

SCHEDULES

SCHEDULE 4

PROVIDERS OF INFORMATION SOCIETY SERVICES

PART 2

PROHIBITION NOTICES AND PROHIBITION ORDERS

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;

Status: This is the original version (as it was originally enacted).

- (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).