 2010 \(S.I. 2010/419\)](#), regs. 1(1), **5(2)**

368E Harmful material

- (1) An on-demand programme service must not contain any material likely to incite [^{F35}violence or hatred against a group of persons or a member of a group of persons based on any of the grounds referred to in Article 21 of the Charter of Fundamental Rights of the European Union of 7 December 2000, as adopted at Strasbourg on 12 December 2007].
- [^{F36}(2) An on-demand programme service must not contain any prohibited material.
- (3) “Prohibited material” means—
- [^{F37}(za) material the inclusion of which in an on-demand programme service would be conduct required by any of the following to be punishable as a criminal offence—
- (i) Article 5 of Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism,
 - (ii) Article 5(4) of [Directive 2011/93/EU](#) of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, or
 - (iii) Article 1 of Council Framework Decision (2008/913/JHA) of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law,]
- (a) a video work which the video works authority has determined for the purposes of the 1984 Act not to be suitable for a classification certificate to be issued in respect of it, or
 - (b) material whose nature is such that it is reasonable to expect that, if the material were contained in a video work submitted to the video works authority for a classification certificate, the video works authority would determine for those purposes that the video work was not suitable for a classification certificate to be issued in respect of it.

Status: Point in time view as at 21/12/2020.

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- (4) [^{F38}A person providing an on-demand programme service must take appropriate measures to ensure that any specially restricted material is made available by the service in a manner which secures that persons under the age of 18 will not normally see or hear it.
- (4A) The measures are to be proportionate to the potential of the material to harm the physical, mental or moral development of such persons.]
- (5) “Specially restricted material” means—
- (a) a video work in respect of which the video works authority has issued a R18 classification certificate,
 - (b) material whose nature is such that it is reasonable to expect that, if the material were contained in a video work submitted to the video works authority for a classification certificate, the video works authority would issue a R18 classification certificate, or
 - (c) other material that might ^{F39}... impair the physical, mental or moral development of persons under the age of 18.
- (6) In determining whether any material falls within subsection (3)(b) or (5)(b), regard must be had to any guidelines issued by the video works authority as to its policy in relation to the issue of classification certificates.
- (7) In this section—
- “the 1984 Act” means the Video Recordings Act 1984;
- “classification certificate” has the same meaning as in the 1984 Act (see section 7 of that Act);
- “R18 classification certificate” means a classification certificate containing the statement mentioned in section 7(2)(c) of the 1984 Act that no video recording containing the video work is to be supplied other than in a licensed sex shop;
- “the video works authority” means the person or persons designated under section 4(1) of the 1984 Act as the authority responsible for making arrangements in respect of video works other than video games;
- “video work” has the same meaning as in the 1984 Act (see section 1(2) of that Act).]

Textual Amendments

- F35** Words in s. 368E(1) substituted (1.11.2020) by [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\)](#), regs. 1(2), **32(a)** (with Pt. 7)
- F36** Ss. 368E(2)-(7) substituted for s. 368E(2) (1.12.2014) by [The Audiovisual Media Services Regulations 2014 \(S.I. 2014/2916\)](#), regs. 1(1), **2**
- F37** S. 368E(3)(za) inserted (1.11.2020) by [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\)](#), regs. 1(2), **32(b)** (with Pt. 7)
- F38** S. 368E(4)(4A) substituted for s. 368E(4) (1.11.2020) by [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\)](#), regs. 1(2), **32(c)** (with Pt. 7)
- F39** Word in s. 368E(5)(c) omitted (1.11.2020) by virtue of [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\)](#), regs. 1(2), **32(d)** (with Pt. 7)

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368F Advertising

(1) Advertising of the following products is prohibited in on-demand programme services—

- (a) cigarettes or other tobacco products;
- ^{F40}(aa) [electronic cigarettes or electronic cigarette refill containers;]
- (b) any prescription-only medicine.

^{F41}(2) Advertising of alcoholic drinks is only permitted in on-demand programme services if—

- (a) it is not aimed specifically at persons under the age of eighteen, nor does it, in particular, depict such persons consuming alcoholic drinks;
- (b) it does not link the consumption of alcohol to enhanced physical performance or to driving;
- (c) it does not create the impression that the consumption of alcohol contributes towards social or sexual success;
- (d) it does not claim that alcohol has therapeutic qualities or that it is a stimulant, a sedative or a means of resolving personal conflicts;
- (e) it does not encourage immoderate consumption of alcohol or present abstinence or moderation in a negative light; and
- (f) it does not place emphasis on high alcoholic content as being a positive quality of alcoholic drinks.]

(3) Advertising included in an on-demand programme 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.

(4) Advertising included in an on-demand programme 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 [^{F42}, mental] or moral detriment to persons under the age of eighteen;
- (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.

Textual Amendments

F40 S. 368F(1)(aa) inserted (20.5.2016) by [The Tobacco and Related Products Regulations 2016 \(S.I. 2016/507\)](#), regs. 1(2), **46(2)**

F41 S. 368F(2) substituted (1.11.2020) by [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\)](#), regs. 1(2), **33(a)** (with Pt. 7)

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F42 Word in s. 368F(4)(e) inserted (1.11.2020) by [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\)](#), regs. 1(2), **33(b)** (with Pt. 7)

368G Sponsorship

- (1) An on-demand programme service or a programme included in an on-demand programme service must not be sponsored—
 - (a) for the purpose of promoting cigarettes or other tobacco products, or
 - (b) by an undertaking whose principal activity is the manufacture or sale of cigarettes or other tobacco products.
- [^{F43}(1A) An on-demand programme service or a programme included in an on-demand programme service must not be sponsored—
 - (a) for the purpose of promoting electronic cigarettes or electronic cigarette refill containers, or
 - (b) by an undertaking whose principal activity is the manufacture or sale of electronic cigarettes or electronic cigarette refill containers.]
- (2) An on-demand programme service or a programme included in an on-demand programme service must not be sponsored for the purpose of promoting a prescription-only medicine.
- (3) An on-demand programme service may not include a news programme or current affairs programme that is sponsored.
- (4) Subsections (5) to (11) apply to an on-demand programme service that is sponsored or that includes any programme that is sponsored.
- (5) The sponsoring of a service or programme must not influence the content of that service or programme in a way that affects the editorial independence of the provider of the service.
- (6) Where a service or programme is sponsored for the purpose of promoting goods or services, the sponsored service or programme and sponsorship announcements relating to it must not directly encourage the purchase or rental of the goods or services, whether by making promotional reference to them or otherwise.
- (7) Where a service or programme is sponsored for the purpose of promoting an alcoholic drink, the service or programme and sponsorship announcements relating to it must not—
 - (a) be aimed specifically at persons under the age of eighteen; or
 - (b) encourage the immoderate consumption of such drinks.
- (8) A sponsored service must clearly inform users of the existence of a sponsorship agreement.
- (9) The name of the sponsor and the logo or other symbol (if any) of the sponsor must be displayed at the beginning or end of a sponsored programme.
- (10) Techniques which exploit the possibility of conveying a message subliminally or surreptitiously must not be used in a sponsorship announcement.
- (11) A sponsorship announcement must not—
 - (a) prejudice respect for human dignity;

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- (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 [^{F44}, mental] or moral detriment to persons under the age of eighteen;
 - ^{F45}(ea) [directly exhort such persons to purchase or rent goods or services in a manner which exploits their inexperience or credulity;]
 - (f) directly encourage such persons to persuade their parents or others to purchase or rent goods or services;
 - (g) exploit the trust of such persons in parents, teachers or others; or
 - (h) unreasonably show such persons in dangerous situations.
- (12) For the purposes of this Part a programme included in an on-demand programme service is “sponsored” if a person (“the sponsor”) other than—
- (a) the provider of that service, or
 - (b) the producer of that programme,
- has met some or all of the costs of the programme for the purpose of promoting the name, trademark, image, activities, services or products of the sponsor or of another person.
- (13) But a programme is not sponsored if it falls within this section only by virtue of the inclusion of product placement (see section 368H(1)) or prop placement (see section 368H(2)).
- (14) For the purposes of subsection (12) a person meets some or all of the costs of a programme included in a service only if that person makes a payment or provides other resources for the purpose of meeting or saving some or all of the costs of—
- (a) producing that programme;
 - (b) transmitting that programme; or
 - (c) making that programme available as part of the service.
- (15) For the purposes of this Part an on-demand programme service is “sponsored” if a person (“the sponsor”) other than the provider of the service has met some or all of the costs of providing the service for the purpose of promoting the name, trademark, image, activities, services or products of the sponsor or another person.
- (16) For the purposes of subsection (15) a person is not to be taken to have met some or all of the costs of providing a service only because a programme included in the service is sponsored by that person.
- (17) In this section a “sponsorship announcement” means—
- (a) anything included for the purpose of complying with subsection (8) or (9), and
 - (b) anything included at the same time as or otherwise in conjunction with anything within paragraph (a).

Textual Amendments

F43 S. 368G(1A) substituted (1.11.2020) by [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\)](#), regs. 1(2), **34(a)** (with Pt. 7)

Status: Point in time view as at 21/12/2020.

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- F44** Word in s. 368G(11)(e) inserted (1.11.2020) by [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\)](#), regs. 1(2), **34(b)(i)** (with Pt. 7)
- F45** S. 368G(11)(ea) inserted (1.11.2020) by [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\)](#), regs. 1(2), **34(b)(ii)** (with Pt. 7)

368H Prohibition of product placement and exceptions

- (1) “Product placement”, in relation to a programme included in an on-demand programme service, means the inclusion in the programme of, or of a reference to, a product, service or trade mark, where the inclusion—
- (a) is for a commercial purpose,
 - (b) is in return for the making of any payment, or the giving of other valuable consideration, to any relevant provider or any connected person, and
 - (c) is not prop placement.
- (2) “Prop placement”, in relation to a programme included in an on-demand programme service, means the inclusion in the programme of, or of a reference to, a product, service or trade mark where—
- (a) the provision of the product, service or trade mark has no significant value; and
 - (b) no relevant provider, or person connected with a relevant provider, has received any payment or other valuable consideration in relation to its inclusion in, or the reference to it in, the programme, disregarding the costs saved by including the product, service or trademark, or a reference to it, in the programme.
- [^{F46}(3) Product placement is prohibited in any of the following included in on-demand programme services—
- (a) children’s programmes;
 - (b) news and current affairs programmes;
 - (c) consumer affairs programmes;
 - (d) religious programmes.]
- (4) Product placement is prohibited in on-demand programme services if—
- (a) it is of cigarettes or other tobacco products,
 - (b) it is by or on behalf of an undertaking whose principal activity is the manufacture or sale of cigarettes or other tobacco products, ^{F47}...
- [it is of electronic cigarettes or electronic cigarette refill containers, ^{F49} ...]
- ^{F48}(ba)
- [it is by or on behalf of an undertaking whose principal activity is the
- ^{F50}(bb) manufacture or sale of electronic cigarettes or electronic cigarette refill containers, or]
- (c) it is of prescription-only medicines.
- (5) Product placement of alcoholic drinks must not —
- (a) be aimed specifically at persons under the age of eighteen;
 - (b) encourage immoderate consumption of such drinks.
- (6) Product placement is otherwise permitted in programmes included in on-demand programme services provided that—
- (a) conditions [^{F51}B] to F are met, and

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(b) if subsection (14) applies, condition G is also met.

^{F52}(7)

(8) Condition B is that the product placement has not influenced the content of the programme in a way that affects the editorial independence of the provider of the service.

(9) Condition C is that the product placement does not directly encourage the purchase or rental of goods or services, whether by making promotional reference to those goods or services or otherwise.

(10) Condition D is that the programme does not give undue prominence to the products, services or trade marks concerned.

(11) Condition E is that the product placement does not use techniques which exploit the possibility of conveying a message subliminally or surreptitiously.

(12) Condition F is that the way in which the product, service or trade mark, or the reference to it, is included in the programme by way of product placement does not—

- (a) prejudice respect for human dignity;
- (b) 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 [^{F53}, mental] or moral detriment to persons under the age of eighteen;

[^{F54}(ea) directly exhort such persons to purchase or rent goods or services in a manner which exploits their inexperience or credulity;]

- (f) directly encourage such persons to persuade their parents or others to purchase or rent goods or services;
- (g) exploit the trust of such persons in parents, teachers or others; or
- (h) unreasonably show such persons in dangerous situations.

(13) Condition G is that the on-demand programme service in question signals appropriately the fact that product placement is contained in a programme, no less frequently than—

- (a) at the start and end of such a programme, and
- (b) in the case of an on-demand programme service which includes advertising breaks within it, at the recommencement of the programme after each such advertising break.

(14) This subsection applies where the programme featuring the product placement has been produced or commissioned by the provider of the service or any connected person.

(15) [^{F55}Subject to [^{F56}subsections (15A), (15B) and (15C)],] this section applies only in relation to programmes the production of which begins after 19th December 2009.

[Subsection (4)(ba) applies only in relation to programmes the production of which ^{F57}(15A) begins after 19th May 2016.]

[Subsection (4)(bb) applies only in relation to programmes the production of which ^{F58}(15B) begins after 31 October 2020.

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(15C) This section applies in relation to a programme the production of which began before 1 November 2020 as if—

- (a) subsection (3)(b) to (d) were omitted, and
- (b) subsection (6)(a) included a reference to a condition that the programme in which the product, service or trademark, or the reference to it, is included is—
 - (i) a film made for cinema,
 - (ii) a film or series made for a television programme service or for an on-demand programme service,
 - (iii) a sports programme, or
 - (iv) a light entertainment programme.]

(16) In this section—

“connected” has the same meaning as it has in the Broadcasting Act 1990 by virtue of section 202 of that Act;

“film made for cinema” means a film made with a view to its being shown to the general public first in a cinema;

“producer”, in relation to a programme, means the person by whom the arrangements necessary for the making of the programme are undertaken;

[^{F59}“programme” does not include an advertisement;]

“relevant provider”, in relation to a programme, means—

- (a) the provider of the on-demand programme service in which the programme is included; and
- (b) the producer of the programme;

“residual value” means any monetary or other economic value in the hands of the relevant provider other than the cost saving of including the product, service or trademark, or a reference to it, in a programme;

“significant value” means a residual value that is more than trivial; and

“trade mark”, in relation to a business, includes any image (such as a logo) or sound commonly associated with that business or its products or services.

Textual Amendments

- F46** S. 368H(3) substituted (1.11.2020) by [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\)](#), regs. 1(2), **35(a)** (with Pt. 7)
- F47** Word in s. 368H(4)(b) omitted (20.5.2016) by virtue of [The Tobacco and Related Products Regulations 2016 \(S.I. 2016/507\)](#), regs. 1(2), **46(4)(a)**
- F48** S. 368H(4)(ba) inserted (20.5.2016) by [The Tobacco and Related Products Regulations 2016 \(S.I. 2016/507\)](#), regs. 1(2), **46(4)(b)**
- F49** Word in s. 368H(4) omitted (1.11.2020) by virtue of [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\)](#), regs. 1(2), **35(b)(i)** (with Pt. 7)
- F50** S. 368H(4)(bb) inserted (1.11.2020) by [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\)](#), regs. 1(2), **35(b)(ii)** (with Pt. 7)
- F51** Word in s. 368H(6)(a) substituted (1.11.2020) by [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\)](#), regs. 1(2), **35(c)** (with Pt. 7)
- F52** S. 368H(7) omitted (1.11.2020) by virtue of [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\)](#), regs. 1(2), **35(d)** (with Pt. 7)
- F53** Word in s. 368H(12)(e) inserted (1.11.2020) by [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\)](#), regs. 1(2), **35(e)** (with Pt. 7)
- F54** S. 368H(12)(ea) inserted (1.11.2020) by [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\)](#), regs. 1(2), **35(f)** (with Pt. 7)

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- F55** Words in s. 368H(15) inserted (20.5.2016) by [The Tobacco and Related Products Regulations 2016 \(S.I. 2016/507\)](#), regs. 1(2), **46(4)(c)**
- F56** Words in s. 368H(15) substituted (1.11.2020) by [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\)](#), regs. 1(2), **35(g)** (with Pt. 7)
- F57** S. 368H(15A) inserted (20.5.2016) by [The Tobacco and Related Products Regulations 2016 \(S.I. 2016/507\)](#), regs. 1(2), **46(4)(d)**
- F58** S. 368H(15B)(15C) inserted (1.11.2020) by [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\)](#), regs. 1(2), **35(h)** (with Pt. 7)
- F59** Words in s. 368H(16) inserted (16.4.2010) by [The Audiovisual Media Services \(Product Placement\) Regulations 2010 \(S.I. 2010/831\)](#), regs. 1(1), 7

368I Enforcement of ^{F60}sections 368CB and 368D]

- (1) Where the appropriate regulatory authority determine that a provider of an on-demand programme service is contravening or has contravened [^{F61}section 368CB or] section 368D 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 368J.
- (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 [^{F62}section 368CB or] section 368D 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 [^{F63}section 368CB or] section 368D and for remedying the consequences of the contravention ^{F64}... 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 programme, or
 - (ii) programmes of a specified description;
 - (b) cease showing or restrict access to—
 - (i) a specified advertisement, or
 - (ii) advertisements of a specified description;
 - (c) provide additional information to users of the service prior to the selection of a specified programme by the user for viewing;
 - (d) show an advertisement only with specified modifications;
 - (e) publish a correction in the form and place and at the time specified; or
 - (f) publish a statement of the findings of the appropriate regulatory authority in the form and place and at the time 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 the taking of the steps required by the notification.

Status: Point in time view as at 21/12/2020.

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- (6) Where a provider is required by an enforcement notification to publish a correction or a statement of findings, the provider may publish with the correction or statement of findings a statement that it is published in pursuance of the enforcement notification.
- (7) It is the duty of a provider 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; or
 - (c) for any other appropriate remedy or relief.
- (9) If a provider 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 provider in accordance with section 368J.
- [^{F65}(10) A financial penalty may not be imposed on a provider of an on-demand programme service under subsection (1) or (9) in respect of an act or omission if the provider has been convicted of a criminal offence in respect of that act or omission.]

Textual Amendments

- F60** Words in s. 368I heading substituted (1.11.2020) by [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\)](#), regs. 1(2), **36(a)** (with Pt. 7)
- F61** Words in s. 368I(1) inserted (1.11.2020) by [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\)](#), regs. 1(2), **36(b)** (with Pt. 7)
- F62** Words in s. 368I(2) inserted (1.11.2020) by [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\)](#), regs. 1(2), **36(c)** (with Pt. 7)
- F63** Words in s. 368I(3) inserted (1.11.2020) by [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\)](#), regs. 1(2), **36(d)(i)** (with Pt. 7)
- F64** Words in s. 368I(3) omitted (1.11.2020) by virtue of [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\)](#), regs. 1(2), **36(d)(ii)** (with Pt. 7)
- F65** S. 368I(10) inserted (1.11.2020) by [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\)](#), regs. 1(2), **36(e)** (with Pt. 7)

[^{F66}368IA Enforcement of section 368E(4)]

- (1) Where the appropriate regulatory authority determine that a provider of an on-demand programme service has failed to take a measure which the authority consider to be appropriate in relation to that service for the purpose mentioned in section 368E(4), or has failed to implement such a measure effectively, the authority 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 368J.
- (2) The appropriate regulatory authority must not make a determination as mentioned in subsection (1) unless there are reasonable grounds for believing that a failure as mentioned in that subsection is occurring or has occurred and they have allowed the provider an opportunity to make representations about that apparent failure.

Status: Point in time view as at 21/12/2020.

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- (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 368E(4) and for remedying the failure 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 programme, or
 - (ii) programmes of a specified description;
 - (b) cease showing or restrict access to—
 - (i) a specified advertisement, or
 - (ii) advertisements of a specified description;
 - (c) provide additional information to users of the service prior to the selection of a specified programme by the user for viewing;
 - (d) take a specified measure that the appropriate regulatory authority consider to be appropriate for the purpose mentioned in section 368E(4);
 - (e) make specified changes to the way in which a provider implements a measure it has taken for that purpose;
 - (f) show an advertisement only with specified modifications;
 - (g) publish a correction in the form and place and at the time specified; or
 - (h) 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 the taking of the steps required by the notification.
- (6) Where a person is required by an enforcement notification to publish a correction or a statement of findings, the person may publish with the correction or 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; 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 368J.]

Status: Point in time view as at 21/12/2020.

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Textual Amendments

F66 S. 368IA inserted (1.11.2020) by [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\)](#), regs. 1(2), 37 (with Pt. 7)

Financial penalties

368J Financial penalties

- (1) The amount of a penalty imposed on a provider under section [F67368BB][F68,][F69368BD, 368I or 368IA] is to be such amount not exceeding 5 per cent. 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 [F70or failure] in respect of which it is imposed.

[Where the provider in question is the BBC, the amount of the penalty is to be such
F71(1A) amount not exceeding the amount for the time being specified in an order under section 198(6) or, if no such order is in force, £250,000, as OFCOM 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) [F72or (1A)] 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 [F73or 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 [F74or failure] relates or by any connected person in the accounting period —
- (a) for the inclusion in that service of advertisements, product placement and sponsorship; and
 - (b) in respect of charges made in that period for the provision of programmes included in 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 of that Act.
- (6) A financial penalty imposed under this section—
- (a) must be paid into the appropriate Consolidated Fund; and

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- (b) if not paid within the period fixed by the appropriate regulatory authority, is to be recoverable by the appropriate regulatory authority as a debt due to them from the person obliged to pay it.
- (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—
- (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.

Textual Amendments

- F67** Words in s. 368J(1) inserted (18.3.2010) by [The Audiovisual Media Services Regulations 2010 \(S.I. 2010/419\)](#), regs. 1(1), 7
- F68** Word in s. 368J(1) inserted (31.7.2017) by [Digital Economy Act 2017 \(c. 30\)](#), ss. 93(5), 118(6); S.I. 2017/765, reg. 2(y)
- F69** Words in s. 368J(1) substituted (1.11.2020) by [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\)](#), regs. 1(2), 38(a)(i) (with Pt. 7)
- F70** Words in s. 368J(1) inserted (1.11.2020) by [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\)](#), regs. 1(2), 38(a)(ii) (with Pt. 7)
- F71** S. 368J(1A) inserted (1.11.2020) by [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\)](#), regs. 1(2), 38(b) (with Pt. 7)
- F72** Words in s. 368J(2) inserted (1.11.2020) by [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\)](#), regs. 1(2), 38(c) (with Pt. 7)
- F73** Words in s. 368J(3)(a) inserted (1.11.2020) by [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\)](#), regs. 1(2), 38(d) (with Pt. 7)
- F74** Words in s. 368J(4) inserted (1.11.2020) by [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\)](#), regs. 1(2), 38(e) (with Pt. 7)

Suspension or restriction of service

368K Suspension or restriction of service for contraventions ^[F75] or failures]

- (1) The appropriate regulatory authority must serve a notice under subsection (2) on a provider of an on-demand programme service if they are satisfied—
- (a) that the provider is in contravention of section ^[F76]368BA ^[F77], 368CB] or ^[F78]368D^[F78], or of regulations under section 368BC]^[F79], or has failed to take a measure which the authority consider to be appropriate in relation to

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- that service for the purpose mentioned in section 368E(4), or has failed to implement such a measure effectively];
- [^{F80}(b) that the imposition of one or more financial penalties or enforcement notifications under section 368BB, 368BD, 368I or 368IA 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 [^{F81}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 [^{F82}or failure] within subsection (1)(a) as are so specified;
 - (d) specify any conditions that the appropriate regulatory authority propose to impose in the direction under section 368M(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 [^{F83}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 an on-demand programme 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.

Textual Amendments

- F75** Words in s. 368K heading inserted (1.11.2020) by [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\)](#), regs. 1(2), **39(a)** (with Pt. 7)
- F76** Words in s. 368K(1)(a) inserted (18.3.2010) by [The Audiovisual Media Services Regulations 2010 \(S.I. 2010/419\)](#), regs. 1(1), **8(2)**
- F77** Words in s. 368K(1)(a) inserted (1.11.2020) by [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\)](#), regs. 1(2), **39(b)(i)** (with Pt. 7)
- F78** Words in s. 368K(1)(a) inserted (31.7.2017) by [Digital Economy Act 2017 \(c. 30\)](#), **ss. 93(6)(a)**, 118(6); [S.I. 2017/765](#), reg. 2(y)
- F79** Words in s. 368K(1)(a) inserted (1.11.2020) by [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\)](#), regs. 1(2), **39(b)(ii)** (with Pt. 7)
- F80** S. 368K(1)(b) substituted (1.11.2020) by [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\)](#), regs. 1(2), **39(c)** (with Pt. 7)
- F81** Words in s. 368K(1)(c) inserted (1.11.2020) by [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\)](#), regs. 1(2), **39(d)** (with Pt. 7)

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- F82** Words in s. 368K(2)(c) inserted (1.11.2020) by [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\)](#), regs. 1(2), **39(d)** (with Pt. 7)
- F83** Words in s. 368K(3) inserted (1.11.2020) by [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\)](#), regs. 1(2), **39(d)** (with Pt. 7)

368L 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 an on-demand programme service if they are satisfied—
- [^{F84}(a) that—
- (i) the service has failed to comply with any requirement of section 368E(1) or (2) or sections 368F to 368H and that accordingly the provider has contravened section 368D(1), or
 - (ii) the provider has failed to take a measure which the authority consider to be appropriate in relation to that service for the purpose mentioned in section 368E(4), or has failed to implement such a measure effectively;]
- (b) that the failure is due to [^{F85}, 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 [^{F86}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);
 - [^{F87}(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 twenty-one 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 an on-demand programme 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

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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 an on-demand programme 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.

Textual Amendments

- F84** S. 368L(1)(a) substituted (1.11.2020) by [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\)](#), regs. 1(2), **40(a)** (with Pt. 7)
- F85** Words in s. 368L(1)(b) inserted (1.11.2020) by [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\)](#), regs. 1(2), **40(b)** (with Pt. 7)
- F86** Words in s. 368L(1)(c) inserted (1.11.2020) by [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\)](#), regs. 1(2), **40(c)** (with Pt. 7)
- F87** S. 368L(2)(b) substituted (1.11.2020) by [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\)](#), regs. 1(2), **40(d)** (with Pt. 7)

368M Supplementary provision about directions

- (1) This section applies to a direction given to a provider under section 368K or 368L.
- (2) A direction must specify the service to which it relates or specify that it relates to any on-demand programme 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 368L must specify a time for it to take effect, and that time must not fall before the end of twenty-eight 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 that provider’s customers.
- (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.

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368N Enforcement of directions under section 368K or 368L

- (1) A person (“P”) is guilty of an offence if P provides an on-demand programme service—
 - (a) while P’s entitlement to do so is suspended by a direction under section 368K or 368L, 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, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to a fine.

F⁸⁸ Fees

Textual Amendments

F88 S. 368NA and cross-heading inserted (18.3.2010) by [The Audiovisual Media Services Regulations 2010 \(S.I. 2010/419\)](#), regs. 1(1), 9 (with reg. 13)

368NA 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 an on-demand programme 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—

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- (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 an on-demand programme 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 368BA(2); and
 - (c) that person did not cease to provide the service following a direction given by the appropriate regulatory authority under section 368K or 368L.
- (9) The authority may make arrangements with any body designated under section 368B 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—
- (a) 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; and
 - (b) the authority’s costs of preparing to carry out the relevant functions incurred after 19 December 2009 but before the financial year in which those functions were first carried out by them are to be treated as if they were 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.]

Information

368O Power to demand information

- (1) The appropriate regulatory authority may require a person who appears to them to be or to have been a provider of an on-demand programme service and to have information that they require for a purpose within subsection (2) to provide them with all such information as they consider necessary for that purpose.
- (2) The following are within this subsection—

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- (a) the purposes of an investigation which the appropriate regulatory authority are carrying out in order for it to be determined whether a contravention of section [F89 368BA][F90, 368CB or 368D][F91, or of regulations under section [F92 368BC],] has occurred or is occurring, where—
- (i) the investigation relates to a matter about which they have received a complaint, or
 - (ii) they otherwise have reason to suspect that there has been [F93 such a contravention];
- [F94 (aa) the purposes of an investigation which the appropriate regulatory authority are carrying out in order to determine whether a person who appears to them to be or to have been a provider of an on-demand programme service has failed to take an appropriate measure in relation to that service for the purpose mentioned in section 368E(4), or has failed to implement such a measure effectively, where—
- (i) the investigation relates to a matter about which they have received a complaint, or
 - (ii) they otherwise have reason to suspect that there has been such a failure;]
- (b) the purpose of ascertaining or calculating applicable qualifying revenue under section 368J.
- (3) The appropriate regulatory authority may require a person who appears to them to be or to have been a provider of an on-demand programme service and to have information that they require for the purpose of securing compliance with the obligations of the United Kingdom under the Audiovisual Media Services Directive to provide them with all such information as they consider necessary for that purpose.
- (4) The appropriate regulatory authority may not require the provision of information under this section unless they have given the person from whom it is required an opportunity of making representations to them about the matters appearing to them to provide grounds for making the request.
- (5) The appropriate regulatory authority must not require the provision of information under this section except by a demand for the information contained in a notice served on the person from whom the information is required that describes the required information and sets out the appropriate regulatory authority’s reasons for requiring it.
- (6) A person who is required to provide information under this section must provide it in such manner and within such reasonable period as may be specified by the appropriate regulatory authority in the demand for information.
- (7) Sections 368I and 368K apply in relation to a failure to comply with a demand for information imposed under this section as if that failure were a contravention of a requirement of section 368D.
- (8) In this section “information” includes copies of programmes.

Textual Amendments

F89 Words in s. 368O(2)(a) inserted (18.3.2010) by [The Audiovisual Media Services Regulations 2010 \(S.I. 2010/419\)](#), regs. 1(1), **10**

F90 Words in s. 368O(2)(a) substituted (1.11.2020) by [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\)](#), regs. 1(2), **41(a)(i)** (with Pt. 7)

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- F91** Words in s. 368O(2)(a) inserted (31.7.2017) by [Digital Economy Act 2017 \(c. 30\), ss. 93\(7\), 118\(6\); S.I. 2017/765, reg. 2\(y\)](#)
- F92** Word in s. 368O(2)(a) substituted (1.11.2020) by [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\), regs. 1\(2\), 41\(a\)\(ii\)](#) (with Pt. 7)
- F93** Words in s. 368O(2)(a)(ii) substituted (1.11.2020) by [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\), regs. 1\(2\), 41\(a\)\(iii\)](#) (with Pt. 7)
- F94** S. 368O(2)(aa) inserted (1.11.2020) by [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\), regs. 1\(2\), 41\(b\)](#) (with Pt. 7)

[^{F95} 368OA Co-operation with member States and the European Commission

- (1) 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 on-demand programme services, in particular Articles 2, 3, 4 and 30a of the Directive.
- (2) Where OFCOM—
 - (a) receive a request from a member State under Article 4 of the Audiovisual Media Services Directive relating to a provider of an on-demand programme service, and
 - (b) consider that the request is substantiated under that Article,
 they must ask the provider to comply with the rule identified in that request.]

Textual Amendments

- F95** S. 368OA inserted (1.11.2020) by [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\), regs. 1\(2\), 42](#) (with Pt. 7)

Application and interpretation of Part 4A

368P Application of Part 4A in relation to the BBC

[Section 368BA (advance notification) does not apply in relation to an on-demand ^{F96}(A1) programme service provided or to be provided by the BBC.]

- [^{F97}(1) The following provisions do not apply to the BBC—
 - (a) [^{F98}section 368D(3)(za) and (zb) (duties of providers of on-demand programme services);]
 - (b) section 368F (advertising);
 - (c) section 368G (sponsorship);
 - (d) section 368NA (fees).]
- (2) In the following provisions references to a provider of an on-demand programme service do not include references to the BBC—
 - (a) section [^{F99}368C(4) (codes of conduct: food and beverage promotion and children’s programmes)];
 - ^{F100}(b)
 - ^{F100}(c)
 - ^{F101}(d)

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- (e) section 368K (suspension or restriction of service for contraventions);
- (f) section 368L (suspension or restriction of service for inciting crime or disorder);

^{F102}(g)

(3) Paragraph 2(2)(b) of Schedule 12 includes provision imposing obligations on the BBC in relation to on-demand programme services.

Textual Amendments

- F96** S. 368P(A1) inserted (18.3.2010) by [The Audiovisual Media Services Regulations 2010](#) (S.I. 2010/419), regs. 1(1), **11(a)**
- F97** S. 368P(1) substituted (18.3.2010) by [The Audiovisual Media Services Regulations 2010](#) (S.I. 2010/419), regs. 1(1), **11(b)**
- F98** S. 368P(1)(a) substituted (1.11.2020) by [The Audiovisual Media Services Regulations 2020](#) (S.I. 2020/1062), regs. 1(2), **43(a)** (with Pt. 7)
- F99** Words in s. 368P(2)(a) substituted (1.11.2020) by [The Audiovisual Media Services Regulations 2020](#) (S.I. 2020/1062), regs. 1(2), **43(b)(i)** (with Pt. 7)
- F100** S. 368P(2)(b)(c) omitted (18.3.2010) by virtue of [The Audiovisual Media Services Regulations 2010](#) (S.I. 2010/419), regs. 1(1), **11(c)**
- F101** S. 368P(2)(d) omitted (1.11.2020) by virtue of [The Audiovisual Media Services Regulations 2020](#) (S.I. 2020/1062), regs. 1(2), **43(b)(ii)** (with Pt. 7)
- F102** S. 368P(2)(g) omitted (1.11.2020) by virtue of [The Audiovisual Media Services Regulations 2020](#) (S.I. 2020/1062), regs. 1(2), **43(b)(ii)** (with Pt. 7)

368Q Application of Part 4A in relation to the Welsh Authority

[Section 368BA (advance notification) does not apply in relation to an on-demand ^{F103}(A1) programme service provided or to be provided by the Welsh Authority, other than a service that includes advertising.]

[^{F104}(1) In section 368C (duties of appropriate regulatory authority), references to a provider of an on-demand programme service only include references to the Welsh Authority in the following subsections—

- (a) subsection (1), so far as it relates to section 368CB,
- (b) subsection (2), and
- (c) subsection (5).]

(2) It is the duty of the appropriate regulatory authority—

- (a) to take such steps as appear to them best calculated to secure that the requirements of sections 368E and 368F are complied with by the Welsh Authority in relation to advertising, and
- (b) to encourage the Welsh Authority to develop the codes of conduct referred to in section 368C(4) so far as it relates to advertising.

^{F105}(3)

(4) Section 368D(3) [^{F106}(zb), (a), and (b) (duties of providers of on-demand programme services) do] not apply to the Welsh Authority except in relation to advertising or in relation to the inclusion of advertising in on-demand programme services provided by the Welsh Authority.

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- [^{F107}(5) Section 368I (enforcement of sections 368CB and 368D) applies in relation to the Welsh Authority only in the following cases—
- (a) a contravention of section 368D(1) consisting of a contravention of section 368E or 368F that relates to advertising;
 - (b) a contravention of section 368D(3)(za).
- (5A) Section 368IA (enforcement of section 368E(4)) applies in relation to the Welsh Authority only in relation to a failure to take or implement a measure as mentioned in section 368IA(1) that relates to advertising.
- (5B) Sections 368K (suspension or restriction of service for contraventions) and 368L (suspension or restriction of service for inciting crime or disorder) apply in relation to the Welsh Authority only in a case mentioned in subsection (5)(a) or (b) or subsection (5A).]
- (6) Section 368O does not apply in relation to information held by the Welsh Authority except where that information is required by the appropriate regulatory authority for the purposes of—
- (a) an investigation which the appropriate regulatory authority are carrying out (whether or not following receipt by them of a complaint) into a matter relating to compliance by the Welsh Authority with section 368E or 368F in relation to advertising; or
 - (b) securing compliance with the international obligations of the United Kingdom under the Audiovisual Media Services Directive in relation to advertising.
- (7) Part 2 of Schedule 12 includes provision imposing obligations on the Welsh Authority in relation to on-demand programme services.

Textual Amendments

- F103** S. 368Q(A1) inserted (18.3.2010) by [The Audiovisual Media Services Regulations 2010 \(S.I. 2010/419\)](#), regs. 1(1), **12(1)**
- F104** S. 368Q(1) substituted (1.11.2020) by [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\)](#), regs. 1(2), **44(a)** (with Pt. 7)
- F105** S. 368Q(3) omitted (1.11.2020) by virtue of [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\)](#), regs. 1(2), **44(b)** (with Pt. 7)
- F106** Words in s. 368Q(4) substituted (18.3.2010) by [The Audiovisual Media Services Regulations 2010 \(S.I. 2010/419\)](#), regs. 1(1), **12(2)**
- F107** S. 368Q(5)-(5B) substituted for s. 368Q(5) (1.11.2020) by [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\)](#), regs. 1(2), **44(c)** (with Pt. 7)

368R Interpretation of Part 4A

- (1) In this Part—
- “appropriate regulatory authority” is to be construed in accordance with 368B;
 - [^{F108}“children’s programme” means a programme made—
 - (a) for a television programme service or for an on-demand programme service, and
 - (b) for viewing primarily by persons under the age of sixteen;]
 - [^{F109}“electronic cigarette” means a product that—

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- (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) or a medical device within the meaning of regulation 2 of the Medical Devices Regulations 2002 (S.I. 2002/618);
- “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;]
- [^{F110}“prescription-only medicine” means a prescription only medicine within the meaning of regulation 5(3) of the Human Medicines Regulations 2012;]
- “product placement” has the meaning given by section 368H(1);
- “sponsorship” is to be construed in accordance with section 368G;
- “tobacco product” has the meaning given in section 1 of the Tobacco Advertising and Promotion Act 2002.
- (2) For the purposes of this Part, a programme is included in an on-demand programme service if it is included in the range of programmes the service offers to users.
 - (3) For the purposes of this Part, advertising is included in an on-demand programme service if it can be viewed by a user of the service as a result of the user selecting a programme to view.
 - (4) The services that are to be taken for the purposes of this Part to be available for use by members of the public include any service which—
 - (a) is made available for use only to persons who subscribe to the service (whether for a period or in relation to a particular occasion) or who otherwise request its provision; but
 - (b) is a service the facility of subscribing to which, or of otherwise requesting its provision, is offered or made available to members of the public.
 - (5) The person, and the only person, who is to be treated for the purposes of this Part as providing an on-demand programme service is the person who has editorial responsibility for the service (see section 368A(4)).
 - (6) For the purposes of this Part—
 - (a) the provision of a service by the BBC does not include its provision by a BBC company;
 - (b) the provision of a service by the Welsh Authority does not include its provision by an S4C company;and, accordingly, control that is or is capable of being exercised by the BBC or the Welsh Authority over decisions by a BBC company or an S4C company about what is to be comprised in a service is to be disregarded for the purposes of determining who has editorial responsibility for the service.]

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Textual Amendments

- F108** Words in s. 368R(1) substituted (16.4.2010) by [The Audiovisual Media Services \(Product Placement\) Regulations 2010 \(S.I. 2010/831\)](#), regs. 1(1), **8**
- F109** Words in s. 368R(1) inserted (20.5.2016) by [The Tobacco and Related Products Regulations 2016 \(S.I. 2016/507\)](#), regs. 1(2), **46(5)**
- F110** Words in s. 368R(1) substituted (14.8.2012) by [The Human Medicines Regulations 2012 \(S.I. 2012/1916\)](#), reg. 1(2), **Sch. 34 para. 44** (with Sch. 32)

Status:

Point in time view as at 21/12/2020.

Changes to legislation:

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