

**2020 No. 1062**

**BROADCASTING**

**The Audiovisual Media Services Regulations 2020**

*Made - - - at 1.05 p.m. on 30th September 2020*

*Laid before Parliament at 3.30 p.m. on 30th September 2020*

*Coming into force in accordance with regulation 1(2) and (3)*

The Secretary of State, being a Minister designated for the purposes of section 2(2) of the European Communities Act 1972(a) in relation to information society services(b) and measures relating to television broadcasting(c), in exercise of the powers conferred by that section, makes the following Regulations.

**PART 1**

**Introductory**

**Citation and commencement**

- 1.**—(1) These Regulations may be cited as the Audiovisual Media Services Regulations 2020.  
(2) Subject to paragraph (3), these Regulations come into force on 1st November 2020.  
(3) The following regulations come into force on 6th April 2021—  
(a) regulation 26;  
(b) regulation 47, insofar as it relates to the insertion of section 368V into the Communications Act 2003(d).

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(a) 1972 c.68. The European Communities Act 1972 was repealed by section 1 of the European Union (Withdrawal) Act 2018 (c.16) with effect from exit day, but saved with modifications until IP completion day by section 1A of that Act (as inserted by section 1 of the European Union (Withdrawal Agreement) Act 2020 (c. 1). Section 2(2) of the European Communities Act 1972 was amended by section 27(1) of the Legislative and Regulatory Reform Act 2006 (c.51) and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c.7).

(b) S.I. 2001/2555; there is an amending instrument but it is not relevant.

(c) S.I. 1997/1174.

(d) 2003 c. 21.

## PART 2

### Television services

#### CHAPTER 1

##### Amendments to the Broadcasting Acts 1990 and 1996

#### 2. In the Broadcasting Act 1990(a)—

- (a) for section 42A (restricted services)(b) substitute—

##### **“42A Restricted services**

In this Part “restricted service” means a service (or a dissociable section of a service) which consists in the broadcasting of television programmes for a particular establishment or other defined location, or a particular event, in the United Kingdom.”;

- (b) in section 202(1) (general interpretation)(c), for the definition of “the Audiovisual Media Services Directive” substitute—

““the Audiovisual Media Services Directive” means Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services(d);”.

#### 3. In the Broadcasting Act 1996—

- (a) in section 1(4) (digital programme services)(e)—

(i) after “means a service” insert “(or a dissociable section of a service)”;

(ii) in paragraph (za), after “a service” insert “(or a dissociable section of a service)”;

- (b) in section 24(1) (digital additional service)(f), after “means any service” insert “(or dissociable section of a service)”;

- (c) in section 39(1) (interpretation of Part 1)(g), for the definition of “the Audiovisual Media Services Directive” substitute—

““the Audiovisual Media Services Directive” means Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services;”;

- (d) in section 105(1) (interpretation of Part 4 and supplementary provisions)(h), for the definition of “the Audiovisual Media Services Directive” substitute—

““the Audiovisual Media Services Directive” means Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services;”.

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(a) 1990 c. 42.

(b) Section 42A was inserted by section 85 of the Broadcasting Act 1996 (c. 55) and amended by section 406(7) of, and Schedule 19 to, the Communications Act 2003 (c. 21).

(c) The definition of the Audiovisual Media Services Directive was inserted by S.I. 2010/1883; there are other amendments but none is relevant.

(d) OJ No. L 95, 15.4.2010, p. 1; amended by Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 (OJ No. L 303, 28.11.2018, p. 69).

(e) Section 1(4) was amended by paragraph 74 of Schedule 15 to the Communications Act 2003 and S.I. 2006/2131.

(f) Section 24(1) was amended by paragraph 93 of Schedule 15 to the Communications Act 2003.

(g) The definition of the Audiovisual Media Services Directive was inserted by S.I. 2013/2217; there are other amendments but none is relevant.

(h) The definition of the Audiovisual Media Services Directive was inserted by S.I. 2013/2217; there are other amendments but none is relevant.

## CHAPTER 2

### Amendments to the Communications Act 2003

4. Part 3 of the Communications Act 2003 is amended in accordance with this Chapter.
5. In section 232 (meaning of “television licensable content service”)(a)—
- (a) in subsection (1)—
    - (i) after “any service” insert “, or dissociable section of a service,”;
    - (ii) in each of paragraphs (a), (aa) and (b), after “the service” insert “or dissociable section of the service”;
  - (b) in subsection (2), in the words before paragraph (a), after “A service” insert “, or dissociable section of a service,”;
  - (c) in subsection (3)(a), for “a service consisting of television programmes” substitute “a service, or dissociable section of a service, consisting of television programmes”.
6. In section 233 (services that are not television licensable content services)(b), in each of subsections (1), (2), (4), (5) and (7), after “A service” insert “, or dissociable section of a service,”.
7. In the italic heading before section 303, for “the deaf and visually impaired” substitute “people with disabilities”.
8. In section 303 (code relating to provision for the deaf and visually impaired)—
- (a) in the heading, for “the deaf and visually impaired” substitute “people with disabilities”;
  - (b) in subsection (1)(a), after “enjoyment by” insert “people with disabilities, in particular”;
  - (c) after subsection (1) insert—
    - “(1A) The code must include provision—
    - (a) encouraging providers of services to which this section applies to develop accessibility action plans with a view to continuously and progressively making such services more accessible to people with disabilities;
    - (b) requiring such action plans to be notified to OFCOM;
    - (c) requiring providers of services to report annually to OFCOM about the accessibility of such services to people with disabilities.”.
9. In section 304 (procedure for issuing and revising code under section 303)—
- (a) in subsection (1)(a), for “persons falling within subsection (1)(a)(i), (ii) or (iii) of that section” substitute “people with disabilities”;
  - (b) in subsection (2), after “revision accessible to” insert “people with disabilities, in particular”.
10. After section 307 insert—
- “307A Disabled people: point of contact**
- OFCOM must provide a single, easily accessible (including by people with disabilities), online point of contact for providing information and receiving complaints regarding accessibility issues which relate to matters dealt with by sections 303 to 307 and the code drawn up by OFCOM under section 303.”.
11. In section 310 (code of practice for electronic programme guides)(c), in subsection (3)—
- (a) after “persons with disabilities” insert “, in particular those”;

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(a) Section 232 was amended by S.I. 2006/2131 and 2009/2979.

(b) Section 233 was amended by S.I. 2006/2131; there is another amending instrument but it is not relevant.

(c) There are amending instruments, but none is relevant.

(b) in paragraph (a), omit “such” before “disabilities”.

**12.** In section 319 (OFCOM’s standards code)(a)—

(a) in subsection (9), for “subsection (10)” substitute “subsections (10) to (12)”;

(b) after subsection (10) insert—

“(11) So far as relating to product placement falling within paragraph 4(bb) of Schedule 11A(b) (undertakings whose principal activity is the manufacture or sale of electronic cigarettes or electronic cigarette refill containers), subsection (2)(fa) applies only in relation to programmes the production of which begins after 31 October 2020.

(12) Subsection (2)(fa) applies in relation to a programme the production of which began before 1 November 2020 as if, in Schedule 11A (which contains the product placement requirements referred to in section 321(3A))—

(a) paragraph 3(1)(b) to (d) were omitted,

(b) in paragraph 6(1) there were inserted, as paragraph (a): “the programme is a religious, consumer affairs or current affairs programme;”, and

(c) paragraph 7 included 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.”.

**13.** In the italic heading before section 335A, after “States” insert “and the European Commission”.

**14.** In section 335A (co-operation with other Member States)(c)—

(a) in the heading, after “States” insert “and the European Commission”;

(b) before subsection (1) insert—

“(A1) OFCOM must take all necessary steps to provide such information and assistance to member States and to the European Commission as is required in order to comply with the Audiovisual Media Services Directive as it applies in relation to relevant broadcasters, in particular Articles 2, 3, 4 and 30a of the Directive.”.

**15.** After section 335A insert—

**“335B Maintenance of list of providers**

(1) OFCOM must establish and maintain an up to date list of persons providing—

(a) a television programme service, or

(b) a digital additional television service,

who are under the jurisdiction of the United Kingdom for the purposes of the Audiovisual Media Services Directive.

(2) The list must indicate in respect of each person which of the criteria set out in paragraphs 2 to 5 of Article 2 of the Audiovisual Media Services Directive is the basis for the decision that they are under the jurisdiction of the United Kingdom.

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(a) Section 319 was amended by S.I. 2010/831 and 2016/507; there are other amending instruments but none is relevant.

(b) Schedule 11A was inserted by S.I. 2010/831 and amended by S.I. 2016/507; there are other amending instruments but none is relevant.

(c) Section 335A was inserted by S.I. 2009/2979 and amended by S.I. 2010/1883.

(3) OFCOM must notify the European Commission of the contents of the list and of any updates to it.

(4) The regulatory regime for each service mentioned in subsection (1) must include the condition that the persons providing the service must notify OFCOM of any changes that may affect the determination of jurisdiction in accordance with paragraphs 2, 3 and 4 of Article 2 of the Audiovisual Media Services Directive.”.

**16.** For section 336(3) (government requirements for licensed services: announcements) substitute—

“(3) The direction—

- (a) may specify the times at which the announcement is to be broadcast or otherwise transmitted; and
- (b) where the announcement relates to an emergency, including a natural disaster, must require the information given in the announcement to be provided in a manner which is accessible to people with disabilities.”.

**17.** In section 362(1) (interpretation of Part 3)(a)—

- (a) in the definition of “assistance for disabled people”, for “means” substitute “includes, in particular,”;
- (b) in the definition of “television broadcasting service”, after “subsection (4)) a service” insert “(or a dissociable section of a service)”.

**18.** In Schedule 11A (restrictions on product placement)(b)—

(a) for paragraph 3(1) substitute—

“(1) Product placement falls within this paragraph if it is in a—

- (a) children’s programme;
- (b) news or current affairs programme;
- (c) consumer affairs programme; or
- (d) religious programme.”;

(b) at the end of paragraph 4(ba) omit “or”;

(c) after paragraph 4(ba) insert—

“(bb) by or on behalf of an undertaking whose principal activity is the manufacture or sale of electronic cigarettes or electronic cigarette refill containers; or”;

(d) omit paragraph 6(1)(a);

(e) omit paragraph 7(2);

(f) in paragraph 7(7)—

- (i) in paragraph (e), after “physical” insert “, mental”;
- (ii) after paragraph (e) insert—

“(ea) directly exhort such persons to purchase or rent goods or services in a manner which exploits their inexperience or credulity;”.

**19.** In Schedule 12 (corresponding obligations of the BBC and Welsh Authority), in the heading of paragraph 22, for “the deaf and visually impaired” substitute “people with disabilities”.

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(a) There are amendments to section 362, but none is relevant to these Regulations.

(b) Schedule 11A was inserted by S.I. 2010/831 and amended by S.I. 2016/507.

## PART 3

### On-demand programme services

20. The Communications Act 2003 is amended in accordance with this Part.

21. In section 341 (imposition of penalties on the Welsh Authority)(a), for subsection (1)(jb) substitute—

“(jb)the requirements imposed by section 368CB, section 368D and section 368E(4) (on-demand programme services), except—

- (i) the requirements imposed by section 368D(1) and section 368E(4) so far as they relate to advertising, and
- (ii) the requirement imposed by section 368D(3)(za);”.

22. Before section 368A insert—

#### “368ZA Audiovisual programmes

This Part applies in relation to the provision of programmes with or without sounds which consist of moving or still images, or of legible text, or of a combination of those things.”.

23. In section 368A (meaning of “on-demand programme service”)(b)—

- (a) in subsection (1)—
  - (i) after “a service” insert “(or a dissociable section of a service)”;
  - (ii) in paragraph (a), for the words “the form and content of which” to the end, substitute “(as described in section 368ZA)”;
- (b) in subsection (2)—
  - (i) after “Access to a service” insert “(or dissociable section of a service)”;
  - (ii) in paragraph (a), after “the service”, in both places, insert “(or dissociable section of the service)”;
- (c) in subsection (3), after “the service” insert “(or dissociable section of the service)”;
- (d) in subsection (4)—
  - (i) after “a service” insert “(or dissociable section of a service)”;
  - (ii) after “the service” insert “(or dissociable section of the service)”.

24. In section 368B (the appropriate regulatory authority)(c)—

- (a) before subsection (1), insert—

“(A1) OFCOM is the appropriate regulatory authority for all purposes of this Part in relation to the BBC (and, in relation to the BBC, OFCOM may not designate any other body to be the appropriate regulatory authority for any of those purposes).”;
- (b) in subsection (1), for “subsection (9)” substitute “subsections (A1) and (9)”.

25. After section 368B insert—

*“List of providers*

#### 368BZA Maintenance of list of providers

(1) OFCOM must establish and maintain an up to date list of persons providing an on-demand programme service.

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(a) Section 341 was amended by S.I. 2009/2979 and 2010/419.

(b) Section 368A was inserted by S.I. 2009/2979.

(c) Section 368B was inserted by S.I. 2009/2979, amended by S.I. 2010/419; there is another amending instrument but it is not relevant.

(2) The list must indicate in respect of each person which of the criteria set out in paragraphs 2 to 5 of Article 2 of the Audiovisual Media Services Directive is the basis for the decision that they are under the jurisdiction of the United Kingdom (see section 368A(1)(e)).

(3) OFCOM must notify the European Commission of the contents of the list and of any updates to it.”.

**26.** In section 368BA (advance notification to appropriate regulatory authority)(a), after subsection (3) insert—

“(4) In this section, “significant differences” includes any change that may affect the determination of jurisdiction in accordance with paragraphs 2, 3 and 4 of Article 2 of the Audiovisual Media Services Directive.”.

**27.** In section 368BC (accessibility for people with disabilities)(b)—

(a) in subsection (1)—

(i) for “their services” substitute “such services”;

(ii) for “affecting their sight or hearing or both” substitute “, including, in particular, people with disabilities affecting their sight or hearing, or both”;

(b) in subsection (2), after paragraph (c) insert—

“(d) requirements for providers of on-demand programme services to report annually to the appropriate regulatory authority about the accessibility of such services.”;

(c) in subsection (4)(b) omit “affecting their sight or hearing or both”.

**28.** In section 368C (duties of the appropriate regulatory authority)(c)—

(a) in subsection (1), for “section 368D” substitute “sections 368CB and 368D”;

(b) for subsection (2)(d) substitute—

“(2) The appropriate regulatory authority must encourage providers of on-demand programme services to develop accessibility action plans with a view to continuously and progressively making such services more accessible to people with disabilities.

(2A) The appropriate regulatory authority must provide a single, easily accessible (including by people with disabilities), online point of contact for providing information and receiving complaints regarding accessibility of on-demand programme services to people with disabilities.”;

(c) omit subsection (3);

(d) after subsection (4) insert—

“(5) The appropriate regulatory authority must draw up, and from time to time review and revise, guidance for providers of on-demand programme services concerning measures that may be appropriate for the purposes of section 368E(4) (ensuring specially restricted material is not available to under-18s).”.

**29.** In section 368CA (code on accessibility for people with disabilities)(e)—

(a) in subsection (1)(b)—

(i) for “their services” substitute “on-demand programme services”;

(ii) omit “affecting their sight or hearing or both”;

(b) in subsection (2), after “revision accessible to” insert “people with disabilities, in particular”.

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(a) Section 368BA was inserted by S.I. 2010/419.

(b) Section 368BC was inserted by section 93 of the Digital Economy Act 2017 (c. 30).

(c) Section 368C was inserted by S.I. 2009/2979.

(d) Subsection (2) of section 368C was repealed by section 93(3) of the Digital Economy Act 2017, but that repeal is not yet in force. See regulation 52 of these Regulations, which repeal section 93(3) of that Act.

(e) Section 368CA was inserted by section 93 of the Digital Economy Act 2017.

**30. Before section 368D insert—**

**“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.

(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(a).”.

**31. In section 368D (duties of service providers)(b)—**

- (a) in subsection (1), for “368E to 368H” substitute “368E(1) and (2) and 368F to 368H”;
- (b) in subsection (2)—
  - (i) after paragraph (c) insert—

“(ca) a statement that P is under the jurisdiction of the United Kingdom for the purposes of the Audiovisual Media Services Directive;”;
  - (ii) in paragraph (d), for “the service” substitute “the on-demand programme service”;
- (c) in subsection (3), before paragraph (za) insert—

“(zza) provide the appropriate regulatory authority with a copy of any accessibility action plan drawn up by the provider as mentioned in section 368C(2);”.

**32. In section 368E (harmful material)(c)—**

- (a) in subsection (1), for “hatred” to the end substitute “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

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(a) OJ No. C 223, 7.7.2020, p. 10.

(b) Section 368D was inserted by S.I. 2009/2979 and amended by S.I. 2010/419.

(c) Section 368E was inserted by S.I. 2009/2979, and amended by S.I. 2014/2916.

Article 21 of the Charter of Fundamental Rights of the European Union of 7 December 2000, as adopted at Strasbourg on 12 December 2007<sup>(a)</sup>.”;

(b) in subsection (3), before paragraph (a) insert—

“(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<sup>(b)</sup>,

(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<sup>(c)</sup>, 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<sup>(d)</sup>.”;

(c) for subsection (4) substitute—

“(4) 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.”;

(d) in subsection (5)(c), omit “seriously”.

**33. In section 368F (advertising)(e)—**

(a) for subsection (2) substitute—

“(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.”;

(b) in subsection (4)(e), after “physical” insert “, mental”.

**34. In section 368G (sponsorship)(f)—**

(a) for subsection (1A) substitute—

“(1A) An on-demand programme service or a programme included in an on-demand programme service must not be sponsored—

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(a) OJ No. C 303, 14.12.2007, p.1.

(b) OJ No. L 88, 31.3.2017, p. 6.

(c) OJ No. L 335, 17.12.2011, p. 1.

(d) OJ No. L 328, 6.12.2008, p. 55.

(e) Section 368F was inserted by S.I. 2009/2979; there is an amending instrument but it is not relevant.

(f) Section 368G was inserted by S.I. 2009/2979 and amended by S.I. 2016/507; there is another amending instrument but it is not relevant.

- (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.”;
- (b) in subsection (11)—
  - (i) in paragraph (e), after “physical” insert “, mental”;
  - (ii) after paragraph (e) insert—
    - “(ea) directly exhort such persons to purchase or rent goods or services in a manner which exploits their inexperience or credulity;”.

**35. In section 368H (prohibition of product placement and exceptions)(a)—**

- (a) for subsection (3) substitute—
  - “(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.”;
- (b) in subsection (4)—
  - (i) at the end of paragraph (ba), omit “or”;
  - (ii) after paragraph (ba) insert—
    - “(bb) 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”;
- (c) in subsection (6)(a), for “A” substitute “B”;
- (d) omit subsection (7);
- (e) in subsection (12)(e), after “physical” insert “, mental”;
- (f) after subsection 12(e) insert—
  - “(ea) directly exhort such persons to purchase or rent goods or services in a manner which exploits their inexperience or credulity;”;
- (g) in subsection (15), for “subsection (15A)” substitute “subsections (15A), (15B) and (15C)”;
- (h) after subsection (15A) insert—
  - “(15B) Subsection (4)(bb) applies only in relation to programmes the production of which 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.”.

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(a) Section 368H was inserted by S.I. 2009/2979, and amended by S.I. 2016/507 and 2010/831.

**36. In section 368I (enforcement)(a)—**

- (a) in the heading, for “section 368D” substitute “sections 368CB and 368D”;
- (b) in subsection (1), after “has contravened” insert “section 368CB or”;
- (c) in subsection (2), after “contravention of” insert “section 368CB or”;
- (d) in subsection (3)—
  - (i) after “complying with” insert “section 368CB or”;
  - (ii) omit “of that section”;
- (e) after subsection (9) insert—

“(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.”.

**37. After section 368I insert—**

**“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.

(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

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(a) Section 368I was inserted by S.I. 2009/2979.

- (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(a); 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.”.

**38. In section 368J (financial penalties)(b)—**

- (a) in subsection (1)—
  - (i) for “368BD or 368I” substitute “368BD, 368I or 368IA”;
  - (ii) after “contravention” insert “or failure”;
- (b) after subsection (1) insert—
 

“(1A) Where the provider in question is the BBC, the amount of the penalty is to be such amount not exceeding the amount for the time being specified in an order under section 198(6) or, if no such order is in force, £250,000, as OFCOM determine to be—

  - (a) appropriate; and
  - (b) proportionate to the contravention or failure in respect of which it is imposed.”;
- (c) in subsection (2), after “subsection (1)” insert “or (1A)”;
- (d) in subsection (3)(a), after “contravention” insert “or failure”;
- (e) in subsection (4), after “contravention” insert “or failure”.

**39. In section 368K (suspension or restriction of service)(c)—**

- (a) in the heading, after “contraventions” insert “or failures”;
- (b) in subsection (1)(a)—
  - (i) after “368BA” insert “, 368CB”;
  - (ii) after “368BC” insert “, or 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”;
- (c) for subsection (1)(b) substitute—

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(a) 1998 c. 36.

(b) Section 368J was inserted by S.I. 2009/2979 and amended by S.I. 2010/419 and section 93 of the Digital Economy Act 2017 (c. 30).

(c) Section 368K was inserted by S.I. 2009/2979; subsection (1) was amended by S.I. 2010/419 and section 93 of the Digital Economy Act 2017.

“(b) that the imposition of one or more financial penalties or enforcement notifications under section 368BB, 368BD, 368I or 368IA has not resulted in the remedying of the contravention or failure in question; and”;

(d) in each of subsections (1)(c), (2)(c) and (3), after “contravention” insert “or failure”.

**40.** In section 368L (suspension or restriction of service for inciting crime or disorder)(a)—

(a) in subsection (1), for paragraph (a) substitute—

“(a) that—

(i) the service has failed to comply with any requirement of section 368E(1) or (2) or sections 368F to 368H and that accordingly the provider has contravened section 368D(1), or

(ii) the provider 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;”;

(b) in subsection (1)(b), after “due to” insert “, or has resulted in,”;

(c) in subsection (1)(c), after “contravention” insert “or failure”;

(d) in subsection (2), for paragraph (b) substitute—

“(b) give details about the matters which, in their opinion, constitute the contravention or failure in question;”.

**41.** In section 368O(2) (power to demand information)(b)—

(a) in paragraph (a)—

(i) for “or section 368D” substitute “, 368CB or 368D”,

(ii) for “368CA” substitute “368BC”, and

(iii) in sub-paragraph (ii), for “a contravention of either of those sections” substitute “such a contravention”;

(b) after paragraph (a) insert—

“(aa) the purposes of an investigation which the appropriate regulatory authority are carrying out in order to determine whether a person who appears to them to be or to have been a provider of an on-demand programme service has failed to take an appropriate measure in relation to that service for the purpose mentioned in section 368E(4), or has failed to implement such a measure effectively, where—

(i) the investigation relates to a matter about which they have received a complaint, or

(ii) they otherwise have reason to suspect that there has been such a failure;”.

**42.** After section 368O insert—

#### **“368OA Co-operation with member States and the European Commission**

(1) OFCOM must take all necessary steps to provide such information and assistance to member States and to the European Commission as is required in order to comply with the Audiovisual Media Services Directive as it applies in relation to providers of on-demand programme services, in particular Articles 2, 3, 4 and 30a of the Directive.

(2) Where OFCOM—

(a) receive a request from a member State under Article 4 of the Audiovisual Media Services Directive relating to a provider of an on-demand programme service, and

(b) consider that the request is substantiated under that Article,

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(a) Section 368L was inserted by S.I. 2009/2979.

(b) Section 368O was inserted by S.I. 2009/2979; subsection (2) was amended by S.I. 2010/419 and section 93 of the Digital Economy Act 2017.

they must ask the provider to comply with the rule identified in that request.”.

**43.** In section 368P (application of Part 4A in relation to the BBC)(a)—

(a) for subsection (1)(a) substitute—

“(a) section 368D(3)(za) and (zb) (duties of providers of on-demand programme services);”;

(b) in subsection (2)—

(i) in paragraph (a), for “368C (duties of appropriate regulatory authority)” substitute “368C(4) (codes of conduct: food and beverage promotion and children’s programmes)”;

(ii) omit paragraphs (d) and (g).

**44.** In section 368Q (application of Part 4A in relation to the Welsh Authority)(b)—

(a) for subsection (1) substitute—

“(1) In section 368C (duties of appropriate regulatory authority), references to a provider of an on-demand programme service only include references to the Welsh Authority in the following subsections —

(a) subsection (1), so far as it relates to section 368CB,

(b) subsection (2), and

(c) subsection (5).”;

(b) omit subsection (3);

(c) for subsection (5) substitute—

“(5) Section 368I (enforcement of sections 368CB and 368D) applies in relation to the Welsh Authority only in the following cases—

(a) a contravention of section 368D(1) consisting of a contravention of section 368E or 368F that relates to advertising;

(b) a contravention of section 368D(3)(za).

(5A) Section 368IA (enforcement of section 368E(4)) applies in relation to the Welsh Authority only in relation to a failure to take or implement a measure as mentioned in section 368IA(1) that relates to advertising.

(5B) Sections 368K (suspension or restriction of service for contraventions) and 368L (suspension or restriction of service for inciting crime or disorder) apply in relation to the Welsh Authority only in a case mentioned in subsection (5)(a) or (b) or subsection (5A).”.

**45.** In Schedule 12 (corresponding obligations of the BBC and Welsh Authority)(c)—

(a) in paragraph 2(2)(b), after “section 368D” insert “and section 368E(4)”;

(b) in paragraph 15, for sub-paragraph (1)(a) substitute—

“(a) that the Welsh Authority have failed in any respect to perform any of their duties under—

(i) paragraphs 12 to 14,

(ii) paragraph 23A,

(iii) section 368D(1) except so far as it relates to advertising,

(iv) section 368D(2),

(v) section 368D(3)(zza), (zb), (a) or (b), or

(vi) section 368E(4) except so far as it relates to advertising; and”;

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(a) Section 368P was inserted by S.I. 2009/2979 and amended by S.I. 2010/419.

(b) Section 368Q was inserted by S.I. 2009/2979 and amended by S.I. 2010/419.

(c) Schedule 12 was amended by S.I. 2009/2979 and 2010/419; there are other amending instruments but none is relevant.

- (c) in paragraph 19—
  - (i) in sub-paragraph (2)(b), for “and section 368Q(3)” substitute “and section 368E(4)”;
  - (ii) for sub-paragraph (3) substitute—
    - “(3) The requirements mentioned in this sub-paragraph are—
      - (a) the requirements imposed by sections 368D(1) and 368E(4) so far as they relate to advertising, and
      - (b) the requirement imposed by section 368D(3)(za).”.
- (d) in paragraph 23A—
  - (i) in sub-paragraph (1), for “section 368Q(3)” substitute “section 368E(4)”;
  - (ii) for sub-paragraph (2) substitute—
    - “(2) But OFCOM must not give any such direction in relation to the handling and resolution of complaints about compliance with—
      - (a) the requirements imposed by section 368D(1) or 368E(4) so far as they relate to advertising, or
      - (b) the requirement imposed by section 368D(3)(za).”.

## PART 4

### Video-sharing platform services

**46.** The Communications Act 2003(a) is amended in accordance with this Part.

**47.** After Part 4A insert—

## “PART 4B

### VIDEO-SHARING PLATFORM SERVICES

#### *Preliminary*

#### **368S Meaning of “video-sharing platform service”**

(1) In this Part “video-sharing platform service” means a service or dissociable section of a service which meets the conditions in subsection (2), where the provision of videos to members of the public is—

- (a) the principal purpose of the service or of the dissociable section of the service, or
- (b) an essential functionality of the service.

(2) The conditions in relation to the service or dissociable section of the service are—

- (a) it is provided by means of an electronic communications network;
- (b) it is provided on a commercial basis;
- (c) the person providing it—
  - (i) does not have general control over what videos are available on it, but
  - (ii) does have general control over the manner in which videos are organised on it (and in this sub-paragraph “organised” includes being organised automatically or by way of algorithms, in particular by displaying, tagging and sequencing); and

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(a) 2003 c. 21.

- (d) that person is under the jurisdiction of the United Kingdom for the purposes of the Audiovisual Media Services Directive.

### **368T The appropriate regulatory authority**

(1) OFCOM may designate any body corporate to be, to the extent provided by the designation, the appropriate regulatory authority for the purposes of any provision of this Part, subject to subsection (9).

(2) To the extent that no body is designated for a purpose, OFCOM is the appropriate regulatory authority for that purpose.

(3) Where a body is designated for a purpose, OFCOM may act as the appropriate regulatory authority for that purpose concurrently with or in place of that body.

(4) OFCOM may provide a designated body with assistance in connection with any of the functions of the body under this Part.

(5) A designation may in particular—

- (a) provide for a body to be the appropriate regulatory authority in relation to video-sharing platform services of a specified description;
- (b) provide that a function of the appropriate regulatory authority is exercisable by the designated body—
  - (i) to such extent as may be specified;
  - (ii) either generally or in such circumstances as may be specified; and
  - (iii) either unconditionally or subject to such conditions as may be specified.

(6) The conditions that may be specified pursuant to subsection (5)(b)(iii) include a condition to the effect that a function may, generally or in specified circumstances, be exercised by the body only with the agreement of OFCOM.

(7) A designation has effect for such period as may be specified and may be revoked by OFCOM at any time.

(8) OFCOM must publish any designation in such manner as they consider appropriate for bringing it to the attention of persons who, in their opinion, are likely to be affected by it.

(9) OFCOM may not designate a body unless, as respects that designation, they are satisfied that the body—

- (a) is a fit and proper body to be designated;
- (b) has consented to being designated;
- (c) has access to financial resources that are adequate to ensure the effective performance of its functions as the appropriate regulatory authority;
- (e) is sufficiently independent of providers of video-sharing platform services; and
- (f) will, in performing any function to which the designation relates, have regard in all cases—
  - (i) to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed; and
  - (ii) to such of the matters mentioned in section 3(4) as appear to the body to be relevant in the circumstances.

(10) Subject to any enactment or rule of law restricting the disclosure or use of information by OFCOM or by a designated body—

- (a) a designated body may supply information to another designated body for use by that other body in connection with any of its functions as the appropriate regulatory authority;

- (b) a designated body may supply information to OFCOM for use by OFCOM in connection with any of their functions under this Part;
- (c) OFCOM may supply information to a designated body for use by that body in connection with any of its functions as the appropriate regulatory authority;
- (d) OFCOM may supply information to the video works authority, within the meaning of section 368E, for use by the video works authority in connection with functions of OFCOM as the appropriate regulatory authority;
- (e) a designated body may supply information to the video works authority, within the meaning of section 368E, for use by the video works authority in connection with functions of the designated body as the appropriate regulatory authority.

(11) In carrying out their functions as the appropriate regulatory authority, a designated body may carry out, commission or support (financially or otherwise) research.

(12) In this section—

“designation” means a designation under this section and cognate expressions are to be construed accordingly;

“specified” means specified in a designation.

*List of providers*

**368U Maintenance of list of providers**

(1) OFCOM must establish and maintain an up to date list of persons providing a video-sharing platform service.

(2) The list must indicate in respect of each person which of the criteria set out in paragraphs 1 to 4 of Article 28a of the Audiovisual Media Services Directive is the basis for the decision that they are under the jurisdiction of the United Kingdom (see section 368S(2)(d)).

(3) OFCOM must notify the European Commission of the contents of the list and of any updates to it.

*Notification by providers*

**368V Advance notification to appropriate regulatory authority**

(1) A person must not provide a video-sharing platform service unless, before beginning to provide it, that person has given a notification to the appropriate regulatory authority of the person’s intention to provide that service.

(2) A person who has given a notification for the purposes of subsection (1) must, before—

- (a) providing the notified service with any significant differences; or
- (b) ceasing to provide it,

give a notification to the appropriate regulatory authority of the differences or (as the case may be) of the intention to cease to provide the service.

(3) A notification for the purposes of this section must—

- (a) be sent to the appropriate regulatory authority in such manner as the authority may require; and
- (b) contain all such information as the authority may require.

(4) In this section, “significant differences” includes any change that may affect the determination of jurisdiction in accordance with paragraphs 1 to 4 of Article 28a of the Audiovisual Media Services Directive.

### **368W Enforcement of section 368V**

(1) Where the appropriate regulatory authority determine that a provider of a video-sharing platform service has contravened section 368V, 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 368Z4.

(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 section 368V 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 a requirement on the provider to take all such steps for remedying the contravention of section 368V as may be specified in the notification.

(4) 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 taking the steps required by the notification.

(5) It is the duty of a person to whom an enforcement notification has been given to comply with it.

(6) 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.

#### *Duties of the appropriate regulatory authority*

### **368X Duties of the appropriate regulatory authority**

(1) It is the duty of the appropriate regulatory authority to take such steps as appear to them best calculated to secure that every provider of a video-sharing platform service complies with the requirements of sections 368Y and 368Z1(6) and (7).

(2) The appropriate regulatory authority must encourage providers of video-sharing platform services to develop codes of conduct regarding standards concerning the appropriate promotion of food or beverages in audiovisual commercial communications which are included in, or accompany, videos containing material which is likely to appeal to children.

(3) The appropriate regulatory authority must draw up, and from time to time review and revise, guidance for providers of video-sharing platform services concerning the measures set out in Schedule 15A which may be appropriate for the purposes mentioned in section 368Z1(1), and the implementation of such measures.

#### *Duties of service providers*

### **368Y Duties of service providers**

(1) The provider of a video-sharing platform service must ensure that the service complies with the requirements of section 368Z.

(2) The provider of a video-sharing platform service ("P") must publish the following information on a publicly accessible part of that service's website—

- (a) P's name;
- (b) P's address;

- (c) P’s electronic address;
  - (d) a statement that P is under the jurisdiction of the United Kingdom for the purposes of the Audiovisual Media Services Directive;
  - (e) the name, address and electronic address of any body which is the appropriate regulatory authority for any purpose in relation to P or the video-sharing platform service that P provides.
- (3) The provider of a video-sharing platform service must—
- (a) pay to the appropriate regulatory authority such fee as that authority may require under section 368Z9;
  - (b) comply with any requirement under section 368Z10;
  - (c) co-operate fully with the appropriate regulatory authority for any purpose mentioned in section 368Z10(3).
- (4) In this section “electronic address” means an electronic address to which electronic communications may be sent, and includes any number or address used for the purposes of receiving such communications.

### **368Z Advertising etc controlled by service providers**

(1) In this section, references to audiovisual commercial communications, in relation to a video-sharing platform service, are to audiovisual commercial communications that are marketed, sold or arranged by the person providing that service.

(2) Audiovisual commercial communications for the following products are prohibited in a video-sharing platform service—

- (a) cigarettes or other tobacco products;
- (b) electronic cigarettes or electronic cigarette refill containers;
- (c) any prescription-only medicine.

(3) Audiovisual commercial communications for alcoholic drinks are only permitted in a video-sharing platform service if—

- (a) they are not aimed specifically at persons under the age of 18, and
- (b) they do not encourage immoderate consumption of alcohol.

(4) Audiovisual commercial communications included in a video-sharing platform 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.

(5) Audiovisual commercial communications included in a video-sharing platform 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, mental or moral detriment to persons under the age of 18;
- (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.

(6) In this section—

“electronic cigarette” means a product that—

- (a) can be used for the consumption of nicotine-containing vapour via a mouth piece, or any component of that product, including a cartridge, a tank and the device without cartridge or tank (regardless of whether the product is disposable or refillable by means of a refill container and a tank, or rechargeable with single use cartridges), and
- (b) is not a medicinal product within the meaning of regulation 2 of the Human Medicines Regulations 2012 (S.I. 2012/1916)<sup>(a)</sup> or a medical device within the meaning of regulation 2 of the Medical Devices Regulations 2002 (S.I. 2002/618)<sup>(b)</sup>;

“electronic cigarette refill container” means a receptacle that—

- (a) contains a nicotine-containing liquid, which can be used to refill an electronic cigarette, and
- (b) is not a medicinal product within the meaning of regulation 2 of the Human Medicines Regulations 2012 or a medical device within the meaning of regulation 2 of the Medical Devices Regulations 2002;

“prescription-only medicine” means a prescription only medicine within the meaning of regulation 5(3) of the Human Medicines Regulations 2012;

“tobacco product” has the meaning given in section 1 of the Tobacco Advertising and Promotion Act 2002<sup>(c)</sup>.

### **368Z1 Duty to take appropriate measures**

(1) A person who provides a video-sharing platform service must, in relation to that service, take such of the measures set out in Schedule 15A as are appropriate for the purposes of—

- (a) protecting persons under the age of 18 from videos and audiovisual commercial communications containing restricted material;
- (b) protecting the general public from videos and audiovisual commercial communications containing relevant harmful material; and
- (c) in relation to audiovisual commercial communications that are not marketed, sold or arranged by the person providing the service, ensuring that—
  - (i) audiovisual commercial communications for a product mentioned in section 368Z(2) are not included in the service,
  - (ii) audiovisual commercial communications for alcoholic drinks are only included in the service if they meet the requirements in section 368Z(3), (4) and (5), and
  - (iii) audiovisual commercial communications for anything else are only included in the service if they meet the requirements in section 368Z(4) and (5).

(2) Where a provider of a video-sharing platform service takes a measure set out in Schedule 15A, the provider must implement the measure in such a way as to carry out the purpose or purposes mentioned in subsection (1) for which the measure is appropriate.

(3) The requirement in subsection (2) is not to be regarded as imposing on a provider of a video-sharing platform service a general obligation of the description given in Article 15(1) of 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<sup>(d)</sup>.

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(a) S.I. 2012/1916; there are amending instruments but none is relevant.

(b) S.I. 2002/618; there are amending instruments but none is relevant.

(c) 2002 c. 36.

(d) OJ No. L 178, 17.7.2000, p. 1.

(4) Whether a measure is appropriate for any of the purposes mentioned in subsection (1) must be determined by whether it is practicable and proportionate for the measure to be taken, taking into account—

- (a) the size and nature of the video-sharing platform service;
- (b) the nature of the material in question;
- (c) the harm the material in question may cause;
- (d) the characteristics of the category of persons to be protected;
- (e) in relation to audiovisual commercial communications that are not marketed, sold or arranged by a person providing a video-sharing platform service, the fact that the provider exercises limited control over such communications;
- (f) the rights and legitimate interests at stake, including those of the person providing the video-sharing platform service and the persons having created or uploaded the material, as well as the general public interest;
- (g) any other measures which have been taken, or are to be taken.

(5) When determining whether a measure is appropriate for the purpose mentioned in subsection (1)(a), the principle that restricted material that has the most potential to harm the physical, mental or moral development of persons under the age of 18 must be subject to the strictest access control measures must be applied.

(6) Where a person uploading a video to a video-sharing platform service declares that the video contains an audiovisual commercial communication, or the provider of the service knows that such a video contains an audiovisual commercial communication, the provider must clearly inform viewers that the video contains an audiovisual commercial communication.

(7) A person who provides a video-sharing platform service must provide for an impartial out-of-court procedure for the resolution of any dispute between a person using the service and the provider relating to—

- (a) the implementation of any measure set out in Schedule 15A, or
- (b) a decision to take, or not to take, any such measure,

but the provision of or use of this procedure must not affect the ability of a person using the service to bring a claim in civil proceedings.

(8) In this section—

“access control measures” means measures designed to control whether or how individuals are able to access videos or audiovisual commercial communications included in a video-sharing platform service;

“relevant harmful material” means—

- (a) material referred to in section 368E(1), or
- (b) material referred to in section 368E(3)(za) (read as if the reference to an on-demand programme service were to a video-sharing platform service);

“restricted material” means—

- (a) material which is prohibited material within the meaning of section 368E by virtue of falling within paragraph (a) or (b) of subsection (3) of that section, or
- (b) specially restricted material within the meaning of section 368E (see subsection (5) of that section).

#### *Enforcement*

#### **368Z2 Enforcement of sections 368Y and 368Z1(6) and (7)**

(1) Where the appropriate regulatory authority determine that a provider of a video-sharing platform service is contravening or has contravened section 368Y or 368Z1(6) or (7) 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 368Z4.

(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 section 368Y or 368Z1(6) or (7) 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 section 368Y or 368Z1(6) or (7) and for remedying the consequences of the contravention 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 video, or
  - (ii) videos of a specified description;
- (b) cease showing or restrict access to—
  - (i) a specified audiovisual commercial communication, or
  - (ii) audiovisual commercial communications of a specified description;
- (c) provide additional information about the content of a specified video or videos of a specified description prior to the selection of that video or a video of that description by an individual for viewing;
- (d) provide an out-of-court procedure of a specified description for resolving disputes between the provider and a person using the service;
- (e) show an audiovisual commercial communication marketed, sold or arranged by the provider on the service only with specified modifications; or
- (f) 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 taking the steps required by the notification.

(6) Where a person is required by an enforcement notification to publish a statement of findings, the person may publish with the 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(a); 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 368Z4.

### **368Z3 Enforcement of section 368Z1(1) and (2)**

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(a) 1998 c. 36.

(1) Where the appropriate regulatory authority determine that a provider of a video-sharing platform service—

- (a) has failed to take a measure set out in Schedule 15A which the authority consider to be appropriate in relation to that service for any of the purposes mentioned in subsection (1) of section 368Z1, or
- (b) has failed to comply with subsection (2) of that section,

the authority may take one or both of the actions mentioned in subsection (2).

(2) The actions are—

- (a) give the provider an enforcement notification under this section;
- (b) impose a financial penalty on the provider in accordance with section 368Z4.

(3) The appropriate regulatory authority must not make a determination as mentioned in subsection (1) unless there are reasonable grounds for believing that a failure mentioned in paragraph (a) or (b) of subsection (1) is occurring or has occurred and they have allowed the provider an opportunity to make representations about that apparent failure.

(4) 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 368Z1(1) or (2) and for remedying the failure as may be specified in the notification.

(5) 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 video, or
  - (ii) videos of a specified description;
- (b) cease showing or restrict access to—
  - (i) a specified audiovisual commercial communication, or
  - (ii) audiovisual commercial communications of a specified description;
- (c) provide additional information about the content of a specified video or videos of a specified description prior to the selection of that video or a video of that description by an individual for viewing;
- (d) provide additional information about the content of a specified audiovisual commercial communication or audiovisual commercial communications of a specified description included in or accompanying a video prior to the selection of that video by an individual for viewing;
- (e) take a specified measure set out in Schedule 15A that the appropriate regulatory authority consider to be appropriate for any of the purposes mentioned in section 368Z1(1);
- (f) make specified changes to the way in which a provider implements a measure set out in Schedule 15A;
- (g) show a video or an audiovisual commercial communication on the service only with specified modifications; or
- (h) publish a statement of the findings of the appropriate regulatory authority in the form and place and for the time period specified.

(6) 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 taking the steps required by the notification.

(7) Where a person is required by an enforcement notification to publish a statement of findings, the person may publish with the statement of findings a statement that it is published in pursuance of the enforcement notification.

(8) It is the duty of a person to whom an enforcement notification has been given to comply with it.

(9) 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.

(10) 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 368Z4.

### **368Z4 Financial penalties**

(1) The amount of a penalty imposed on a provider of a video-sharing platform service under section 368W, 368Z2 or 368Z3 is to be such amount not exceeding 5% of the provider's applicable qualifying revenue or £250,000, whichever is the greater amount, as the appropriate regulatory authority determine to be—

- (a) appropriate; and
- (b) proportionate to the contravention or failure in respect of which it is imposed.

(2) In determining the amount of a penalty under subsection (1) the appropriate regulatory authority must have regard to any statement published by OFCOM under section 392 (guidelines to be followed in determining amount of penalties).

(3) The “applicable qualifying revenue”, in relation to a provider, means—

- (a) the qualifying revenue for the provider's last complete accounting period falling within the period during which the provider has been providing the service to which the contravention or failure relates; or
- (b) in relation to a person whose first complete accounting period falling within that period has not ended when the penalty is imposed, the amount that the appropriate regulatory authority estimate to be the qualifying revenue for that period.

(4) For the purposes of subsection (3) the “qualifying revenue” for an accounting period consists of the aggregate of all the amounts received or to be received by the provider of the service to which the contravention or failure relates or by any connected person in the accounting period—

- (a) for the inclusion in that service of audiovisual commercial communications;
- (b) in respect of charges made in that period for the provision of videos by that service; and
- (c) which in any other way arise from the provision of that service.

(5) For the purposes of subsection (4), “connected” has the same meaning as it has in the Broadcasting Act 1990 by virtue of section 202(a) of that Act.

(6) A financial penalty imposed under this section must be paid into the appropriate Consolidated Fund.

(7) For the purposes of subsections (3) and (6)—

- (a) the amount of a person's qualifying revenue for an accounting period, or
- (b) the amount of any payment to be made into the appropriate Consolidated Fund by any person in respect of any such revenue,

is, in the event of a disagreement between the appropriate regulatory authority and that person, the amount determined by the appropriate regulatory authority.

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(a) 1990 c. 42. The definition of “connected” in section 202 was amended by paragraph 21 of Schedule 10 to the Broadcasting Act 1996 (c. 55); there are other amendments to section 202 but none is relevant.

(8) The references in this section to the payment of an amount into the appropriate Consolidated Fund—

- (a) in the case of an amount received in respect of matters appearing to OFCOM to have no connection with Northern Ireland, is a reference to the payment of the amount into the Consolidated Fund of the United Kingdom;
- (b) in the case of an amount received in respect of matters appearing to OFCOM to have a connection with Northern Ireland but no connection with the rest of the United Kingdom, is a reference to the payment of the amount into the Consolidated Fund of Northern Ireland; and
- (c) in any other case, is a reference to the payment of the amount, in such proportions as OFCOM consider appropriate, into each of those Funds.

*Suspension or restriction of service*

**368Z5 Suspension or restriction of service for contraventions or failures**

(1) The appropriate regulatory authority must serve a notice under subsection (2) on a provider of a video-sharing platform service if they are satisfied—

- (a) that the provider—
  - (i) has contravened section 368V, 368Y or 368Z1(6) or (7),
  - (ii) has failed to take a measure which the authority consider to be appropriate in relation to that service for any of the purposes mentioned in section 368Z1(1), or
  - (iii) has failed to implement such a measure as mentioned in section 368Z1(2);
- (b) that the imposition of one or more financial penalties or enforcement notifications under section 368W, 368Z2 or 368Z3 has not resulted in the remedying of the contravention or failure in question; and
- (c) that the giving of a direction under this section would be appropriate and proportionate to the seriousness of the contravention or failure.

(2) A notice under this subsection must—

- (a) state that the appropriate regulatory authority are satisfied as mentioned in subsection (1);
- (b) state the reasons why they are satisfied as mentioned in subsection (1);
- (c) state that the appropriate regulatory authority will give a direction under this section unless the provider takes, within a period specified in the notice, such steps to remedy the contravention or failure within subsection (1)(a) as are so specified;
- (d) specify any conditions that the appropriate regulatory authority propose to impose in the proposed direction under section 368Z7(5)(b); and
- (e) inform the provider that the provider has the right to make representations to the appropriate regulatory authority about the matters appearing to the authority to provide grounds for giving the proposed direction within the period specified for the purposes of paragraph (c).

(3) If, after considering any representations made to them by the provider within that period, the appropriate regulatory authority are satisfied that the provider has failed to take the steps specified in the notice for remedying the contravention or failure and that it is necessary in the public interest to give a direction under this section, the appropriate regulatory authority must give such of the following as appears to them appropriate and proportionate as mentioned in subsection (1)(c)—

- (a) a direction that the entitlement of the provider to provide a video-sharing platform service is suspended (either generally or in relation to a particular service);
- (b) a direction that that entitlement is restricted in the respects set out in the direction.

**368Z6 Suspension or restriction of service for inciting crime or disorder**

(1) The appropriate regulatory authority must serve a notice under subsection (2) on a provider of a video-sharing platform service if they are satisfied—

- (a) that—
  - (i) the service has failed to comply with a requirement of section 368Z and that accordingly the provider has contravened section 368Y(1),
  - (ii) the provider has failed to take a measure which the authority consider to be appropriate in relation to that service for any of the purposes mentioned in section 368Z1(1), or
  - (iii) the provider has failed to implement such a measure as mentioned in section 368Z1(2);
- (b) that the failure is due to, or has resulted in, the inclusion in the service of material likely to encourage or to incite the commission of crime, or to lead to disorder; and
- (c) that the contravention or failure is such as to justify the giving of a direction under this section.

(2) A notice under this subsection must—

- (a) state that the appropriate regulatory authority are satisfied as mentioned in subsection (1);
- (b) give details about the matters which, in their opinion, constitute the contravention or failure in question;
- (c) specify the effect of the notice in accordance with subsection (3);
- (d) state that the appropriate regulatory authority may give a direction under this section after the end of the period of 21 days beginning with the day on which the notice is served on the provider; and
- (e) inform the provider of the provider's right to make representations to the appropriate regulatory authority within that period about the matters appearing to the appropriate regulatory authority to provide grounds for giving a direction under this section.

(3) A notice under subsection (2) has the effect specified under subsection (2)(c), which may be either—

- (a) that the entitlement of the provider to provide a video-sharing platform service is suspended (either generally or in relation to a particular service), or
- (b) that that entitlement is restricted in the respects set out in the notice.

(4) The suspension or restriction has effect as from the time when the notice is served on the provider until either—

- (a) a direction given under this section takes effect; or
- (b) the appropriate regulatory authority decide not to give such a direction.

(5) If, after considering any representations made to them by the provider within the period mentioned in subsection (2)(d), the appropriate regulatory authority are satisfied that it is necessary in the public interest to give a direction under this section, they must give such of the following as appears to them justified as mentioned in subsection (1)(c)—

- (a) a direction that the entitlement of the provider to provide a video-sharing platform service is suspended (either generally or in relation to a particular service);
- (b) a direction that that entitlement is restricted in the respects set out in the direction.

### **368Z7 Supplementary provision about directions**

(1) This section applies to a direction given to a provider under section 368Z5 or 368Z6.

(2) A direction must specify the service to which it relates or specify that it relates to any video-sharing platform service provided or to be provided by the provider.

(3) A direction, except so far as it otherwise provides, takes effect for an indefinite period beginning with the time at which it is notified to the provider.

(4) A direction under section 368Z6 must specify a time for it to take effect, and that time must not fall before the end of 28 days beginning with the day on which the direction is notified to the provider.

(5) A direction—

- (a) may provide for the effect of a suspension or restriction to be postponed by specifying that it takes effect only at a time determined by or in accordance with the terms of the direction; and
- (b) in connection with the suspension or restriction contained in the direction or with the postponement of its effect, may impose such conditions on the provider as appear to the appropriate regulatory authority to be appropriate for the purpose of protecting individuals using the provider's service.

(6) If the appropriate regulatory authority consider it appropriate to do so (whether or not in consequence of representations or proposals made to them), they may revoke a direction or modify its conditions—

- (a) with effect from such time as they may direct;
- (b) subject to compliance with such requirements as they may specify; and
- (c) to such extent and in relation to such services as they may determine.

### **368Z8 Enforcement of directions under section 368Z5 or 368Z6**

(1) A person ("P") is guilty of an offence if P provides a video-sharing platform service—

- (a) while P's entitlement to do so is suspended by a direction under section 368Z5 or 368Z6, or
- (b) in contravention of a restriction contained in such a direction.

(2) A person guilty of an offence under this section is liable—

- (a) on summary conviction—
  - (i) in England and Wales, to a fine;
  - (ii) in Scotland, to a fine not exceeding £5,000;
  - (iii) in Northern Ireland, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

### *Fees*

### **368Z9 Fees**

(1) In this section "the authority" means each of these—

- (a) the appropriate regulatory authority;
- (b) (where they are not the appropriate regulatory authority) OFCOM.

(2) The authority may require a provider of a video-sharing platform service to pay them a fee.

(3) The authority must be satisfied that the amount of any fee required under subsection (2)—

- (a) represents the appropriate contribution of the provider towards meeting the likely costs described in subsection (5)(a), and
- (b) is justifiable and proportionate having regard to the provider who will be required to pay it and the functions in respect of which it is imposed.

(4) A different fee may be required in relation to different cases or circumstances.

(5) The authority must, for each financial year—

- (a) prepare such estimate as it is practicable for them to make of the likely costs of carrying out the relevant functions during that year;

- (b) ensure that the aggregate amount of the fees that are required to be paid to them under subsection (2) during that year is sufficient to enable them to meet, but not exceed, the costs estimated under paragraph (a);
  - (c) consult in such manner as they consider appropriate the providers likely to be required to pay them a fee under subsection (2) during that year;
  - (d) publish in such manner as they consider appropriate the amount of the fees they will require providers to pay to them under subsection (2) during that year.
- (6) As soon as reasonably practicable after the end of the financial year, the authority must publish a statement setting out, for that year—
- (a) the aggregate amount received by them during that year in respect of fees required to be paid under subsection (2);
  - (b) the aggregate amount outstanding and likely to be paid or recovered in respect of fees that were required to be so paid under subsection (2); and
  - (c) the costs to them of carrying out the relevant functions during that year.
- (7) Any deficit or surplus shown (after applying this subsection for all previous years) by a statement under subsection (6) is to be—
- (a) carried forward; and
  - (b) taken into account in determining what is required to satisfy the requirement imposed by virtue of subsection (5)(b) in relation to the following year.
- (8) The authority may repay to a person some or all of a fee paid to them by a person under subsection (2) if—
- (a) that person has ceased to provide a video-sharing platform service at some time during the period to which the fee relates;
  - (b) before ceasing to provide that service, that person gave the appropriate regulatory authority a notification under section 368V(2); and
  - (c) that person did not cease to provide the service following a direction given by the appropriate regulatory authority under section 368Z5 or 368Z6.
- (9) The authority may make arrangements with any body designated under section 368T for that body to provide the authority with assistance in connection with the collection or repayment of fees required by them under this section.
- (10) For the purposes of this section, the authority’s costs of carrying out the relevant functions during a financial year include their costs of preparing to carry out the relevant functions incurred during that year.
- (11) In this section “relevant functions” means—
- (a) in relation to the appropriate regulatory authority, their functions as the appropriate regulatory authority;
  - (b) in relation to OFCOM (where they are not the appropriate regulatory authority), their other functions under this Part.
- (12) In this section “financial year” means a period of 12 months ending with 31 March.
- (13) The authority may not charge a fee for any period in relation to a financial year which begins before 1 April 2022.

*Information and reports*

**368Z10 Power to demand information**

- (1) The appropriate regulatory authority may require a person who appears to be or to have been a provider of a video-sharing platform service to provide them with all such information relating to that service as the authority require for the purpose of carrying out their functions under this Part.

(2) The appropriate regulatory authority may also require a person who appears to have or to be able to generate information that the authority reasonably require for the purpose of carrying out their functions under this Part to provide them with that information.

(3) The information that may be required by the appropriate regulatory authority under subsection (1) or (2) includes, in particular, information that they require for any one or more of the following purposes—

- (a) the purpose of determining whether a person falls under the jurisdiction of the United Kingdom for the purposes of the Audiovisual Media Services Directive;
- (b) the purpose of determining whether there has been any change of circumstance that may affect a determination mentioned in paragraph (a);
- (c) the purpose of determining the appropriate fee that a provider of a video-sharing platform service is required to pay under section 368Z9;
- (d) the purpose of assessing compliance with section 368V, 368Y or 368Z1(1), (2), (6) or (7);
- (e) the purpose of determining which of the measures set out in Schedule 15A the authority consider to be appropriate in relation to a video-sharing platform service for any of the purposes mentioned in section 368Z1(1);
- (f) the purposes of an investigation being carried out by the authority to determine—
  - (i) whether a contravention of section 368V, 368Y or 368Z1(6) or (7) has occurred or is occurring,
  - (ii) whether a provider of a video-sharing platform service has failed to take a measure set out in Schedule 15A which the authority consider to be appropriate in relation to that service for any of the purposes mentioned in subsection (1) of section 368Z1, or
  - (iii) whether a provider of a video-sharing platform service has failed to comply with subsection (2) of section 368Z1;
- (g) the purpose of monitoring which of the measures set out in Schedule 15A are taken by providers of video-sharing platform services for the purposes mentioned in section 368Z1(1), and how such measures are implemented;
- (h) the purpose of producing a report under section 368Z11;
- (i) the purpose of ascertaining or calculating applicable qualifying revenue under section 368Z4.

(4) A requirement imposed on a person to provide information under this section includes a requirement that the person must, if necessary, generate the information.

(5) The appropriate regulatory authority may only require the provision of information under this section if—

- (a) the demand for the information is contained in a notice served on the person from whom the information is required that describes the required information and sets out the purpose or purposes for which it is required,
- (b) the demand for the information is proportionate to the use to which the information is to be put in the carrying out of the authority's functions, and
- (c) the authority have given the person from whom the information is required the opportunity to make representations to the authority concerning the demand.

(6) A person who is required to provide information under this section must provide it in such manner and form and within such reasonable period as may be specified by the authority in the demand for information.

(7) Sections 368Z2 and 368Z5 apply in relation to a failure by a provider of a video-sharing platform service to comply with a demand for information under this section as if that failure were a contravention of section 368Y.

(8) Section 368Z2 applies in relation to a failure by a person other than a provider of a video-sharing platform service to comply with a demand for information under this section as if that failure were a contravention of section 368Y, but where section 368Z2 applies by virtue of this subsection—

- (a) references in that section and in section 368Z4 to a provider of a video-sharing platform service are to be read as references to the person who has failed to comply with the demand for information, and
- (b) section 368Z4(1) is to apply as if, for the words “5% of the provider’s applicable qualifying revenue or £250,000, whichever is the greater amount,” there were substituted “£250,000”.

(9) In this section “information” includes technical information and material such as videos, audiovisual commercial communications, screenshots and archived material.

### **368Z11 Reports by OFCOM**

(1) OFCOM may from time to time produce and publish reports about—

- (a) the steps taken by providers of video-sharing platform services to comply with sections 368Y and 368Z1(6) and (7);
- (b) the measures taken by providers for the purposes mentioned in section 368Z1(1), and the ways in which such measures are implemented so as to carry out those purposes;
- (c) the systems adopted by providers for the reporting, flagging or rating of material on the service and the handling of complaints or the resolution of disputes relating to the service.

(2) In publishing a report under this section, OFCOM must have regard to the need to exclude from publication, so far as that is practicable, the matters which are confidential in accordance with subsections (3) and (4).

(3) A matter is confidential under this subsection if—

- (a) it relates specifically to the affairs of a particular body, and
- (b) publication of that matter would or might, in OFCOM’s opinion, seriously and prejudicially affect the interests of that body.

(4) A matter is confidential under this subsection if—

- (a) it relates to the private affairs of an individual, and
- (b) publication of that matter would or might, in OFCOM’s opinion, seriously and prejudicially affect the interests of that individual.

### **368Z12 Co-operation with member States and the European Commission**

OFCOM must take all necessary steps to provide such information and assistance to member States and to the European Commission as is required in order to comply with the Audiovisual Media Services Directive as it applies in relation to providers of video-sharing platform services.

#### *Interpretation of Part 4B*

### **368Z13 Interpretation of Part 4B**

In this Part—

- “appropriate regulatory authority” is to be construed in accordance with section 368T;
- “audiovisual commercial communication” means a set of moving or still images, or of legible text, or of a combination of those things (with or without sounds), which—
  - (a) is designed to promote (directly or indirectly) the goods, services or image of a person pursuing an economic activity, and
  - (b) accompanies or is included in a video in return for payment, or for other valuable consideration, or for self-promotional purposes,

and forms of audiovisual commercial communication include advertising, sponsorship, teleshopping and product placement;

“product placement” means the inclusion of, or of a reference to, a product, a service or a trade mark within a video in return for payment or for other valuable consideration;

“sponsorship” means any contribution made by a person not engaged in providing video-sharing platform services to the financing of video-sharing platform services or videos with a view to promoting the name, trade mark, image, activities, services or products of that person or another person;

“teleshopping” means direct offers broadcast to the public for the supply of goods, services, immovable property, rights or obligations, in return for payment;

“trade mark”, in relation to a person, includes any image (such as a logo) or sound commonly associated with that person, or that person’s products or services;

“video” means a set of moving or still images, or of legible text, or of a combination of those things (with or without sounds), which constitutes an individual item irrespective of its length (and which is not an audiovisual commercial communication);

“video-sharing platform service” has the meaning given by section 368S.”.

48. After Schedule 15 insert—

**“SCHEDULE 15A** Section 368Z1(1)

**Video-sharing platform services: appropriate measures for the purposes of section 368Z1(1)**

*Appropriate measures*

**1.** Paragraphs 2 to 9 set out the measures which it may be appropriate for a person who provides a video-sharing platform service to take in relation to that service for the purposes mentioned in section 368Z1(1).

**2.** Include terms and conditions to the effect that if a person uploads to the service a video that contains any restricted material, that person must bring it to the attention of the person who is providing the service.

**3.** Include terms and conditions to the effect that a person must not upload to the service a video containing relevant harmful material.

**4.** Include terms and conditions to the effect that—

- (a) a person must not upload to the service a video containing an audiovisual commercial communication for a product mentioned in section 368Z(2),
- (b) a person must not upload to the service a video containing an audiovisual commercial communication for an alcoholic drink unless that communication meets the requirements in section 368Z(3), (4) and (5), and
- (c) a person must not upload to the service a video containing an audiovisual commercial communication for anything else unless that communication meets the requirements in section 368Z(4) and (5).

**5.** Provide functionality for a person uploading a video to the service to declare whether, as far as they know or can reasonably be expected to know, the video contains an audiovisual commercial communication, and include terms and conditions to the effect that a person uploading a video must use the functionality to make such a declaration.

**6.** Establish and operate—

- (a) transparent and user-friendly mechanisms for viewers to report or flag harmful material which is available on the service to the person providing the service;

- (b) systems through which the person providing the service explains to persons using the service what effect has been given to the reporting and flagging referred to in sub-paragraph (a);
- (c) systems for obtaining assurance as to the age of potential viewers;
- (d) easy to use systems allowing viewers to rate harmful material.

7. Provide for parental control systems in relation to restricted material.

8. In relation to the implementation of the measures set out in paragraphs 6 and 7, establish and operate a complaints procedure which must be transparent, easy to use and effective, and must not affect the ability of a person to bring a claim in civil proceedings.

9. Provide information and tools for individuals using the service with the aim of improving their media literacy, and raise awareness of the availability of such information and tools.

### *Interpretation*

10. In this Schedule—

“audiovisual commercial communication” has the meaning given by section 368Z13;

“harmful material” means—

- (a) relevant harmful material, or
- (b) restricted material;

“parental control systems” means systems designed to be used by an adult responsible for a person under the age of 18, to control whether or how such persons are able to access videos or audiovisual commercial communications included in a video-sharing platform service;

“relevant harmful material” means—

- (a) material referred to in section 368E(1), or
- (b) material referred to in section 368E(3)(za) (read as if the reference to an on-demand programme service were to a video-sharing platform service);

“restricted material” means—

- (a) material which is prohibited material within the meaning of section 368E by virtue of falling within paragraph (a) or (b) of subsection (3) of that section, or
- (b) specially restricted material within the meaning of section 368E (see subsection (5) of that section);

“video” has the meaning given by section 368Z13;

“video-sharing platform service” has the meaning given by section 368S.”.

## PART 5

### Signal integrity

49. During the period beginning with 1st November 2020 and ending with IP completion day, the Communications Act 2003(a) has effect as if, after section 347, there were inserted—

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(a) 2003 c. 21.

## “CHAPTER 4A

### Signal integrity

#### **347A Signal integrity**

- (1) This section applies to a person who—
  - (a) provides access to a service specified in subsection (4) (or part of such a service), or
  - (b) manufactures equipment or apparatus which connects to an electronic communications network or an electronic communications service, or receives a television signal, enabling programmes included in such a service to be viewed.
- (2) A person to whom this section applies must not—
  - (a) impose an overlay, for commercial purposes, on a programme which is included in a service specified in subsection (4), or
  - (b) implement a modification of a programme which is included in such a service.
- (3) But the prohibitions in subsection (2) do not apply in relation to a service where—
  - (a) the overlay or modification is expressly permitted by the person providing the service; or
  - (b) the overlay or modification—
    - (i) is expressly initiated or authorised by the recipient of the service for private use, such as an overlay resulting from a service enabling private communication between individuals, or from choices expressly made by the recipient of the service using the settings of the device through which programmes included in the service are viewed;
    - (ii) is necessary for the operation of the device through which programmes included in the service are viewed, such as volume bars, search functions, navigation menus or lists of channels;
    - (iii) is designed to assist people with disabilities to understand programmes included in the service, such as subtitles or sign language;
    - (iv) is for the purpose of enabling a public authority to provide communications of vital importance to the public, such as information in an emergency; or
    - (v) amounts to a reduction in the size of a data file to adapt a service for distribution, such as resolution or coding, without any modification of the content.
- (4) The services are—
  - (a) a television programme service;
  - (b) a digital additional television service;
  - (c) an on-demand programme service.

(5) In this section—

“overlay” means any text or moving or still images superimposed on a programme included in a service;

“modification”, in relation to a service, includes transmission of that service in a shortened form, or with alterations or interruptions, and substitution of advertising which is included in that service.

#### **347B Regulator for signal integrity**

It is the duty of OFCOM to enforce compliance with the prohibition in section 347A(2).

### **347C Power to demand information**

(1) OFCOM may require a person who appears—

- (a) to be or have been a provider of a service specified in section 347A(4),
- (b) to have contravened, or to be contravening, section 347A(2), or
- (c) to have information required by them for the purpose of carrying out their functions under section 347B,

to provide them with all such information as they consider necessary for carrying out those functions.

(2) The information that may be required by OFCOM under subsection (1) includes, in particular, information that they may require in the course of carrying out an investigation to determine whether a person has contravened or is contravening section 347A(2).

(3) OFCOM may not require the provision of information under this section unless—

- (a) the making of the demand for the information is proportionate to the use to which the information is to be put in the carrying out of OFCOM's functions under section 347B;
- (b) they have given the person from whom it is required an opportunity of making representations to them about the matters appearing to them to provide grounds for making the request.

(4) Any demand for information made by OFCOM under this section must be contained in a notice which—

- (a) is served on the person from whom the information is required,
- (b) describes the information that is required, and
- (c) sets out OFCOM's reasons for requiring it.

(5) A person who is required to provide information under this section must provide it in such manner and form and within such reasonable period as may be specified by OFCOM in the notice.

### **347D Enforcement**

(1) OFCOM may give a person a notice of intent under this section where they determine that there are reasonable grounds for believing that the person—

- (a) is contravening or has contravened section 347A(2), or
- (b) has failed to comply with a demand for information made under section 347C.

(2) A notice of intent under this section is one which—

- (a) sets out the determination made by OFCOM;
- (b) specifies the contravention or failure in respect of which that determination has been made;
- (c) specifies the period during which the person has an opportunity to make representations; and
- (d) specifies the steps that OFCOM propose to require the person to take in order to remedy the contravention or failure.

(3) A notice of intent under this section may also specify the amount of a penalty which OFCOM propose to impose in accordance with sections 347E and 347F.

(4) A notice of intent under this section—

- (a) may be given in respect of more than one contravention or failure; and
- (b) if it is given in respect of a continuing contravention or failure, may be given in respect of any period during which the contravention or failure has continued.

### **347E Enforcement notices and penalty notices**

- (1) This section applies where—
  - (a) a person has been given a notice of intent under section 347D; and
  - (b) the period allowed for the making of representations has expired.
- (2) Where, after considering any representations, OFCOM are satisfied that the person is contravening or has contravened section 347A(2), or has failed to comply with a demand for information made under section 347C, OFCOM may give the person either or both of the following—
  - (a) an enforcement notice requiring the person to take steps to remedy that contravention or failure;
  - (b) a penalty notice requiring the person to pay a penalty.
- (3) An enforcement notice—
  - (a) must be given to the person without delay;
  - (b) must include reasons for the requirement for the person to take the steps specified in the notice; and
  - (c) must specify a period within which the person must take the steps specified in the notice.
- (4) It is the duty of the person to whom an enforcement notice has been given to comply with it.
- (5) That duty is enforceable in civil proceedings by OFCOM—
  - (a) for an injunction;
  - (b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988(a); or
  - (c) for any other appropriate remedy or relief.
- (6) A penalty notice—
  - (a) must be given to the person without delay;
  - (b) must include reasons for the imposition of the penalty; and
  - (c) must specify—
    - (i) the period within which the penalty is to be paid,
    - (ii) how the penalty is to be paid, and
    - (iii) the consequences of not paying the penalty.
- (7) A penalty imposed by a penalty notice must be paid into the appropriate Consolidated Fund.
- (8) The reference in this section to the payment of an amount into the appropriate Consolidated Fund—
  - (a) in the case of an amount received in respect of matters appearing to OFCOM to have no connection with Northern Ireland, is a reference to the payment of the amount into the Consolidated Fund of the United Kingdom;
  - (b) in the case of an amount received in respect of matters appearing to OFCOM to have a connection with Northern Ireland but no connection with the rest of the United Kingdom, is a reference to the payment of the amount into the Consolidated Fund of Northern Ireland; and
  - (c) in any other case, is a reference to the payment of the amount, in such proportions as OFCOM consider appropriate, into each of those Funds.

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(a) 1988 c. 36.

### **347F Penalties: further provision**

(1) A penalty notice may impose separate penalties for separate contraventions or failures specified in the notice of intent.

(2) Where the notice of intent relates to a period of continuing contravention or failure, a penalty notice—

- (a) may not impose more than one penalty in respect of that period;
- (b) may impose a penalty in respect of each day on which the contravention or failure continues on or after a day specified in the penalty notice.

(3) The amount of a penalty imposed on a person by a penalty notice under section 347E (other than a daily penalty mentioned in subsection (2)(b)), or, where more than one such penalty is imposed on a person by a penalty notice under that section, the sum of such penalties, is to be such amount not exceeding 10% of the turnover of the person's relevant business for the relevant period as OFCOM determine to be—

- (a) appropriate; and
- (b) proportionate to the contravention or failure (or contraventions or failures) in question.

(4) The amount of a penalty mentioned in subsection (2)(b) is to be such amount not exceeding £20,000 per day as OFCOM determine to be—

- (a) appropriate; and
- (b) proportionate to the contravention or failure in respect of which it is imposed.

(5) For the purposes of this section the turnover of the person's relevant business for a period—

- (a) is to be calculated in conformity with accounting practices and principles which are generally accepted in the United Kingdom;
- (b) is limited to the amounts derived by that person from the relevant business after deduction of sales rebates, value added tax and other taxes directly related to turnover;
- (c) where the person's relevant business consists of two or more undertakings that each prepare accounts, is to be calculated by adding together the turnover of each, save that no account is to be taken of any turnover resulting from the supply of goods or the provision of services between them.

(6) In this section—

“relevant business”, in relation to a person, means so much of any business carried on by the person as consists in either or both of the following—

- (a) an activity mentioned in section 347A(1)(a) or (b);
- (b) a business carried on in association with such an activity;

“relevant period”, in relation to a person's relevant business, means—

- (a) except in a case falling within paragraph (b) or (c), the period of one year ending with the 31 March before the time when a notice of intent was given to the person under section 347D;
- (b) in the case of a person who at that time has been carrying on that business for a period of less than a year, the period, ending with that time, during which the person has been carrying it on;
- (c) in the case of a person who at that time has ceased to carry on that business, the period of one year ending with the time when the person ceased to carry it on.”.

## PART 6

### Miscellaneous amendments

**50.** In section 405(1) (general interpretation)(a) of the Communications Act 2003—

(a) for the definition of “the Audiovisual Media Services Directive” substitute—

““the Audiovisual Media Services Directive” means Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services(b);”;

(b) in the definition of “programme”, after “that service” insert “which is an individual item (irrespective of length)”.

**51.** In section 115(1) (general interpretation) of the Wireless Telegraphy Act 2006(c), for the definition of “the Audiovisual Media Services Directive” substitute—

““the Audiovisual Media Services Directive” means Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services;”.

**52.** Omit section 93(3) of the Digital Economy Act 2017(d).

## PART 7

### Transitional provision

#### Quota for European Works

**53.**—(1) This regulation applies where a person is providing an on-demand programme service immediately before 1st November 2020.

(2) The person is to be taken to comply with the requirement of section 368CB(1) of the Communications Act 2003 in relation to the year 2020 if the person complies with that requirement in relation to November and December 2020.

#### Advance notification for on-demand programme and video-sharing platform services

**54.**—(1) Paragraph (2) applies where a person is providing an on-demand programme service immediately before 6th April 2021 and—

(a) there is a significant difference between the service being provided and the service that was notified to the appropriate regulatory authority under section 368BA(1) of the 2003 Act, and

(b) that significant difference is a change that may affect the determination of jurisdiction in accordance with paragraphs 2, 3 and 4 of Article 2 of the Audiovisual Media Services Directive.

(2) Section 368BA(2) of the 2003 Act has effect as if the requirement to give a notification of the significant difference before providing the service with a significant difference were a requirement to give a notification of the significant difference before 6th May 2021.

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(a) The definition of “the Audiovisual Media Services Directive” was inserted into section 405(1) by S.I. 2009/2979 and substituted by S.I. 2010/1883; there are other amendments but none is relevant.

(b) OJ No. L 95, 15.4.2010, p. 1; amended by Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 (OJ No. L 303, 28.11.2018, p. 69).

(c) 2006 c. 36. The definition of “the Audiovisual Media Services Directive” was inserted into section 115(1) by S.I. 2009/2979 and substituted by S.I. 2010/1883; there are other amendments but none is relevant.

(d) 2017 c. 30.

(3) Paragraph (4) applies where a person is providing a video-sharing platform service immediately before 6th April 2021.

(4) Section 368V(1) of the 2003 Act has effect as if the requirement to give a notification of the person's intention to provide the service before beginning to provide it were a requirement to give a notification before 6th May 2021 that the service is being provided.

(5) In this regulation—

“the 2003 Act” means the Communications Act 2003;

“the Audiovisual Media Services Directive” has the same meaning as in the 2003 Act (see section 405(1) of that Act);

“on-demand programme service” has the same meaning as in the 2003 Act (see section 368A of that Act);

“video-sharing platform service” has the same meaning as in the 2003 Act (see section 368S of that Act).

### Signal integrity

**55.**—(1) Section 16 of the Interpretation Act 1978 (general savings on repeal)(a) applies in relation to the expiry of Chapter 4A of Part 3 of the 2003 Act (see regulation 49) with the modification in paragraph (2).

(2) OFCOM may not begin or continue any investigation into a signal integrity breach, or give a notice under section 347D or 347E of the 2003 Act in respect of a signal integrity breach, unless the breach is brought to OFCOM's attention before the final complaints day.

(3) A “signal integrity breach” means either or both of the following—

(a) a contravention of section 347A(2) of the 2003 Act;

(b) a failure to comply with a demand for information made under section 347C of that Act.

(4) The “final complaints day” is the last day of the period of 20 working days beginning with IP completion day.

(5) In this regulation—

“the 2003 Act” means the Communications Act 2003;

“working day” means a day other than—

(a) Saturday or Sunday, or

(b) a day which is a bank holiday under the Banking and Financial Dealings Act 1971(b) in any part of the United Kingdom.

1.05 p.m. on 30th September 2020

*John Whittingdale*  
Minister of State for Media and Data  
Department for Digital, Culture, Media and Sport

### EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations implement certain provisions of Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the

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(a) 1978 c. 30.

(b) 1971 c. 80 (for the definition of “bank holiday” see section 1 and Schedule 1).

coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities (“the amending Directive”). Directive 2010/13/EU is known as “the AVMSD”. These Regulations make amendments to the Broadcasting Acts of 1990 (c. 42) and 1996 (c. 55) and the Communications Act 2003 (c. 21) (“the 2003 Act”).

Audiovisual media services comprise broadcast television and on-demand programme services (a service which provides programmes online, at a time chosen by the viewer, see section 368A of the 2003 Act). The main new features of the revised AVMSD include expansion of its scope to encompass dissociable sections of a service, the principal purpose of which is to provide programmes to the general public. As an increasing number of consumers access audiovisual content online, the AVMSD also seeks to level the playing field between different types of providers. It removes the distinction between broadcast television and on-demand programme services in the application of rules to protect audiences from harm. The AVMSD reinforces protection against incitement to violence or hatred and public provocation to commit terrorist offences. Audiovisual media services are required to protect minors from harmful content using measures proportionate to the potential harm, including through selecting the time of the broadcast, age verification tools or other technical measures. Regulatory authorities must establish and keep an up to date list of providers of audiovisual media services. Lastly, the scope of measures to increase accessibility to audiovisual media services for disabled persons is widened to encompass all disabilities, not just those concerning impairment of sight and hearing.

Part 2 makes amendments in respect of broadcast television services. The details of content standards for broadcast television are contained in OFCOM’s Broadcasting Code (available at: [https://www.ofcom.org.uk/\\_\\_data/assets/pdf\\_file/0016/132073/Broadcast-Code-Full.pdf](https://www.ofcom.org.uk/__data/assets/pdf_file/0016/132073/Broadcast-Code-Full.pdf) or from OFCOM, Riverside House, 2a Southwark Bridge Road, London, SE1 9HA). In setting standards, OFCOM must secure the standards objectives set out in the 2003 Act, see in particular section 319 of, and Schedule 11A to, that Act. Part 2 makes amendments to those provisions, and changes will also be made to the Broadcasting Code.

Part 3 makes amendments in respect of on-demand programme services. The content standards are contained within Part 3 itself and are amended (see sections 368E to 368H). The Regulations ensure that standards and advertising rules for on-demand programme services are equivalent to those for broadcast television. In addition, there is a new requirement for a 30% quota for European works on services (being works originating from certain European countries, or from qualifying co-productions involving those states), to be assessed over the course of a year. Exemptions are available where the service has a low turnover or a low audience or it is impracticable or unjustified for those subsections to apply because of the nature or theme of the service – see section 368CB of the 2003 Act. There are bespoke provisions relating to the application of Part 3 to the BBC and the Welsh Authority which are amended (see sections 368P and 368Q of, and Schedule 12 to, the 2003 Act).

The AVMSD also regulates video-sharing platform services for the first time. The Regulations insert a new section Part 4B into the 2003 Act to deal with this. See section 368S for the definition of video-sharing platform service: it is a service providing videos online to members of the public where the person providing the service has general control only over the organisation of the videos on the service, and not over the videos which are available.

The AVMSD requires providers of video-sharing platform services to take ‘appropriate measures’ to achieve specified protection purposes. The protection purposes are:

- to protect minors from content and advertising that might impair their physical, mental or moral development;
- to protect the general public from content and advertising that incites violence or hatred towards people with certain protected characteristics; and
- to protect the general public from content and advertising that is a criminal offence under EU law to circulate (i.e. terrorist content, content containing child sexual exploitation and abuse, and racist/xenophobic content).

The system does not involve direct regulation of content on services, instead, there is regulation of the systems which providers of video-sharing platform services have in place. This reflects the limited level of control that service providers have over the content provided by their services, as material is uploaded by third parties (see section 368Z1 and Schedule 15A of the 2003 Act). Service providers have to take “appropriate measures” to deliver the protection purposes, such as having in place and applying certain terms and conditions of service for users; establishing and operating flagging and reporting mechanisms, age verification systems, systems to rate the content and easy-to-access complaints procedures; and the provision of parental control systems. However, there are greater controls for content which is under the direct control of service providers, being audiovisual commercial communications (advertising) that are marketed, sold or arranged by service providers (see section 368Z).

Section 368T makes provision for the appropriate regulatory authority for Part 4B. In the first instance it will be OFCOM, but OFCOM has the power to designate any body corporate meeting certain conditions to be a co-regulator. The enforcement powers are in sections 368Z2 to 368Z8, and include power to give enforcement notices and to impose a financial penalty. There is power for the regulatory authority to charge a fee to cover the costs of regulation in section 368Z9, to demand relevant information in section 368Z10, and in section 368Z11 for OFCOM to from time to time produce and publish reports about compliance by providers with the requirements.

There are new duties for the regulatory authority to co-operate and provide information and assistance to other member States and the European Commission in order to achieve compliance with the AVMSD: see section 335A (in respect of relevant broadcasters), section 368OA (in respect of providers of on-demand programme services) and section 368Z12 (in respect of providers of video-sharing platform services) of the 2003 Act.

Part 5 concerns signal integrity measures which prohibit audiovisual media services from being shortened, altered, interrupted, or overlaid for commercial purposes, without the explicit consent of the media service provider (see sections 347A to 347F). These provisions are subject to “sunsetting” and will cease to have effect on IP completion day (see regulation 49).

Part 7 contains transitional provisions. Regulation 53 concerns the quota for European works and deals with the issue of the requirement for the remainder of this year. Regulation 54 concerning advance notification relates to the fact that the amendments inserting section 368B(4) (advance notification of a change to an on-demand programme service) and s368V (advance notification of provision of a video-sharing platform service) do not come into force until 6th April 2021. Existing service providers at this date will have a month to provide the necessary notification. Regulation 55 specifies the time period within which matters relating to breach of the signal integrity provisions can be brought to OFCOM’s attention for potential enforcement action.

A Transposition Table outlining transposition of Directive (EU) 2018/1808 is available alongside these Regulations at [www.legislation.gov.uk](http://www.legislation.gov.uk) and from the Department for Digital, Culture, Media and Sport at 100 Parliament Street, London SW1A 2BQ.

A full impact assessment of the effect that this instrument will have on the costs of business, the voluntary sector and the public sector is available alongside these Regulations and from the Department for Digital, Culture, Media and Sport at 100 Parliament Street, London SW1A 2BQ.

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