EXPLANATORY MEMORANDUM TO

THE ON-DEMAND PROGRAMME SERVICES (TIER 1 SERVICES) REGULATIONS 2026

2026 No. 235

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department for Culture, Media and Sport and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Ian Murray, Minister of State for Creative Industries, Media and Arts at the Department for Culture, Media and Sport, confirms that this Explanatory Memorandum meets the required standard.

2.2 Mark Griffin, Deputy Director for TV and Broadcasting at the Department for Culture, Media and Sport, confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Jason Cotton at the Department for Culture, Media and Sport can be contacted by email at the following address with any queries regarding the instrument: enquiries@dcms.gov.uk.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 These Regulations specify a description of on-demand programme services, or non-UK on-demand programme services, as Tier 1 services for the purposes of Chapter 3 of Part 4A of the Communications Act 2003

Where does the legislation extend to, and apply?

4.2 The extent of this instrument (that is, the jurisdictions which the instrument forms part of the law of) is England, Wales, Scotland, and Northern Ireland.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the United Kingdom.

5. Policy Context

What is being done and why?

5.1 Video-on-demand (VoD) services (referred to as on-demand programme services, "ODPS", in legislation) deliver enormous value to audiences in the United Kingdom. Collectively, they offer the choice of hundreds of thousands of hours of TV-like content, available on-demand across hundreds of services. These services are increasingly popular and are often used interchangeably with traditional linear broadcast television.

5.2 Broadcast services (television and radio) are subject to Ofcom's Broadcasting Code, which sets appropriate standards for content and includes important protections for audiences against harmful and offensive material, due accuracy and impartiality in news, fairness, and privacy. However, VoD services, other than BBC's iPlayer, are not subject to Ofcom's Broadcasting Code.

5.3 Instead, UK-based VoD services must comply with the requirements in Part 4A of the Communications Act 2003 as set out in Ofcom's ODPS Rules and Guidance.[1] While these do include some audience protections (for example, by prohibiting material likely to incite violence or hatred, and protections for under-18s), they are not as extensive as the Broadcasting Code and Ofcom will not normally consider a complaint about a programme on a VoD service unless a complaint is made to the provider first. VoD services based outside of the UK are currently unregulated in the UK, meaning there is limited recourse for audiences if they encounter something which concerns them.

5.4 Similarly, while licensed TV broadcasters are required to meet minimum quotas for accessibility services such as subtitles, audio description, and sign language provision, current requirements for VoD services are less extensive. Under Part 4A of the Communications Act 2003, ODPS providers do not have specific targets for accessibility services. Instead, Ofcom has a duty to encourage providers of ODPS to develop accessibility action plans, with a view to continuously and progressively making such services more accessible to people with disabilities. While Ofcom has published best practice guidelines, a lack of mandatory targets has led to inconsistency across the VoD sector and an accessibility gap between VoD and broadcast television.

5.5 Given the similarities in content offerings between non-UK VoD services, UK VoD services, and traditional broadcast television, audiences may reasonably expect similar standards and rules to apply in terms of audience protections and accessibility.

5.6 Accordingly, the Media Act 2024 amended Part 4A of the Communications Act 2003 to introduce a new regulatory regime for "Tier 1 services". Tier 1 services include VoD services provided by a public service broadcaster (PSB), apart from the BBC, that are being used to contribute to the fulfilment of its public service remit, and services specified by these Regulation, specifically, any UK or non-UK VoD service which has an average number of monthly UK users that exceeds 500,000.

5.7 A person who uses a UK or non-UK VoD service via a user-to-user service (such as a channel on a video-sharing platform) is not a UK user for the purposes of considering whether the 500,000 threshold has been met. While there are some ODPS notified to Ofcom which are channels on video-sharing platforms, the majority of these types of services are small and do not provide TV-like content, and imposing Tier 1 service requirements on these services would not be proportionate. This is particularly important with the case of viral content, where short videos can receive millions of views in a very short period of time.

5.8 However, a person who uses a VoD service provided by a PSB, other than the BBC, via a user-to-user service is a UK user for this purpose. This is because these services are much more likely to carry TV-like content (much of which will already have been broadcast by the PSB on television). Further, as outlined above, the Communications Act 2003 provides that any VoD service being used by a PSB, apart from the BBC, to contribute to the fulfilment of its public service remit is a Tier 1 service. Exempting a

[1] Available at: https://www.ofcom.org.uk/tv-radio-and-on-demand/video-on-demand/rules-guidance

person who uses a PSB VoD service via a user-to-user service would therefore be inconsistent with that provision.

5.9 VoD services provided by the BBC, such as BBC iPlayer, are not Tier 1 services. They continue to be regulated under the Broadcasting Code via the BBC Framework Agreement. In due course it is the intention that the Framework Agreement will be amended in order to bring BBC UK VoD services under the Tier 1 standards code (see below).

5.10 Tier 1 services will be required to comply with a new VoD standards code which will be similar to the Broadcasting Code and will set appropriate standards and rules to protect audiences. Tier 1 services will also be required to comply with a new VoD accessibility code, which will contain quotas for subtitles, audio description, and sign language provision. These will align with the statutory requirements in place for linear broadcast television. Ofcom will consult on, draft, and enforce these codes after designation, and is required to keep them under review. Section 368HE of the Communications Act 2003 also sets out that non-UK Tier 1 services will need to comply with certain requirements set out in the ODPS Rules and Guidance. Specifically, rules related to providing certain information to users of the service, notifying their service to Ofcom, prohibiting certain harmful material, and rules around advertising and sponsorship.

5.11 UK-based VoD services that are not designated Tier 1 (i.e. because they do not meet the 500,000 UK user threshold) will continue to be regulated only under the requirements set out in Ofcom's existing ODPS Rules and Guidance.

5.12 The aim of the policy is to bring the largest, most popular VoD services under enhanced regulation by Ofcom and, for non-UK services, within Ofcom's remit for the first time. As a result of these Regulations, the largest VoD services which engage UK audiences at scale will be subject to similar obligations as UK broadcasters, meaning audiences will benefit from a similar level of audience protections and accessibility features as they already expect when viewing broadcast TV.

What was the previous policy, how is this different?

5.13 Previously, the only content the only content standards regulation which applied to VoD services in the UK were the requirements set out in the ODPS Rules and Guidance. These include protections against the most extreme audience harms, but they only apply to UK-based services and are not as robust as the rules which apply to broadcast television services. Ofcom will also not normally consider a complaint under the ODPS Rules unless the complainant has followed the service's own complaints procedure first.

5.14 Through these Regulations, the most popular mainstream UK and non-UK VoD services will be designated as Tier 1 services, bringing them under enhanced regulation by Ofcom. Audiences will be able to complain to Ofcom if they see something on a Tier 1 service which concerns them, and Ofcom has powers to apply statutory sanctions, such as financial penalties, against these services. The Government has taken a proportionate approach to regulation by setting a threshold of 500,000 UK users, meaning smaller UK-based services will continue to be regulated only under the requirements set out in the existing ODPS Rules and Guidance. The Government will keep this threshold under review, and further detail regarding the Government's considerations in reaching this decision are outlined in paragraphs 6.3 and 6.4, below.

6. Legislative and Legal Context

How has the law changed?

6.1 Part 4 of the Media Act 2024 amended Part 4A of the Communications Act 2003 by introducing a definition of a non-UK ODPS. It also inserted Chapter 3 of Part 4A, which includes provisions for determining when a UK or a non-UK ODPS is a Tier 1 service, and how Tier 1 services are to be regulated.

6.2 Section 368HA of the Communication Act 2003 defines "Tier 1 service" as an ODPS that is being used by a PSB, other than the BBC, to contribute to the fulfilment of its public service remit and services specified by regulations under section 368HB.

6.3 Section 368HB of the Communications Act 2003 grants power to the Secretary of State to specify Tier 1 services, either by description or by specifying (naming) them in regulations. Before making these Regulations, the Secretary of State must request that Ofcom produce a report on the operation of the ODPS market in the UK, and must have regard to the contents of that report. The Secretary of State commissioned such a report on 17 September 2024, and it was provided by Ofcom to the Secretary of State on 30 May 2025. This report has not been published as it contains confidential, market sensitive information which may be shared by Ofcom with the Secretary of State but may not be further shared (whether by Ofcom or the Secretary of State), as set out in section 368HB(10).

6.4 The Secretary of State has considered the contents of Ofcom's report as required under section 368HB, and is satisfied that the approach taken in these Regulations is appropriate, and that Tier 1 services designated through these Regulations will reasonably be able to comply with the relevant duties and requirements of Tier 1 services.

6.5 These are the first regulations made under section 368HB. Regulation 2 specifies that an ODPS or a non-UK ODPS is a Tier 1 service if it has an average number of monthly UK users that exceeds 500,000. Regulation 2 also sets out that any ODPS provided by the BBC is not a Tier 1 service (see paragraph 5.8).

6.6 Regulation 3 defines a "user" of an ODPS or non-UK ODPS and also provides that a person who accesses such a service via a user-to-user service (as defined in section 3(1) of the Online Safety Act 2023) is not a user for the purposes of these Regulations. But this exception does not apply to a person who accesses an ODPS provided by a PSB, other than the BBC, via a user-to-user service (see paragraph 5.7).

Why was this approach taken to change the law?

6.7 This is the only possible approach to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

7.1 The Department for Culture, Media and Sport engaged extensively with industry during and after public consultation and during the passage of the Media Act 2024, which introduced these powers.

7.2 As required by section 368HB(5) of the Communications Act 2003, before making these Regulations, the Secretary of State has considered and had regard to the content of a report from Ofcom on the operation of the market in the UK for ODPS and non-UK ODPS.

7.3 In accordance with section 368HB(3) of the Communications Act 2003, on 24 February 2026 the Secretary of State published a description of the services which were proposed to be specified as Tier 1 services, which is available at: https://www.gov.uk/guidance/statement-on-designation-of-tier-1-video-on-demand-vod-services.

7.4 Ofcom has a duty to prepare and publish a code containing standards with which Tier 1 services must comply, and a code imposing accessibility requirements on Tier 1 services. In preparing these codes, Ofcom must consult those representing potential audiences of services, those representing the interests of people with disabilities, providers of Tier 1 services, and any other persons Ofcom considers may have an interest in the codes. For the purposes of that consultation, Ofcom must also publish a draft of those codes.

8. Applicable Guidance

8.1 Ofcom will consult on, draft, and enforce the VoD standards and accessibility codes. Ofcom can also publish relevant guidance for Tier 1 services to assist with services' understanding and interpretation of the relevant rules and duties.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because of the low level of impact. On this basis, a proportionate analysis has been undertaken by the Department for Culture, Media and Sport to assess the costs and benefits of the regulation. A de minimis assessment has therefore been prepared and estimated the equivalent annual net direct cost to business to be well below the threshold of £10 million per annum.

9.2 There is no, or no significant, impact on business, charities or voluntary bodies.

9.3 The legislation does not impact small or micro businesses.

9.4 There is no, or no significant, impact on the public sector.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The Department for Culture, Media and Sport will continue to monitor the implementation and impact of this measure on an ongoing basis through engagement with stakeholders and reference to relevant data sources. The Department meets with a wide range of stakeholders regularly and will continue to do so following the designation of Tier 1 services.

10.2 The Secretary of State has powers to designate further services in the future, or to amend the description of services which are Tier 1, should evidence show that this is appropriate. The Department will keep the 500,000 UK user threshold under review.

10.3 Ofcom, as the independent regulator, is responsible for keeping the VoD standards and accessibility codes under review. Under section 368OB of the Communications Act 2003, Ofcom must also carry out a review of audience protection measures used by UK VoD services and non-UK VoD services that are Tier 1.

10.4 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, Ian

Murray, Minister of State for Creative Industries, Media and Arts at the Department for Culture, Media and Sport, has made the following statement:

> "A statutory review clause is not necessary, as there is not expected to be a significant annualised net impact on business and there are no other factors that would make it desirable to have a review clause. The Department for Culture, Media and Sport will continue to monitor the implementation and impact of this measure on an ongoing basis through engagement with stakeholders and reference to relevant data sources."

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 As the instrument is subject to negative procedure and does not amend primary legislation, no statement is required.

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").