



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

^I_{F2} **368CB** Quota for European works

- (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.

***Changes to legislation:** Communications Act 2003, Cross Heading: Duties of service providers is up to date with all changes known to be in force on or before 15 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

- (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—
- “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

- F2** 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 [^{F3}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;]
 - ^{F4}(ca) the name, address and electronic address of any body which is the appropriate regulatory authority for any purpose in relation to P or [^{F5}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
 - ^{F6}(zza) action plan drawn up by the provider as mentioned in section 368C(2);]
 - [pay to the appropriate regulatory authority such fee as that authority may
 - ^{F7}(za) require under section 368NA;
 - (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).

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[A copy of a programme retained for the purposes of subsection (3)(zb) must be of a ^{F8}(3A) standard and in a format which allows the programme to be viewed as it was made available for viewing.]

(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

- F3** 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)
- F4** 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)
- F5** 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)
- F6** S. 368D(3)(zza) inserted (1.11.2020) by [The Audiovisual Media Services Regulations 2020](#) (S.I. 2020/1062), regs. 1(2), **31(c)** (with Pt. 7)
- F7** 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)**
- F8** 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 [^{F9}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].

[^{F10}(2) An on-demand programme service must not contain any prohibited material.

(3) “Prohibited material” means—

[^{F11}(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

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purposes that the video work was not suitable for a classification certificate to be issued in respect of it.

(4) ^{F12}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 ^{F13}... 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

- F9** 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)
- F10** 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**
- F11** 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)
- F12** 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)
- F13** 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;
- ^{F14}(aa) [electronic cigarettes or electronic cigarette refill containers;]
- (b) any prescription-only medicine.

^{F15}(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 [^{F16}, 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

F14 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)**

F15 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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F16 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)

Advertising: less healthy food and drink

F17 368FA

- (1) From the beginning of ^{F18}1 October 2025], on-demand programme services must not, between 5.30 am and 9.00 pm, include advertisements for an identifiable less healthy food or drink product.
- (2) The prohibition imposed by subsection (1) does not apply in relation to advertisements included in on-demand programme services as a result of arrangements made by or on behalf of a person who is, at the time when the arrangements are made, a food or drink SME.
- (3) The Secretary of State may by regulations provide for further exemptions from the prohibition imposed by subsection (1).
- (4) For the purposes of this section—
 - (a) “advertisements” includes advertisements and sponsorship announcements (within the meaning given by section 368G(17)) under a sponsorship agreement;
 - (b) a product is “identifiable”, in relation to advertisements, if persons in the United Kingdom (or any part of the United Kingdom) could reasonably be expected to be able to identify the advertisements as being for that product;
 - (c) a food or drink product is “less healthy” if—
 - (i) it falls within a description specified in regulations made by the Secretary of State, and
 - (ii) it is “less healthy” in accordance with the relevant guidance;
 - (d) “the relevant guidance” means the guidance entitled “Nutrient Profiling Technical Guidance” published by the Department of Health on 1 January 2011;
 - (e) “food or drink SME” means a small or medium enterprise, within the meaning given by regulations made by the Secretary of State, of a description specified in the regulations.
- (5) Regulations under subsection (4)(e) that make provision by reference to the number of members of staff of a person may make provision about who is to count as a member of staff (including members of staff of another person).
- (6) The Secretary of State may, before the date specified in subsection (1), amend that subsection so as to substitute a later date for the date that is for the time being specified there.
- (7) The Secretary of State may by regulations amend this section to change the meaning of “the relevant guidance”.
- (8) Before making regulations under subsection (3) or (7), the Secretary of State must consult such persons as the Secretary of State considers appropriate.
- (9) A statutory instrument containing regulations under subsection (7) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.]

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Textual Amendments

- F17** S. 368FA inserted (28.6.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(4), [Sch. 18 para. 2](#)
- F18** Words in s. 368FA(1) substituted (31.12.2022) by [The Communications Act 2003 \(Restrictions on the Advertising of Less Healthy Food\) \(Effective Date\) \(Amendment\) Regulations 2022 \(S.I. 2022/1311\)](#), regs. 1(2), [2\(3\)](#)

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.
- [^{F19}(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.

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- (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 [^{F20}, mental] or moral detriment to persons under the age of eighteen;
 - ^{F21}(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).

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Textual Amendments

- F19** 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)
- F20** 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)
- F21** 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.

[^{F22}(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, ^{F23}...

[it is of electronic cigarettes or electronic cigarette refill containers, ^{F25}...]
^{F24}(ba)

[it is by or on behalf of an undertaking whose principal activity is the manufacture or sale of electronic cigarettes or electronic cigarette refill containers, or]
^{F26}(bb)

- (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;

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- (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 [F27B] to F are met, and
 - (b) if subsection (14) applies, condition G is also met.
- ^{F28}(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 [F29, mental] or moral detriment to persons under the age of eighteen;
 - ^{F30}(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) [F31Subject to [F32subsections (15A), (15B) and (15C)],] this section applies only in relation to programmes the production of which begins after 19th December 2009.

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[Subsection (4)(ba) applies only in relation to programmes the production of which^{F33}(15A) begins after 19th May 2016.]

[Subsection (4)(bb) applies only in relation to programmes the production of which^{F34}(15B) begins after 31 October 2020.

(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;

[^{F35}“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

- F22** 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)
- F23** 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)**
- F24** 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)**
- F25** 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)
- F26** 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)
- F27** 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)

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- F28** 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)
- F29** 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)
- F30** 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)
- F31** 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)**
- F32** 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)
- F33** 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)**
- F34** 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)
- F35** 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 [^{F36}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 [^{F37}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 [^{F38}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 [^{F39}section 368CB or] section 368D and for remedying the consequences of the contravention ^{F40}... 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.

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- (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.]
- [^{F41}(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

- F36** 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)
- F37** 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)
- F38** 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)
- F39** 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)
- F40** 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)
- F41** 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)

[^{F42}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.

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- (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.
- (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.]

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Textual Amendments

F42 [S. 368IA](#) inserted (1.11.2020) by [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\)](#), regs. 1(2), **37** (with [Pt. 7](#))

Changes to legislation:

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Changes and effects yet to be applied to :

- specified provision(s) amendment to earlier commencing SI 2003/1900, art. 3(2) by [S.I. 2003/3142 art. 1\(3\)](#)
- specified provision(s) amendment to earlier commencing SI 2003/3142 by [S.I. 2004/1492 art. 2](#)
- specified provision(s) amendment to earlier commencing SI 2003/3142 by [S.I. 2004/697 art. 2](#)
- specified provision(s) amendment to earlier commencing SI 2003/3142 art. 4 Sch. 2 by [S.I. 2004/545 art. 2](#)

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 124Q(7)(a) words substituted by [2013 c. 22 Sch. 9 para. 52](#)
- s. 148A and cross-heading inserted by [2022 c. 46 s. 73\(2\)](#)
- s. 368E(5)(d)(e) inserted by [2017 c. 30 s. 94\(3\)](#)
- s. 402(2A)(za)(zb) inserted by [2022 c. 46 Sch. para. 2](#)
- Sch. 3A para. 21(6) inserted by [2022 c. 46 Sch. para. 3\(5\)\(b\)](#)
- Sch. 3A para. 37(3)(aza) inserted by [2022 c. 46 Sch. para. 3\(9\)](#)
- Sch. 3A para. 84(1)(aza) inserted by [2022 c. 46 Sch. para. 3\(10\)](#)
- Sch. 3A para. 103(1)(ca) inserted by [2022 c. 46 s. 70](#)
- Sch. 3A para. 119A inserted by [2022 c. 46 s. 72](#)
- Sch. 3A Pt. 4ZA inserted by [2022 c. 46 s. 67\(1\)](#)