
STATUTORY INSTRUMENTS

2012 No. 1916

The Human Medicines Regulations 2012

PART 14

Advertising

CHAPTER 3

Monitoring of Advertising

Complaints to OFCOM

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- 314.**—(1) This regulation applies if OFCOM—
- (a) receives from a person a complaint that an advertisement that contains material prohibited by any of regulations 286 to 290 (“prohibited material”) has been included in—
 - (i) a licensed service, or
 - (ii) S4C Digital or a service provided by the Welsh Authority under section 205 of the Communications Act 2003(1) (“the 2003 Act”); or
 - (b) has a complaint as described in sub-paragraph (a) referred to it by the Ministers under regulation 309(5) and (6).
- (2) OFCOM must consider the complaint unless—
- (a) the complaint appears to it to be frivolous or vexatious; or
 - (b) paragraph (3) applies.
- (3) If the Ministers have served a notice in respect of the advertisement under regulation 305 (whether or not they have taken action in respect of it under regulation 306) OFCOM—
- (a) may consider the complaint; but
 - (b) is not subject to any duty to do so.
- (4) If, having considered the complaint, OFCOM considers that the advertisement contains prohibited material it may—
- (a) in the case of an advertisement that has been included in a licensed service, give to the person who is the holder of the licence in respect of that service a direction to exclude the advertisement from the licensed service; and
 - (b) in the case of an advertisement that has been included in S4C Digital or a service provided by the Welsh Authority under section 205 of the 2003 Act, give to the Welsh Authority a direction to exclude the advertisement from S4C Digital or the service provided under section 205 of the 2003 Act.

(5) If OFCOM gives a direction under paragraph (4), it may also give a direction to the licence holder or (as the case may be) the Welsh Authority to exclude from the service any advertisement in similar terms or likely to convey a similar impression.

(6) In deciding whether or not to exercise its power to give a direction under paragraph (4), OFCOM must disregard any lack of evidence that—

- (a) the publication of the advertisement has given rise to loss or damage to any person; or
- (b) the person responsible for the advertisement intended it to be incompatible with the prohibitions imposed by Chapter 2 or failed to exercise proper care to prevent it from being so incompatible.

(7) A direction given under this regulation to a licence holder is to be treated for the purposes of the 2003 Act as a direction with respect to a matter mentioned in section 325(5) of that Act.

(8) A direction given under this regulation to the Welsh Authority is to be treated for the purposes of the Communications Act 2003 Act as a direction with respect to a matter mentioned in paragraph 14(2) of Schedule 12 to that Act.

(9) If OFCOM gives a direction under this regulation, it must inform the licence holder or (as the case may be) the Welsh Authority in writing of its reasons for doing so.

(10) In this regulation—

“licensed service” means a service in respect of which OFCOM has granted a licence under Part 1 or 3 of the Broadcasting Act 1990⁽²⁾ or Part 1 or 2 of the Broadcasting Act 1996⁽³⁾;

“S4C Digital” means the television service provided in digital form and known as S4C Digital; and

“Welsh Authority” means the authority whose name is, by virtue of section 56(1) of the Broadcasting Act 1990⁽⁴⁾, Sianel Pedwar Cymru.

⁽²⁾ 1990 c.42.

⁽³⁾ 1996 c.55.

⁽⁴⁾ Section 56(1) was amended by section 406(7) of and Schedule 19(1) to the Communications Act 2003.