

SCHEDULES

SCHEDULE 7

Section 37(8)

TIER 1 SERVICES: AMENDMENTS OF OTHER LEGISLATION

- 1 In section 93 of the Representation of the People Act 1983 (broadcasting of local items during election period), in subsection (6), in the definition of “relevant services”, in paragraph (b), at the end insert “or services that are Tier 1 services within the meaning given by [section 368HA](#) of the Communications Act 2003”.
- 2 (1) The Broadcasting Act 1996 is amended as follows.
 - (2) In section 107 (preparation by OFCOM of code relating to avoidance of unjust or unfair treatment etc)—
 - (a) in subsection (1), in paragraph (a), for “this section” substitute “subsection (5)”;
 - (b) after subsection (1) insert—
 - “(1A) OFCOM must also draw up, and from time to time review, a code giving guidance as to the principles to be observed, and practices to be followed, in connection with the avoidance of—
 - (a) unjust or unfair treatment in any programme that is included in a Tier 1 service (within the meaning given by [section 368HA](#) of the Communications Act 2003), or
 - (b) unwarranted infringement of privacy in, or in connection with the obtaining of material included in, such programmes.
 - (1B) Subsection (1A) applies in relation to a Tier 1 service only so far as the service is made available for use by members of the public in the United Kingdom.”;
 - (c) in subsection (3), for “the code” substitute “a code under this section”;
 - (d) in subsection (4), for “the code” substitute “a code under this section”;
 - (e) in subsection (5), for “This section” substitute “This subsection”.
 - (3) In section 110 (general functions of OFCOM in relation to complaints), in subsection (3), for “the code” substitute “the codes”.
 - (4) In section 111 (complaints of unfair treatment etc)—
 - (a) in subsection (4), after “in a licensed service” insert “or a Tier 1 service”;
 - (b) after subsection (4) insert—
 - “(4A) OFCOM must not entertain, or proceed with the consideration of, a fairness complaint relating to the inclusion of a programme in a Tier 1 service unless it appears to them that the programme—
 - (a) was first included in the service after the end of the grace period, or

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- (b) if first included before then, either remained included or was again included after the end of that period.
- (4B) In subsection (4A), “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 107(1A) was published.
- (4C) Where regulations under [section 368HB\(1\)](#) of the Communications Act 2003 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 (4A) and (4B) 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 (4B) to 12 months were a reference to such lesser period as may be specified in the regulations.”;
 - (c) in subsection (5), after “in a licensed service” insert “or a Tier 1 service”;
 - (d) in subsection (6), after “in a licensed service” insert “or a Tier 1 service”.
- (5) In section 115 (consideration of fairness complaints), in subsection (9)—
 - (a) omit the “and” at the end of paragraph (a);
 - (b) at the end of paragraph (b) insert “, and
 - (c) in a case where the relevant programme was included in a Tier 1 service, the person who provides that service.”
- (6) In section 119 (publication of OFCOM’s findings)—
 - (a) after subsection (7C) insert—
 - “(7D) Where the relevant person is a provider of a Tier 1 service, the following provisions of the Communications Act 2003 apply in relation to a contravention of the duty under subsection (6) as they apply in relation to a contravention of the duty under [section 368HJ\(1\)](#) of that Act—
 - (a) section 368I(1A)(b) (power to impose a financial penalty in accordance with section 368J) and section 368J;
 - (b) section 368K (suspension or restriction of services).”;
 - (b) in subsection (8), in paragraph (c), for the words from “by a broadcasting body” to “licensed service” substitute “by a relevant person”;
 - (c) in subsection (11A), omit the “and” at the end of paragraph (a);
 - (d) in that subsection, at the end of paragraph (b) insert “; and
 - (c) in a case where the relevant programme was included in a Tier 1 service, the person who provides that service.”
- (7) In section 120 (reports on action taken voluntarily in response to findings on complaints)—
 - (a) after subsection (3) insert—

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- “(3A) Where the relevant programme was included in a Tier 1 service, the provider of that service shall send to OFCOM a report of any supplementary action taken by—
- (a) the provider, or
 - (b) any other person appearing to the provider to be responsible for the making or provision of the relevant programme.”;
- (b) in subsection (4), for “or (3)” substitute “, (3) or (3A)”.
- (8) In section 130 (interpretation of Part 5), in subsection (1), insert at the appropriate place—
- ““Tier 1 service” has the same meaning as in the Communications Act 2003 (see [section 368HA](#) of that Act);”.
- 3 (1) The Communications Act 2003 is amended as follows.
- (2) In section 361 (meaning of “available for reception by members of the public”), in subsection (2), at the end insert “or a non-UK on-demand programme service that is a Tier 1 service (see [section 368HA](#))”.
- (3) In section 368Z14 (prohibition of paid-for advertising of less healthy food and drink), in subsection (3)(b)—
- (a) after “in on-demand programme services” insert “or in non-UK on-demand programme services that are Tier 1 services”;
 - (b) in the words in brackets, for “section 368FA” substitute “sections 368FA and [368HE\(2\)\(e\)](#)”.
- (4) In section 405 (general interpretation), in subsection (1), insert at the appropriate places—
- ““non-UK on-demand programme service” has the meaning given by section 368AA(1);”;
- ““Tier 1 service” has the meaning given by [section 368HA](#);”.
- (5) In Schedule 11A (restrictions on product placement), in paragraph 3(2)(a), after “an on-demand programme service” insert “or a non-UK on-demand programme service that is a Tier 1 service”.
- 4 (1) Section 9A of the Wireless Telegraphy Act 2006 (notice to satellite uplinkers) is amended as follows.
- (2) In subsection (3), 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 (6)—
- (a) in the definition of “on-demand programme service”, after “on-demand programme service” insert “, “non-UK on-demand programme service” and “Tier 1 service” each”;
 - (b) in the words in brackets, for “section 368A” substitute “sections 368A, [368AA](#) and [368HA](#)”.
- 5 (1) The Online Safety Act 2023 is amended as follows.
- (2) In section 80 (scope of duties about regulated provider pornographic content)—
- (a) in subsection (6)—

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- (i) after “programme service” insert “or a non-UK on-demand programme service that is a Tier 1 service”;
 - (ii) omit “within the meaning of section 368A of the Communications Act”;
 - (b) after subsection (6) insert—
 - “(6A) In subsection (6), “on-demand programme service”, “non-UK on-demand programme service” and “Tier 1 service” have the same meaning as in the Communications Act (see sections 368A, [368AA](#) and [368HA](#) of that Act).”
- (3) In Schedule 9 (certain internet services not subject to duties relating to regulated provider pornographic content)—
- (a) in the italic heading before paragraph 5, after “services” insert “and non-UK on-demand programme services that are Tier 1 services”;
 - (b) in paragraph 5 (on-demand programme services (entire internet service))—
 - (i) in sub-paragraph (1), after “programme service” insert “or a non-UK on-demand programme service that is a Tier 1 service”;
 - (ii) in sub-paragraph (2), for “has” substitute “, “non-UK on-demand programme service” and “Tier 1 service” have”;
 - (iii) in sub-paragraph (2), for “section 368A” substitute “sections 368A, [368AA](#) and [368HA](#)”;
 - (c) in the italic heading before paragraph 6, after “services” insert “and non-UK on-demand programme services that are Tier 1 services”;
 - (d) in paragraph 6 (on-demand programme services (part of internet service))—
 - (i) in sub-paragraph (2)(a), after “programme service” insert “or a non-UK on-demand programme service that is a Tier 1 service”;
 - (ii) in sub-paragraph (3), after “programme service” insert “or a non-UK on-demand programme service that is a Tier 1 service”.