

Amendments of primary legislation

3. Schedule 1 contains amendments of primary legislation.

Amendments of subordinate legislation

4. Schedule 2 contains amendments of subordinate legislation.

Transitional provision relating to EEA broadcasters

5.—(1) This regulation applies to a television licensable content service, digital television programme service or digital additional television service which—

- (a) began to be provided before exit day, and
- (b) is provided by a person who—
 - (i) immediately before exit day was for the purposes of the Audiovisual Media Services Directive under the jurisdiction of an EEA State other than the United Kingdom, and
 - (ii) on and after exit day is not for the purposes of the European Convention on Transfrontier Television under the jurisdiction of the United Kingdom, or any other CTT State.

(2) During the 6 months beginning with the day on which exit day falls, the service is to be taken for the purposes of section 211 of the Communications Act 2003 (as amended by Schedule 1) to be an exempt foreign service, whether or not it would be so taken apart from this regulation.

(3) In this regulation, “Audiovisual Media Services Directive” has the meaning given by section 405(1) of the Communications Act 2003(a).

Saving for existing licences

6. Nothing in these Regulations affects the validity of licences to provide television licensable content services, digital television programme services or digital additional television services that are in force immediately before exit day.

Direction under section 23 of Communications Act 2003

7.—(1) This regulation applies to the exercise by OFCOM of a function under the enactments relating to broadcasting so far as the obligations of the United Kingdom under the European Convention on Transfrontier Television are relevant to that function.

(2) In considering for the purposes of Article 3 of the European Convention on Transfrontier Television (field of application), whether a television satellite service provided by a person who is within the jurisdiction of one CTT State can be received, directly or indirectly, in another CTT State (“the relevant State”), OFCOM must treat the service as one that can be so received if, but only if, the service—

- (a) can be received by the general public in all parts of the relevant State using standard consumer equipment, and
- (b) can be accessed in the relevant State by means of an electronic programme guide which—
 - (i) is licensed or otherwise regulated under the law of the relevant State, or
 - (ii) if the relevant State is a State other than the United Kingdom whose law does not regulate the provision of electronic programme guides, is provided by a person whose head office is in the relevant State.

(3) In this regulation—

(a) This definition was inserted by S.I. 2010/1883.

“electronic programme guide” has the meaning given by section 310(8) of the Communications Act 2003;

“television satellite service” means a service which consists of or involves the broadcasting of television programme services from a satellite.

Signed by authority of the Secretary of State for Digital, Culture, Media and Sport

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

SCHEDULE 1 Regulation 3

Amendments of primary legislation

PART 1

Amendments of Broadcasting Act 1990

1. In section 177 of the Broadcasting Act 1990(a) (orders proscribing unacceptable foreign satellite services), in subsection (6)(b), in the definition of “foreign satellite service”, for paragraph (a) (including the “or” at the end) substitute—

“(a) a service which—

- (i) consists wholly or mainly in the transmission by satellite of television programmes which are capable of being received in the United Kingdom,
- (ii) does not fall within subsection (2)(a) or (b) of section 211 of the Communications Act 2003 (regulation of independent television services), and
- (iii) is not provided by the BBC or the Welsh Authority, or”.

PART 2

Amendments of Broadcasting Act 1996

2. The Broadcasting Act 1996(c) is amended as follows.

3. In section 1 (multiplex services and digital programme services), in subsection (4A)(d), for “EEA State” substitute “CTT State”.

4.—(1) Section 12 (conditions attached to multiplex licence) is amended as follows.

(2) In subsection (1)(e)—

- (a) in paragraph (c), for “an EEA broadcaster” substitute “a CTT broadcaster or are exempt Irish services”, and
- (b) in paragraph (d), for “an EEA broadcaster” substitute “a CTT broadcaster or are exempt Irish services”.

(a) 1990 c. 42.

(b) Subsection (6) was substituted by S.I. 1997/1682 and the definition of “foreign satellite service” was substituted by S.I. 1998/3196 and amended by S.I. 2010/1883.

(c) 1996 c. 55.

(d) Subsection (4A) was inserted by S.I. 1998/3196 and substituted by paragraph 74(4) of Schedule 15 to the Communications Act 2003.

(e) Subsection (1)(c) and (d) was amended by section 242(1) of the Communications Act 2003 and by S.I. 1998/3196.

(3) For subsection (3A)(a) substitute—

“(3A) In subsection (1)(c) and (d)—

“CTT broadcaster” means a person who for the purposes of the European Convention on Transfrontier Television is within the jurisdiction of a CTT State other than the United Kingdom;

“exempt Irish service” means a service specified in section 211B(1)(b) of the Communications Act 2003.”.

5. In section 24 (digital additional services), in subsection (1)(b)(ii), for “an EEA State” substitute “a CTT State”.

6. In section 26 (duration and conditions of digital additional services licence), at the end insert—

“(3) A digital additional services licence which authorises the provision of an electronic programme guide (“the guide”) shall also include such conditions as appear to OFCOM to be appropriate for ensuring that, at any time when the guide is a regulated electronic programme guide as defined by section 211A of the Communications Act 2003, the only digital programme services that are listed or promoted by, or which can be accessed through, the guide are digital programme services that—

(a) are provided by or under a licence under this Part, or

(b) do not fall, in pursuance of section 211(1) of the Communications Act 2003, to be regulated by OFCOM.”.

7. In section 39 (interpretation of Part 1), in subsection (1)—

(a) omit the definition of “the Audiovisual Media Services Directive”(b);

(b) after the definition beginning “Channel 4” insert—

““CTT State” means a State which is for the time being a party to the European Convention on Transfrontier Television;”;

(c) after the definition of “digital sound programme service” insert—

““the European Convention on Transfrontier Television” means the Council of Europe Convention on Transfrontier Television which was opened for signature at Strasbourg on 5th May 1989, as amended by the Protocol which was opened for signature at Strasbourg on 1st October 1998;”;

(d) omit the definition of “EEA State”(c).

8. In section 54 (conditions attached to national or local radio multiplex licence), in subsection (1)(ca)(d), for “an EEA broadcaster” substitute “a CTT broadcaster”.

9.—(1) Section 98 (categories of service)(e) is amended as follows.

(2) In subsection (1), omit “and EEA satellite services” in each place where it occurs.

(3) In subsection (5), omit “and EEA satellite services”,

(4) Omit subsection (6).

10.—(1) Section 99 (contract for exclusive right to televise listed event to be void) is amended as follows.

(2) In subsection (3)(a)(f), for the words from “nor to any” to “United Kingdom” substitute “, to any CTT broadcaster or on an exempt Irish service”.

(a) Subsection (3A) was inserted by S.I. 1998/3196 and amended by S.I. 2013/2217.

(b) The definition of “the Audiovisual Media Services Directive” was inserted by S.I. 2013/2217.

(c) The definition of “EEA State” was inserted by S.I. 2013/2217.

(d) Subsection (1)(ca) was inserted by S.I. 2006/2131.

(e) Section 98 was substituted by S.I. 2000/54.

(f) Subsection (3)(a) was substituted by S.I. 2000/54 and amended by S.I. 2013/2217.

(3) After that subsection insert—

“(4) In subsection (3)—

“CTT broadcaster” means a person who for the purposes of the European Convention on Transfrontier Television is within the jurisdiction of a State, other than the United Kingdom, which is for the time being a party to the Convention”;

“exempt Irish service” means a service specified in section 211B(1)(b) of the Communications Act 2003.”.

11.—(1) Section 101A (designated events in relation to other EEA States)(a) is amended as follows.

(2) Renumber the existing text as subsection (1) and in that subsection omit “other than the United Kingdom”.

(3) After that subsection insert—

“(2) For the purposes of this Part, a sporting or other event is a designated event, in relation to a qualifying CTT State, if—

- (a) that State has designated the event in accordance with Article 9bis of the European Convention on Transfrontier Television as being of major importance for society,
- (b) the designation forms part of measures which have been notified by that State under that Article to the Standing Committee set up under Article 20 of the Convention, and
- (c) the event and measures are included in a consolidated list published by the Standing Committee under Article 9bis of the Convention.

(3) In this Part “qualifying CTT State” means a State, other than the United Kingdom, which is for the time being a party to the European Convention on Transfrontier Television but is not an EEA State.”.

(4) In the heading, for “other EEA States” substitute “EEA States or other CTT States”.

12.—(1) Section 101B (restriction on televising of an event designated by other EEA State)(b) is amended as follows.

(2) In subsection (1), omit “other than the United Kingdom”.

(3) After subsection (1) insert—

“(1A) A television programme provider must not, without the previous consent of OFCOM, exercise rights to televise the whole or part of an event which is a designated event, in relation to a qualifying CTT State, for reception in that State or any area of that State, where a substantial proportion of the public in that State is deprived of the possibility of following that event by live or deferred coverage on free television as determined by that State in accordance with Article 9bis of the European Convention on Transfrontier Television.”.

(4) In subsections (2) and (3), after “subsection (1)” insert “or (1A)”.

(5) In the heading, for “other EEA State” substitute “EEA State or other CTT State”.

13.—(1) Section 102 (power of OFCOM to impose penalty) is amended as follows.

(2) In subsections (1) and (2)(c), for “subsection (1) of section 101B” substitute “subsection (1) or (1A) of section 101B”.

(3) In subsection (2A)(d)—

- (a) for “subsection (1) of section 101B” substitute “subsection (1) or (1A) of section 101B”;

(a) Section 101A was inserted by S.I. 2000/54.

(b) Section 101B was inserted by S.I. 2000/54 and amended by S.I. 2013/2217.

(c) Subsections (1) and (2) were amended by S.I. 2000/54.

(d) Subsection (2A) was inserted by S.I. 2000/54.

(b) for “other EEA States)” substitute “EEA States or qualifying CTT States)”.

14.—(1) Section 103 (report to Secretary of State) is amended as follows.

(2) In subsections (1) and (2)(a), for “subsection (1) of section 101B” substitute “subsection (1) or (1A) of section 101B”.

(3) In subsection (2A)(b)—

(a) after “subsection (1)” insert “or (1A)”;

(b) for “other EEA States)” substitute “EEA States or qualifying CTT States)”.

15. In section 104 (code of guidance), in subsection (1)(a) and (b)(c), after “section 101B(1)” insert “or (1A)”.

16. In section 104A (provision of information)(d), in subsections (1) and (2), for “other than the United Kingdom” substitute “or a qualifying CTT State”.

17. In section 105 (interpretation of Part 4 and supplementary provisions), in subsection (1)—

(a) for the definition of “designated event”(e) substitute—

““designated event”—

(a) in relation to an EEA State, has the meaning given by section 101A(1), and

(b) in relation to a qualifying CTT State, has the meaning given by section 101A(2);”;

(b) after the definition of “EEA State”(f) insert—

““the European Convention on Transfrontier Television” means the Council of Europe Convention on Transfrontier Television which was opened for signature at Strasbourg on 5th May 1989, as amended by the Protocol which was opened for signature at Strasbourg on 1st October 1998;”;

(c) after the definition beginning “national Channel 3 service” insert—

““qualifying CTT State” has the meaning given by section 101A(3);”.

PART 3

Amendments of Communications Act 2003

18. The Communications Act 2003 is amended as follows.

19.—(1) Section 75 (conditional access systems and access to digital services) is amended as follows.

(2) In subsection (2), in paragraph (b)—

(a) omit “from time to time”;

(b) at the end insert “, as it had effect immediately before exit day”.

(3) After that subsection insert—

“(2A) For the purposes of subsection (2)(b), Part 1 of Annex 1 to the Access Directive is to be read as if—

(a) the reference to viewers and listeners in the Community was a reference to viewers and listeners in the United Kingdom,

(b) the reference to Member States was a reference to OFCOM,

(a) Subsections (1) and (2) were amended by S.I. 2000/54.

(b) Subsection (2A) was inserted by S.I. 2000/54.

(c) Subsection (1) was substituted by section 301(1) of the Communications Act 2003.

(d) Section 104A was inserted by S.I. 2000/54.

(e) The definition of “designated event” was inserted by S.I. 2000/54.

(f) The definition of “EEA State” was inserted by S.I. 2013/2217.

- (c) the words “in accordance with Article 6” were omitted,
- (d) in point (a), the reference to the market in the Community was a reference to the market in the United Kingdom, and
- (e) in point (b), the references to Community competition law were references to any provision relating to competition that is contained in or made under an enactment.”

20.—(1) Section 211 (regulation of independent television services) is amended as follows.

(2) In subsection (2), for paragraphs (b) and (c) substitute—

“(b) television licensable content services that meet the appropriate condition in subsection (4);

(c) digital television programme services that—

- (i) can be accessed by means of a regulated electronic programme guide and are not exempt foreign services, or
- (ii) cannot be accessed by means of a regulated electronic programme guide but are provided by a person who is within the jurisdiction of the United Kingdom for the purposes of the European Convention on Transfrontier Television and included in broadcasts to which that Convention applies.”.

(3) In subsection (3), for paragraph (b) substitute—

“(b) digital additional television services that meet the appropriate condition in subsection (4);”.

(4) After that subsection insert—

“(4) For the purposes of subsections (2)(b) and (3)(b) “the appropriate condition” is—

- (a) if or to the extent that the service does not consist of an electronic programme guide, that—
 - (i) the service can be accessed by means of a regulated electronic programme guide and is not an exempt foreign service, or
 - (ii) the service cannot be accessed by means of a regulated electronic programme guide but is provided by a person who is within the jurisdiction of the United Kingdom for the purposes of the European Convention on Transfrontier Television and included in broadcasts to which that Convention applies;
- (b) if or to the extent that the service consists of an electronic programme guide, that the electronic programme guide is a regulated electronic programme guide.

(5) In this section—

- (a) “electronic programme guide” has the meaning given by section 310(8),
- (b) “regulated electronic programme guide” has the meaning given by section 211A, and
- (c) “exempt foreign service” has the meaning given by section 211B.”.

21. After section 211 insert—

“Regulated electronic programme guides

211A.—(1) This section has effect for the interpretation of section 211.

(2) “Regulated electronic programme guide” means an electronic programme guide which—

- (a) is provided, under a licence to provide television licensable content services or digital additional television services, by a person who was providing an electronic programme guide under that licence immediately before exit day,
- (b) is provided by a person designated by the Secretary of State by regulations or by a person having a prescribed connection with a person so designated, or

- (c) falls within a prescribed description.
- (3) In subsection (2) “prescribed” means prescribed by the regulations.
- (4) Regulations under subsection (2)(b) may only designate a person who, at the time when the regulations are made—
 - (a) is providing an electronic programme guide that is used by members of the public in the United Kingdom as a facility for obtaining access to television programme services, or
 - (b) is providing, or has informed OFCOM of an intention to provide, an electronic programme guide with a view to its use by members of the public in the United Kingdom as such a facility.
- (5) The electronic programme guides that are to be taken for the purposes of this section to be used by members of the public include any electronic programme guide that—
 - (a) is used, or available for use, only by persons who subscribe to the service (whether for a period or in relation to a particular occasion) or who otherwise request its provision, but
 - (b) is a service the facility of subscribing to which, or of otherwise requesting its provision, is offered or made available to members of the public.
- (6) Before making regulations under subsection (2), the Secretary of State must consult OFCOM.
- (7) In this section “electronic programme guide” has the meaning given by section 310(8).

Exempt foreign services

- 211B.**—(1) In section 211 “exempt foreign service” means—
- (a) a service provided by a person who is for the purposes of the European Convention on Transfrontier Television within the jurisdiction of a CTT State other than the United Kingdom, or
 - (b) any of the following services—
 - (i) the services known as RTÉ1 and RTÉ2 provided by Raidió Teilifís Éireann, and
 - (ii) the service known as TG4 provided by Teilifís na Gaeilge.
- (2) The Secretary of State may by regulations amend subsection (1)(b)—
- (a) by adding a reference to a service appearing to the Secretary of State to be a public service channel established in Ireland,
 - (b) by amending the description of a service for the time being specified in that provision, or
 - (c) by omitting the reference to a service for the time being specified in that provision.
- (3) In this section “CTT State” means a State which is for the time being a party to the European Convention on Transfrontier Television.”.

22. In section 235 (licensing of television licensable content services), after subsection (7)(a) insert—

“(8) A licence to provide a television licensable content service which authorises the provision of an electronic programme guide (“the guide”) must also include such conditions as OFCOM consider appropriate for ensuring that, at any time when the guide is a regulated electronic programme guide as defined by section 211A, the only television programme

(a) Subsection (7) was inserted by S.I. 2006/2131.

services that are listed or promoted by, or which can be accessed through, the guide are television programme services that—

- (a) are provided by or under a licence under this Part, or
- (b) do not fall, in pursuance of section 211(1) of the Communications Act 2003, to be regulated by OFCOM.”.

23. In section 245 (regulation of independent radio services), in subsection (5)(c), for “another EEA State” substitute “an EEA State”.

24. In section 319 (OFCOM’s standards code), in subsection (2), after paragraph (h) insert—

- “(ha) that the requirements of any EU directives, as they had effect immediately before exit day, with respect to advertising included in television and radio services are complied with;”.

25. In section 329 (proscription orders)(a), in subsection (7), in paragraph (b)(i), for “under the jurisdiction of the United Kingdom for the purposes of the Audiovisual Media Services Directive” substitute “within the jurisdiction of the United Kingdom for the purposes of the European Convention on Transfrontier Television”.

26. In section 335 (conditions securing compliance with international obligations), after subsection (2) insert—

“(2A) The reference in subsection (2) to the international obligations of the United Kingdom includes a reference to Articles 16(1) and (2), 17 and 18 of the Audiovisual Media Services Directive, together with the interpretative provisions in Article 1 of that Directive so far as relevant to those Articles.

(2B) The provisions of the Audiovisual Media Services Directive mentioned in subsection (2A) are to be read for the purposes of this section as if—

- (b) in Articles 16(1) and (2) and 17, references to the Member States were references to the United Kingdom, and
- (b) in Article 16(2), the second subparagraph were omitted.”.

27. For section 335A(b) and the heading immediately before it substitute—

“Co-operation with other parties to European Convention on Transfrontier Television

335A. OFCOM may do any of the things that paragraph 3 of Article 19 of the European Convention on Transfrontier Television requires to be done by an authority designated under paragraph 2 of that Article.”.

28. In section 362 (interpretation of Part 3), in subsection (1)—

- (a) in the definition beginning “EEA State”(c), omit the words from “and “another” to the end;
- (b) after the definition beginning “EEA State” insert—

““the European Convention on Transfrontier Television” means the Council of Europe Convention on Transfrontier Television which was opened for signature at Strasbourg on 5th May 1989, as amended by the Protocol which was opened for signature at Strasbourg on 1st October 1998;”.

29. In section 368A (meaning of “on-demand programme service”)(d), in subsection (1)—

- (a) at the end of paragraph (d), omit “and”;

(a) Subsection (7)(b)(i) was amended by S.I. 2009/2979.

(b) Section 335A was inserted by S.I. 2009/2979 and amended by S.I. 2010/1883.

(c) The definitions of “EEA State” and “another EEA State” were substituted by S.I. 2013/2217.

(d) Section 368A was inserted by S.I. 2009/2979.

(b) for paragraph (e) substitute—

“(e) that person’s head office is in the United Kingdom, and

(f) editorial decisions about the service are taken in the United Kingdom.”.

30. In section 368O (power to demand information)(a), omit subsection (3).

31. In Schedule 11A(b) (restrictions on product placement), in paragraph 6(3)(b), for the words from “which is provided” to the end substitute “that falls within section 211(2)”.

PART 4

Amendments of Wireless Telegraphy Act 2006

32. The Wireless Telegraphy Act 2006(c) is amended as follows.

33. In section 9A (notice to satellite uplinkers)(d), omit subsection (1).

34. In section 115 (general interpretation), in subsection (1)(e), omit the definition of “the Audiovisual Media Services Directive”.

PART 5

Other amendments of primary legislation

35.—(1) The Copyright, Designs and Patents Act 1988(f) is amended as follows.

(2) In section 297A (unauthorised decoders)(g), in subsection (4), in the definition of “transmission”, in paragraphs (a) and (b), omit “or any other member State”.

(3) In section 298 (rights and remedies in respect of apparatus, &c for unauthorised reception of transmissions)(h), in subsection (1), in paragraphs (a), (b) and (c), omit “or any other member State”.

36.—(1) The Gambling Act 2005(i) is amended as follows.

(2) In section 333 (territorial application: remote advertising), in subsection (5)(j), for the words from “the additional” to the end substitute “the additional test is that the advertising is included in a service falling within subsection (2) or (3) of section 211 of the Communications Act 2003 (regulation of independent television services)”.

(3) In section 353 (interpretation), in subsection (1), omit the definition of “EEA State”.

SCHEDULE 2

Regulation 4

Amendments of subordinate legislation

1.—(1) The Broadcasting (Original Productions) Order 2004(k) is amended as follows.

(a) Section 368O was inserted by S.I. 2009/2979.

(b) Schedule 11A was inserted by S.I. 2010/831.

(c) 2006 c. 36.

(d) Section 9A was inserted by S.I. 2009/2979.

(e) This definition was substituted by S.I. 2010/1883.

(f) 1988 c. 48.

(g) Section 297A was inserted by section 179(1) of the Broadcasting Act 1990; substituted by S.I. 2000/1175 and the definition of “transmission” in subsection (4) was amended by S.I. 2003/2498.

(h) Section 298 was substituted by S.I. 2000/1175 and subsection (1)(a) was amended by S.I. 2003/2498.

(i) 2005 c. 19.

(j) Subsection (5) was amended by S.I. 2010/1883.

(k) S.I. 2004/1652.

- (2) In article 5 (meaning of “European programmes”)—
- (a) in paragraphs (3) and (4), for “Community”, in each place where it occurs, substitute “European”;
 - (b) in paragraph (5), for the definition of “Community producer” substitute—
 - ““European producer” means a producer—
 - (a) who is an individual who is a national of a qualifying State; or
 - (b) which is a body corporate formed under the law of a qualifying State and having its registered or head office in a qualifying State and in the case of which the central management and control of the business is exercised in a qualifying State;”;
 - and
 - (c) after that paragraph insert—
 - “(6) In paragraph (5) “qualifying State” means—
 - (a) the United Kingdom;
 - (b) any other CTT State, as defined by section 211B(3) of the Communications Act 2003; or
 - (c) an EEA State that is not a CTT State, as so defined.”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, except regulation 7, 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), (f) or (g) of section 8) arising from the withdrawal of the United Kingdom from the European Union.

These Regulations make amendments to legislation relating to broadcasting. Schedule 1 amends primary legislation and Schedule 2 amends subordinate legislation.

Regulation 7 contains a direction to the Office of Communications (Ofcom) under section 23 of the Communications Act 2003 in relation to the interpretation of Article 3 of the Council of Europe Convention on Transfrontier Television.

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.

© Crown copyright 2018

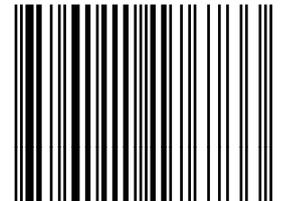
Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Jeff James, Controller of Her Majesty’s Stationery Office and Queen’s Printer of Acts of Parliament.

£6.90

UK201812121000 12/2018 19585

<http://www.legislation.gov.uk/id/ukdsi/2019/9780111176733>

ISBN 978-0-11-117673-3



9 780111 176733