

STATUTORY INSTRUMENTS

2006 No. 2369

Tobacco Advertising and Promotion Act 2002 etc. (Amendment) Regulations 2006

PROSPECTIVE

Information society service providers

9. After section 22 of the Act insert the following Schedule—

“SCHEDULE

Section 4(5)

INFORMATION SOCIETY SERVICE PROVIDERS

Interpretation

1. In this Schedule—

“recipient of the service” means any person who, for professional ends or otherwise, uses an information society service, in particular for the purposes of seeking information or making it accessible; and

“relevant offence” is an offence under section 2, 3A or 9.

Exceptions for mere conduits

2.—(1) A service provider is not capable of being guilty of a relevant offence in respect of anything done in the course of providing so much of an information society service as consists in—

- (a) the provision of access to a communication network, or
- (b) the transmission in a communication network of information provided by a recipient of the service,

if the transmission condition is satisfied.

(2) The transmission condition is that 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.

(3) Sub-paragraph (1)(b) does not apply if the information is information to which paragraph 3 applies.

(4) For the purposes of this paragraph, the provision of access to a communication network and the transmission of information in the network includes automatic, intermediate and transient storage of information for the purpose of carrying out the transmission in the network.

Status: This version of this provision is prospective.

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Tobacco Advertising and Promotion Act 2002 etc. (Amendment) Regulations 2006. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

(5) Sub-paragraph (4) does not apply if the information is stored for longer than is reasonably necessary for the transmission.

Exception for caching

3.—(1) This paragraph applies to information which—

- (a) is provided by a recipient of an information society service, and
- (b) is the subject of automatic, intermediate and temporary storage which is solely for the purpose of making the onward transmission of the information to other recipients of the service at their request more efficient.

(2) A service provider is not capable of being guilty of a relevant offence in respect of anything done in the course of providing so much of an information society service as consists in the transmission in a communication network of information to which this paragraph applies if—

- (a) the service provider does not modify the information;
- (b) he complies with any conditions attached to having access to the information;
- (c) in a case to which sub-paragraph (3) applies, the service provider expeditiously removes the information or disables access to it.

(3) 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, or
- (b) access to it has been disabled.

Exception for hosting

4.—(1) A service provider is not capable of being guilty of a relevant offence in respect of anything done in the course of providing so much of an information society service as consists in the storage of information provided by a recipient of the service if—

- (a) the service provider did not know when the information was provided that it contained offending material, or
- (b) upon obtaining actual knowledge that the information contained offending material, the service provider expeditiously removed the information or disabled access to it.

(2) Offending material is material the storage of which would constitute a relevant offence.”.

Commencement Information

II Reg. 9 in force at 28.9.2006, see [reg. 1\(1\)](#)

Status:

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Changes and effects yet to be applied to :

- reg. 9 coming into force by [S.I. 2006/2369](#) reg. 1(1)