
STATUTORY INSTRUMENTS

2020 No. 1062

The Audiovisual Media Services Regulations 2020

PART 5

Signal integrity

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

“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

347B 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(2); 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.

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.”.