

Part Three:

On Demand Programme Service Rules

Introduction

This part applies only to On Demand Programme Services (“ODPS”). It sets out the statutory requirements with which providers of ODPS must comply (“the ODPS Rules”).

Ofcom publishes guidance to assist ODPS providers in their understanding of how Ofcom interprets the ODPS Rules. This guidance is available on the Ofcom website¹².

Ofcom also publishes separate guidance on what constitutes an ODPS and who needs to notify an ODPS to Ofcom¹³.

The statutory requirements for advertising in ODPS are not included here. Ofcom has designated the Advertising Standards Authority as co-regulator in relation to advertising in ODPS with effect from 1 September 2010¹⁴.

Legislative Background to the ODPS Rules

The ODPS Rules reflect Part 4A of the Communications Act 2003, which in turn implements the Audiovisual Media Services Directive¹⁵ (“AVMS Directive”). The Rules include footnoted references to the underlying statutory provisions. Where an ODPS provider breaches a Rule, that means it has breached the relevant statutory provision. In the event of any unintended conflict in meaning or interpretation between the Rules and the Act, the Act shall prevail. Ofcom’s procedures for investigating potential breaches of the ODPS Rules are available on its website¹⁶.

Statutory definitions are provided where appropriate. Note that the legislation uses the term “appropriate regulatory authority”. Other than in relation to advertising, which is not covered by these Rules, that means Ofcom because no other body is designated under section 368B at present.

12. https://www.ofcom.org.uk/__data/assets/pdf_file/0022/54922/rules_and_guidance.pdf

13. https://www.ofcom.org.uk/__data/assets/pdf_file/0028/71839/guidance_on_who_needs_to_notify.pdf

14. The relevant advertising rules can be found at: <https://www.cap.org.uk/Advertising-Codes/Non-Broadcast/CodeItem.aspx?csid={aa7bc9c1-4ca6-4c00-b580-a9b01fe5f00f}#.VnF2IEqLTGg>

15. Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directive 89/552/EEC

16. <https://www.ofcom.org.uk/tv-radio-and-on-demand/information-for-industry/on-demand/rules-guidance>. Separate procedures apply to BBC ODPS.

Rules

Administrative rules

Rule 1: Notification of intention to provide an ODPS¹⁷

A person must not provide an ODPS unless, before beginning to provide it, that person has given a notification to Ofcom of the person's intention to provide that service.

A notification must be sent to Ofcom in such manner, and including such information, as Ofcom may require.

Rule 2: Notification of intention to make significant changes to a notified service¹⁸

A person who has given a notification must, before providing the notified service with any significant differences, give a notification to Ofcom of the differences.

A notification must be sent to Ofcom in such manner, and including such information, as Ofcom may require.

Rule 3: Notification of intention to cease providing a notified service¹⁹

A person who has given a notification must, before ceasing to provide it, give a notification to Ofcom of the intention to cease to provide the service.

A notification must be sent to Ofcom in such manner, and including such information, as Ofcom may require.

Rule 4: Payment of required fee²⁰

The provider of an ODPS must pay to Ofcom such fee as Ofcom may require under section 368NA of the Act.

17. Section 368BA of the Act. This Rule does not apply to BBC ODPS.

18. Section 368BA of the Act. This Rule does not apply to BBC ODPS.

19. Section 368BA of the Act. This Rule does not apply to BBC ODPS

20. Section 368D(3)(za) of the Act. This Rule does not apply to BBC ODPS

Rule 5: Retention of programmes for at least 42 days²¹

The provider of an ODPS must retain a copy of every programme included in the service for at least 42 days after the day on which the programme ceases to be available for viewing.

A copy of a programme retained must be of a standard and in a format which allows the programme to be viewed as it was made available for viewing.

Rule 6: Provision of information²²

The provider of an ODPS must comply with any requirement to provide information under section 368O of the Act. “Information” includes copies of programmes.

Ofcom may require a person who appears to it to be or to have been a provider of an ODPS and to have information that Ofcom requires for the purpose of securing compliance with the obligations of the United Kingdom under the Audiovisual Media Services Directive to provide all such information as Ofcom considers necessary for that purpose.

Ofcom may not require the provision of information under section 368O unless it has given the person from whom it is required an opportunity of making representations about the matters appearing to Ofcom to provide grounds for making the request.

Ofcom must not require the provision of information under section 368O except by a demand for the information contained in a notice served on the person from whom the information is required that describes the required information and sets out Ofcom’s reasons for requiring it.

A person who is required to provide information under this section must provide it in such manner and within such reasonable period as may be specified by Ofcom in the demand for information.

21. Section 368D(3)(zb) of the Act. This Rule does not apply to BBC ODPS

22. Section 368D(3)(a) of the Act. This Rule does not apply to BBC ODPS

Rule 7: Co-operation²³

The provider of an ODPS must co-operate fully with Ofcom for any purpose within section 368O(2) or (3).

Rule 8: Compliance with enforcement notifications²⁴

An ODPS provider to whom an enforcement notification has been given must comply with it.

Rule 9: Supply of Information²⁵

ODPS providers must supply the following information to users of the service—

- (a) the provider's name;
- (b) the provider's address;
- (c) the provider's electronic address²⁶; and
- (d) Ofcom's name, address and electronic address (and that of the ASA in relation to advertising content).

Editorial rules

Rule 10: Harmful Material: Material Likely to Incite Hatred²⁷

An ODPS must not contain any material likely to incite hatred based on race, sex, religion or nationality.

23. Section 368D(3)(b) of the Act. This Rule does not apply to BBC ODPS.

24. Section 368I of the Act. This Rule does not apply to BBC ODPS.

25. Section 368D(2) of the Act. ODPS providers (other than the BBC) should also note the obligation to provide information under section 368O of the Act.

26. Defined by section 368D(4) of the Act as, "an electronic address to which users may send electronic communications, and includes any number or address used for the purposes of receiving such communications".

27. Section 368E(1) of the Act.

Rule 11: Harmful Material: Protection of Under-18s (Specially Restricted Material)²⁸

An ODPS must not contain any specially restricted material unless the material is made available in a manner which secures that persons under the age of 18 will not normally see or hear it.

“Specially restricted material” means—

- (a) a video work in respect of which the video works authority²⁹ 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 seriously impair the physical, mental or moral development of persons under the age of 18.

In determining whether any material falls within (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.

Statutory definitions relevant to Rule 11 - section 368E(7)

- “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 Act³⁰);
- “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;

28. Section 368E(4) and (5) of the Act.

29. The British Board of Film Classification (“BBFC”) is currently designated as the ‘video works authority’.

30. <http://www.legislation.gov.uk/ukpga/1984/39/section/7>

- “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).”

Rule 12: Sponsorship³¹

- (1) An ODPS or a programme included in an on-demand programme service must not be sponsored—
 - (a) for the purpose of promoting cigarettes or other tobacco products, or
 - (b) by an undertaking whose principal activity is the manufacture or sale of cigarettes or other tobacco products.
- (1A) An ODPS or a programme included in an ODPS must not be sponsored for the purpose of promoting electronic cigarettes or electronic cigarette refill containers.
- (2) An ODPS or a programme included in an ODPS must not be sponsored for the purpose of promoting a prescription-only medicine.
- (3) An ODPS may not include a news programme or current affairs programme that is sponsored.
- (4) Paragraphs 11.22 to (11.28) apply to an ODPS that is sponsored or that includes any programme that is sponsored.
- (5) The sponsoring of a service or programme must not influence the content of that service or programme in a way that affects the editorial independence of the provider of the service.

31. Section 368G of the Act. This Rule does not apply to BBC ODPS, but note that sections 9 and 10 of the Broadcasting Code do apply to BBC ODPS and contain rules relating to sponsorship.

- (6) Where a service or programme is sponsored for the purpose of promoting goods or services, the sponsored service or programme and sponsorship announcements relating to it must not directly encourage the purchase or rental of the goods or services, whether by making promotional reference to them or otherwise.
- (7) Where a service or programme is sponsored for the purpose of promoting an alcoholic drink, the service or programme and sponsorship announcements relating to it must not—
 - (a) be aimed specifically at persons under the age of eighteen; or
 - (b) encourage the immoderate consumption of such drinks.
- (8) A sponsored service must clearly inform users of the existence of a sponsorship agreement.
- (9) The name of the sponsor and the logo or other symbol (if any) of the sponsor must be displayed at the beginning or end of a sponsored programme.
- (10) Techniques which exploit the possibility of conveying a message subliminally or surreptitiously must not be used in a sponsorship announcement.
- (11) A sponsorship announcement must not—
 - (a) prejudice respect for human dignity;
 - (b) include or promote discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation;
 - (c) encourage behaviour prejudicial to health or safety;
 - (d) encourage behaviour grossly prejudicial to the protection of the environment;
 - (e) cause physical or moral detriment to persons under the age of eighteen;
 - (f) directly encourage such persons to persuade their parents or others to purchase or rent goods or services;
 - (g) exploit the trust of such persons in parents, teachers or others; or
 - (h) unreasonably show such persons in dangerous situations.

Statutory definition of ‘sponsored programme’ – section 368G(12) and (13)

A programme included in an on-demand programme service is “sponsored” if a person (“the sponsor”) other than:

- (a) the provider of that service, or
- (b) the producer of that programme,

has met some or all of the costs of the programme for the purpose of promoting the name, trademark, image, activities, services or products of the sponsor or of another person.

A programme is not sponsored if it falls within this definition only by virtue of the inclusion of product placement³² or prop placement³³ (see Guidance on Rule 13).

Statutory definition of sponsored on-demand programme service – section 368G(15) and (16)

An on-demand programme service is “sponsored” if a person (“the sponsor”) other than the provider of the service has met some or all of the costs of providing the service for the purpose of promoting the name, trademark, image, activities, services or products of the sponsor or another person.

A person is not to be taken to have met some or all of the costs of providing a service only because a programme included in the service is sponsored by that person.

Statutory definition of a “sponsorship announcement” – section 368G(17)

A “sponsorship announcement” means:

- (a) anything included for the purpose of complying with the requirements to clearly inform users of the existence of a sponsorship agreement and to display at the beginning or end of a sponsored programme the name of the sponsor and the logo or other symbol (if any) of the sponsor ; and

32. See section 368H(1) of the Act.

33. See section 368H(2) of the Act.

(b) anything included at the same time as or otherwise in conjunction with anything within paragraph (a).

Statutory definition of “tobacco product” – section 1 of the Tobacco Advertising and Promotion Act 2002

“Tobacco product” means a product consisting wholly or partly of tobacco and intended to be smoked, sniffed, sucked or chewed.

Statutory definitions of an “electronic cigarette” and an “electronic cigarette refill container” – section 368R(1) of the Act

“Electronic cigarette” means a product that:

(a) can be used for the consumption of nicotine-containing vapour via a mouth piece, or any component of that product, including a cartridge, a tank and the device without cartridge or tank (regardless of whether it is disposable or refillable by means of a refill container and a tank, or rechargeable with single use cartridges), and

(b) is not a medical product within the meaning of regulation 2 of the Human Medicines Regulations 2012 or medical device within the meaning of regulation 2 of the Medical Devices Regulations 2002.

“Electronic cigarette refill container” means a receptacle that:

(a) contains a nicotine-containing liquid, which can be used to refill an electronic cigarette; and

(b) is not a medicinal product within the meaning of regulation 2 of the Human Medicines Regulations 2012 or medical device within the meaning of regulation 2 of the Medical Devices Regulations 2002.

Rule 13: Prohibition of Product Placement and Exceptions³⁴

Note:

Paragraphs 11.29 to 11.32 apply only in relation to programmes the production of which began after 19 December 2009. The prohibition of product placement of electronic cigarettes and electronic cigarette refill containers applies only in relation to programmes the production of which began after 19 May 2016.

Prohibited Product Placement

Product placement is prohibited in children's programmes included in ODPS.

Product placement is prohibited in ODPS if—

- (a) it is of cigarettes or other tobacco products,
- (b) it is by or on behalf of an undertaking whose principal activity is the manufacture or sale of cigarettes or other tobacco products, or
- (c) it is of prescription-only medicines; or
- (d) it is of electronic cigarettes or refill containers.

Product placement of alcoholic drinks must not—

- (a) be aimed specifically at persons under the age of eighteen;
- (b) encourage immoderate consumption of such drinks.

Permitted Product Placement

Subject to the above, product placement is otherwise permitted in programmes included in on-demand programme services provided that—

- (a) conditions A to F below are met, and

34. Section 368H of the Act

- (b) where the programme featuring the product placement has been produced or commissioned by the ODPS provider or any connected person, condition G is also met.

Conditions A to F

Condition A:

The programme in which the product, service or trademark, or the reference to it, is included is—

- a) a film made for cinema;
- b) a film or series made for a television programme service or for an on-demand programme service;
- c) a sports programme; or
- d) a light entertainment programme.

Condition B

The product placement has not influenced the content of the programme in a way that affects the editorial independence of the provider of the service.

Condition C

The product placement does not directly encourage the purchase or rental of goods or services, whether by making promotional reference to those goods or services or otherwise.

Condition D

The programme does not give undue prominence to the products, services or trade marks concerned.

Condition E

The product placement does not use techniques which exploit the possibility of conveying a message subliminally or surreptitiously.

“Residual value” means:

any monetary or other economic value in the hands of the relevant provider other than the cost saving of including the product, service or trademark, or a reference to it, in a programme.

“Significant value” means:

a residual value that is more than trivial.

“Trade mark”, in relation to a business, includes:

any image (such as a logo) or sound commonly associated with that business or its products or services.

Rule 14: Harmful Material: Prohibited material³⁸

An ODPS must not contain any prohibited material.

“Prohibited material” means:

- (a) a video work which the video works authority has determined for the purposes of the 1984 Act³⁹ not to be suitable for a classification certificate to be issued in respect of it, or
- (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.

In determining whether any material falls within (b), regard must be had to any guidelines issued by the video works authority (the British Board of Film Classification) as to its policy in relation to the issue of classification certificates.

38. Section 368E(2) and (3) of the Act

39. The Video Recordings Act 1984