



Communications Act 2003

2003 CHAPTER 21

[^{F1}PART 4A

ON-DEMAND PROGRAMME SERVICES

[^{F1}[^{F2}CHAPTER 1

INTRODUCTORY PROVISIONS]

Textual Amendments

- F1** Pt. 4A inserted (19.12.2009) by [Audiovisual Media Services Regulations 2009 \(S.I. 2009/2979\)](#), regs. 1(1), 2
- F2** Pt. 4A Ch. 1 heading inserted (23.8.2024) by [Media Act 2024 \(c. 15\)](#), ss. 37(2), 55(3)(d); S.I. 2024/858, reg. 2(1)(o)

Preliminary

[^{F3}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.]

Textual Amendments

- F3** S. 368ZA inserted (1.11.2020) by [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\)](#), regs. 1(2), 22 (with Pt. 7)

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368A Meaning of “on-demand programme service”

- (1) For the purposes of this Act, a service [^{F4}(or a dissociable section of a service)] is an “on-demand programme service” if—
- (a) its principal purpose is the provision of programmes [^{F5}(as described in section 368ZA)];
 - (b) access to it is on-demand;
 - (c) there is a person who has editorial responsibility for it;
 - (d) it is made available by that person for use by members of the public; ^{F6} ...
 - [^{F7}(e) that person's head office is in the United Kingdom, and
 - (f) editorial decisions about the service are taken in the United Kingdom.]
- (2) Access to a service [^{F8}(or dissociable section of a service)] is on-demand if—
- (a) the service [^{F9}(or dissociable section of the service)] enables the user to view, at a time chosen by the user, programmes selected by the user from among the programmes included in the service [^{F9}(or dissociable section of the service)]; and
 - (b) the programmes viewed by the user are received by the user by means of an electronic communications network (whether before or after the user has selected which programmes to view).
- (3) For the purposes of subsection (2)(a), the fact that a programme may be viewed only within a period specified by the provider of the service [^{F10}(or dissociable section of the service)] does not prevent the time at which it is viewed being one chosen by the user.
- (4) A person has editorial responsibility for a service [^{F11}(or dissociable section of a service)] if that person has general control—
- (a) over what programmes are included in the range of programmes offered to users; and
 - (b) over the manner in which the programmes are organised in that range;
- and the person need not have control of the content of individual programmes or of the broadcasting or distribution of the service [^{F12}(or dissociable section of the service)] (and see section 368R(6)).
- (5) If an on-demand programme service (“the main service”) offers users access to a relevant ancillary service, the relevant ancillary service is to be treated for the purposes of this Part as a part of the main service.
- (6) In subsection (5), “relevant ancillary service” means a service or facility that consists of or gives access to assistance for disabled people in relation to some or all of the programmes included in the main service.
- (7) In this section “assistance for disabled people” has the same meaning as in Part 3.

Textual Amendments

- F4** Words in s. 368A(1) inserted (1.11.2020) by [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\)](#), regs. 1(2), **23(a)(i)** (with Pt. 7)
- F5** Words in s. 368A(1)(a) substituted (1.11.2020) by [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\)](#), regs. 1(2), **23(a)(ii)** (with Pt. 7)
- F6** Word in s. 368A(1)(d) omitted (31.12.2020) by virtue of [The Broadcasting \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/224\)](#), reg. 1(2), **Sch. 1 para. 29(a)** (with reg. 6) (as amended by S.I. 2020/1536, regs. 2, **5(2)(3)**); 2020 c. 1, **Sch. 5 para. 1(1)**

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- F7** S. 368A(1)(e)(f) substituted for s. 368A(1)(e) (31.12.2020) by [The Broadcasting \(Amendment\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/224), reg. 1(2), [Sch. 1 para. 29\(b\)](#) (with reg. 6) (as amended by S.I. 2020/1536, regs. 2, [5\(2\)\(3\)](#)); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)
- F8** Words in s. 368A(2) inserted (1.11.2020) by [The Audiovisual Media Services Regulations 2020](#) (S.I. 2020/1062), regs. 1(2), [23\(b\)\(i\)](#) (with Pt. 7)
- F9** Words in s. 368A(2)(a) inserted (1.11.2020) by [The Audiovisual Media Services Regulations 2020](#) (S.I. 2020/1062), regs. 1(2), [23\(b\)\(ii\)](#) (with Pt. 7)
- F10** Words in s. 368A(3) inserted (1.11.2020) by [The Audiovisual Media Services Regulations 2020](#) (S.I. 2020/1062), regs. 1(2), [23\(c\)](#) (with Pt. 7)
- F11** Words in s. 368A(4) inserted (1.11.2020) by [The Audiovisual Media Services Regulations 2020](#) (S.I. 2020/1062), regs. 1(2), [23\(d\)\(i\)](#) (with Pt. 7)
- F12** Words in s. 368A(4) inserted (1.11.2020) by [The Audiovisual Media Services Regulations 2020](#) (S.I. 2020/1062), regs. 1(2), [23\(d\)\(ii\)](#) (with Pt. 7)

Meaning of non-UK on-demand programme service

F13 **368AA**

- (1) For the purposes of this Act, a service (or a dissociable section of a service) is a “non-UK on-demand programme service” if—
- it meets the conditions in paragraphs (a) to (d) of section 368A(1),
 - it does not meet one or both of the conditions in paragraphs (e) and (f) of section 368A(1), and
 - the members of the public for whose use it is made available are or include members of the public in the United Kingdom.
- (2) Section 368A(5) to (7) applies in relation to a non-UK on-demand programme service as it applies in relation to an on-demand programme service.

Textual Amendments

- F13** [Ss. 368AA, 368AB](#) inserted (23.8.2024) by [Media Act 2024](#) (c. 15), [ss. 37\(3\), 55\(3\)\(d\)](#); S.I. 2024/858, reg. 2(1)(o)

368AB Overview of Part 4A

- This section provides an overview of this Part.
- This Chapter (Chapter 1) gives the meaning of certain expressions used in this Part.
- Chapter 2 contains provision for the regulation of on-demand programme services (as defined by section 368A).
- Chapter 3—
 - sets out the rules that apply for determining when an on-demand programme service (as defined by section 368A) or a non-UK on-demand programme service (as defined by [section 368AA](#)) is a Tier 1 service,
 - makes provision for certain sections of Chapter 2 to apply in relation to a non-UK on-demand programme service that is a Tier 1 service in the same way that they apply in relation to an on-demand programme service, and
 - makes provision for the additional regulation of Tier 1 services (whether on-demand programme services or non-UK on-demand programme services).

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(5) Chapter 4 makes provision about the enforcement of certain provisions of Chapters 2 and 3.

(6) Chapter 5 makes supplementary provision.]

Textual Amendments

F13 Ss. 368AA, 368AB inserted (23.8.2024) by Media Act 2024 (c. 15), ss. 37(3), 55(3)(d); S.I. 2024/858, reg. 2(1)(o)

368B The appropriate regulatory authority

^{F14}(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).]

^{F15}(A2) [OFCOM is the appropriate regulatory authority for the purposes of sections 368HC, 368HJ and 368HK (and OFCOM may not designate any other body to be the appropriate regulatory authority for those purposes).]

- (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 ^{F16}subsections (A1) ^{F17}, (A2)] and (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 on-demand programme services ^{F18}, or non-UK on-demand programme services that are Tier 1 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.

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- (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;
 - (d) is sufficiently independent of providers of on-demand programme services [^{F19}or non-UK on-demand programme services]; and
 - (e) 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.
 - [^{F20}(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.]

Textual Amendments

- F14** S. 368B(A1) inserted (1.11.2020) by [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\)](#), regs. 1(2), **24(a)** (with Pt. 7)
- F15** S. 368B(A2) inserted (23.8.2024) by [Media Act 2024 \(c. 15\)](#), ss. **37(4)**, 55(3)(d); S.I. 2024/858, reg. 2(1)(o)
- F16** Words in s. 368B(1) substituted (1.11.2020) by [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\)](#), regs. 1(2), **24(b)** (with Pt. 7)
- F17** Words in s. 368B(1) inserted (23.8.2024) by [Media Act 2024 \(c. 15\)](#), ss. **37(4)(b)**, 55(3)(d); S.I. 2024/858, reg. 2(1)(o)

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- F18** Words in s. 368B(5)(a) inserted (23.8.2024) by [Media Act 2024 \(c. 15\)](#), **ss. 37(4)(c)**, 55(3)(d); S.I. 2024/858, reg. 2(1)(o)
- F19** Words in s. 368B(9)(d) inserted (23.8.2024) by [Media Act 2024 \(c. 15\)](#), **ss. 37(4)(d)**, 55(3)(d); S.I. 2024/858, reg. 2(1)(o)
- F20** S. 368B(10)(d)(e) inserted (1.12.2014) by [The Audiovisual Media Services Regulations 2014 \(S.I. 2014/2916\)](#), regs. 1(1), **3**

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Changes and effects yet to be applied to :

- specified provision(s) amendment to earlier commencing SI 2003/1900, art. 3(2) by [S.I. 2003/3142 art. 1\(3\)](#)
- specified provision(s) amendment to earlier commencing SI 2003/3142 by [S.I. 2004/1492 art. 2](#)
- specified provision(s) amendment to earlier commencing SI 2003/3142 by [S.I. 2004/697 art. 2](#)
- specified provision(s) amendment to earlier commencing SI 2003/3142 art. 4 Sch. 2 by [S.I. 2004/545 art. 2](#)

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 148A and cross-heading inserted by [2022 c. 46 s. 73\(2\)](#)
- s. 204A-204C substituted for s. 204-206 by [2024 c. 15 s. 32\(2\)](#)
- s. 245(1)(c) inserted by [2024 c. 15 s. 46\(2\)](#)
- s. 245(3A)-(3C) inserted by [2024 c. 15 s. 46\(3\)](#)
- s. 264(10A)(10B) inserted by [2024 c. 15 s. 1\(3\)](#)
- s. 270(3)(ca) inserted by [2024 c. 15 s. 6\(3\)](#)
- s. 270(4A) inserted by [2024 c. 15 s. 6\(4\)](#)
- s. 270(7A) inserted by [2024 c. 15 s. 6\(7\)](#)
- s. 278A inserted by [2024 c. 15 s. 10](#)
- s. 315(6)(c) omitted by [2024 c. 15 s. 47\(9\)](#)
- s. 315A inserted by [2024 c. 15 s. 44\(9\)](#)
- s. 351(4)(aa) inserted by [2024 c. 15 Sch. 2 para. 58\(2\)\(b\)](#)
- s. 351(5)(aa) substituted for s. 351(5)(a) by [2024 c. 15 Sch. 2 para. 58\(3\)\(a\)](#)
- s. 353(4)(aa) inserted by [2024 c. 15 Sch. 2 para. 59\(2\)\(b\)](#)
- s. 359A and cross-heading inserted by [2024 c. 15 s. 45](#)
- s. 368E(5)(d)(e) inserted by [2017 c. 30 s. 94\(3\)](#)
- s. 370(13) inserted by [2024 c. 13 Sch. 29 para. 7\(2\)](#)
- s. 371(13) inserted by [2024 c. 13 Sch. 29 para. 7\(3\)](#)
- s. 393(5)(t) inserted by [2024 c. 13 Sch. 30 para. 28\(b\)](#)
- s. 402(2A)(zza) inserted by [2024 c. 15 s. 46\(4\)](#)
- s. 402(2A)(zzb) inserted by [2024 c. 15 s. 44\(10\)](#)
- s. 402(2A)(za)(zb) inserted by [2022 c. 46 Sch. para. 2](#)
- Sch. 3A para. 21(6) inserted by [2022 c. 46 Sch. para. 3\(5\)\(b\)](#)
- Sch. 3A para. 37(3)(aza) inserted by [2022 c. 46 Sch. para. 3\(9\)](#)
- Sch. 3A para. 84(1)(aza) inserted by [2022 c. 46 Sch. para. 3\(10\)](#)
- Sch. 3A para. 103(1)(ca) inserted by [2022 c. 46 s. 70](#)
- Sch. 3A para. 119A inserted by [2022 c. 46 s. 72](#)
- Sch. 3A Pt. 4ZA inserted by [2022 c. 46 s. 67\(1\)](#)
- Sch. 12 para. 1(15) inserted by [2024 c. 15 Sch. 1 para. 1\(10\)](#)
- Sch. 12 para. 4(2A) inserted by [2024 c. 15 Sch. 4 para. 52\(4\)](#)
- Sch. 12 para. 7(14) inserted by [2024 c. 15 Sch. 1 para. 2\(10\)](#)
- Sch. 12 para. 3(6)-(7B) substituted for Sch. 12 para. 3(6)(7) by [2024 c. 15 Sch. 4 para. 51\(4\)](#)