



Digital Economy Act 2017

2017 CHAPTER 30

PART 6

MISCELLANEOUS

On-demand programme services

93 On-demand programme services: accessibility for people with disabilities

- (1) The Communications Act 2003 is amended as follows.
- (2) After section 368BB insert—

“Accessibility

368BC Accessibility for people with disabilities

- (1) The Secretary of State may by regulations impose requirements on providers of on-demand programme services for the purpose of ensuring that their services are accessible to people with disabilities affecting their sight or hearing or both.
- (2) The requirements that may be imposed include—
 - (a) requirements for programmes included in the services to be accompanied by subtitling;
 - (b) requirements for such programmes to be accompanied by audio-description for the blind;
 - (c) requirements for such programmes to be presented in, or translated into, sign language.
- (3) The steps set out in subsections (4) to (6) must be taken before regulations are made under this section.

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- (4) The Secretary of State must ask the appropriate regulatory authority to consult such persons as appear to the authority likely to be affected by regulations under this section, including—
 - (a) providers of on-demand programme services, and
 - (b) representatives of people with disabilities affecting their sight or hearing or both.
- (5) The appropriate regulatory authority must inform the Secretary of State of—
 - (a) the outcome of the consultation, and
 - (b) any other matters that they think should be taken into account by the Secretary of State for the purposes of the regulations.
- (6) Where OFCOM are not the appropriate regulatory authority, the Secretary of State must consult OFCOM.
- (7) 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.

368BD Enforcement of regulations under section 368BC

- (1) Where the appropriate regulatory authority determine that a provider of an on-demand programme service is contravening or has contravened regulations under section 368BC, they may do one or both of the following—
 - (a) give the provider an enforcement notification under this section;
 - (b) impose a penalty on the provider in accordance with section 368J.
- (2) The appropriate regulatory authority must not make a determination as mentioned in subsection (1) unless there are reasonable grounds for believing that a contravention of the regulations is occurring or has occurred and they have allowed the provider an opportunity to make representations about that apparent contravention.
- (3) An enforcement notification under this section is a notification which specifies the determination made as mentioned in subsection (1) and imposes a requirement on the provider to take all such steps for complying with the regulations and for remedying the consequences of the contravention of the regulations as may be specified in the notification.
- (4) An enforcement notification must—
 - (a) include reasons for the appropriate regulatory authority's decision to give the enforcement notification, and
 - (b) fix a reasonable period for taking the steps required by the notification.
- (5) It is the duty of a provider to whom an enforcement notification is given to comply with it.
- (6) That duty is enforceable in civil proceedings by the appropriate regulatory authority—
 - (a) for an injunction,
 - (b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988, or

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(c) for any other appropriate remedy or relief.

(7) If a provider to whom an enforcement notification has been given does not comply with it within the period fixed by the appropriate regulatory authority in that enforcement notification the appropriate regulatory authority may impose a financial penalty on the provider in accordance with section 368J.”

^{F1}(3)

(4) After that section insert—

“368CA Code on accessibility for people with disabilities

(1) It is the duty of the appropriate regulatory authority to draw up, and from time to time review and revise, a code giving guidance as to—

- (a) the steps to be taken by providers of on-demand programme services so as to meet the requirements of regulations under section 368BC, and
- (b) other steps to be taken by providers who are subject to requirements under the regulations to ensure that their services are made progressively more accessible to people with disabilities affecting their sight or hearing or both.

(2) The appropriate regulatory authority must publish the code drawn up under this section, and every revision of it, in such manner as, having regard to the need to make the code or revision accessible to—

- (a) persons who are deaf or hard of hearing,
 - (b) persons who are blind or partially sighted, and
 - (c) persons with a dual sensory impairment,
- they consider appropriate.”

(5) In section 368J(1) (financial penalties), after “368BB” insert “ , 368BD ”.

(6) In section 368K(1) (suspension or restriction of service for contraventions)—

- (a) in paragraph (a), after “368D” insert “ , or of regulations under section 368BC ”,
- (b) in paragraph (b)—
 - (i) after “368D” insert “ or the regulations ”, and
 - (ii) for “or 368I” substitute “ , 368I or 368BC ”.

(7) In section 368O(2)(a) (power to demand information), after “368D” insert “ , or of regulations under section 368CA, ”.

(8) In section 402(2)(a) (procedure for statutory instruments) after “411” insert “ or regulations under section 368BC ”.

Textual Amendments

F1 S. 93(3) omitted (1.11.2020) by virtue of [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\)](#), regs. 1(2), 52

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Commencement Information

II S. 93(1)(2)(4)-(8) in force at 31.7.2017 by S.I. 2017/765, reg. 2(y)

PROSPECTIVE

94 On-demand programme services: specially restricted material

- (1) Section 368E of the Communications Act 2003 (restrictions on harmful material contained in on-demand programme services) is amended as follows.
- (2) In subsection (5), after paragraph (b) omit “or”.
- (3) In that subsection, after paragraph (c) insert—
 - “(d) a video work—
 - (i) in respect of which the video works authority has issued an 18 certificate, and
 - (ii) whose nature is such that it is reasonable to assume that its principal purpose is to cause sexual arousal, or
 - (e) material whose nature is such that it is reasonable—
 - (i) to assume that its principal purpose is to cause sexual arousal, and
 - (ii) to expect that, if the material were contained in a video work submitted to the video works authority for a classification certificate, the video works authority would issue an 18 certificate.”
- (4) In subsection (6), after “(5)(b)” insert “ or (e) ”.
- (5) In subsection (7), after the definition of “the 1984 Act”, insert—

““18 certificate” means a classification certificate which—

 - (a) contains, pursuant to section 7(2)(b) of the 1984 Act, a statement that the video work is suitable for viewing only by persons who have attained the age of 18 and that no video recording containing that work is to be supplied to any person who has not attained that age, and
 - (b) does not contain the statement mentioned in section 7(2)(c) of the 1984 Act that no video recording containing the video work is to be supplied other than in a licensed sex shop;”

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