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*Changes to legislation: There are currently no known outstanding effects for the Media Act 2024, Schedule 6. (See end of Document for details)*

## SCHEDULES

PROSPECTIVE

### 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.

##### Commencement Information

**I1** Sch. 6 para. 1 not in force at Royal Assent, see [s. 55\(3\)\(d\)](#)

2 Before section 368I insert—  
“Chapter 4

*Enforcement: general”.*

##### Commencement Information

**I2** Sch. 6 para. 2 not in force at Royal Assent, see [s. 55\(3\)\(d\)](#)

- 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)—

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- (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)”.

**Commencement Information**

**I3** Sch. 6 para. 3 not in force at Royal Assent, see [s. 55\(3\)\(d\)](#)

- 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,”.

**Commencement Information**

**I4** Sch. 6 para. 4 not in force at Royal Assent, see [s. 55\(3\)\(d\)](#)

- 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”.

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**Commencement Information**

**I5** Sch. 6 para. 5 not in force at Royal Assent, see [s. 55\(3\)\(d\)](#)

- 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”.

**Commencement Information**

**I6** Sch. 6 para. 6 not in force at Royal Assent, see [s. 55\(3\)\(d\)](#)

- 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.”

**Commencement Information**

**I7** Sch. 6 para. 7 not in force at Royal Assent, see [s. 55\(3\)\(d\)](#)

- 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”.

**Commencement Information**

**I8** Sch. 6 para. 8 not in force at Royal Assent, see [s. 55\(3\)\(d\)](#)

- 9 Before section 368NA insert—  
“Chapter 5

*Supplementary”.*

**Commencement Information**

**I9** Sch. 6 para. 9 not in force at Royal Assent, see [s. 55\(3\)\(d\)](#)

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- 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.”

#### Commencement Information

**110** Sch. 6 para. 10 not in force at Royal Assent, see [s. 55\(3\)\(d\)](#)

- 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 \(6\)](#)”.

**Commencement Information**

**I11** Sch. 6 para. 11 not in force at Royal Assent, see [s. 55\(3\)\(d\)](#)

- 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”.

**Commencement Information**

**I12** Sch. 6 para. 12 not in force at Royal Assent, see [s. 55\(3\)\(d\)](#)

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