

SCHEDULES

SCHEDULE 4

PROVIDERS OF INFORMATION SOCIETY SERVICES

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.

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- (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;
 - (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

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- (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 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.