

SCHEDULES

SCHEDULE 2

Section 10

TICKET TOUTING: PROVIDERS OF INFORMATION SOCIETY SERVICES

Non-UK service providers: restriction on institution of proceedings

- 1 (1) Proceedings for an offence under section 10 may not be instituted against a non-UK service provider in respect of anything done in the course of the provision of information society services unless the derogation condition is met.
- (2) The derogation condition is that taking proceedings—
 - (a) is necessary for the purposes of the public interest objective,
 - (b) relates to an information society service that prejudices that objective or presents a serious and grave risk of prejudice to that objective, and
 - (c) is proportionate to that objective.
- (3) In this paragraph—
 - “non-UK service provider” means a service provider established in an EEA state other than the United Kingdom;
 - “the public interest objective” means the pursuit of public policy.

Exceptions for mere conduits

- 2 (1) A service provider does not commit an offence under section 10 by providing access to a communication network or by transmitting, in a communication network, information provided by a recipient of the service, if the service provider does not—
 - (a) initiate the transmission,
 - (b) select the recipient of the transmission, or
 - (c) select or modify the information contained in the transmission.
- (2) For the purposes of sub-paragraph (1)—
 - (a) providing access to a communication network, and
 - (b) transmitting information in a communication network,include the automatic, intermediate and transient storage of the information transmitted so far as the storage is solely for the purpose of carrying out the transmission in the network.
- (3) Sub-paragraph (2) does not apply if the information is stored for longer than is reasonably necessary for the transmission.

Exception for caching

- 3 (1) A service provider does not commit an offence under section 10 by storing information provided by a recipient of the service for transmission in a communication network if the first and second conditions are met.

Status: This is the original version (as it was originally enacted).

- (2) The first condition is that the storage of the information—
 - (a) is automatic, intermediate and temporary, and
 - (b) is solely for the purpose of making more efficient the onward transmission of the information to other recipients of the service at their request.
- (3) The second condition is that the service provider—
 - (a) does not modify the information,
 - (b) complies with any conditions attached to having access to the information, and
 - (c) if sub-paragraph (4) applies, promptly removes the information or disables access to it.
- (4) This sub-paragraph applies if the service provider obtains actual knowledge that—
 - (a) the information at the initial source of the transmission has been removed from the network,
 - (b) access to it has been disabled, or
 - (c) a court or administrative authority has ordered the removal from the network of, or the disablement of access to, the information.

Exception for hosting

- 4 (1) A service provider does not commit an offence under section 10 by storing information provided by a recipient of the service if—
 - (a) the service provider had no actual knowledge when the information was provided that its provision constituted an offence under section 10, or
 - (b) on obtaining actual knowledge that the provision of the information constituted such an offence, the service provider promptly removed the information or disabled access to it.
- (2) Sub-paragraph (1) does not apply if the recipient of the service is acting under the authority or control of the service provider.

Interpretation

- 5 In this Schedule—
 - “established”, in relation to a service provider, is to be read in accordance with paragraph 6;
 - “information society services”—
 - (a) has the meaning given in Article 2(a) of the E-Commerce Directive (which refers to Article 1(2) of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations), and
 - (b) is summarised in recital 17 of the E-Commerce Directive as covering “any service normally provided for remuneration, at a distance, by means of electronic equipment for the processing (including digital compression) and storage of data, and at the individual request of a recipient of a service”;
 - “recipient”, in relation to a service, means a person who, for professional ends or otherwise, uses an information society service, in particular for the purposes of seeking information or making it accessible;

Status: This is the original version (as it was originally enacted).

“service provider” means a person providing an information society service;

“the E-Commerce Directive” means Directive [2000/31/EC](#) of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce).

- 6 (1) A service provider is “established” in the United Kingdom, or in a particular EEA state, if the service provider—
- (a) effectively pursues an economic activity using a fixed establishment in the United Kingdom, or that EEA state, for an indefinite period, and
 - (b) is a national of an EEA state or a company or firm mentioned in Article 54 of the Treaty on the Functioning of the European Union.
- (2) The presence or use in a particular place of equipment or other technical means of providing an information society service does not, of itself, constitute the establishment of a service provider.
- (3) Where it cannot be determined from which of a number of establishments a given information society service is provided, that service is to be regarded as provided from the establishment at the centre of the service provider’s activities relating to that service.