

SCHEDULES

SCHEDULE 17

Section 211

VIDEO-SHARING PLATFORM SERVICES: TRANSITIONAL PROVISION ETC

PART 1

INTERPRETATION

- 1 (1) In this Schedule, “pre-existing Part 4B service” means—
- (a) an internet service which—
 - (i) is a video-sharing platform service by reason of the conditions in section 368S(1) and (2) of the Communications Act being met in relation to the service as a whole, and
 - (ii) was being provided immediately before this Schedule comes into force; or
 - (b) a dissociable section of an internet service, where that dissociable section—
 - (i) is a video-sharing platform service by reason of the conditions in section 368S(1)(a) and (2) of the Communications Act being met in relation to that dissociable section, and
 - (ii) was being provided immediately before this Schedule comes into force.
- (2) In sub-paragraph (1), any reference to a service provided before this Schedule comes into force includes a reference to a service provided in breach of the requirement in section 368V of the Communications Act.
- 2 In this Schedule—
- “the relevant day”, in relation to a pre-existing Part 4B service or to a service which includes a pre-existing Part 4B service, means—
 - (a) the date when section 210 comes into force (repeal of Part 4B of the Communications Act), or
 - (b) if the pre-existing Part 4B service ceases to be a video-sharing platform service before the date mentioned in paragraph (a), the date when that service ceases to be a video-sharing platform service;
 - “safety duties” means the duties mentioned in section 7(2), (4) and (5), except the duties set out in—
 - (a) section 9 (illegal content risk assessments),
 - (b) section 11 (children’s risk assessments),
 - (c) section 14 (assessments related to the adult user empowerment duty set out in section 15(2)), and
 - (d) section 23(2), (9) and (10) (records of assessments);
 - “the transitional period”, in relation to a pre-existing Part 4B service or to a service which includes a pre-existing Part 4B service, means the period—

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- (a) beginning with the date when this Schedule comes into force, and
 - (b) ending with the relevant day;
- “video-sharing platform service” has the same meaning as in Part 4B of the Communications Act (see section 368S of that Act).

PART 2

DURING THE TRANSITIONAL PERIOD

Pre-existing Part 4B services which are regulated user-to-user services

- 3 (1) This paragraph applies in relation to a pre-existing Part 4B service which—
- (a) is within the definition in paragraph (a) of paragraph 1(1), and
 - (b) is also a regulated user-to-user service.
- (2) Both this Act and Part 4B of the Communications Act apply in relation to the pre-existing Part 4B service during the transitional period.
- (3) But that is subject to—
- (a) sub-paragraph (4),
 - (b) sub-paragraph (5), and
 - (c) paragraph 4.
- (4) The following duties and requirements under this Act do not apply during the transitional period in relation to the pre-existing Part 4B service—
- (a) the safety duties;
 - (b) the duties set out in section 38 (fraudulent advertising);
 - (c) the duties set out in section 64 (user identity verification);
 - (d) the requirements under section 66(1) and (2) (reporting CSEA content to the NCA);
 - (e) the duties set out in sections 71 and 72 (terms of service);
 - (f) the duties set out in section 75 (deceased child users);
 - (g) the duty on OFCOM to give a notice under section 77(1) requiring information in a transparency report;
 - (h) the requirements to produce transparency reports under section 77(3) and (4).
- (5) OFCOM’s powers under Schedule 12 to this Act (powers of entry, inspection and audit) do not apply during the transitional period in relation to the pre-existing Part 4B service.
- (6) In sub-paragraph (2) the reference to this Act does not include a reference to Part 6 (fees); for the application of Part 6, see Part 3 of this Schedule.

Regulated user-to-user services that include regulated provider pornographic content

- 4 (1) The duties set out in section 81 of this Act do not apply during the transitional period in relation to any regulated provider pornographic content published or displayed on a pre-existing Part 4B service.

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- (2) In the case of a regulated user-to-user service which includes a pre-existing Part 4B service within the definition in paragraph (b) of paragraph 1(1), nothing in sub-paragraph (1) is to be taken to prevent the duties set out in section 81 from applying during the transitional period in relation to any regulated provider pornographic content published or displayed on any other part of the service.
- (3) In this paragraph “regulated provider pornographic content” and “published or displayed” have the same meaning as in Part 5 of this Act (see section 79).

Pre-existing Part 4B services which form part of regulated user-to-user services

- 5 (1) During the transitional period, Part 4B of the Communications Act applies in relation to a pre-existing Part 4B service within the definition in paragraph (b) of paragraph 1(1).
- (2) Sub-paragraph (3), and paragraphs 6 to 8, apply in relation to a regulated user-to-user service which includes a pre-existing Part 4B service within the definition in paragraph (b) of paragraph 1(1).
- (3) During the transitional period, this Act applies in relation to the regulated user-to-user service with the modifications set out in paragraph 6, 7, or 8 (whichever applies).
- (4) In paragraphs 6 to 8 the dissociable section of the service which is the pre-existing Part 4B service is referred to as “the Part 4B part”.
- (5) In sub-paragraph (3) the reference to this Act does not include a reference to Part 6 (fees); for the application of Part 6, see Part 3 of this Schedule.

Regulated user-to-user services with a Part 4B part and another user-to-user part

- 6 (1) This paragraph applies in relation to a regulated user-to-user service described in paragraph 5(2) if the service would still be a regulated user-to-user service even if the Part 4B part were to be assumed not to be part of the service.
- (2) During the transitional period—
 - (a) any duty or requirement mentioned in paragraph 3(4) which applies in relation to the regulated service is to be treated as applying only in relation to the rest of the service;
 - (b) the powers mentioned in paragraph 3(5) are to be treated as applying only in relation to the rest of the service.
- (3) In this paragraph “the rest of the service” means any user-to-user part of the regulated service other than the Part 4B part.

Regulated user-to-user services with a Part 4B part and a search engine

- 7 (1) This paragraph applies in relation to a regulated user-to-user service described in paragraph 5(2) if the service would be a regulated search service if the Part 4B part were to be assumed not to be part of the service.
- (2) During the transitional period, no duty or requirement mentioned in paragraph 3(4) applies in relation to the Part 4B part of the service (but that is not to be taken to prevent any other duty or requirement under this Act from applying in relation to the search engine of the service during the transitional period).

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- (3) During the transitional period, the powers mentioned in paragraph 3(5) are to be treated as applying only in relation to the search engine of the service.

Regulated user-to-user services with a Part 4B part but no other user-to-user part or search engine

- 8 (1) This paragraph applies in relation to a regulated user-to-user service described in paragraph 5(2) if the service does not fall within paragraph 6 or 7.
- (2) The duties, requirements and powers mentioned in paragraph 3(4) and (5) do not apply in relation to the regulated service during the transitional period.

Assessments of pre-existing Part 4B services or of services which include a pre-existing Part 4B service

- 9 See Part 3 of Schedule 3 for provision about—
- (a) the timing of certain assessments of pre-existing Part 4B services, and
 - (b) modifications of Parts 1 and 2 of that Schedule in connection with certain assessments of services which include a pre-existing Part 4B service within the definition in paragraph (b) of paragraph 1(1).

Operation of section 368U of the Communications Act

- 10 During the transitional period, section 368U of the Communications Act has effect as a requirement to establish and maintain an up to date list of persons providing a video-sharing platform service to which Part 4B applies.

Video-sharing platform services which start up, or start up again, during the transitional period

- 11 Part 4B of the Communications Act does not apply in relation to a video-sharing platform service which is first provided on or after the date when this Schedule comes into force.
- 12 (1) Sub-paragraph (2) applies in relation to a pre-existing Part 4B service if—
- (a) the service ceases to be a video-sharing platform service on a date within the transitional period, and
 - (b) the service begins again to be a video-sharing platform service on some later date within the transitional period.
- (2) Part 4B of the Communications Act does not start applying again in relation to the service on the date mentioned in sub-paragraph (1)(b).
- 13 Paragraphs 11 and 12 apply regardless of whether, or when, a provider of a service has notified the appropriate regulatory authority in accordance with section 368V of the Communications Act.

PART 3

APPLICATION OF PART 6 OF THIS ACT: FEES

Introduction

- 14 This Part makes provision about the application of the following provisions of this Act in relation to a person who is the provider of a relevant regulated service—
- (a) section 83 (duty to notify OFCOM in relation to the charging of fees);
 - (b) section 84 (payment of fees);
 - (c) Schedule 10 (additional fees).
- 15 In this Part “relevant regulated service” means—
- (a) a regulated user-to-user service which is a pre-existing Part 4B service within the definition in paragraph (a) of paragraph 1(1), or
 - (b) a regulated user-to-user service which includes a pre-existing Part 4B service within the definition in paragraph (b) of paragraph 1(1).

Application of section 83

- 16 (1) Sub-paragraph (2) applies in relation to a person who is the provider of a relevant regulated service, whether or not the person is the provider of any other regulated service.
- (2) Section 83, which makes provision about the notification of OFCOM in relation to a charging year, applies to the provider in relation to every charging year, regardless of whether any part, or all, of a charging year falls within the transitional period.
- 17 (1) This paragraph applies in relation to a person who is the provider of a relevant regulated service, unless the person is an exempt provider (see paragraph 24).
- (2) Sub-paragraph (3) applies in relation to the provider if—
- (a) the provider is required by section 83 to give details to OFCOM of the provider’s qualifying worldwide revenue for the qualifying period that relates to a charging year,
 - (b) the provider gives such details in relation to that charging year at a time within the transitional period, and
 - (c) no regulations under section 240(1) have been made before that time specifying that section 210 is to come into force on or before the first day of that charging year.
- (3) The provider’s notification under section 83 about qualifying worldwide revenue must include a breakdown indicating the amounts which are wholly referable to a relevant Part 4B service (if any).

Application of section 84: transitional charging year

- 18 If a person who is the provider of a relevant regulated service is an exempt provider, section 84 and Schedule 10 do not apply in relation to the provider in respect of a transitional charging year (see paragraph 23).
- 19 (1) If a person who is the provider of a relevant regulated service is not an exempt provider, section 84 and Schedule 10 apply in relation to the provider in respect of a transitional charging year.

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- (2) But sub-paragraphs (3) and (4) apply in relation to the provider in respect of a transitional charging year if the provider’s notification under section 83 in relation to that charging year has included details of amounts wholly referable to a relevant Part 4B service (as mentioned in paragraph 17(3)).
- (3) For the purposes of the computation of the provider’s fee under section 84 in respect of the transitional charging year, references in that section to the provider’s qualifying worldwide revenue are to be taken to be references to the provider’s non-Part 4B qualifying worldwide revenue.
- (4) OFCOM may not require the provider to pay a fee under section 84 in respect of the transitional charging year if the provider’s non-Part 4B qualifying worldwide revenue for the qualifying period that relates to that charging year is less than the threshold figure that has effect for that charging year.
- (5) The amount of a provider’s “non-Part 4B qualifying worldwide revenue” is the amount that would be the provider’s qualifying worldwide revenue (see section 85) if all amounts wholly referable to a relevant Part 4B service were left out of account.

Application of section 84: non-transitional charging year

- 20 (1) Sub-paragraph (2) applies in relation to a person who is the provider of a relevant regulated service, whether or not the person is the provider of any other regulated service.
- (2) Section 84 and Schedule 10 apply without modification in relation to the provider in respect of a non-transitional charging year (even if the notification date in relation to such a charging year fell within the transitional period).

Amounts wholly referable to relevant Part 4B service

- 21 (1) For the purposes of this Part, OFCOM may produce a statement giving information about the circumstances in which amounts do, or do not, count as being wholly referable to a relevant Part 4B service.
- (2) If OFCOM produce such a statement, they must publish it (and any revised or replacement statement).

Interpretation of this Part

- 22 In this Part—
 - “non-transitional charging year” means a charging year which is not a transitional charging year;
 - “notification date”, in relation to a charging year, means the latest date by which a notification under section 83 relating to that charging year is required to be given (see section 83(5));
 - “relevant Part 4B service” means—
 - (a) a regulated user-to-user service described in paragraph 15(a), or
 - (b) a pre-existing Part 4B service included in a regulated user-to-user service described in paragraph 15(b).
- 23 For the purposes of this Part a charging year is a “transitional charging year” if—

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- (a) the notification date in relation to that charging year fell within the transitional period, and
 - (b) no regulations under section 240(1) were made before the notification date specifying that section 210 was to come into force on or before the first day of that charging year.
- 24 (1) In this Part “exempt provider” means a person within sub-paragraph (2) or (3).
- (2) A person is within this sub-paragraph if the person is the provider of only one regulated service, and that service is—
- (a) a regulated user-to-user service which is a pre-existing Part 4B service within the definition in paragraph (a) of paragraph 1(1), or
 - (b) a regulated user-to-user service which—
 - (i) includes a pre-existing Part 4B service within the definition in paragraph (b) of paragraph 1(1), and
 - (ii) does not fall within paragraph 6 or 7.
- (3) A person is within this sub-paragraph if the person is the provider of more than one regulated service, if each regulated service is of a kind described in sub-paragraph (2).
- 25 In this Part the following terms have the same meaning as in Part 6 of this Act—
- “charging year”;
 - “qualifying period”;
 - “threshold figure”.

PART 4

AFTER THE END OF THE TRANSITIONAL PERIOD

Interpretation of this Part

- 26 In this Part of this Schedule—
- (a) “the repeal time” means the time when section 210 of this Act comes into force (repeal of Part 4B of the Communications Act);
 - (b) (except in paragraph (a)) references to sections are to sections of the Communications Act.
- 27 For the purposes of this Part an investigation relating to a person begins when OFCOM notify the person to that effect.

OFCOM as appropriate regulatory authority

- 28 The repeal of section 368T does not affect OFCOM’s powers to act after the repeal time as the appropriate regulatory authority under Part 4B of the Communications Act as it has effect by virtue of this Part of this Schedule.

Duties of service providers to co-operate with investigations

- 29 The repeal of section 368Y(3)(c) (duty to co-operate) does not affect the application of that provision after the repeal time in relation to—

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- (a) an investigation as mentioned in section 368Z10(3)(f) begun before that time, or
- (b) any demand for information for the purpose mentioned in section 368Z10(3)(i) resulting from such an investigation.

Demands for information, and enforcement of such demands

- 30 (1) The repeal of sections 368Y(3)(b) and 368Z10 (demands for information) does not affect the application of those provisions after the repeal time in a case in which—
- (a) OFCOM require information after the repeal time for the purposes of an investigation as mentioned in section 368Z10(3)(f), and
 - (b) the investigation was begun before that time.
- (2) The repeal of sections 368Z2, 368Z4 and 368Z10 does not affect the application of those sections after the repeal time in connection with—
- (a) a failure to comply with a requirement under section 368Z10 imposed before that time, or
 - (b) a failure to comply with a requirement imposed after that time under section 368Z10 as it has effect in a case mentioned in sub-paragraph (1).
- (3) In this paragraph—
- (a) “the purposes of an investigation” include the purposes of any enforcement action or proceedings resulting from an investigation;
 - (b) references to sections 368Z2 and 368Z4 include references to those sections as modified by section 368Z10.

Enforcement notifications, financial penalties etc

- 31 (1) The repeal of sections 368W and 368Z4 (enforcement of section 368V) does not affect the application of those sections after the repeal time in a case in which OFCOM—
- (a) made a determination as mentioned in section 368W(1) before that time, or
 - (b) began, before that time, to investigate whether they may have grounds to make such a determination.
- (2) The repeal of sections 368Z2 and 368Z4 (enforcement of sections 368Y and 368Z1(6) and (7)) does not affect the application of those sections after the repeal time in a case in which OFCOM—
- (a) made a determination as mentioned in section 368Z2(1) before that time, or
 - (b) began, before that time, to investigate whether they may have grounds to make such a determination.
- (3) The repeal of sections 368Z3 and 368Z4 (enforcement of sections 368Z1(1) and (2)) does not affect the application of those sections after the repeal time in a case in which OFCOM—
- (a) made a determination as mentioned in section 368Z3(1) before that time, or
 - (b) began, before that time, to investigate whether they may have grounds to make such a determination.

Suspension or restriction of service for contraventions or failures

- 32 (1) The repeal of section 368Z5 (suspension or restriction of service for contraventions or failures) does not affect the application of that section after the repeal time in a case in which OFCOM—
- (a) made a determination as mentioned in section 368W(1), 368Z2(1) or 368Z3(1) before that time, or
 - (b) made such a determination after that time following an investigation begun before that time.
- (2) The repeal of section 368Z5 does not affect the application of that section (as modified by section 368Z10) after the repeal time in a case in which—
- (a) OFCOM are satisfied that a person failed to comply with a requirement under section 368Z10 imposed before that time, or
 - (b) OFCOM are satisfied that a person failed to comply with a requirement imposed after that time under section 368Z10 as it has effect in a case mentioned in paragraph 30(1).
- (3) The repeal of sections 368Z7 (directions under sections 368Z5 and 368Z6) and 368Z8 (offence relating to such directions) does not affect the application of those sections after the repeal time in connection with a direction given under section 368Z5 as it has effect by virtue of this paragraph.