

SCHEDULES

SCHEDULE 5

Section 37(6)

TIER 1 SERVICES: CHAPTER TO BE INSERTED AS CHAPTER 3 OF PART 4A OF THE 2003 ACT
Insert the following Chapter as Chapter 3 of Part 4A of the Communications Act 2003—

“CHAPTER 3

REGULATION OF TIER 1 SERVICES

Meaning of Tier 1 service

368HA Meaning of Tier 1 service

- (1) In this Act, a “Tier 1 service” means—
 - (a) an on-demand programme service that falls within [subsection \(2\)](#), and
 - (b) an on-demand programme service, or a non-UK on-demand programme service, that is a Tier 1 service by virtue of regulations under [section 368HB](#).
- (2) An on-demand programme service falls within this subsection if it is an on-demand programme service that is being used by a public service broadcaster, other than the BBC, to contribute to the fulfilment of its public service remit.
- (3) In this section, “public service remit”—
 - (a) in relation to S4C, has the meaning given by [section 204A](#);
 - (b) in relation to the provider of a Channel 3 service or Channel 5, has the meaning given by [section 265\(2\)](#);
 - (c) in relation to the provider of Channel 4, has the meaning given by [section 265\(3\)](#).

368HB Power to specify Tier 1 services etc

- (1) The Secretary of State may by regulations provide that an on-demand programme service, or a non-UK on-demand programme service, is a Tier 1 service if it is specified, or falls within a description specified, in the regulations.
- (2) The Secretary of State may make regulations under [subsection \(1\)](#) only if the Secretary of State is satisfied that it is appropriate for the providers of the services specified, or falling within a description specified, in the regulations to be subject to the duties imposed on providers of Tier 1 services.
- (3) Before making regulations under [subsection \(1\)](#) (but after considering any report prepared by OFCOM under [subsection \(5\)](#) or [\(6\)](#)), the Secretary of State must publish on a publicly accessible part of an official website of His Majesty’s Government a list

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of the services, or descriptions, that the Secretary of State proposes to specify in the regulations.

- (4) Regulations are not to be made under [subsection \(1\)](#) unless the period of five sitting days beginning with the first sitting day after the date on which the requirement in [subsection \(3\)](#) is met in relation to the regulations has expired.
- (5) Before making the first regulations under [subsection \(1\)](#), the Secretary of State must—
 - (a) request OFCOM to prepare a report on the operation of the market in the United Kingdom for on-demand programme services and non-UK on-demand programme services, and
 - (b) have regard to the contents of that report.
- (6) Where the Secretary of State is considering whether to make a second or subsequent set of regulations under [subsection \(1\)](#), the Secretary of State—
 - (a) may request OFCOM to prepare a further report on the operation of the market in the United Kingdom for on-demand programme services and non-UK on-demand programme services, and
 - (b) where a request is made, the Secretary of State must have regard to the contents of the report in deciding whether to make the regulations.
- (7) In preparing a report requested under [subsection \(5\)\(a\)](#) or [\(6\)\(a\)](#), OFCOM must deal with any matters specified by the Secretary of State in the request (as well as any other matters that they consider appropriate).
- (8) For the purposes of preparing a report requested under [subsection \(5\)\(a\)](#) or [\(6\)\(a\)](#), OFCOM may request any person who appears to be the provider of an on-demand programme service or a non-UK on-demand programme service to provide OFCOM with any information relating to that service that is specified in the request.
- (9) The power conferred by [subsection \(8\)](#) does not include power to require the provision of information in respect of which a claim to legal professional privilege, or (in Scotland) to confidentiality of communications, could be maintained in legal proceedings.
- (10) Information provided in response to a request by OFCOM may be shared by OFCOM with the Secretary of State but may not be further shared (whether by OFCOM or the Secretary of State).
- (11) A request under [subsection \(8\)](#) may—
 - (a) specify a period of time within which the information must be provided;
 - (b) specify the form and manner in which the information must be provided.
- (12) A person who is requested to provide information under [subsection \(8\)](#) must comply with that request.
- (13) In this section “sitting day” means a day on which both Houses of Parliament sit.

Duties relating to notification etc

368HC Notification to OFCOM

- (1) A person who provides a Tier 1 service must give OFCOM a notification (a “Tier 1 notification”) to that effect.

- (2) Subsection (3) applies where—
 - (a) regulations are made under [section 368HB\(1\)](#), and
 - (b) a non-UK on-demand programme service is specified or falls within a description specified in the regulations.
- (3) OFCOM must, for the purpose of assisting with compliance with [subsection \(1\)](#), inform the provider of that Tier 1 service of that fact.
- (4) A person who gives a Tier 1 notification must also notify OFCOM if the person ceases to provide a Tier 1 service.
- (5) A Tier 1 notification or a notification under [subsection \(4\)](#) must—
 - (a) be sent to OFCOM in such manner as they may require, and
 - (b) include such information as they may require.

368HD Lists of Tier 1 providers

- (1) OFCOM must establish and maintain an up to date list of persons who have—
 - (a) given a Tier 1 notification to OFCOM under [section 368HC\(1\)](#), and
 - (b) not given a further notification under [section 368HC\(4\)](#).
- (2) The list must include contact details which may be used by members of the public wishing to contact a Tier 1 service.
- (3) OFCOM must publish the list on a publicly accessible part of their website.

Application etc of Chapter 2 to certain Tier 1 services

368HE Application etc of Chapter 2 to certain Tier 1 services

- (1) Subsection (2) applies where a non-UK on-demand programme service is a Tier 1 service by virtue of regulations under [section 368HB](#).
- (2) The following provisions of Chapter 2 apply in relation to the Tier 1 service as if any reference in those provisions to an on-demand programme service included a reference to the Tier 1 service—
 - (a) [section 368C](#), so far as relating to the duties of the appropriate regulatory authority in relation to [section 368D](#);
 - (b) [section 368D](#) (duties of service providers), apart from [section 368D\(2\)\(ca\)](#);
 - (c) [section 368E](#) (harmful material);
 - (d) [section 368F](#) (advertising);
 - (e) [section 368FA](#) (advertising: less healthy food and drink);
 - (f) [section 368G](#) (sponsorship);
 - (g) [section 368H](#) (prohibition of product placement and exceptions).
- (3) A duty or prohibition arising by virtue of [subsection \(2\)](#) applies in relation to the Tier 1 service only on and after the end of the grace period that applies in relation to the Tier 1 service.
- (4) In [subsection \(3\)](#), “the grace period”, in relation to a non-UK on-demand programme service that is a Tier 1 service, means the period of 12 months beginning with the day on which the non-UK on-demand programme service became a Tier 1 service.

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- (5) Where regulations under [section 368HB\(1\)](#) provide that a non-UK on-demand programme service specified in the regulations is a Tier 1 service, the regulations may also provide—
- (a) that subsections (1) and (2) do not apply in relation to the service, or
 - (b) that those subsections apply in relation to the service as if the reference in [subsection \(4\)](#) to 12 months were a reference to such lesser period as may be specified in the regulations.
- (6) Section 368D(3)(zb) applies in relation to an on-demand programme service that is a Tier 1 service by virtue of [section 368HA\(1\)\(a\)](#) with the modification that the reference in section 368D(3)(zb) to 60 days is to be read as a reference to 90 days.

Standards code for Tier 1 services

368HF Standards code for Tier 1 services

- (1) OFCOM must prepare and publish a code containing standards set by them for the content of programmes to be included in Tier 1 services.
- (2) The standards must be such as appear to OFCOM to be best calculated to secure the following objectives (“the standards objectives”)—
 - (a) that persons under the age of 18 are protected;
 - (b) that material likely to encourage or incite the commission of crime or to lead to disorder is not included in Tier 1 services;
 - (c) that news included in those services is presented with due impartiality;
 - (d) that news included in those services is reported with due accuracy;
 - (e) that the impartiality requirements described in [section 368HG](#) are met;
 - (f) that generally accepted standards are applied to the contents of those services so as to provide adequate protection for members of the public from the inclusion of offensive and harmful material;
 - (g) that the proper degree of responsibility is exercised with respect to the content of religious programmes included in those services.
- (3) The standards included in the code to secure the objective described in [subsection \(2\)\(g\)](#) must, in particular, contain provision designed to secure that religious programmes do not involve—
 - (a) any improper exploitation of susceptibilities of the audience for such a programme, or
 - (b) any abusive treatment of the religious views and beliefs of those belonging to a particular religion or religious denomination.
- (4) OFCOM may fulfil their duty to publish the code in such ways as OFCOM consider likely to bring the code to the attention of persons who are likely to be affected by it.
- (5) OFCOM—
 - (a) must keep the code under review,
 - (b) may from time to time revise the code, and
 - (c) where they do so, must publish the code as revised.
- (6) References in this Part to a code under this section are to be read, in relation to times after a revised code is published, as references to the code as revised.

(7) In this section—

“news” means news in whatever form it is included in a service;

“programme” does not include an advertisement.

368HG Tier 1 standards code: special impartiality requirements

- (1) The impartiality requirements referred to in [section 368HF\(2\)\(e\)](#) are—
- (a) the exclusion from programmes included in any Tier 1 services of all expressions of the views or opinions of the person providing that service on—
 - (i) matters of political or industrial controversy, or
 - (ii) matters relating to current public policy;
 - (b) the preservation of due impartiality on the part of the person providing the service as respects those matters.
- (2) Subsection (1)(a) does not require the exclusion of expressions of views or opinions relating to the provision of on-demand programme services or non-UK on-demand programme services.
- (3) A code under [section 368HF](#) must make provision about the application of the requirement in [subsection \(1\)\(b\)](#), including provision about the ways in which the requirement may be met.

368HH Tier 1 standards code: matters to be taken into account

- (1) In preparing or revising a code under [section 368HF](#), OFCOM must, in particular and to such extent as appears to them to be relevant to securing the standards objectives, have regard to each of the matters set out in [subsection \(2\)](#).
- (2) Those matters are—
- (a) the likely expectation of potential audiences as to the nature of the content of programmes included in particular Tier 1 services;
 - (b) the degree of harm or offence likely to be caused by the inclusion of any particular sort of content, whether in programmes generally or in particular kinds of programmes;
 - (c) the age of the content of particular programmes or particular kinds of programmes included in Tier 1 services;
 - (d) the extent to which, and the ways in which, information about the nature of the content of particular kinds of programmes or of particular programmes can be given in a way that enables individuals to make choices about whether they (or others for whom they have responsibility) view or continue to view that content;
 - (e) the likely effect of consideration being required in order to view a particular Tier 1 service or particular programmes included in a Tier 1 service;
 - (f) the length of time for which particular programmes are included in Tier 1 services;
 - (g) the desirability of maintaining the independence of editorial control over programme content.
- (3) In preparing or revising a code under [section 368HF](#), OFCOM must take account of such of the international obligations of the United Kingdom as the Secretary of State may notify to them for the purposes of this section.
- (4) The Secretary of State may by regulations amend the list of matters in [subsection \(2\)](#).

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- (5) Before making regulations under [subsection \(4\)](#), the Secretary of State must consult OFCOM.
- (6) A statutory instrument containing regulations under [subsection \(4\)](#) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

368HI Tier 1 standards code: procedural requirements

- (1) Before publishing a code under [section 368HF](#), OFCOM must consult—
 - (a) persons appearing to OFCOM to represent the interests of potential audiences of Tier 1 services;
 - (b) such persons providing on-demand programme services or non-UK on-demand programme services as OFCOM think fit; and
 - (c) such other persons as appear to OFCOM to have an interest in the content of the code.
- (2) For the purposes of the consultation, OFCOM must publish a draft of the code.
- (3) After considering any views expressed by those persons, OFCOM may—
 - (a) publish the code in the terms of the draft published for the purposes of the consultation, or
 - (b) modify the draft and publish the code in the terms of the draft as modified.
- (4) Subsections (1) to (3) apply to a revision of a code under [section 368HF](#) as they apply to a code.

Duties of Tier 1 providers as regards Tier 1 standards code

368HJ Duties of Tier 1 providers to comply with Tier 1 standards code

- (1) A person who provides a Tier 1 service must observe the code for the time being published under [section 368HF](#).
- (2) The duty under [subsection \(1\)](#) applies only on and after the end of the grace period that applies in relation to the service.
- (3) In [subsection \(2\)](#), “the grace period”, in relation to a Tier 1 service, means the period of 12 months beginning with whichever is the later of the following—
 - (a) the day on which the on-demand programme service, or non-UK on-demand programme service, became a Tier 1 service;
 - (b) the day when the first code under [section 368HF](#) was published.
- (4) Where regulations under [section 368HB\(1\)](#) provide that an on-demand programme service, or a non-UK on-demand programme service, specified in the regulations is a Tier 1 service, the regulations may also provide—
 - (a) that subsections (2) and (3) do not apply in relation to the service, or
 - (b) that those subsections apply in relation to the service as if the reference in subsection (3) to 12 months were a reference to such lesser period as may be specified in the regulations.

Complaints relating to Tier 1 standards code

368HK Complaints relating to Tier 1 standards code

- (1) OFCOM must establish and maintain procedures for the handling and resolution of complaints that a person who provides a Tier 1 service is failing, or has failed, to comply with [section 368HJ\(1\)](#).
- (2) A person who provides a Tier 1 service must establish and maintain procedures for the handling and resolution of complaints that the person is failing, or has failed, to comply with [section 368HJ\(1\)](#).

Accessibility code for Tier 1 services

368HL Accessibility code for Tier 1 services

- (1) OFCOM must prepare and publish a code imposing requirements on providers of Tier 1 services for the purpose of ensuring that such services are accessible to people with disabilities, including, in particular, people with disabilities affecting their sight or hearing, or both.
- (2) The code must include provision requiring providers of Tier 1 services to report annually to OFCOM about—
 - (a) the accessibility of their services to people with disabilities;
 - (b) the steps taken to secure the quality and usability of the means by which their services are made accessible to people with disabilities.
- (3) The code must include provision requiring every provider of a Tier 1 service to ensure that adequate information about the assistance for disabled people that is provided in relation to that service is made available to those who are likely to want to make use of it.
- (4) The code must include provision requiring the provider of a Tier 1 service, from the second anniversary of the relevant date, to secure that, in the 12 month period beginning with that second anniversary and in the succeeding 12 month period—
 - (a) at least 40 per cent of the total catalogue hours of that service for that period consists of programmes that are accompanied by subtitling;
 - (b) at least 5 per cent of the total catalogue hours of that service for that period consists of programmes that are accompanied by audio-description for the blind; and
 - (c) at least 2.5 per cent of the total catalogue hours of that service for that period consists of programmes that are presented in, or translated into, sign language.
- (5) The code must include provision requiring the provider of a Tier 1 service, from the fourth anniversary of the relevant date, to secure that, in the 12 month period beginning with the fourth anniversary and in each succeeding 12 month period—
 - (a) at least 80 per cent of the total catalogue hours of that service for that period consists of programmes that are accompanied by subtitling;
 - (b) at least 10 per cent of the total catalogue hours of that service for that period consists of programmes that are accompanied by audio-description for the blind; and
 - (c) at least 5 per cent of the total catalogue hours of that service for that period consists of programmes that are presented in, or translated into, sign language.

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- (6) A reference in any paragraph of subsections (4) and (5) to the total catalogue hours of a Tier 1 service for a period of time is a reference to the combined duration of the programmes available from the service within that period, other than those programmes excluded under subsection (7) in relation to the requirement in that paragraph.
- (7) The code must set out, in relation to each of the paragraphs of subsections (4) and (5), the descriptions of programmes that are excluded for the purposes of the requirement in that paragraph.
- This subsection does not restrict the provision which may be made under subsection (8).
- (8) The code may include provision under which Tier 1 services specified in the code are wholly or partly exempted from some or all of the requirements set out in subsections (4) and (5).
- (9) Provision in the code partly exempting a Tier 1 service may, in particular, provide for the exemption to apply in relation to particular methods, or particular descriptions of method, by which that service is available to members of the public.
- (10) Before including in the code such provision as is described in subsection (7) or (8) in relation to a Tier 1 service, OFCOM must have regard, in particular, to—
- (a) the extent of the benefit which would be conferred if the provider of the service were to comply with the requirements set out in subsections (4) and (5);
 - (b) the size of the audience for the service;
 - (c) the number of persons who would be likely to benefit from compliance with those requirements and the extent of the likely benefit for each of those persons;
 - (d) the extent to which persons accessing the service are resident in places outside the United Kingdom;
 - (e) the technical difficulty of compliance with those requirements; and
 - (f) the cost, in the context of the matters mentioned in paragraphs (a) to (e), of compliance with those requirements.
- (11) The requirements that may be imposed by the code include, in particular—
- (a) requirements as to lesser levels of assistance that apply before the date on which the requirements set out in subsection (4) or (5) fall to be complied with;
 - (b) requirements as to the provision of assistance for disabled people, or a description of disabled people, in the case of a Tier 1 service that is exempted or partly exempted.
- (12) The code must also give guidance as to—
- (a) the extent to which Tier 1 services should promote the understanding and enjoyment by people with disabilities (in particular, people with disabilities affecting their sight or hearing, or both) of the programmes to be included in Tier 1 services; and
 - (b) the means by which such understanding and enjoyment should be promoted.
- (13) OFCOM—
- (a) must keep the code under review,
 - (b) may from time to time revise the code, and
 - (c) where they do so, must publish the code as revised.
- (14) OFCOM must publish the code, and every revision of it, in such manner as they consider appropriate, having regard to the need to make the code or revision accessible to people

with disabilities, including, in particular, people with disabilities affecting their sight or hearing, or both.

- (15) References in this Part to a code under this section are to be read, in relation to times after a revised code is published, as references to the code as revised.
- (16) In this section, “programme” does not include an advertisement.

368HM Meaning of “relevant date”

- (1) The relevant date, in relation to a Tier 1 service, is the later of—
- (a) the day on which the on-demand programme service, or non-UK on-demand programme service, became a Tier 1 service, and
 - (b) the day on which the first code under [section 368HL](#) was published.
- (2) OFCOM may determine that a service provided by a person is to be treated for the purposes of [section 368HL](#) and this section as a continuation of a service previously provided by that person.

368HN Power to modify requirements in section 368HL

- (1) Where it appears to the Secretary of State, in the case of Tier 1 services of a particular description, that the requirement specified in any paragraph of [section 368HL\(4\)](#) has been or is likely to be fulfilled in their case before the anniversary specified in [section 368HL\(4\)](#), the Secretary of State may by regulations modify [section 368HL](#) so as to do one or both of the following—
- (a) increase the percentage so specified in relation to services of that description;
 - (b) substitute the first anniversary for the anniversary specified in [section 368HL\(4\)](#) in the case of services of that description.
- (2) The Secretary of State may by regulations modify [section 368HL](#) so as to do one or both of the following—
- (a) substitute a later anniversary for the anniversary specified in [section 368HL\(5\)](#);
 - (b) substitute a higher percentage for the percentage for the time being specified in any paragraph of [section 368HL\(5\)](#).
- (3) The provision that may be made by regulations under this section includes—
- (a) modifications for requiring the code to set out additional requirements to be fulfilled once the requirements previously required to be set out in the code have been fulfilled; and
 - (b) savings for the requirements previously set out in the code.
- (4) Before making regulations under this section the Secretary of State must consult OFCOM.
- (5) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

368HO Tier 1 accessibility code: procedural requirements

- (1) Before publishing a code or a revised code under [section 368HL](#), OFCOM must consult—

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- (a) such persons appearing to OFCOM to represent the interests of people with disabilities as OFCOM think fit;
- (b) such persons providing on-demand programme services or non-UK on-demand programme services as OFCOM think fit; and
- (c) such other persons as appear to OFCOM to have an interest in the content of the code.

(2) For the purposes of the consultation, OFCOM must publish a draft of the code.

368HP Duty to comply with Tier 1 accessibility code

A provider of a Tier 1 service must comply with such of the requirements of the code under [section 368HL](#) as apply to that provider.

Reports to Secretary of State

368HQ Reports to Secretary of State

OFCOM may from time to time report to the Secretary of State on any issues which—

- (a) have been identified by them in the course of carrying out their functions in relation to Tier 1 services, and
- (b) appear to them to raise questions of general policy about the regulation of those services.

Application of Chapter 3

368HR Application of Chapter 3

The duties of providers of Tier 1 services under or by virtue of this Chapter apply in relation to those services only so far as they are made available for use by members of the public in the United Kingdom.”