



Communications Act 2003

2003 CHAPTER 21

[^{F1}PART 4A

ON-DEMAND PROGRAMME SERVICES

[^{F1}Duties of service providers

Textual Amendments

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

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 368E 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;
 - (d) the name, address and electronic address of any body which is the appropriate regulatory authority for any purpose in relation to P or the service that P provides.
- (3) The provider of an on-demand programme service must—
 - (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).

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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.

368E Harmful material

- (1) An on-demand programme service must not contain any material likely to incite hatred based on race, sex, religion or nationality.
- (2) If an on-demand programme service contains material which might seriously impair the physical, mental or moral development of persons under the age of eighteen, the material must be made available in a manner which secures that such persons will not normally see or hear it.

368F Advertising

- (1) Advertising of the following products is prohibited in on-demand programme services—
- (a) cigarettes or other tobacco products;
 - (b) any prescription-only medicine.
- (2) Advertising of alcoholic drinks is prohibited in on-demand programme services unless—
- (a) it is not aimed at persons under the age of eighteen, and
 - (b) it does not encourage excessive consumption of such 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 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.

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

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- (b) by an undertaking whose principal activity is the manufacture or sale of cigarettes or other tobacco products.
- (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;
 - (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 or moral detriment to persons under the age of eighteen;
 - (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,

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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).

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.
- (3) Product placement is prohibited in children’s programmes included in on-demand programme services.

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- (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, 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 A to F are met, and
 - (b) if subsection (14) applies, condition G is also met.
- (7) Condition A is that the programme in which the product, service or trademark, or the reference to it, is included is—
 - (a) a film made for cinema;
 - (b) a film or series made for a television programme service or for an on-demand programme service;
 - (c) a sports programme; or
 - (d) a light entertainment programme.
- (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 or moral detriment to persons under the age of eighteen;
 - (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.

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- (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) This section applies only in relation to programmes the production of which begins after 19th December 2009.
- (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;
 - “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.

368I Enforcement of section 368D

- (1) Where the appropriate regulatory authority determine that a provider of an on-demand programme service is contravening or has contravened 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 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 section 368D and for remedying the consequences of the contravention of that section as may be specified in the notification.

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- (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.
- (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.]

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