



Communications Act 2003

2003 CHAPTER 21

[^{F1}PART 4B

VIDEO-SHARING PLATFORM SERVICES

[^{F1}Preliminary

Textual Amendments

- F1** Pt. 4B inserted (1.11.2020 for specified purposes, 6.4.2021 in so far as not already in force) by [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\)](#), regs. 1(3)(b), 47 (with Pt. 7)

368S Meaning of “video-sharing platform service”

- (1) In this Part “video-sharing platform service” means a service or dissociable section of a service which meets the conditions in subsection (2), where the provision of videos to members of the public is—
- (a) the principal purpose of the service or of the dissociable section of the service, or
 - (b) an essential functionality of the service.
- (2) The conditions in relation to the service or dissociable section of the service are—
- (a) it is provided by means of an electronic communications network;
 - (b) it is provided on a commercial basis;
 - (c) the person providing it—
 - (i) does not have general control over what videos are available on it, but
 - (ii) does have general control over the manner in which videos are organised on it (and in this sub-paragraph “organised” includes being organised automatically or by way of algorithms, in particular by displaying, tagging and sequencing); and
 - [^{F2}(d) the person providing it has the required connection with the United Kingdom.]

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- [For that purpose, the person providing the service or the dissociable section of the ^{F3}(3) service (P) has the required connection with the United Kingdom in either of the following cases.
- (4) Case A is where P provides the service, or the dissociable section of the service, using a fixed establishment in the United Kingdom for an indefinite period and effectively pursues an economic activity in doing so.
- (5) Case B is where—
- (a) P is not under the jurisdiction of an EEA State for the purposes of the Audiovisual Media Services Directive; and
 - (b) a group undertaking of P is established in the United Kingdom.
- (6) For the purposes of subsection (4)—
- (a) the presence and use of the technical means and technologies required to provide the service, or the dissociable section of the service, do not in themselves constitute an establishment of P; and
 - (b) in a case where it cannot be determined from which of a number of places of establishment in the EEA or the United Kingdom a particular service, or a particular dissociable section of a service, is provided, that service or dissociable section of a service is to be regarded as provided from the place of establishment which is the centre of P’s activities relating to that service or dissociable section of a service.
- (7) In subsection (5) “undertaking” and “group undertaking” each has the meaning given by section 1161 of the Companies Act 2006, except that “group undertaking” also includes all other undertakings having economic and legal organisational links to P.
- (8) For the purposes of this section a person is “not under the jurisdiction of an EEA State” if OFCOM knows, or has reasonable grounds for believing, that the person—
- (a) is not established on the territory of an EEA State in accordance with paragraph (1) of Article 28a of the Audiovisual Media Services Directive, and
 - (b) is not deemed to be established on the territory of any EEA State in accordance with paragraphs (2) to (4) of that Article.
- (9) The references in this section to the Audiovisual Media Services Directive are to that Directive as it has effect from time to time in EU law.]

Textual Amendments

- F2** S. 368S(2)(d) substituted (31.12.2020) by [The Audiovisual Media Services \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1536\)](#), regs. 2, **4(2)**
- F3** S. 368S(3)-(9) inserted (31.12.2020) by [The Audiovisual Media Services \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1536\)](#), regs. 2, **4(3)**

368T The appropriate regulatory authority

- (1) OFCOM may designate any body corporate to be, to the extent provided by the designation, the appropriate regulatory authority for the purposes of any provision of this Part, subject to subsection (9).

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- (2) To the extent that no body is designated for a purpose, OFCOM is the appropriate regulatory authority for that purpose.
- (3) Where a body is designated for a purpose, OFCOM may act as the appropriate regulatory authority for that purpose concurrently with or in place of that body.
- (4) OFCOM may provide a designated body with assistance in connection with any of the functions of the body under this Part.
- (5) A designation may in particular—
 - (a) provide for a body to be the appropriate regulatory authority in relation to video-sharing platform services of a specified description;
 - (b) provide that a function of the appropriate regulatory authority is exercisable by the designated body—
 - (i) to such extent as may be specified;
 - (ii) either generally or in such circumstances as may be specified; and
 - (iii) either unconditionally or subject to such conditions as may be specified.
- (6) The conditions that may be specified pursuant to subsection (5)(b)(iii) include a condition to the effect that a function may, generally or in specified circumstances, be exercised by the body only with the agreement of OFCOM.
- (7) A designation has effect for such period as may be specified and may be revoked by OFCOM at any time.
- (8) OFCOM must publish any designation in such manner as they consider appropriate for bringing it to the attention of persons who, in their opinion, are likely to be affected by it.
- (9) OFCOM may not designate a body unless, as respects that designation, they are satisfied that the body—
 - (a) is a fit and proper body to be designated;
 - (b) has consented to being designated;
 - (c) has access to financial resources that are adequate to ensure the effective performance of its functions as the appropriate regulatory authority;
 - (e) is sufficiently independent of providers of video-sharing platform services; and
 - (f) will, in performing any function to which the designation relates, have regard in all cases—
 - (i) to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed; and
 - (ii) to such of the matters mentioned in section 3(4) as appear to the body to be relevant in the circumstances.
- (10) Subject to any enactment or rule of law restricting the disclosure or use of information by OFCOM or by a designated body—
 - (a) a designated body may supply information to another designated body for use by that other body in connection with any of its functions as the appropriate regulatory authority;

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- (b) a designated body may supply information to OFCOM for use by OFCOM in connection with any of their functions under this Part;
 - (c) OFCOM may supply information to a designated body for use by that body in connection with any of its functions as the appropriate regulatory authority;
 - (d) OFCOM may supply information to the video works authority, within the meaning of section 368E, for use by the video works authority in connection with functions of OFCOM as the appropriate regulatory authority;
 - (e) a designated body may supply information to the video works authority, within the meaning of section 368E, for use by the video works authority in connection with functions of the designated body as the appropriate regulatory authority.
- (11) In carrying out their functions as the appropriate regulatory authority, a designated body may carry out, commission or support (financially or otherwise) research.
- (12) In this section—
- “designation” means a designation under this section and cognate expressions are to be construed accordingly;
 - “specified” means specified in a designation.]

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Changes and effects yet to be applied to :

- specified provision(s) amendment to earlier commencing SI 2003/1900, art. 3(2) by [S.I. 2003/3142 art. 1\(3\)](#)
- specified provision(s) amendment to earlier commencing SI 2003/3142 by [S.I. 2004/1492 art. 2](#)
- specified provision(s) amendment to earlier commencing SI 2003/3142 by [S.I. 2004/697 art. 2](#)
- specified provision(s) amendment to earlier commencing SI 2003/3142 art. 4 Sch. 2 by [S.I. 2004/545 art. 2](#)

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 124Q(7)(a) words substituted by [2013 c. 22 Sch. 9 para. 52](#)
- s. 148A and cross-heading inserted by [2022 c. 46 s. 73\(2\)](#)
- s. 368E(5)(d)(e) inserted by [2017 c. 30 s. 94\(3\)](#)
- s. 402(2A)(za)(zb) inserted by [2022 c. 46 Sch. para. 2](#)
- Sch. 3A para. 21(6) inserted by [2022 c. 46 Sch. para. 3\(5\)\(b\)](#)
- Sch. 3A para. 37(3)(aza) inserted by [2022 c. 46 Sch. para. 3\(9\)](#)
- Sch. 3A para. 84(1)(aza) inserted by [2022 c. 46 Sch. para. 3\(10\)](#)
- Sch. 3A para. 103(1)(ca) inserted by [2022 c. 46 s. 70](#)
- Sch. 3A para. 119A inserted by [2022 c. 46 s. 72](#)
- Sch. 3A Pt. 4ZA inserted by [2022 c. 46 s. 67\(1\)](#)