

**EXPLANATORY MEMORANDUM TO THE
FOREIGN SATELLITE SERVICE PROSCRIPTION ORDER 2005**

2005 No.220

1. This explanatory memorandum has been prepared by the Department for Culture, Media and Sport and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

- 2 **Description**

2.1 This instrument proscribes the foreign satellite television service known as 'Extasi TV' (sometimes spelt "Exstasi TV") for the purposes of Section 177 of the Broadcasting Act 1990.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 This Order does not observe the usual rule that a negative procedure instrument should not come into force sooner than 21 days after it has been laid, and we offer the Committees the following explanation for that decision.

3.2 Article 1 of this Order specifies a commencement date that falls 14 days after it was made, because the Government believes that the promotion and accessibility of seriously harmful broadcast material should be prevented expeditiously. On the other hand, businesses need an opportunity to ensure compliance before the Order comes into effect and 14 days is a practical minimum. In order to help businesses achieve compliance quickly, officials are publicising the Order in the media and are writing to a number of publishers to alert them to the Order.

4. **Legislative Background**

4.1 Extasi TV is a television service which is broadcast from outside the United Kingdom but can be received in this country by means of satellite broadcasting. Its programming contains frequent episodes of violent pornography. It is a function of the Office of Communications ("Ofcom") to monitor satellite services receivable in the UK and (under section 177 of the 1990 Act) to notify the Secretary of State of any that appear to them to be of an unacceptable quality by reason of the fact that they repeatedly contain material which offends against good taste or decency or is likely to encourage or incite crime or to lead to disorder or to be offensive to public feeling. Ofcom have notified details of the Extasi TV service to the Secretary of State pursuant to this provision.

4.2 The purpose of the Order is to restrict the availability of its transmissions in the United Kingdom. Section 177 gives the Secretary of State power to make an Order proscribing foreign satellite television services in circumstances of this kind. It is subject to annulment by a resolution of either House of Parliament.

4.3 The effect of the Order is that it will become a criminal offence under section 178 of the 1990 Act to do any of the following in the United Kingdom—

- (a) supply any equipment or other goods for use in connection with the operation or day-to-day running of the Extasi TV service;
- (b) supply, or offer to supply, programme material to be included in it;
- (c) arrange for, or invite, any other person to supply programme material to be included in it;
- (d) advertise by means of Extasi TV;
- (e) publish the times or other details of Extasi TV programmes or other material calculated to promote the service;
- (f) supply or offer to supply any decoding equipment which is designed or adapted to be used primarily for the purpose of enabling the reception of Extasi TV.

4.4 This measure engages particular provisions of EU law. In principle, a measure such as this conflicts with the freedom of reception guaranteed by article 2a of the Television Without Frontiers Directive (Council Directive 89/552/EEC, as amended by Directive 97/36/EC). However, article 2a also lays down a procedure involving consultation with the European Commission, the broadcaster and the Member State from which the offending service originates before a measure restricting reception is implemented. These procedures have been followed; indeed, the Secretary of State is not permitted to make the Order unless she is satisfied that the UK's international obligations have been fulfilled: section 177(4). Also, this Order must be notified to the Commission, who have the duty to rule upon whether or not it is consistent with EU law. If they decide that it is not compatible, it must be withdrawn forthwith.

5. Extent

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 Not applicable.

7. Policy Background

7.1 As noted above, the Extasi TV channel frequently shows material containing very strong forms of pornography, including scenes of violence and

power imbalance in a sexual context. The Government takes the clear view that it is thoroughly contrary to the public interest that such material should be broadcast to the UK, and in particular that it might seriously impair the mental and/or moral development of any children who may see it. This is the test laid down in Article 22 of the Television Without Frontiers Directive as one of the grounds upon which a Member State can take action to restrict the reception of satellite television services, and the Minister is quite satisfied that the test is met in this case.

7.2 The Extasi TV service is broadcast in encrypted form. But encryption can provide no adequate assurance that children will not be exposed to this material.

7.3 The Government takes the view that the publication in the United Kingdom of material of the sort transmitted from overseas by the Extasi TV channel could constitute an offence under the Obscene Publications Act 1959.

8. Impact

8.1 A Regulatory Impact Assessment is attached to this memorandum.

8.2 The impact on the public sector is that the Order forms part of the criminal law and will create offences which stand to be enforced by the police and the Courts.

9. Contact

Chris Bone at the Department for Culture, Media and Sport Tel: 020 7211 6444 or e-mail: chris.bone@culture.gsi.gov.uk can answer any queries regarding the instrument.

REGULATORY IMPACT ASSESSMENT

1. Title

The Foreign Satellite Service Proscription Order 2005

2. Purpose and Intended Effect

This Order concerns a foreign television service known as 'Extasi TV', which is broadcast from outside the United Kingdom but can be received in this country via satellite. Its programming contains frequent episodes of violent pornography.

The purpose of the Order is to restrict the availability of Extasi TV's transmissions in the United Kingdom.

Section 177 of the Broadcasting Act 1990 gives the Secretary of State power to make an order proscribing foreign satellite TV services in circumstances of this kind.

The effect of the Order is that it will become a criminal offence under section 178 of the 1990 Act to do any of the following in the United Kingdom –

- (g) supply any equipment or other goods for use in connection with the operation or day-to-day running of the Extasi TV service;
- (h) supply, or offer to supply, programme material to be included in it;
- (i) arrange for, or invite, any other person to supply programme material to be included in it;
- (j) advertise by means of Extasi TV;
- (k) publish the times or other details of Extasi TV programmes or other material calculated to promote the service;
- (l) supply or offer to supply any decoding equipment which is designed or adapted to be used primarily for the purpose of enabling the reception of Extasi TV.

The background

A television channel showing violent pornography would not be able to obtain a licence from the Office of Communications (OfCOM) to operate as a UK television service. Under the codes drawn up by the British Board of Film Classification, violent pornography of this kind is not classified for viewing by the public in cinemas or to be sold to the public on DVD or video, even in licensed sex shops.

Risk assessment

As noted above, the Extasi TV channel frequently shows material containing very strong forms of pornography, including scenes of violence and power imbalance in a sexual context, and would in the Government's view be offensive to the standards of taste and decency which are accepted by even the most liberal and tolerant people in the UK.

By the very nature of the issue it is difficult formally to quantify the risks, whether social or psychological, that material of this sort may present. It is, though, the Government's clear view that it is thoroughly contrary to the public interest that such material should be broadcast to the UK, and in particular that it might seriously impair the mental and/or moral development of any children who may see it.

The service is broadcast in encrypted form. But encryption can provide no adequate assurance that children will not be exposed to this material.

3. Options

The Government cannot by itself prevent the Extasi TV channel from operating or from being carried by a satellite whose signals are receivable in the UK. The programming originates from outside the UK but within the European Union, and the Government has made its views about it clear to the authorities in the country from which it originates and in the country from which it is transmitted, and to the European Commission.

Under European law, all Member States of the EU must take appropriate measures to ensure that television broadcasters under their jurisdiction do not include any programmes which might seriously impair the physical, mental or moral development of minors, in particular programmes that involve pornography or gratuitous violence.

So long however as the Extasi TV service continues to broadcast violent pornography, the choice before the UK Government and Parliament is either—

- to allow it to do so without restriction in the UK; or
- to impose the restrictions allowed for by the Broadcasting Act 1990 as set out above.

The 1990 Act does not allow the Government or Parliament to select from among the restrictions set out in section 178. The effect of the Act is that when a foreign satellite service is proscribed under section 177, all the restrictions in section 178 must apply to it, without exception.

4. Benefits

The Order will benefit children. They will be less likely to be exposed to violent pornography.

5. Costs

The Order will impose costs on a number of sectors including—

- suppliers of equipment (which would be mainly, or exclusively, decryption cards sent from abroad) primarily for receiving Extasi TV programmes;
- publishers and printers of magazines, etc., which carry its advertising and programme details;
- persons who may be involved in supplying programme material for it.

Although the Government is not aware of any detailed cost information, we believe that the actual costs to UK businesses will be small. The programme material seems to be of non-UK origin.

Another (non-violent) pornography channel available from much the same source as Extasi TV is claimed to have a UK subscription base of around 3,000. The cost of a 12-month decryption card for Extasi TV (along with two other satellite pornography channels) is quoted in advertisements in UK satellite listings magazines as £139.

On this basis, the total expected income from all UK subscribers to Extasi TV would be of the order of £143,000 p.a. That is a substantial sum. But it all goes to the source, outside the UK, from which the station originates. They however will have no costs to meet in the UK except for advertising, since they are not thought to carry out any other activities here.

Costs to UK sources therefore seem likely to be confined to those falling upon printers and publishers of magazines, mainly specialist satellite TV magazines and 'adult' magazines, which carry listings showing Extasi TV or advertisements for it. These will lose advertising revenue, and will have to ensure that the listings and advertisements - which normally carry on unchanged from issue to issue - are amended so that Extasi is no longer mentioned.

As a proportion of the suspected £143,000 pa UK revenue from Extasi TV, these costs are not thought to be large.

6. Equity and fairness

It may be that most viewers of Extasi TV are men. Aside from that, the Government believes that the Order will not have any disproportionate effect on any particular racial, gender, or other group, except insofar as the intention behind it is to provide particular protection for children.

7. Consultation with small business

The Government believes that it would be unhelpful to engage in public consultation about an Order of this kind in advance of making it. To do so would be to supply a thoroughly undesirable TV service with free publicity.

8. Competition assessment

In the Government's view, the only UK market which will be affected by this Order is the market for satellite TV listings magazines and 'adult' magazines. The Order seems likely to affect only a very small part of the activities of those publications that carry advertising for Extasi

TV. Any such competition effects on them in relation to publications that do not carry this advertising will be on a very small scale.

9. Enforcement and sanctions

The Order forms part of the criminal law and stands to be enforced by the police. Several other Orders under section 177 of the 1990 Act are already in force.

There are criminal sanctions for non-compliance, set out at section 178(5) of the 1990 Act. On summary conviction, there is a maximum penalty of six months' imprisonment or a fine of up to £5,000 (or both). On conviction on indictment, there is a maximum penalty of two years' imprisonment or an unlimited fine (or both).

10. Monitoring and Review

The Government and OFCOM will keep the position of Extasi TV under review. If it alters the nature of its service so as to be acceptable in the UK, we would consider asking Parliament to rescind the Order.

11. Consultation

As explained above, the Government has not carried out any public consultation on this Order. It believes that publicising the Extasi TV service in that way would be unhelpful. Through publicising the station, it would risk increasing the possibility of harm to children and young people which the Order is designed to reduce.

European law requires us to notify the broadcaster of Extasi TV of the measures we propose to take against it, and also to consult the transmitting Member State and the European Commission. The Government has carried out these obligations.

12. Declaration

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs

Signed.....

Rt Hon Lord Andrew McIntosh of Haringey
Minister for Media and Heritage

7th February 2005

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