Draft Regulations laid before Parliament under section paragraph 1(3) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2021 No.

ELECTRONIC COMMUNICATIONS

BROADCASTING

The Audiovisual Media Services (Amendment) Regulations 2021

Made - - - - ***

Coming into force in accordance with regulation 1(2) and (3)

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018(**a**).

In accordance with paragraph 1(3) of Schedule 7 to the European Union (Withdrawal) Act 2018, a draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Audiovisual Media Services (Amendment) Regulations 2021.

(2) These Regulations, with the exception of regulations 7 and 14, come into force on the day after the day on which they are made.

(3) Regulations 7 and 14 come into force—

(a) on the day after the day on which these Regulations are made, or

(b) immediately after the beginning of 6th April 2021,

whichever is the later.

(4) In these Regulations, "the 2003 Act" means the Communications Act 2003.

Amendment of the Broadcasting Act 1990

2. In section 202(1) of the Broadcasting Act 1990 (general interpretation)(**b**), omit the definition of "the Audiovisual Media Services Directive".

(**a**) 2018 c. 16; section 8 was amended by section 27 of the European Union (Withdrawal Agreement) Act 2020 (c. 1) and paragraph 21 was amended by paragraph 53 of Schedule 5 to that Act.

(**b**) 1990 c. 42; the definition of "the Audiovisual Media Services Directive" was substituted by S.I. 2020/1062.

Amendment of the Broadcasting Act 1996

3. In section 105(1) of the Broadcasting Act 1996 (interpretation of Part 4)(**a**), in the definition of "the Audiovisual Media Services Directive", at the end insert "as it has effect in EU law from time to time".

Amendment of the 2003 Act

4. The 2003 Act(**b**) is amended in accordance with regulations 5 to 18.

5. In section 335B (maintenance of list of providers)—

(a) in subsection (1), for the words after paragraph (b) substitute "which are subject to regulation by OFCOM as a result of one of the provisions listed in subsection (1A)";

(b) after subsection (1) insert—

"(1A) The provisions are—

(a) section 198 (regulation of the BBC by OFCOM);

(b) section 203 (regulation of the Welsh Authority by OFCOM);

(c) section 211 (regulation of independent television services).";

(c) omit subsection (2);

(d) for subsection (3) substitute—

"(3) OFCOM must publish the up to date list on a publicly accessible part of their website.";

(e) in subsection (4)—

(i) after "subsection (1)" insert "(other than any service provided by the BBC or the Welsh Authority)";

(ii) for the words from "the determination of jurisdiction" to the end substitute "whether or not the service falls to be regulated by OFCOM under section 211".

6. In section 368BZA (maintenance of list of providers)—

(a) omit subsection (2);

(b) for subsection (3) substitute—

"(3) OFCOM must publish the up to date list on a publicly accessible part of their website.".

7. In section 368BA(4) (meaning of "significant differences") for the words from "the determination" to the end substitute "whether or not paragraphs (e) and (f) of section 368A(1) are satisfied".

8. In section 368CB (quota for European works)—

(a) in subsection (7), in the definition of "European works", after "Services Directive" insert "as it has effect in EU law as amended from time to time";

(b) in subsection (8), at the end insert "as amended from time to time".

9. In section 368D(2)(ca) (duties of service providers), for the words from "under the jurisdiction" to the end substitute "subject to regulation by the appropriate regulatory authority as a result of section 368A(1)(e) and (f)".

10. In section 368E (harmful material)—

(a) in subsection (1), for the words from "of the grounds" to the end substitute "ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief,

(**a**) 1996 c. 55; the definition of "the Audiovisual Media Services Directive" was substituted by S.I. 2020/1062.
(**b**) Relevant amendments to the 2003 Act were made by S.I. 2009/2979, 2010/419, 2014/2916 and 2020/1062.

political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation";

(b) before subsection (3)(za) insert—

"(zza) material the inclusion of which in an on-demand programme service would be an offence under section 1 of the Terrorism Act 2006 (encouragement of terrorism)(**a**);";

(c) in subsection (3)(za)—

(i) for "would be conduct" substitute "is conduct of a kind that, immediately before IP completion day, would have been";

(ii) omit sub-paragraph (i).

11. For section 368OA (co-operation with member States and the European Commission), substitute—

"**368OA Co-operation with EEA States**

OFCOM may co-operate with EEA states which are subject to the Audiovisual Media Services Directive, and with the national regulatory authorities of such EEA states, for the following purposes—

(a) facilitating the carrying out by OFCOM of any of their functions under this Part; or

(b) facilitating the carrying out by the national regulatory authorities of the EEA states of any of their functions in relation to on-demand programme services under the Directive as it has effect in EU law as amended from time to time.".

12. Omit section 368Q(6)(b) (compliance with obligations under the Audiovisual Media Services Directive in relation to the Welsh Authority).

13. In section 368U (maintenance of list of providers)—

(a) omit subsection (2);

(b) for subsection (3) substitute—

"(3) OFCOM must publish the up to date list on a publicly accessible part of their website.".

14. In section 368V(4) (meaning of "significant differences"), for the words from "the determination of jurisdiction" to the end substitute "whether or not the person has the required connection with the United Kingdom under section 368S(2)(d)".

15. In section 368Y(2)(d) (information to be provided by providers of video-sharing platform services), for the words from "under the jurisdiction" to the end substitute "subject to regulation by the appropriate regulatory authority as a result of having the required connection with the United Kingdom under section 368S(2)(d)".

16. In section 368Z1(3) (duty to take appropriate measures), for the words from "of the description" to the end substitute "to monitor the information which they transmit or store, or actively to seek to discover facts or circumstances indicating illegal activity".

17. In section 368Z10(3)(a) (power to demand information), for the words from "falls under" to the end substitute "is subject to regulation by the appropriate regulatory authority as a result of having the required connection with the United Kingdom under section 368S(2)(d)".

18. For section 368Z12 (co-operation with member States and the European Commission) substitute—

"**368Z12 Co-operation with EEA States**

(**a**) 2006 c. 11; section 1 was amended by sections 5 and 7 of the Counter-Terrorism and Border Security Act 2019 (c. 3).

OFCOM may co-operate with EEA states which are subject to the Audiovisual Media Services Directive, and with the national regulatory authorities of such EEA states, for the following purposes—

(a) facilitating the carrying out by OFCOM of any of their functions under this Part; or

(b) facilitating the carrying out by the national regulatory authorities of the EEA states of any of their functions in relation to video-sharing platform services under the Directive as it has effect in EU law as amended from time to time.".

Name
Parliamentary Under Secretary of State
Date Department for Digital, Culture, Media and Sport

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers in section 8 of the European Union (Withdrawal) Act 2018 (c. 16) in order to address failures of retained EU law to operate effectively and other deficiencies (in particular, deficiencies falling within subsection (2)(a), (c), (d) and (g) of section 8) arising from the withdrawal of the United Kingdom from the European Union.

Regulations 5, 6 and 13 amend the requirements for OFCOM to maintain up to date lists of providers of audiovisual media services (i.e. linear television services, on-demand programme services and video-sharing platform services) in the United Kingdom, so that the lists and updates to them no longer have to be notified to the European Commission. Instead OFCOM must publish the lists on their website.

Regulations 11 and 18 replace duties on OFCOM to co-operate with EEA States and the European Commission with a power for OFCOM to co-operate with EEA States subject to the Audiovisual Media Services Directive, and with their national regulatory authorities, for certain purposes.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private or voluntary sector is foreseen.

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