
Regulating video-sharing platforms

A guide to the new requirements on VSPs and Ofcom's approach to regulation

[Regulating video sharing platforms](#) – Welsh translation

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1. Overview

Video-sharing platforms (VSPs) are a type of online video service. A principal feature of this type of service is that it enables users to upload and share videos with members of the public. VSPs allow users to engage with a wide range of content and social features. New regulations apply to UK-established VSPs from 1 November 2020.

This document provides an overview of the new regulatory framework for VSP providers. It includes how to determine whether a service falls within scope and the key legislative requirements on providers, in particular the requirement to take appropriate measures to protect users from certain types of harm. This short guide is intended to assist stakeholders to understand the obligations that will apply from 1 November 2020 and Ofcom's approach to carrying out its new duties from this date. In the coming months, Ofcom will also be developing and publicly consulting on more detailed regulatory guidance for VSPs.

What does the guide cover?

- The statutory requirements for VSP providers come into force on 1 November 2020. It is for VSP providers to assess whether a service falls under the scope of the regulation and therefore needs to comply with the new requirements from this date. From 6 April 2021, VSP providers will be required to notify Ofcom that they fall within scope of the regulation. We expect to publish further guidance on scope and jurisdiction later this year.
- VSP providers must take appropriate measures to protect children (under 18s) from content which might impair their physical, mental or moral development. VSP providers must also take appropriate measures to protect the general public from content inciting violence or hatred, and content constituting criminal offences relating to terrorism; child sexual exploitation and abuse; and racism and xenophobia. The measures VSP providers must consider taking are set out in legislation and are described in this document.
- Ofcom will be seeking to engage with VSP providers as we start operating the new regime. We will assist VSP providers in understanding the steps they should take to ensure compliance, where appropriate. Guidance on the risk of harms and appropriate measures will be consulted on in early 2021 and published in summer 2021.
- Prior to the publication of our guidance on harms and measures, we expect to prioritise only the most serious potential breaches for formal enforcement action. Any enforcement action taken will be in line with our existing guidelines for regulatory investigations.

2. Definitions and requirements on VSPs

What are the new regulations?

- 2.1 The 2018 revision to the Audiovisual Media Services Directive (“AVMSD” or “the Directive”) introduces a regulatory framework for a new category of service, video-sharing platforms, or “VSPs”.
- 2.2 The Government has transposed the VSP framework into Part 4B of the Communications Act 2003 (“the Act”).¹ This will come into force on 1 November 2020 and VSP providers will be required to comply with the new requirements (other than the requirement to notify Ofcom and to pay a regulatory fee) from this date.
- 2.3 The new provisions include a requirement to take appropriate measures to protect children from harmful content, and to protect the general public from incitement to hatred and violence and from criminal content. They also include requirements relating to standards around advertising.² We discuss the new requirements in further detail below.
- 2.4 Under the statutory framework Ofcom must publish guidance on the measures available to VSP providers to protect users from harm. This guide sets out Ofcom’s expectations for VSP regulation until further guidance on harms and measures is published next year. Ofcom plans to consult on this guidance in early 2021 and to publish by summer 2021. Ofcom has recently concluded a Call for Evidence to inform the development of this guidance.³
- 2.5 Ofcom understands the Government’s intention is for the VSP regulation to be in place until such time as the new Online Harms regime comes into force.⁴

How are VSPs defined?

- 2.6 Under section 368S of the Act, a service, or a dissociable section of a service, is a VSP if the service, or the dissociable section, meets the conditions listed in paragraph 2.7 below and either of the following apply:
 - a) the provision of videos to members of the public is the principal purpose of the service or of the dissociable section of the service; or
 - b) the provision of videos to members of the public is an essential functionality of the service (as a whole).⁵

¹ [The Audiovisual Media Services Regulations 2020](#)

² The legislation refers to “audio-visual commercial communications” (“AVCCs”). AVCCs is a term applied across a number of sectors and includes advertising, as well as sponsorship, teleshopping and product placement, but also influencer marketing and other forms of commercial communication associated with VSPs. In this guide, “advert” and “advertising” are used as a short-hand for “AVCCs”.

³ [Video-Sharing Platform Regulation: Call for Evidence](#), 16 July 2020

⁴ [Online Harms White Paper](#)

⁵ For more information on the definition of essential functionality, please see the [European Commission Guidelines on Essential Functionality](#)

- 2.7 The additional conditions that must be met 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 does not have general control over what videos are available on it, but does have general control over the manner in which videos are organised on it (which includes being organised automatically or by way of algorithms, in particular by displaying, tagging and sequencing); and
 - d) that person is under the jurisdiction of the United Kingdom.
- 2.8 The criteria set out in the Act must all be met for the definition to apply. In other words, at least one of the criteria in paragraph 2.6 must apply and all of the conditions in paragraph 2.7 must be met for a service or a dissociable section of a service to be a VSP.

UK jurisdiction

- 2.9 For the remainder of the Brexit transition period, a VSP is under UK jurisdiction for the purposes of AVMSD if it is established within the UK under the [eCommerce Directive](#). The concept of “establishment” involves the effective pursuit of an economic activity relating to the provision of the service concerned, or a dissociable section of a service, through a fixed establishment in the UK. If a VSP provider is established in both the UK and one or more EU member states,⁶ it will fall under UK jurisdiction if the centre of its activities relating to the service, or the dissociable section of the service, is in the UK.
- 2.10 If a VSP provider is not established in the UK or in an EU member state under the terms of the eCommerce Directive, its service may still be under UK jurisdiction if it has a parent or subsidiary company in the UK, or if it is part of a group and another undertaking in that group is established in the UK. Where the parent undertaking, the subsidiary undertaking or the other undertakings in the group of a VSP are established across the UK and one or more EU member states, the AVMSD sets out a hierarchy of factors that will determine whether the VSP will fall under the jurisdiction of the UK or an EU member state.
- 2.11 The Government laid a “fixing” statutory instrument on 15 October 2020, amending Part 4B of the Act, clarifying when a VSP will fall under UK jurisdiction after the end of the Brexit transition period.⁷ The statutory instrument broadly reflects the AVMSD jurisdictional provisions set out above. Specifically, the instrument provides that after the end of the Brexit transition period, a VSP will fall under UK jurisdiction where it has the required connection with the UK. This will be in either of two cases:
- a) Where a VSP provides the service, or the dissociable section of the service, using a fixed establishment in the UK for an indefinite period and effectively pursues an

⁶ Following incorporation of the AVMSD into the EEA Agreement, the VSP regime will apply to EEA countries. We understand this process to be ongoing. See the [EFTA AVMSD status update](#).

⁷ See <https://www.legislation.gov.uk/ukdsi/2020/9780348213652>

economic activity in doing so.⁸ If the VSP is also established in an EU member state,⁹ the VSP will fall under UK jurisdiction if the centre of its economic activity relating to the relevant service or dissociable section is in the UK; or

- b) Where a VSP is not established in the UK in the above sense, and no EU member state has jurisdiction under the AVMSD, it will still fall under UK jurisdiction if it has a group undertaking established in the UK.¹⁰

2.12 We will update this guide to reflect any further changes made to the rules that will apply after the end of the transition period to determine UK jurisdiction.

2.13 Providers are responsible for assessing whether they operate a service which is likely to fall under the scope of the new regime and is within UK jurisdiction. We expect to publish guidance to help services understand if they meet the definition of a VSP and are within UK jurisdiction later this year.

What are the main requirements on VSPs?

2.14 The main purpose of the new VSP regime is to ensure that providers take appropriate measures to protect consumers who engage with these services from the risk of viewing harmful content.

Protecting users from harm

2.15 VSP providers must take such of the measures listed in the legislation as are appropriate for the following purposes:

- a) Protecting persons under the age of 18 from videos and adverts containing **restricted material**.

Restricted material refers to videos which have or would be likely to have an R18 certificate, or which have been or would likely be refused a certificate.¹¹ It also means other material that might impair the physical, mental or moral development of persons under the age of 18.

- b) Protecting the general public from videos and adverts containing **relevant harmful material**.

⁸ The presence and use of the technical means and technologies required to provide the service, or the dissociable section of the service, will not in themselves constitute an establishment.

⁹ The provisions in the fixing SI relating to EU member states will also apply to EEA member states once the AVMSD extends to them. See footnote 6 above.

¹⁰ The term “group undertaking” refers to a VSP provider’s parent undertaking or subsidiary undertaking, a subsidiary of a VSP provider’s parent undertaking, and any undertaking with economic and legal organizational links to a VSP.

¹¹ Certificate here refers to ‘classification certificate’ which has the same meaning as in the Video Recordings Act 1984. See [BBFC Guidelines on Classification](#) (pages 28 – 31) for more information on R18 certificates and the refusal to classify works.

Relevant harmful material refers to any material likely to incite violence or hatred against a group of persons or a member of a group of persons based on particular grounds.¹²

It also refers to the inclusion of any material which would be a criminal offence under laws relating to terrorism, child sexual exploitation or racism and xenophobia.

- c) Ensuring adverts on VSPs comply with specific advertising requirements around transparency, prohibited or restricted material, as well as with general advertising requirements (see paragraphs 4.20 – 4.27).
- 2.16 Whether a measure is appropriate must be determined by whether it is practicable and proportionate. For these purposes, VSP providers must take into account factors such as the size and nature of the service, the type of harm that may be caused, the characteristics of those whom the measure is intended to protect (e.g. persons under the age of eighteen or any other category of user) and rights to freedom of expression (see paragraphs 4.2 – 4.3).

Out-of-court dispute resolution

- 2.17 VSP providers are required to provide for an impartial out-of-court procedure for the resolution of disputes between users and the provider relating to:
- a) the implementation of appropriate measures, or
 - b) a decision to take, or not to take, any such measure.
- 2.18 The procedure must not affect the ability of a user to bring a claim in civil proceedings.
- 2.19 Note that this requirement to provide an out-of-court dispute resolution mechanism is separate to the measure set out at paragraphs 4.17 – 4.18 below, where a VSP provider must, where appropriate, establish and operate a complaints function for users to raise concerns with specific measures taken by the provider to protect users from harm, namely around reporting or flagging, age assurance, rating systems or parental controls. In contrast, this dispute resolution mechanism must cover the taking, failure to take, or execution of any of the appropriate measures listed in the legislation and set out at paragraphs 4.9 – 4.19.

¹² The particular 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, sexual orientation, or nationality (as referred to in Article 21 of the [Charter of Fundamental Rights of the European Union](#) of 7 December 2000).

3. Ofcom's approach to VSP regulation

What we expect from VSPs

- 3.1 VSP providers are bound by the regulation from 1 November 2020, when the new provisions come into force. From that date, providers will have a responsibility to ensure measures are in place to protect users from harmful material.
- 3.2 Initially, companies need to consider whether they are providing a service which is likely to fall under the scope of the new regime. We expect VSP providers who believe their service is in scope to conduct risk assessments to review the risk of harms to its users and assess any existing measures against the new regulatory requirements. This includes assessing measures against the criteria set out at paragraphs 4.2 – 4.3 below, including taking into account the rights and legitimate interests at stake, such as the right to freedom of expression.
- 3.3 Ofcom understands that some providers will already have in place some of the measures set out in Section 4 below, but also that some of the functionality measures and other administrative requirements such as redress mechanisms may take some time to set up.
- 3.4 Where existing measures require strengthening, or new measures are to be implemented, we expect VSP providers to begin by prioritising compliance measures which are likely be most effective at protecting users from harmful material, such as updating and enforcing terms and conditions which reflect the areas of harm in the Directive, and ensuring children are not able to access restricted material.
- 3.5 We expect VSP providers to regularly review the effectiveness of any measures they have implemented and update these accordingly.
- 3.6 Ofcom will be seeking to engage with VSP providers as we start to understand existing practices and monitor how providers are complying with the new requirements. We will work with VSP providers to ensure they understand the steps they must take to comply with their new regulatory obligations and to learn from different approaches we observe.

How we will develop our guidance on harms and measures

- 3.7 By engaging with Ofcom, VSP providers will have the opportunity to shape our guidance on the risk of harms and the measures appropriate for mitigating those risks. Collaboration with industry and other relevant stakeholders during this period will be critical to ensuring Ofcom's guidance is informed by platform capabilities, existing good practice and reflective of the fast pace of evolving technologies. Our conversations with industry will focus on understanding the prevalence and risk of harmful content on VSPs and the measures VSP providers are currently taking to protect their users.
- 3.8 Our guidance will set out examples of the types of content that Ofcom considers might impair the physical, mental or moral development of children, including those with the potential to cause the most harm. Ofcom will also look to provide more detail on the types

of measures most appropriate for protecting against different types of harm and refer to examples of good practice where possible. In addition, Ofcom will provide some guidance on what we would expect a VSP provider's risk assessment of their service to include.

Our approach to enforcement

- 3.9 Our focus in the early regulatory period will be on working with providers to help them understand the new obligations and discuss any steps that are needed for them to come into compliance. While Ofcom will have the power to take formal enforcement action from 1 November 2020, we expect to prioritise only the most serious potential breaches for formal enforcement action until our full guidance is published next year.
- 3.10 The new regime is focussed on whether a VSP provider has taken and implemented appropriate measures to reduce or prevent the risk of harm. Individual occurrences of illegal or harmful content will not necessarily result in us initiating formal enforcement action. However, we will not be precluded from doing so if they highlight a systemic failing in the measures taken by a platform.
- 3.11 As part of any investigation into a potential breach, Ofcom will take into account how thorough a VSP provider's risk assessment of its service is; how decisions are taken to protect users from harm; and how the VSP provider monitors the effectiveness of the measures it has implemented (and makes improvements where appropriate).
- 3.12 We are currently reviewing our enforcement processes and whether we need to update these to reflect the new provisions. In the meantime, any action we take will be in line with our existing [enforcement guidelines for regulatory investigations](#).

4. Appropriate measures

- 4.1 VSP providers must take such of the measures specified in the legislation (see paragraphs 4.8 onwards), as are appropriate to protect children from restricted material and the general public from relevant harmful material.¹³

Practicable and proportionate criteria

- 4.2 The legislative framework sets out the following criteria that providers must take into account when determining whether it is practicable and proportionate to take one or more of the measures specified:¹⁴
- a) the size and nature of the VSP;
 - b) the nature of the material in question;
 - c) the harm the material in question may cause;
 - d) the characteristics of the category of persons to be protected (for example, children);
 - e) in relation to adverts that are not marketed, sold or arranged by a person providing a VSP, the fact that the provider exercises limited control over such communications;
 - f) the rights and legitimate interests at stake, including those of the person providing the video-sharing platform service and the persons having created or uploaded the material, as well as the general public interest. This includes rights to freedom of expression and privacy rights;
 - g) any other measures which have been taken or are to be taken.
- 4.3 When determining whether a measure is appropriate to protect children from restricted material, VSP providers must apply the principle that restricted material that has the most potential to harm the physical, mental or moral development of children (such as pornography or gratuitous depictions of violence) must be subject to the strictest access control measures.¹⁵
- 4.4 Depending on the size and nature of their service, VSP providers are likely to require different measures to protect users from harm. Ofcom welcomes engagement with VSP providers on the different measures that may be appropriate given a service's individual characteristics.
- 4.5 Ofcom suggests that VSP providers who believe they are in scope of the regulation conduct risk assessments to determine the level of risk to users on their service. They should also consider the effectiveness, or likely effectiveness, of any existing or proposed measures in

¹³ See Schedule 15A of the Act

¹⁴ See section 368Z1(4) of the Act

¹⁵ See section 368Z1(5) of the Act

providing protection to users. We suggest providers begin to collect and retain information on the risk of harm on their service and the effectiveness of their measures.¹⁶

4.6 As part of any risk assessments, VSP providers may want to consider the following:

- a) Assessing the types and characteristics of users accessing the VSP and their potential to experience harm from hosted content;
- b) Reviewing the user experience when visiting the VSP and interactions with potentially harmful content, including the effectiveness of age-gating measures;
- c) Reviewing the nature of the content that has been previously flagged or removed due to being harmful, in order to improve identification processes;
- d) Assessing the amount and type of content that has been flagged or removed, in order to assess trends.

4.7 This list of potential activities is provided by way of illustration only. Providers will need to consider which of the measures listed below are appropriate to their own particular circumstances by reference to the criteria set out at paragraph 4.2 above. Ofcom's guidance on harms and measures will include further suggestions for what VSP providers could include in their risk assessments.

Appropriate measures for the purposes of protecting users from harm

4.8 It is important to note that, where a VSP takes any of the measures set out below, they must implement these in such a way that protects children and the general public from harmful material and ensures that any adverts meet the relevant advertising requirements. The measures in the legislation are summarised below.¹⁷

Terms and conditions

4.9 Include terms and conditions to the effect that if a person uploads a video that contains any restricted material, that person must bring it to the attention of the VSP provider.¹⁸

4.10 Include terms and conditions to the effect that a person must not upload a video containing relevant harmful material.

4.11 Include terms and conditions about the requirements of adverts on the platform (see below for advertising requirements).

¹⁶ This does not impose on a VSP provider a general obligation to monitor the information which they transmit or store. See paragraph 5.8

¹⁷ See Schedule 15A of the Act

¹⁸ Terms and conditions in the context of VSP regulation may include community guidelines, community standards, rules, or other terms of using the service.

Functionality

- 4.12 Provide the functionality for someone uploading a video to declare whether the video contains an advert.
- 4.13 Establish and operate transparent and user-friendly mechanisms for viewers to report or flag harmful material and provide explanations to users about any action taken in response to material that has been reported or flagged by viewers.
- 4.14 Establish and operate systems for obtaining assurance as to the age of potential viewers. The principle set out above at paragraph 4.3 is particularly relevant here, where VSP providers must ensure that restricted material that has the most potential to harm the physical, mental or moral development of children must be subject to the strictest access control measures.
- 4.15 Establish and operate easy to use systems allowing viewers to rate harmful material.
- 4.16 Provide for parental control systems in relation to restricted material.

Complaints

- 4.17 Establish and operate a complaints procedure in relation to the implementation of:
 - a) reporting or flagging mechanisms and in relation to the outcome of any action taken in response;
 - b) age assurance systems and rating systems; and
 - c) parental controls in relation to restricted material.
- 4.18 This must be transparent, easy to use and effective, and must not affect the ability of a person to bring a claim in civil proceedings.

Media literacy

- 4.19 Provide information and tools for users with the aim of improving their media literacy and raise awareness of the availability of such information and tools. Ofcom has published research and information on media literacy which can be found on our [Making Sense of Media page](#).

Additional requirements in relation to advertising

- 4.20 As set out above, the requirements placed on VSP providers with regard to restricted material and relevant harmful material in videos apply to adverts as well. In addition, there are specific requirements in relation to advertising.
- 4.21 The legislation recognises that VSP providers may exercise differing degrees of control over the advertising that appears on their services. Where VSP providers market, sell or arrange advertising themselves, they are directly responsible for compliance with the requirements

summarised below under the headings “Prohibited and restricted products” and “General advertising requirements”.

- 4.22 Where they do not market, sell or arrange advertising themselves, VSP providers must include terms and conditions requiring users who upload videos that include advertising to comply with the same set of requirements. There are also requirements relating to transparency, which apply to all advertising.
- 4.23 Ofcom is developing its approach to the distinction between advertising that is and is not marketed, sold or arranged by VSP providers, and will provide further information on this area in early 2021. We will also consult on the regulatory regime for enforcing the requirements placed on VSP providers for advertising that is under their control (i.e. where they are directly responsible for compliance). As part of this we are preparing to consult on designating the Advertising Standards Authority as a co-regulator in relation to this aspect of advertising regulation. This guide focuses on the advertising requirements that are covered by the provision of appropriate measures.

Transparency of advertising

- 4.24 Where a person uploading a video to a VSP uses the functionality referred to in paragraph 4.12 above to declare that the video contains an advert, or the VSP provider knows that such a video contains an advert, the provider must clearly inform viewers that the video contains an advert.

Prohibited and restricted products

- 4.25 Adverts for the following are prohibited: cigarettes and other tobacco products; electronic cigarettes and electronic cigarette refill containers; or any prescription-only medicine.
- 4.26 Adverts for alcoholic drinks must not be aimed at children and must not encourage immoderate consumption of alcohol. They must also comply with the general advertising requirements below.

General advertising requirements

- 4.27 Adverts for anything else not listed above can only be included in the service if they meet the following requirements:
- a) Adverts included on a VSP must be readily recognisable as such and must not use techniques which exploit the possibility of conveying a message subliminally or surreptitiously.
 - b) Adverts on a VSP must not prejudice respect for human dignity; include or promote discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation; encourage behaviour prejudicial to health or safety; or encourage behaviour grossly prejudicial to the protection of the environment.

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- c) Adverts on a VSP must not cause physical, mental or moral detriment to persons under the age of 18; directly exhort such persons to purchase or rent goods or services in a manner which exploits their inexperience or credulity; directly encourage such persons to persuade their parents or others to purchase or rent goods or services; exploit the trust of such persons in parents, teachers or others; or unreasonably show such persons in dangerous situations.

5. FAQs

When will Ofcom be providing more guidance on VSP regulation?

- 5.1 Ofcom expects to consult on guidance about scope and jurisdiction later in 2020 and to publish before April 2021, at which point VSP providers will need to notify Ofcom.
- 5.2 Ofcom expects to consult on guidance on harms and appropriate measures early in 2021, with a view to publishing in summer 2021.
- 5.3 Guidance regarding advertising requirements, as well as the enforcement regime for advertising on VSPs, will be consulted on in early 2021 and published by summer 2021.

Will Ofcom be regulating all VSPs?

- 5.4 No, Ofcom will be responsible for regulating only UK-based VSPs. Under the Audiovisual Media Services Directive criteria for determining the jurisdiction of VSPs, it is likely that some of the most popular VSPs, such as YouTube and Facebook, will fall within Ireland's jurisdiction.

How will Ofcom be monitoring VSPs compliance?

- 5.5 Ofcom is developing its approach to monitoring VSP providers' compliance. In the early regulatory period, we will engage with VSP providers and wider industry regularly and conduct ongoing research on user experiences.

Will VSP providers need to notify Ofcom?

- 5.6 From 6 April 2021 existing VSP providers are required to notify Ofcom of their services. Notifications must be made to Ofcom by 6 May 2021. Later this year we will be consulting on further guidance designed to help providers understand if their service meets the definition of a VSP and is within UK jurisdiction and what they need to do to notify to the service to Ofcom. In the meantime, VSP providers should use the criteria in legislation (summarised above) to assess whether they fall under the scope of the UK regulations.

Will VSP providers need to pay a fee?

- 5.7 VSP providers will be expected to pay a regulatory fee each financial year from April 2022. Before finalising the regulatory fee structure, Ofcom will carry out a consultation with industry to ensure it is appropriate and proportionate.

Does the regulation require VSPs to monitor information?

- 5.8 The requirement to implement the measures set out in the legislation is not to be regarded as imposing on a provider of a video-sharing platform service a general obligation to

monitor the information which they transmit or store, nor a general obligation actively to seek facts or circumstances indicating illegal activity.¹⁹

What happens at the end of the Brexit transition period?

- 5.9 The implementation of the revised AVMSD is required as part of the UK's obligations arising from its membership of the European Union (EU) and the Withdrawal Agreement. From January 2021 onwards (after the end of the transition period) the VSP framework will continue to apply²⁰ until the Online Harms regime comes into force and supersedes the VSP regime.
- 5.10 A "fixing" statutory instrument was laid on 15 October 2020 clarifying when a VSP will fall under UK jurisdiction after the end of the Brexit transition period. See paragraph 2.11 for more information.
- 5.11 We understand the Government intends to lay a further "fixing" statutory instrument later this year, which will detail the technical fixes required after the transition period.

What will the Online Harms regime mean for VSP regulation?

- 5.12 We understand the Government's intention is that VSP regulation will be in place until such time as the new Online Harms regime comes into force. Ofcom will ensure that there is support for services when transitioning from one regime to the next.

How do I contact Ofcom?

- 5.13 If you would like to get in touch with Ofcom about the new regime, please contact VSPRegulation@ofcom.org.uk.

¹⁹ This reflects the position set out in Article 15(1) of the e-commerce Directive (Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market).

²⁰ As it is 'retained EU law'.