

## SCHEDULES

### SCHEDULE 4

Section 57

#### PROVIDERS OF INFORMATION SOCIETY SERVICES

##### PART 1

##### OFFERING TO SUPPLY A PSYCHOACTIVE SUBSTANCE

###### *Domestic service providers: extension of liability*

- 1 (1) If—
- (a) a service provider established in a particular part of the United Kingdom does anything in an EEA state other than the United Kingdom in the course of providing information society services, and
  - (b) the action, if done in that part of the United Kingdom, would constitute an offence under section 5(2),
- the service provider is guilty in that part of the United Kingdom of such an offence.
- (2) Nothing in this paragraph affects the operation of paragraphs 3 to 5.

###### *Non-UK service providers: restriction on institution of proceedings*

- 2 (1) Proceedings for an offence under section 5(2) may not be instituted against a non-UK service provider in respect of anything done in the course of the provision of information society services unless the derogation condition is met.
- (2) The derogation condition is that taking proceedings—
- (a) is necessary for the purposes of the public interest objective,
  - (b) relates to an information society service that prejudices that objective or presents a serious and grave risk of prejudice to that objective, and
  - (c) is proportionate to that objective.
- (3) In this paragraph—
- “non-UK service provider” means a service provider established in an EEA state other than the United Kingdom;
  - “the public interest objective” means the pursuit of public policy.

###### *Exceptions for mere conduits*

- 3 (1) A service provider does not commit an offence under section 5(2) by providing access to a communication network or by transmitting, in a communication network, information provided by a recipient of the service, if the service provider does not—
- (a) initiate the transmission,
  - (b) select the recipient of the transmission, or

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- (c) select or modify the information contained in the transmission.
- (2) For the purposes of sub-paragraph (1)—
  - (a) providing access to a communication network, and
  - (b) transmitting information in a communication network,
 include the automatic, intermediate and transient storage of the information transmitted so far as the storage is solely for the purpose of carrying out the transmission in the network.
- (3) Sub-paragraph (2) does not apply if the information is stored for longer than is reasonably necessary for the transmission.

*Exception for caching*

- 4 (1) A service provider does not commit an offence under section 5(2) by storing information provided by a recipient of the service for transmission in a communication network if the first and second conditions are met.
- (2) The first condition is that the storage of the information—
  - (a) is automatic, intermediate and temporary, and
  - (b) is solely for the purpose of making more efficient the onward transmission of the information to other recipients of the service at their request.
- (3) The second condition is that the service provider—
  - (a) does not modify the information,
  - (b) complies with any conditions attached to having access to the information, and
  - (c) if sub-paragraph (4) applies, promptly removes the information or disables access to it.
- (4) This sub-paragraph applies if the service provider obtains actual knowledge that—
  - (a) the information at the initial source of the transmission has been removed from the network,
  - (b) access to it has been disabled, or
  - (c) a court or administrative authority has ordered the removal from the network of, or the disablement of access to, the information.

*Exception for hosting*

- 5 (1) A service provider does not commit an offence under section 5(2) by storing information provided by a recipient of the service if—
  - (a) the service provider had no actual knowledge when the information was provided that its provision constituted an offence under section 5(2), or
  - (b) on obtaining actual knowledge that the provision of the information constituted such an offence, the service provider promptly removed the information or disabled access to it.
- (2) Sub-paragraph (1) does not apply if the recipient of the service is acting under the authority or control of the service provider.

## PART 2

### PROHIBITION NOTICES AND PROHIBITION ORDERS

#### *Domestic service providers: extension of liability*

- 6 (1) If—
- (a) a service provider established in a particular part of the United Kingdom does anything in an EEA state other than the United Kingdom in the course of providing information society services, and
  - (b) the action, if done in that part of the United Kingdom, would constitute an offence under section 26,
- the service provider is guilty in that part of the United Kingdom of such an offence.
- (2) Nothing in this paragraph affects the operation of paragraph 8.

#### *Non-UK service providers: restriction on including terms in prohibition notice or order*

- 7 (1) This paragraph applies where—
- (a) a person proposes to give a prohibition notice,
  - (b) a person makes an application for a prohibition order under section 18, or
  - (c) a person mentioned in subsection (1)(a) or (2) of section 28 makes an application under that section for the variation of a prohibition order.
- (2) The prohibition notice or prohibition order may include terms which restrict the freedom of a non-UK service provider to provide information society services in relation to an EEA state only if conditions A and B are met.
- (3) Condition A is that the relevant person considers that the terms—
- (a) are necessary for the purposes of the public interest objective,
  - (b) relate to an information society service that prejudices that objective or presents a serious and grave risk of prejudice to that objective, and
  - (c) are proportionate to that objective.
- (4) In sub-paragraph (3)—
- “the relevant person” means—
    - (a) in relation to a prohibition notice, the person giving the notice;
    - (b) in relation to a prohibition order, the court making or varying the order;
  - “the public interest objective” means the pursuit of public policy.
- (5) Condition B is that—
- (a) the relevant enforcement authority has requested the EEA state in which the service provider is established to take measures which the authority considers to be of equivalent effect under the law of the EEA state to the terms and the EEA state has failed to take the measures, and
  - (b) the relevant enforcement authority has notified the Commission of the European Union and the EEA state of the relevant matters (see sub-paragraph (6)).
- (6) The “relevant matters” are—
- (a) in the case of a prohibition notice, the intention to give a prohibition notice containing the terms;

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- (b) in the case of a prohibition order, the intention to apply for—
    - (i) a prohibition order containing the terms, or
    - (ii) the variation of a prohibition order so that it contains the terms;
  - (c) in either of those cases, the terms.
- (7) In the case of a prohibition order, it does not matter for the purposes of sub-paragraph (5) whether the request or notification is made before or after the making of the application referred to in sub-paragraph (6)(b).
- (8) In this paragraph—
- “non-UK service provider” means a service provider established in an EEA state other than the United Kingdom;
  - “the relevant enforcement authority” means—
    - (a) in the case of a prohibition notice to be given by a constable, the chief officer of police or chief constable (as the case may be) of the police force of which the constable is a member;
    - (b) in the case of a prohibition notice to be given by a designated NCA officer, the Director General of the National Crime Agency;
    - (c) in the case of a prohibition notice to be given by a general customs official, the Secretary of State by whom general customs functions are exercisable;
    - (d) in the case of a prohibition notice to be given by a local authority, that local authority;
    - (e) in the case of a prohibition order, the person applying for the order or for the variation of the order (as the case may be).

*Protections for service providers of intermediary services*

- 8 (1) A prohibition notice or prohibition order may not include terms which impose liabilities on service providers of intermediary services so far as the imposition of those liabilities would result in a contravention of Article 12, 13 or 14 of the E-Commerce Directive (various protections for service providers of intermediary services).
- (2) A prohibition notice or prohibition order may not include terms which impose a general obligation on service providers of intermediary services covered by Article 12, 13 or 14 of the E-Commerce Directive—
- (a) to monitor the information which they transmit or store when providing those services, or
  - (b) actively to seek facts or circumstances indicating illegal activity when providing those services.
- 9 (1) In paragraph 8 “intermediary services” means an information society service which consists in any of the following—
- (a) the provision of access to a communication network or the transmission, in a communication network, of information provided by a recipient of the service;
  - (b) the transmission in a communication network of information which—
    - (i) is provided by a recipient of the service, and
    - (ii) is the subject of automatic, intermediate and temporary storage which is solely for the purpose of making more efficient the onward

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- transmission of the information to other recipients of the service at their request;
- (c) the storage of information provided by a recipient of the service.
- (2) For the purposes of sub-paragraph (1)(a)—
- (a) providing access to a communication network, and
- (b) transmitting information in a communication network,
- include the automatic, intermediate and transient storage of the information transmitted so far as the storage is solely for the purpose of carrying out the transmission in the network.
- (3) Sub-paragraph (2) does not apply if the information is stored for longer than is reasonably necessary for the transmission.

### PART 3

#### INTERPRETATION

- 10 In this Schedule—
- “established”, in relation to a service provider, is to be read in accordance with paragraph 11;
- “information society services”—
- (a) has the meaning given in Article 2(a) of the E-Commerce Directive (which refers to Article 1(2) of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations), and
- (b) is summarised in recital 17 of the E-Commerce Directive as covering “any service normally provided for remuneration, at a distance, by means of electronic equipment for the processing (including digital compression) and storage of data, and at the individual request of a recipient of a service”;
- “recipient”, in relation to a service, means a person who, for professional ends or otherwise, uses an information society service, in particular for the purposes of seeking information or making it accessible;
- “service provider” means a person providing an information society service;
- “the E-Commerce Directive” means Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce).
- 11 (1) A service provider is “established” in a particular part of the United Kingdom, or in a particular EEA state, if the service provider—
- (a) effectively pursues an economic activity using a fixed establishment in that part of the United Kingdom, or that EEA state, for an indefinite period, and
- (b) is a national of an EEA state or a company or firm mentioned in Article 54 of the Treaty on the Functioning of the European Union.
- (2) The presence or use in a particular place of equipment or other technical means of providing an information society service does not, of itself, constitute the establishment of a service provider.

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- (3) Where it cannot be determined from which of a number of establishments a given information society service is provided, that service is to be regarded as provided from the establishment at the centre of the service provider's activities relating to that service.