

SCHEDULES

SCHEDULE 4

PROVIDERS OF INFORMATION SOCIETY SERVICES

PART 1

OFFERING TO SUPPLY A PSYCHOACTIVE SUBSTANCE

Domestic service providers: extension of liability

- 1 (1) If—
- (a) a service provider established in a particular part of the United Kingdom does anything in an EEA state other than the United Kingdom in the course of providing information society services, and
 - (b) the action, if done in that part of the United Kingdom, would constitute an offence under section 5(2),
- the service provider is guilty in that part of the United Kingdom of such an offence.
- (2) Nothing in this paragraph affects the operation of paragraphs 3 to 5.

Non-UK service providers: restriction on institution of proceedings

- 2 (1) Proceedings for an offence under section 5(2) may not be instituted against a non-UK service provider in respect of anything done in the course of the provision of information society services unless the derogation condition is met.
- (2) The derogation condition is that taking proceedings—
- (a) is necessary for the purposes of the public interest objective,
 - (b) relates to an information society service that prejudices that objective or presents a serious and grave risk of prejudice to that objective, and
 - (c) is proportionate to that objective.
- (3) In this paragraph—
- “non-UK service provider” means a service provider established in an EEA state other than the United Kingdom;
 - “the public interest objective” means the pursuit of public policy.

Exceptions for mere conduits

- 3 (1) A service provider does not commit an offence under section 5(2) by providing access to a communication network or by transmitting, in a communication network, information provided by a recipient of the service, if the service provider does not—
- (a) initiate the transmission,
 - (b) select the recipient of the transmission, or

Status: This is the original version (as it was originally enacted).

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

Exception for caching

- 4 (1) A service provider does not commit an offence under section 5(2) by storing information provided by a recipient of the service for transmission in a communication network if the first and second conditions are met.
- (2) The first condition is that the storage of the information—
- (a) is automatic, intermediate and temporary, and
 - (b) is solely for the purpose of making more efficient the onward transmission of the information to other recipients of the service at their request.
- (3) The second condition is that the service provider—
- (a) does not modify the information,
 - (b) complies with any conditions attached to having access to the information, and
 - (c) if sub-paragraph (4) applies, promptly removes the information or disables access to it.
- (4) This sub-paragraph applies if the service provider obtains actual knowledge that—
- (a) the information at the initial source of the transmission has been removed from the network,
 - (b) access to it has been disabled, or
 - (c) a court or administrative authority has ordered the removal from the network of, or the disablement of access to, the information.

Exception for hosting

- 5 (1) A service provider does not commit an offence under section 5(2) by storing information provided by a recipient of the service if—
- (a) the service provider had no actual knowledge when the information was provided that its provision constituted an offence under section 5(2), or
 - (b) on obtaining actual knowledge that the provision of the information constituted such an offence, the service provider promptly removed the information or disabled access to it.
- (2) Sub-paragraph (1) does not apply if the recipient of the service is acting under the authority or control of the service provider.