

2020 No. 609

ENFORCEMENT

**The Online Intermediation Services for Business Users
(Enforcement) Regulations 2020**

<i>Made</i>	- - - -	<i>18th June 2020</i>
<i>Laid before Parliament</i>		<i>19th June 2020</i>
<i>Coming into force</i>	- -	<i>12th July 2020</i>

The Secretary of State makes these Regulations in exercise of the power conferred by section 2(2) of the European Communities Act 1972(a).

The Secretary of State has been designated(b) for the purposes of section 2(2) of that Act in relation to information society services and in relation to services in the internal market.

Citation and Commencement

1. These Regulations may be cited as the Online Intermediation Services for Business Users (Enforcement) Regulations 2020 and come into force on 12th July 2020.

Interpretation

2. In these Regulations—

“Regulation 2019/1150” means Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services(c);

“business user” and “provider of online intermediation services” each have the meaning given in Article 2 of Regulation 2019/1150;

“provider of an online search engine” has the meaning given to the term “provider of online search engine” in Article 2 of Regulation 2019/1150.

Actionable breach

3.—(1) A breach by a provider of online intermediation services of an obligation to comply with any of the following provisions of Regulation 2019/1150 in relation to a business user is to be

(a) 1972 c. 68. The European Communities Act 1972 was repealed by section 1 of the European Union (Withdrawal) Act 2018 (c. 16) with effect from exit day, but saved with modifications until IP completion day by section 1A of that Act (as inserted by section 1 of the European Union (Withdrawal Agreement) Act 2020 (c. 1)). Section 2(2) of the European Communities Act 1972 was amended by section 27(1) of the Legislative and Regulatory Reform Act 2006 (c. 51) and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7).

(b) S.I. 2001/2555 and S.I. 2009/221.

(c) OJ No. L 186, 11.7.2019, p.57.

treated as a breach of duty owed by the provider of online intermediation services to that business user—

- (a) Article 3 (terms and conditions);
- (b) Article 4 (restriction, suspension and termination);
- (c) Article 8 (specific contractual terms).

(2) Where a business user suffers loss or damage due to a breach by a provider of online intermediation services of any of the provisions referred to in paragraph (1), that loss or damage is actionable by the business user against that provider of online intermediation services.

Injunctions to secure compliance with Regulation 2019/1150

4.—(1) This regulation applies where a qualifying organisation or association considers that there has been or is likely to be—

- (a) a breach by a provider of online intermediation services of an obligation to comply with any of the following provisions of Regulation 2019/1150—
 - (i) any provision referred to in regulation 3(1);
 - (ii) Article 5 (ranking);
 - (iii) Article 6 (ancillary goods or services);
 - (iv) Article 7 (differentiated treatment);
 - (v) Article 9 (access to data);
 - (vi) Article 10 (restrictions to offer different conditions through other means);
 - (vii) Article 11 (internal complaint-handling system);
 - (viii) Article 12 (mediation);
- (b) a breach by a provider of an online search engine of an obligation to comply with any of the following provisions of Regulation 2019/1150—
 - (i) Article 5 (ranking);
 - (ii) Article 7 (differentiated treatment).

(2) Where this regulation applies, a qualifying organisation or association may, if it thinks it is appropriate to do so, bring proceedings against the provider of online intermediation services or provider of an online search engine for an appropriate remedy.

(3) For the purposes of this regulation and regulation 5—

- (a) “an appropriate remedy” means—
 - (i) an injunction (including an interim injunction);
 - (ii) in Scotland, an interdict or specific performance of a statutory duty under section 45 of the Court of Session Act 1988(a); or
 - (iii) any other appropriate remedy or relief;
- (b) a “qualifying organisation or association” is an organisation or association that has the right set out in Article 14(1) of Regulation 2019/1150 (judicial proceedings).

Powers of the court

5.—(1) The court, on an application by a qualifying organisation or association under regulation 4(2), may grant an appropriate remedy on such terms as it may think fit to secure compliance with the requirements of Regulation 2019/1150 to which the application relates.

(2) Before granting an appropriate remedy the court must have regard to all the interests involved and in particular the public interest.

(a) 1988 c. 36.

(3) The court may also require any provider of online intermediation services or provider of an online search engine against which an appropriate remedy (other than an interim remedy) is granted to publish in such form and manner and to such extent as the court thinks appropriate for the purpose of eliminating any continuing effects of the non-compliance—

- (a) a copy of any order granted by the court; and
- (b) a corrective statement.

(4) The court may grant an appropriate remedy under paragraph (1) even where there is no evidence of proof of actual loss or damage or of intention or negligence on the part of the provider of online intermediation services or the provider of an online search engine.

(5) In this regulation, “court” means—

- (a) in relation to England and Wales, the county court or the High Court;
- (b) in relation to Northern Ireland, a county court or the High Court;
- (c) in relation to Scotland, the sheriff court or the Court of Session.

Callanan

Parliamentary Under Secretary of State

Department of Business, Energy and Industrial Strategy

18th June 2020

EXPLANATORY NOTE

(This note is not part of the Regulations)

Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services (OJ No. L 241, 17.9.2015, p.1) or “the Online Intermediation Services Regulation” applies in the law of the United Kingdom by virtue of Part 4 of the United Kingdom’s Withdrawal Agreement with the European Union, as implemented by the European Union (Withdrawal Agreement) Act 2020. However, in order to comply with Article 15 of the Online Intermediation Services Regulation, the United Kingdom is required to ensure adequate and effective enforcement and to lay down the rules setting out the measures applicable to infringements of the provisions of that Regulation. These Regulations set out those measures.

Regulation 3 provides that a failure of a provider of online intermediation services to comply with certain articles of the Online Intermediation Services Regulation is a breach of an obligation owed to a business user so that, where loss or damage is caused to the business user, the business user may bring a civil action against the provider of online intermediation services in respect of that loss or damage.

Regulation 4 provides that a qualifying organisation or association with the right referred to in Article 14(1) of the Online Intermediation Services Regulation may bring proceedings for an appropriate remedy to secure compliance by providers of online intermediation services or providers of online search engines with relevant requirements of the Regulation.

Regulation 5 sets out the powers of the court in relation to an application for an appropriate remedy under regulation 4.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, public or voluntary sector is foreseen.

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