
Rules and Guidance

Statutory Rules and Non-Binding Guidance for Providers of On-Demand Programme Services (ODPS)

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1. Introduction

The purpose of this document

- 1.1 This document sets out the statutory requirements with which providers of on-demand programme services (“ODPS”) must comply (“the Rules”).
- 1.2 The accompanying Guidance (“the Guidance”) is provided to assist ODPS providers in their understanding of how Ofcom interprets the Rules. The Rules themselves are not set by Ofcom; they derive from Part 4A of the Communications Act 2003 (as amended) (the “Act”). The Guidance is not comprehensive and merely explains some important practical implications for ODPS providers.
- 1.3 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 2010¹ (although not in relation to enforcement of ODPS advertising requirement – these functions have been retained by Ofcom).
- 1.4 The Rules reflect Part 4A of the Communications Act 2003, which in turn implements the Audiovisual Media Services Directive (“AVMS Directive”)². 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.

The Guidance

- 1.5 The Guidance in this document is provided to assist ODPS providers in their understanding of the Rules and how Ofcom applies them. In some circumstances Ofcom may be willing to respond to requests for additional general guidance on its interpretation of the statutory requirements where such requests raise issues of general concern to stakeholders, but it cannot and does not undertake prior clearance of on-demand programme service content. Any such additional guidance given is informal only and is without prejudice to the right of Ofcom to investigate and act in the event of a contravention.
- 1.6 ODPS providers must ensure they comply with their statutory obligations under the Act. They should seek their own legal advice on any compliance issues. Ofcom does not accept liability for any loss or damage alleged to result from reliance placed on either its published Guidance or any supplementary informal guidance it may give.

¹ The relevant advertising rules can be found at: <https://www.cap.org.uk/Advertising-Codes/Non-Broadcast/Codeltem.aspx?cscid={aa7bc9c1-4ca6-4c00-b580-a9b01fe5f00f}#.VnF2IEqLTGg>

² Certain provisions of Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU set the regulatory framework underpinning the audiovisual services single market in the European Union. Under the terms of the Withdrawal Agreement, the UK committed to implementing EU legislation up until the end of the transition period. The transition period is expected to end at 11pm on 31 December 2020. Although the UK will no longer be within the EU after the transition period, alignment with the AVMSD will remain in place.

- 1.7 ODPS providers should use the Ofcom website to keep up to date on published breach decisions and sanctions decisions³ and changes that may from time to time be made to Ofcom's current interpretation of the Rules.
- 1.8 If, having followed its published procedures, Ofcom finds that an ODPS provider has contravened any of the relevant requirements, it will normally publish a decision and explain why the ODPS provider has been found to be in breach. If necessary, Ofcom can use its powers under the Act to issue statutory enforcement notifications.

Enforcement

- 1.9 The requirements specified in an enforcement notification may in particular include requirements to do one or more of the following:
- cease providing or restrict access to a specified programme or advertisement, or to programmes of a specified description;
 - provide additional information to users of the service prior to the selection of a specified programme by the user for viewing;
 - publish a correction in the form and place and at the time specified; and/or
 - publish a statement of Ofcom's findings in the form and place and at the time specified.
- 1.10 Ofcom may consider breaches of the Rules for the imposition of sanctions, including financial penalties. Under current legislation, the amount of a financial penalty imposed on an ODPS provider can be up to 5% of the provider's applicable qualifying revenue⁴ or £250,000 (whichever is greater); for BBC services the maximum penalty is £250,000.

³ Ofcom Decisions are published in the Ofcom Broadcasting and On Demand Bulletin, available here: <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/>

⁴ Applicable qualifying revenue' is defined in s368J of the Act.

2. The Rules and Guidance⁵

- 2.1 Guidance reflecting Ofcom’s current interpretation is provided in italics beneath each Rule. The Guidance is intended as practical advice. It is not intended to augment the Rules or corresponding statutory requirements. **Compliance with the Guidance is not determinative of whether or not the Rules and the corresponding statutory requirements have been complied with.**
- 2.2 It is the responsibility of the service provider to consider, having taken its own legal advice if appropriate, whether the service it intends to provide, or a dissociable section of the service it intends to provide, is an ODPS.
- 2.3 Statutory definitions are provided where appropriate. Note that the legislation uses the term “appropriate regulatory authority”. Other than in relation to advertising, for which the ASA has been designated as the appropriate regulatory authority (except in relation to enforcement), that means Ofcom because no other body is designated under section 368B at present. Examples of styles are below. Guidance on these new templates is available on the Loop, including best practice for transferring content from old documents – please refer to this before pasting old material across.

Administrative Rules

Rule 1: Notification of intention to provide an ODPS⁶

- 2.4 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.
- 2.5 A notification must be sent to Ofcom in such manner, and including such information, as Ofcom may require.

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- 2.6 *The requirement to notify, and indeed other Rules, apply to providers of “on-demand programme services” as defined by section 368A(1) of the Act. A service, or a dissociable section of a service, is an on-demand programme service if it meets all of the criteria in the definition. Failure to notify a service falling within the definition will mean the provider is in breach of Rule 1.*
- 2.7 *To satisfy the obligation to notify, an ODPS provider must complete a Notification Form⁷.*
- 2.8 *The obligation covers ODPS providers who were providing a service prior to 1 November 2020 which meets the definition of an ODPS under Part 4A of the Act as a result of changes*

⁵ On-demand services provided by the BBC and the Welsh Authority are also subject to the ODPS requirements in the Act.

⁶ Section 368BA of the Act.

⁷ Available at: <http://stakeholders.ofcom.org.uk/binaries/broadcast/on-demand/notification.rtf>

to section 368A following the Audiovisual Media Services Regulations 2020, and in relation to services commencing after that point.

Rule 2: Notification of significant differences to a notified service⁸

- 2.9 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.
- 2.10 “Significant differences” includes any changes that may affect the determination of jurisdiction of the ODPS.
- 2.11 A notification must be sent to Ofcom in such manner, and including such information, as Ofcom may require.

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- 2.12 *In order to satisfy the obligation to notify, an ODPS provider must provide details of the intended changes to Ofcom in writing. This can be done by email sent to: ODPSnotifications@ofcom.org.uk.*
- 2.13 *The obligation to notify Ofcom before providing the service with a significant difference that may affect jurisdiction applies to existing services up to 6 April 2021 as if it were an obligation to notify Ofcom by 6 May 2021⁹.*

Rule 3: Notification of intention to cease providing a notified service¹⁰

- 2.14 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.
- 2.15 A notification must be sent to Ofcom in such manner, and including such information, as Ofcom may require.

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- 2.16 *In order to satisfy the obligation to notify, the notification must include the date on which the ODPS provider intends to cease providing the service, whether the service is expected to be provided by a third party after that date and, if so, the contact details for that third party.*
- 2.17 *Notification of the intention to cease providing the service can be made by email to ODPSnotifications@ofcom.org.uk.*

⁸ Section 368BA of the Act.

⁹ Regulation 54 of the Audiovisual Media Services Regulations 2020 (SI 2020/1062).

¹⁰ Section 368BA of the Act.

Rule 4: Payment of required fee¹¹

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

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- 2.19 *Ofcom is not required to charge a fee under section 368NA but may do so and, where it does, this has been set in accordance with section 368NA.*
- 2.20 *If Ofcom does require an ODPS provider to pay a fee under section 368NA, a notification of this would be made to the provider and an invoice would be issued. Non-payment may result in a fine and/or suspension of the ODPS.*

Rule 5: Retention of programmes for at least 42 days¹²

- 2.21 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.
- 2.22 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.

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- 2.23 *Picture and sound should not have been significantly altered on the retained copy (for example by cropping or darkening of picture, or by reducing or distorting sound); picture and sound quality on the retained copy should be equivalent to that made available for viewing. The format in which the copy is retained should allow it to be provided to Ofcom (if required under Rule 6) in the manner required.*
- 2.24 *Note that, where an ODPS provider has received a complaint from a person alleging breach of any Rule, Ofcom would expect the ODPS provider to retain relevant material for at least 42 days after the outcome of the ODPS provider's own complaints procedure has been notified to the complainant, even if that extends beyond 42 days after the material ceases to be available for viewing.*

Rule 6: Provision of information¹³

- 2.25 The provider of an ODPS must comply with any requirement to provide information under section 368O of the Act. "Information" includes copies of programmes.
- 2.26 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 carrying out its duties to provide all such information as Ofcom considers necessary for the purpose in question.

¹¹ Section 368D(3)(za) of the Act.

¹² Section 368D(3)(zb) of the Act.

¹³ Section 368D(3)(a) of the Act.

- 2.27 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.
- 2.28 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.
- 2.29 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.

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- 2.30 *Information should be supplied in such form as Ofcom may reasonably require. Where the information required includes a copy of a programme, the manner specified may include providing a copy of a programme, or a specified number of copies, in a particular format, such as DVD.*

Rule 7: Co-operation¹⁴

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

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- 2.32 *An ODPS provider is required to co-operate for the purposes of an investigation into a possible failure to comply with the statutory requirements (as set out in these Rules), or in order to calculate applicable qualifying revenue.*

Rule 8: Compliance with enforcement notifications¹⁵

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

Rule 9: Supply of Information¹⁶

- 2.34 ODPS providers must supply the following information to users of the service—
- a) the provider's name;
 - b) the provider's address;

¹⁴ Section 368D(3)(b) of the Act.

¹⁵ Section 368I of the Act.

¹⁶ Section 368D (2) of the Act. ODPS providers should also note the obligation to provide information under section 368O of the Act.

- c) the provider's electronic address¹⁷;
- d) a statement that the provider is under the jurisdiction of the UK in accordance with the applicable criteria for establishing jurisdiction;
- e) Ofcom's name, address and electronic address (and that of the ASA in relation to advertising content).

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2.35 *ODPS providers have some discretion as to how they "supply" the required information to users of the service. It could be by making the information available on the provider's own website and/or in response to requests from users (provided that the website provides information on how to make such a request). The main purpose of this obligation is however to enable users of the service to contact the service provider or Ofcom. It must therefore be freely and easily available to members of the public on demand.*

2.36 *Suggested format for information:*

- *Name of service provider (and logo)*
- *Postal Address*
- *Email address*
- *Web site address*
- *Statement explaining that the service provider is under UK jurisdiction and the basis for this*
- *Name, address and email address of (i) Ofcom as the appropriate regulatory authority for editorial content; and (ii) the ASA as the appropriate regulatory authority for advertising content; together with an explanation of the co-regulators' roles, using suggested wording as follows:*

"Ofcom regulates the editorial content of on-demand programme services. This includes ensuring that particular rules are observed. These rules require certain material to be restricted to adults, prohibit other material (including that likely to incite hatred) altogether, and govern product placement in programmes and sponsorship of individual programmes or services. If you have complained to us and you are dissatisfied with our response, you can submit a complaint about any of these aspects of our on-demand service to Ofcom using the online complaint form at

<http://stakeholders.ofcom.org.uk/broadcasting/on-demand/complain>

Please note Ofcom is the regulator for editorial content on ODPS. Advertising within our services is regulated by the Advertising Standards Authority. You can access the ASA complaints procedures online at <http://www.asa.org.uk/Complaints> or by telephoning 020 7492 2222. You can also complain to the ASA by post to:

¹⁷ 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".

Advertising Standards Authority
Castle House
37-45 Paul Street
Shoreditch
London
EC2A 4LS

Any queries relating to matters such as technical issues, billing, installation or marketing should be made directly to us at [contact details for service provider].

Further information about Ofcom can be found at www.ofcom.org.uk, and about the ASA at www.asa.org.uk.

Editorial Rules

Rule 10: Harmful Material: Material Likely to Incite Hatred¹⁸

2.37 An ODPS must not contain any material likely to incite 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.

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2.38 *These grounds are: sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation and nationality.*

Rule 11: Harmful Material: Prohibited material¹⁹

2.39 An ODPS must not contain any prohibited material.

2.40 “Prohibited material” means:

- a) 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 terrorism²⁰,
 - 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 pornography²¹, or

¹⁸ Section 368E(1) of the Act.

¹⁹ Section 368E(2) and (3) of the Act.

²⁰ OJ No. L 88, 31.3.2017, p. 6.

²¹ OJ No. L 335, 17.12.2011, p. 1.

- 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 law²²;
 - b) a video work which the video works authority has determined for the purposes of the 1984 Act²³ not to be suitable for a classification certificate to be issued in respect of it, or
 - c) 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.
- 2.41 In determining whether any material falls within (c), 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.

Rule 12: Harmful Material: Protection of Under-18s (Specially Restricted Material)²⁴

- 2.42 A person providing an on-demand programme service must take appropriate measures²⁵ 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.
- 2.43 The measures are to be proportionate to the potential of the material to harm the physical, mental or moral development of such persons.
- 2.44 “Specially restricted material” means—
- a) a video work in respect of which the video works authority²⁶ 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 impair the physical, mental or moral development of persons under the age of 18.
- 2.45 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.

²² OJ No. L 328, 6.12.2008, p. 55.

²³ The Video Recordings Act 1984

²⁴ Section 368E(4) and (5) of the Act.

²⁵ The appropriate regulatory authority must draw up, and from time to time review and revise, guidance for providers of on-demand programme services concerning measures that may be appropriate for the purposes of section 368E(4) (ensuring specially restricted material is not available to under-18s).

²⁶ The British Board of Film Classification (“BBFC”) is currently designated as ‘the video works authority’.

Statutory definitions relevant to Rule 12 - section 368E(7):

2.46 As follows:

- “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 Act²⁷);
- “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; and
- “video work” has the same meaning as in the 1984 Act (see section 1(2) of that Act).

Rule 13: Sponsorship²⁸

2.47 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.

2.47A) An ODPS or a programme included in an ODPS must not be sponsored-

- c) for the purpose of promoting electronic cigarettes or electronic cigarette refill containers; or
- d) by an undertaking whose principal activity is the manufacture or sale of electronic cigarettes or electronic cigarette refill containers.

2.48 An ODPS or a programme included in an ODPS must not be sponsored for the purpose of promoting a prescription-only medicine.

2.49 An ODPS may not include a news programme or current affairs programme that is sponsored.

2.50 Paragraphs 2.51 – 2.57 apply to an ODPS that is sponsored or that includes any programme that is sponsored.

2.51 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.

²⁷ <https://www.legislation.gov.uk/ukpga/1984/39/section/7>

²⁸ Section 368G of the Act.

- 2.52 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.
- 2.53 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.
- 2.54 A sponsored service must clearly inform users of the existence of a sponsorship agreement.
- 2.55 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.
- 2.56 Techniques which exploit the possibility of conveying a message subliminally or surreptitiously must not be used in a sponsorship announcement.
- 2.57 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, mental or moral detriment to persons under the age of eighteen; ea) directly exhort such persons to purchase or rent goods or services in a manner which exploits their inexperience or credulity;
 - 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), (13) and (14)

- 2.58 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.

- 2.59 For these purposes, a person meets some or all of the costs of a programme included in a service only if that person makes a payment or provides other resources for the purpose of meeting or saving some or all of the costs of—
- a) producing that programme;
 - b) transmitting that programme; or
 - c) making that programme available as part of the service.
- 2.60 A programme is not sponsored if it falls within this definition only by virtue of the inclusion of product placement²⁹ or prop placement³⁰ (see Rule 14 below).

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

- 2.61 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.
- 2.62 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.
- 2.63 Statutory definition of a “sponsorship announcement” – section 368G(17)
- 2.64 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
 - 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

- 2.65 “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

- 2.66 “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

²⁹ See Section 368H(1) of the Act.

³⁰ See Section 368H(2) of the Act.

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.

2.67 “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 14: Prohibition of Product Placement and Exceptions³¹

2.68 Note that different rules apply depending on when production of the relevant programme began, as the legislation has been changed over time to broaden the categories of prohibition but programmes produced before those changes can still be shown.

2.69 Rule 14 applies only in relation to programmes the production of which began after 19 December 2009. Further specific prohibitions are given in footnotes to the relevant paragraphs below.

Prohibited Product Placement

2.70 Product placement is prohibited in any of the following included in ODPS³²:

- a) children’s programmes;
- b) news and current affairs programmes;
- c) consumer affairs programmes; and
- d) religious programmes.

2.71 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;
- c) it is of prescription-only medicines;

³¹ Section 368H of the Act.

³² The widened prohibition of *all* product placement in: news and current affairs programmes; consumer affairs programmes; and religious programmes applies only in relation to programmes the production of which began after 31 October 2020 (N.B. the specific prohibitions for certain types of product placement in all programmes still apply to these categories of programme where production started earlier and it is simply that these types of programmes were added to the general prohibition already applying to children’s programmes at this point).

- d) it is of electronic cigarettes or refill containers³³; or
- e) it is by or on behalf of an undertaking whose principal activity is the manufacture or sale of electronic cigarettes or electronic cigarette refill containers³⁴.

2.72 Product placement of alcoholic drinks must not—

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

Permitted Product Placement³⁵

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

- a) conditions B to F below are met, and
- 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 B to F:

2.74 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.

2.75 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.

2.76 Condition D

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

2.77 Condition E

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

2.78 Condition F

³³ The specific 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.

³⁴ The wider prohibition of product placement by or on behalf of an undertaking whose principal activity is the manufacture or sale of electronic cigarettes or electronic cigarette refill containers (i.e. not just the product but the manufacturer or seller) applies only in relation to programmes the production of which began after 31 October 2020.

³⁵ Programmes the production of which began before 1 November 2020 benefit from the “permitted product placement” exception only if they are: a film made for cinema; a film or series made for a television programme service or for an on-demand programme service; a sports programme; or a light entertainment programme (as well as satisfying conditions A-G – note that condition A is no longer existent in the AVMS Directive).

The way in which the product, service or trade mark, or the reference to it, is included in the programme by way of product placement does not—

- a) prejudice respect for human dignity;
- b) 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, mental or moral detriment to persons under the age of eighteen; ea) directly exhort such persons to purchase or rent goods or services in a manner which exploits their inexperience or credulity;
- 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.

Condition G

- 2.79 The ODPS in question signals appropriately the fact that product placement is contained in a programme, no less frequently than—
- a) at the start and end of such a programme, and
 - b) in the case of an on-demand programme service which includes advertising breaks within it, at the recommencement of the programme after each such advertising break.
- 2.80 Note: Condition G applies only where the programme featuring the product placement has been produced or commissioned by the provider of the service or any connected person.

Statutory definition of “Product placement” – section 368H(1)”

- 2.81 “Product placement”, in relation to a programme included in an on-demand programme service, means the inclusion in the programme of, or of a reference to, a product, service or trade mark, where the inclusion—
- a) is for a commercial purpose,
 - b) is in return for the making of any payment, or the giving of other valuable consideration, to any relevant provider or any connected person, and
 - c) is not prop placement.

Statutory definition of “Prop placement” – section 368H(2)

- 2.82 “Prop placement”, in relation to a programme included in an on-demand programme service, means the inclusion in the programme of, or of a reference to, a product, service or trade mark where:

- a) the provision of the product, service or trade mark has no significant value; and
- b) no relevant provider, or person connected with a relevant provider, has received any payment or other valuable consideration in relation to its inclusion in, or the reference to it in, the programme, disregarding the costs saved by including the product, service or trademark, or a reference to it, in the programme.

Statutory definition of “Children’s programme” – section 289A(13)

2.83 “Children’s programme” means a programme made:

- a) for a television programme service or for an on-demand programme service; and
- b) for viewing primarily by persons under the age of sixteen

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

2.84 “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

2.85 “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.

2.86 “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.

Other Statutory definitions for Rule 14 – section 368H(16)

2.87 “Film made for cinema” means a film made with a view to its being shown to the general public first in a cinema.

2.88 “Relevant provider”, in relation to a programme, means:

- a) the provider of the on-demand programme service in which the programme is included; and

- b) the producer of the programme.
- 2.89 “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.
- 2.90 “Significant value” means a residual value that is more than trivial.
- 2.91 “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 15: European works

- 2.92 A person providing an on-demand programme service must secure that, in each year, on average at least 30% of the programmes included in the service are European works.
- 2.93 A person providing an on-demand programme service must ensure the prominence of European works in the service.
- 2.94 These rules do not apply to a person providing an on-demand programme service in relation to any period throughout which —
 - a) the service has a low turnover or a low audience; or
 - b) it is impracticable or unjustified for these rules to apply because of the nature or theme of the service.
- 2.95 An exemption for (b) is provided at the discretion of the appropriate regulatory authority.
- 2.96 Where a person does not provide an on-demand programme service for a whole year, compliance with the quota obligation is to be assessed in relation to the period in that year during which the person does provide the service.
- 2.97 In assessing a provider’s compliance with the quota, any period for which an exemption under either (a) or (b) applies to the provider is to be discounted.
- 2.98 “European works” has the same meaning as in the Audiovisual Media Services Directive and includes works deemed to be European works by Article 1(4) of that Directive;
- 2.99 “programmes” does not include advertisements, news programmes, sports events, games, teletext services or teleshopping.
- 2.100 This Rule is to be interpreted in accordance with the Communication from the European Commission (2020/C223/03) “Guidelines pursuant to Article 13(7) of the Audiovisual Media Services Directive on the calculation of the share of European works in on-demand catalogues and on the definition of low audience and low turnover” published in Volume 63 of the Official Journal of the European Union on 7 July 2020(29).”