



Communications Act 2003

2003 CHAPTER 21

[^{F1}PART 4A

ON-DEMAND PROGRAMME SERVICES

Duties of service providers

[^{F1}368E Harmful material

- (1) An on-demand programme service must not contain any material likely to incite [^{F2}violence or hatred against a group of persons or a member of a group of persons based on any of the grounds referred to in Article 21 of the Charter of Fundamental Rights of the European Union of 7 December 2000, as adopted at Strasbourg on 12 December 2007].
- [^{F3}(2) An on-demand programme service must not contain any prohibited material.
- (3) “Prohibited material” means—
 - [^{F4}(za) material the inclusion of which in an on-demand programme service would be conduct required by any of the following to be punishable as a criminal offence—
 - (i) Article 5 of Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism,
 - (ii) Article 5(4) of [Directive 2011/93/EU](#) of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, or
 - (iii) Article 1 of Council Framework Decision (2008/913/JHA) of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law,]
 - (a) a video work which the video works authority has determined for the purposes of the 1984 Act not to be suitable for a classification certificate to be issued in respect of it, or

Changes to legislation: Communications Act 2003, Section 368E is up to date with all changes known to be in force on or before 11 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (b) material whose nature is such that it is reasonable to expect that, if the material were contained in a video work submitted to the video works authority for a classification certificate, the video works authority would determine for those purposes that the video work was not suitable for a classification certificate to be issued in respect of it.
- (4) [^{F5}A person providing an on-demand programme service must take appropriate measures to ensure that any specially restricted material is made available by the service in a manner which secures that persons under the age of 18 will not normally see or hear it.
- (4A) The measures are to be proportionate to the potential of the material to harm the physical, mental or moral development of such persons.]
- (5) “Specially restricted material” means—
- (a) a video work in respect of which the video works authority has issued a R18 classification certificate,
 - (b) material whose nature is such that it is reasonable to expect that, if the material were contained in a video work submitted to the video works authority for a classification certificate, the video works authority would issue a R18 classification certificate, or
 - (c) other material that might ^{F6}... impair the physical, mental or moral development of persons under the age of 18.
- (6) In determining whether any material falls within subsection (3)(b) or (5)(b), regard must be had to any guidelines issued by the video works authority as to its policy in relation to the issue of classification certificates.
- (7) In this section—
- “the 1984 Act” means the Video Recordings Act 1984;
- “classification certificate” has the same meaning as in the 1984 Act (see section 7 of that Act);
- “R18 classification certificate” means a classification certificate containing the statement mentioned in section 7(2)(c) of the 1984 Act that no video recording containing the video work is to be supplied other than in a licensed sex shop;
- “the video works authority” means the person or persons designated under section 4(1) of the 1984 Act as the authority responsible for making arrangements in respect of video works other than video games;
- “video work” has the same meaning as in the 1984 Act (see section 1(2) of that Act).]]

Textual Amendments

- F1** Pt. 4A inserted (19.12.2009) by [Audiovisual Media Services Regulations 2009 \(S.I. 2009/2979\)](#), regs. 1(1), 2
- F2** Words in s. 368E(1) substituted (1.11.2020) by [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\)](#), regs. 1(2), **32(a)** (with Pt. 7)
- F3** Ss. 368E(2)-(7) substituted for s. 368E(2) (1.12.2014) by [The Audiovisual Media Services Regulations 2014 \(S.I. 2014/2916\)](#), regs. 1(1), 2
- F4** S. 368E(3)(za) inserted (1.11.2020) by [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\)](#), regs. 1(2), **32(b)** (with Pt. 7)

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- F5** S. 368E(4)(4A) substituted for s. 368E(4) (1.11.2020) by [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\)](#), regs. 1(2), **32(c)** (with Pt. 7)
- F6** Word in s. 368E(5)(c) omitted (1.11.2020) by virtue of [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\)](#), regs. 1(2), **32(d)** (with Pt. 7)

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Changes and effects yet to be applied to :

- s. 368E(5) word omitted by [2017 c. 30 s. 94\(2\)](#)
- s. 368E(6) words inserted by [2017 c. 30 s. 94\(4\)](#)
- s. 368E(7) words inserted by [2017 c. 30 s. 94\(5\)](#)
- 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\(1\)](#)