

SCHEDULES

SCHEDULE 1

EXEMPT USER-TO-USER AND SEARCH SERVICES

PART 1

DESCRIPTIONS OF SERVICES WHICH ARE EXEMPT

Email services

- 1 A user-to-user service is exempt if emails are the only user-generated content (other than identifying content) enabled by the service.

SMS and MMS services

- 2 (1) A user-to-user service is exempt if SMS messages are the only user-generated content (other than identifying content) enabled by the service.
- (2) A user-to-user service is exempt if MMS messages are the only user-generated content (other than identifying content) enabled by the service.
- (3) A user-to-user service is exempt if SMS messages and MMS messages are the only user-generated content (other than identifying content) enabled by the service.
- (4) “SMS message” and “MMS message” have the meaning given by section 55(12).

Services offering only one-to-one live aural communications

- 3 (1) A user-to-user service is exempt if one-to-one live aural communications are the only user-generated content (other than identifying content) enabled by the service.
- (2) “One-to-one live aural communications” has the meaning given by section 55(5).

Limited functionality services

- 4 (1) A user-to-user service is exempt if the functionalities of the service are limited, such that users are able to communicate by means of the service only in the following ways—
- (a) posting comments or reviews relating to provider content;
 - (b) sharing such comments or reviews on a different internet service;
 - (c) expressing a view on such comments or reviews, or on provider content, by means of—
 - (i) applying a “like” or “dislike” button or other button of that nature,
 - (ii) applying an emoji or symbol of any kind,
 - (iii) engaging in yes/no voting, or

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- (iv) rating or scoring the content (or the comments or reviews) in any way (including giving star or numerical ratings);
 - (d) producing or displaying identifying content in connection with any of the activities described in paragraphs (a) to (c).
- (2) In sub-paragraph (1), “provider content” means content published on a service by the provider of the service or by a person acting on behalf of the provider, including where the publication of the content is effected or controlled by means of—
- (a) software or an automated tool or algorithm applied by the provider or by a person acting on behalf of the provider, or
 - (b) an automated tool or algorithm made available on the service by the provider or by a person acting on behalf of the provider.
- (3) For the purposes of this paragraph, content that is user-generated content in relation to a service is not to be regarded as provider content in relation to that service.

Services which enable combinations of user-generated content

- 5 A user-to-user service is exempt if the only user-generated content enabled by the service is content of the following kinds—
- (a) content mentioned in paragraph 1, 2 or 3 and related identifying content;
 - (b) content arising in connection with any of the activities described in paragraph 4(1).

Exception to exemptions in paragraphs 1 to 5

- 6 But a user-to-user service described in any of paragraphs 1 to 5 is not exempt if—
- (a) regulated provider pornographic content is published or displayed on the service, and
 - (b) the service has links with the United Kingdom within the meaning of section 80(4).

Internal business services (entire user-to-user service or search service)

- 7 (1) A user-to-user service or a search service is exempt if the conditions in sub-paragraph (2) are met in relation to the service.
- (2) The conditions are—
- (a) the user-to-user service or search service is an internal resource or tool for a business, or for more than one business carried on by the same person,
 - (b) the person carrying on the business (or businesses) (“P”) is the provider of the user-to-user service or search service, and
 - (c) the user-to-user service or search service is available only to a closed group of people comprising some or all of the following—
 - (i) where P is an individual or individuals, that individual or those individuals,
 - (ii) where P is an entity, officers of P,
 - (iii) persons who work for P (including as employees or volunteers) for the purposes of any activities of the business (or any of the businesses) in question, and

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(iv) any other persons authorised by a person within sub-paragraph (i), (ii) or (iii) to use the service for the purposes of any activities of the business (or any of the businesses) in question (for example, a contractor, consultant or auditor, or in the case of an educational institution, pupils or students).

(3) In this paragraph—

“business” includes trade, profession, educational institution or other concern (whether or not carried on for profit);

“officer” includes a director, manager, partner, associate, secretary, governor, trustee or other similar officer.

Internal business services (part of user-to-user service or search service)

8 (1) A user-to-user service is exempt if—

- (a) the conditions in paragraph 7(2) are met in relation to a part of the service,
- (b) no user-generated content is enabled by the rest of the service, and
- (c) no regulated provider pornographic content is published or displayed on the rest of the service.

(2) A user-to-user service is also exempt if—

- (a) the conditions in paragraph 7(2) are met in relation to a part of the service,
- (b) the only user-generated content enabled by the rest of the service is—
 - (i) content mentioned in paragraph 1, 2 or 3 and related identifying content, or
 - (ii) content arising in connection with any of the activities described in paragraph 4(1), and
- (c) no regulated provider pornographic content is published or displayed on the rest of the service.

(3) A search service is exempt if—

- (a) the conditions in paragraph 7(2) are met in relation to a part of the service that is a search engine,
- (b) the service does not include a public search engine, and
- (c) no regulated provider pornographic content is published or displayed on the rest of the service.

(4) In this paragraph—

“public search engine” means a search engine other than one in relation to which the conditions in paragraph 7(2) are met;

“the rest of the service” means all parts of the user-to-user service or search service other than the part in relation to which the conditions in paragraph 7(2) are met.

Services provided by public bodies

9 (1) A user-to-user service or a search service is exempt if—

- (a) both of the following conditions are met in relation to the service—
 - (i) the provider of the service is a public authority within the meaning of section 6 of the Human Rights Act 1998, and
 - (ii) the service is provided in the exercise of public functions only,

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- (b) the provider of the service is Parliament, either House of Parliament, the Scottish Parliament, Senedd Cymru, the Northern Ireland Assembly or a person acting on behalf of any of those institutions,
 - (c) the provider of the service is a foreign sovereign power, or
 - (d) both of the following conditions are met in relation to the service—
 - (i) the provider of the service is an entity formed under the law of a country outside the United Kingdom, which exercises functions of a public nature, and
 - (ii) the service is provided in the exercise of such functions only.
- (2) But a user-to-user service or a search service is not exempt under this paragraph if—
- (a) the provider of the service is a person providing education or childcare, and
 - (b) the service is provided for the purposes of that education or childcare.
- See paragraph 10 for an exemption for services provided by persons providing education or childcare of particular descriptions.
- (3) This paragraph is without prejudice to the fact that this Act does not apply in relation to a user-to-user or search service provided by the Crown.
- (4) In this paragraph, “public function” means a function that is a function of a public nature for the purposes of the Human Rights Act 1998.

Services provided by persons providing education or childcare

- 10 (1) A user-to-user service or a search service is exempt if—
- (a) the provider of the service is—
 - (i) the person with legal responsibility for education or childcare of a description listed in Part 2 of this Schedule (“the responsible person”), or where the responsible person is a body, a member of that body, or
 - (ii) a person who is employed or engaged to provide education or childcare of a description listed in Part 2 of this Schedule, and who is subject to safeguarding duties which relate to the provision of that education or childcare, and
 - (b) the service is provided for the purposes of that education or childcare.
- (2) In sub-paragraph (1)(a)(ii), “safeguarding duties” means duties or requirements which are related to the safeguarding of children arising under enactments other than this Act, under guidance or requirements (however referred to) produced under enactments other than this Act, or as a result of contractual arrangements made by the responsible person.
- (3) For the purposes of this paragraph, the person with legal responsibility for education or childcare of a particular description is the person with legal responsibility for its day-to-day provision (for example, the person with legal responsibility for a particular school), rather than any other person who has a duty to ensure that, in general, education or childcare of that description (or education or childcare which includes education or childcare of that description) is provided.

Interpretation

- 11 In Part 1 of this Schedule—

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“enactment” includes—

- (a) an enactment contained in subordinate legislation (within the meaning of the Interpretation Act 1978),
- (b) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament,
- (c) an enactment contained in, or in an instrument made under, a Measure or Act of Senedd Cymru, and
- (d) an enactment contained in, or in an instrument made under, Northern Ireland legislation;

“regulated provider pornographic content” and “published or displayed” have the same meaning as in Part 5 (see section 79);

“user-generated content” has the meaning given by section 55 (see subsections (3) and (4) of that section).