

SCHEDULES

SCHEDULE 6

Section 37(7)

TIER 1 SERVICES: FURTHER AMENDMENTS OF PART 4A OF THE 2003 ACT

1 Part 4A of the Communications Act 2003 is amended as follows.

2 Before section 368I insert—
“Chapter 4

Enforcement: general”.

3 (1) Section 368I (enforcement of sections 368CB and 368D) is amended as follows.

(2) For the heading substitute “Enforcement of service providers’ principal duties”.

(3) In subsection (1), in the words before paragraph (a), after “section 368D” insert “, or that a provider of a non-UK on-demand programme service that is a Tier 1 service is contravening or has contravened section 368D,”.

(4) After subsection (1) insert—

“(1A) Where OFCOM (as the appropriate regulatory authority) determine that a provider of a Tier 1 service is contravening or has contravened section 368HC, 368HJ(1), 368HK(2) or 368HP, they may do one or both of the following—

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

(5) In subsection (2)—

- (a) after “subsection (1)” insert “or (1A)”;
(b) after “section 368D” insert “or (as the case may be) [section 368HC](#), [368HJ\(1\)](#), [368HK\(2\)](#) or [368HP](#)”.

(6) In subsection (3)—

- (a) after “subsection (1)” insert “or (1A)”;
(b) after “section 368D” insert “or (as the case may be) [section 368HC](#), [368HJ\(1\)](#), [368HK\(2\)](#) or [368HP](#)”.

(7) In subsection (10)—

- (a) after “an on-demand programme service” insert “, or a non-UK on-demand programme service that is a Tier 1 service,”;
(b) after “subsection (1)” insert “, (1A)”.

4 In section 368IA (enforcement of section 368E(4)), in subsection (1), in the words before paragraph (a), after “an on-demand programme service” insert “, or a non-UK on-demand programme service that is a Tier 1 service,”.

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- 5 (1) Section 368K (suspension or restriction of service for contraventions or failures) is amended as follows.
- (2) In subsection (1), in the words before paragraph (a), after “an on-demand programme service” insert “or a non-UK on-demand programme service that is a Tier 1 service”.
- (3) After subsection (1) insert—
- “(1A) OFCOM (as the appropriate regulatory authority) must serve a notice under subsection (2) on a provider of a Tier 1 service if they are satisfied—
- (a) that the provider is in contravention of [section 368HC](#), [368HJ\(1\)](#), [368HK\(2\)](#) or [368HP](#),
- (b) that the imposition of one or more financial penalties or enforcement notifications under section 368I has not resulted in the remedying of the contravention, and
- (c) that the giving of a direction under this section would be appropriate and proportionate to the seriousness of the contravention.”
- (4) In subsection (2)—
- (a) in paragraph (a), after “subsection (1)” insert “or (1A)”;
- (b) in paragraph (b), after “subsection (1)” insert “or (1A)”;
- (c) in paragraph (c), after “subsection (1)(a)” insert “or (1A)(a)”.
- (5) In subsection (3)—
- (a) in the words before paragraph (a), after “subsection (1)(c)” insert “or (1A)(c)”;
- (b) in paragraph (a), after “an on-demand programme service” insert “or a non-UK on-demand programme service that is a Tier 1 service”.
- 6 (1) Section 368L (suspension or restriction of service for inciting crime or disorder) is amended as follows.
- (2) In subsection (1), in the words before paragraph (a), after “an on-demand programme service” insert “or a non-UK on-demand programme service that is a Tier 1 service”.
- (3) In subsection (3), in paragraph (a), after “an on-demand programme service” insert “or a non-UK on-demand programme service that is a Tier 1 service”.
- (4) In subsection (5), in paragraph (a), after “an on-demand programme service” insert “or a non-UK on-demand programme service that is a Tier 1 service”.
- 7 (1) Section 368M (supplementary provisions about directions) is amended as follows.
- (2) In subsection (2), after “any on-demand programme service” insert “, or to any non-UK on-demand programme service that is a Tier 1 service,”.
- (3) After subsection (2) insert—
- “(2A) A direction has effect in relation to a non-UK on-demand programme service that is a Tier 1 service only so far as the service is made available for use by members of the public in the United Kingdom.”
- 8 In section 368N (enforcement of directions under section 368K or 368L), in subsection (1), in the words before paragraph (a), after “an on-demand programme service” insert “or a non-UK on-demand programme service that is a Tier 1 service”.
- 9 Before section 368NA insert—

“Chapter 5

Supplementary”.

- 10 (1) Section 368NA (fees) is amended as follows.
- (2) In subsection (2), after “an on-demand programme service” insert “or a non-UK on-demand programme service that is a Tier 1 service”.
- (3) After subsection (8) insert—
- “(8A) The authority may also repay some or all of a fee paid to them by a person under subsection (2) if—
- (a) the person has ceased to provide a Tier 1 service at some time during the period to which the fee relates,
- (b) the Tier 1 service in question was a non-UK on-demand programme service,
- (c) the person gave a notification under section 368HC(4) that the person had ceased to provide the Tier 1 service, and
- (d) the person did not cease to provide the Tier 1 service following a direction given by the appropriate regulatory authority under section 368K or 368L.
- (8B) The authority may repay some of a fee paid to them by a person under subsection (2) if—
- (a) the person has ceased to provide a Tier 1 service at some time during the period to which the fee relates,
- (b) the Tier 1 service in question was an on-demand programme service that the person continues to provide, and
- (c) the person gave a notification under [section 368HC\(4\)](#) that the person had ceased to provide the Tier 1 service.”
- 11 (1) For section 368O (power to demand information) substitute—

“368O Power to require information

- (1) The appropriate regulatory authority may by notice require a person within [subsection \(5\)](#) to provide them with any information that they require for the purpose of carrying out their functions under this Part.
- (2) OFCOM may by notice require a person within [subsection \(5\)](#) to provide them with any information that they require for the purpose of carrying out their functions under Part 5 of the 1996 Act, so far as relating to Tier 1 services.
- (3) The power conferred by [subsection \(1\)](#) or [\(2\)](#) includes power to require a person within [subsection \(5\)](#) to obtain or generate information.
- (4) The power conferred by [subsection \(1\)](#) or [\(2\)](#) must be exercised in a way that is proportionate to the use to which the information is to be put by OFCOM.
- (5) The persons within this subsection are—
- (a) a provider of an on-demand programme service or a non-UK on-demand programme service;

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- (b) a person who was a provider of an on-demand programme service or a non-UK on-demand programme service at a time to which the required information relates;
 - (c) a person who is not within [paragraph \(a\)](#) or [\(b\)](#) but who appears to the appropriate regulatory authority to have, or to be able to obtain or generate, information required by them as mentioned in [subsection \(1\)](#).
- (6) The information that the appropriate regulatory authority may require under [subsection \(1\)](#) includes, in particular, information that they require for any one or more of the following purposes—
- (a) the purpose of determining whether a person is a provider of an on-demand programme service or a non-UK on-demand programme service;
 - (b) the purpose of determining whether a person is a provider of a Tier 1 service;
 - (c) the purpose of determining whether there has been any change of circumstances that may affect a determination mentioned in [paragraph \(a\)](#) or [\(b\)](#);
 - (d) the purpose of assessing compliance with any duty imposed on a provider of an on-demand programme service by or by virtue of Chapter 2;
 - (e) the purpose of assessing compliance with any duty imposed on a provider of a Tier 1 service by or by virtue of Chapter 3;
 - (f) the purpose of an investigation being carried out by the authority to determine whether a contravention of section 368BA, 368CB or 368D has occurred or is occurring;
 - (g) the purpose of an investigation being carried out by the authority to determine whether there has been a failure to take an appropriate measure for the purpose mentioned in section 368E(4) or a failure to implement such a measure effectively;
 - (h) the purpose of an investigation being carried out by the authority to determine whether a contravention of [section 368HC](#), [368HJ\(1\)](#), [368HK\(2\)](#) or [368HP](#) has occurred or is occurring;
 - (i) the purpose of ascertaining or calculating applicable qualifying revenue under section 368J;
 - (j) the purpose of determining the appropriate fee that a provider is required to pay under section 368NA.
- (7) A notice under [subsection \(1\)](#) or [\(2\)](#) (an “information notice”) must—
- (a) specify or describe the information to be provided,
 - (b) specify why the information is required,
 - (c) specify the form and manner in which the information must be provided, and
 - (d) contain information about the consequences of not complying with the notice.
- (8) An information notice must specify when the information must be provided which may be—
- (a) on or by a specified date, or

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- (b) within a specified period.
- (9) The power conferred by [subsection \(1\)](#) or [\(2\)](#) 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) A person to whom an information notice is given must provide the information in accordance with any requirements included in the notice (subject to [subsection \(11\)](#)).
- (11) The duty under [subsection \(10\)](#) does not require a disclosure of information if that disclosure would contravene the data protection legislation (but, in determining whether a disclosure would do so, that duty is to be taken into account).
- (12) In this section—
 - “data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act);
 - “information” includes technical information and material such as videos, audiovisual commercial communications, screenshots and archived material.

368OZA Information powers: supplementary

- (1) Any power to require the provision of information under [section 368HB](#), [368O](#) or [368OB](#) includes power to require the provision of information held outside the United Kingdom.
- (2) In the following provisions of this section, a “Part 4A information duty” means—
 - (a) the duty under [section 368HB\(12\)](#);
 - (b) the duty under [section 368O\(10\)](#);
 - (c) the duty under [section 368OB\(9\)](#).
- (3) Sections 368I and 368K apply in relation to a failure by a provider of an on-demand programme service, or a non-UK on-demand programme service that is a Tier 1 service, to comply with a Part 4A information duty as if that failure were a contravention of [section 368D](#).
- (4) Section 368I applies in relation to a failure by a person other than one described in [subsection \(3\)](#) to comply with a Part 4A information duty falling within [subsection \(2\)\(a\)](#) or [\(b\)](#) as if that failure were a contravention of [section 368D](#).
- (5) Where [section 368I](#) applies in accordance with [subsection \(4\)](#)—
 - (a) references in [section 368I](#) or [368J](#) to a provider of an on-demand programme service are to be read as references to the person who has failed to comply with the Part 4A information duty, and
 - (b) [section 368J\(1\)](#) applies as if, for the words “5 per cent. of the provider’s applicable qualifying revenue or £250,000, whichever is the greater amount”, there were substituted “£250,000”.

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- (2) In consequence of the amendment made by [sub-paragraph \(1\)](#), in section 368D, in subsection (3)(b), for “[section 368O\(2\) or \(3\)](#)” substitute “[section 368O\(2\) or \(6\)](#)”.
- 12 (1) Section 368R (interpretation of Part 4A) is amended as follows.
- (2) In subsection (1), in the definition of “children’s programme”, in paragraph (a), after “an on-demand programme service” insert “or a non-UK on-demand programme service that is a Tier 1 service”.
- (3) In subsection (2), after “an on-demand programme service” insert “or a non-UK on-demand programme service that is a Tier 1 service”.
- (4) In subsection (3), after “an on-demand programme service” insert “or a non-UK on-demand programme service that is a Tier 1 service”.
- (5) In subsection (5), after “an on-demand programme service” insert “or a non-UK on-demand programme service”.