

EXPLANATORY MEMORANDUM TO
THE TELEVISION BROADCASTING REGULATIONS 2014
2014 No. 1184

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.

2. Purpose of the instrument

2.1 This instrument repeals section 101B(4) of the Broadcasting Act 1996 (“the Act”) to ensure correct implementation of Article 14(3) of Directive 2010/13/EU of the European Parliament and of the Council (the Audiovisual Media Services Directive, “AVMSD”).

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

3.1 None.

4. Legislative Context

4.1 The AVMSD repealed and codified Council Directive 89/552/EEC (as amended). Sections 101A and 101B of the Act were inserted by the Television Broadcasting Regulations 2000 (S.I. 2000/54) to implement Council Directive 89/552/EEC and were amended by the Broadcasting and Communications (Amendment) Regulations 2013 (S.I. 2013/2217) to reflect the codification of previous Directives in the AVMSD.

The European Commission notified the UK in 2013 that it considered that section 101B(4) of the Act was inconsistent with correct implementation of Article 14(3) AVMSD. The UK, after careful consideration, reached the same conclusion. No Transposition Note is provided with this Instrument since the Instrument repeals one subsection of the Act. (The Transposition Note accompanying the Explanatory Memorandum to the Audiovisual Media Services Regulations 2009 (S.I. 2009/2979) notes the implementation of the relevant requirements of the then applicable Directive in Part IV of the Act.)

See: <http://www.legislation.gov.uk/ukxi/2009/2979/memorandum/contents.>)

Section 101A provides that a sporting or other event is a designated event in relation to an EEA state other than the United Kingdom if (a) that other state has designated the event in accordance with Article 14(1) of the AVMSD as being of major importance to its society; (b) the designation forms part of measures which have been notified by that state to the European Commission for the purposes of Article 14(2) of the AVMSD and (c) notice has been published in the Official Journal of the Communities.

Article 14(3) of the AVMSD (as extended to EEA states) requires each EEA state to regulate broadcasters within its own jurisdiction so that they do not exercise exclusive

broadcasting rights in such a way as to deprive a substantial proportion of the public in another EEA state of the possibility of following on free television an event designated by that other EEA State. Section 101B(1) of the Act accordingly restricts the televising of a designated event: a television programme provider (as defined in section 99 of the Act) regulated in the United Kingdom may not, without the previous consent of Ofcom, exercise rights to televise the whole or part of an event designated in relation to another EEA state for reception in that other EEA state, or any area of it, where a substantial proportion of the public in that other EEA state is deprived of the possibility of following that event by live or deferred coverage on free television. Pursuant to section 101B(4), the requirement to obtain Ofcom's consent did not apply where the rights were acquired before the day on which the event became a designated event. The repeal of section 101B(4) has effect so that a television programme provider must now obtain Ofcom's consent under section 101B(1) to exercise such exclusive rights whether the rights were acquired before or after the event is designated, i.e. it brings all such rights, whenever acquired in time, within scope of Ofcom regulation.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 The Parliamentary Under Secretary of State for Culture, Communications and Creative Industries, Ed Vaizey MP, has made the following statement regarding Human Rights:

In my view the provisions of the Television Broadcasting Regulations 2014 are compatible with the Convention rights.

7. Policy background

- What is being done and why

7.1 The policy objective of Article 14 AVMSD is to ensure that certain (often sporting) events of particular importance to the society of an EEA state can be seen by the public in that state on free television. Article 14(3) contains mutual recognition provisions so that broadcasters based in another EEA state cannot circumvent the regulatory regime in the EEA state which has designated the event. In the UK the mutual recognition requirement is given effect by the requirement for a broadcaster to seek Ofcom's consent to broadcast a designated event. No new matters of UK policy and no new obligation to implement the AVMSD arise (the predecessor of Article 14(3) AVMSD was implemented in the UK by S.I. 2000/54). This Instrument simply ensures that the relevant UK legislation and the AVMSD are correctly aligned by repealing section 101B(4).

8. Consultation outcome

8.1 DCMS consulted about the repeal of section 101B(4) with all UK licensed broadcasters, of which there are just over 1000, in September 2013. The consultation was open for 6 weeks. Two broadcasters responded. Both accepted the requirement to comply with EU law. They suggested that DCMS should amend rather than repeal section 101B(4), on the basis that this might otherwise disadvantage UK broadcasters as compared with broadcasters based in other EEA states. DCMS met with both broadcasters to discuss their concerns. DCMS did not change its policy in the light of the submissions made because DCMS' conclusion was that repeal was legally necessary as a matter of compliance with the AVMSD and further that the duty on Ofcom when considering requests made under s101B(1) for consent to broadcast would require Ofcom to ensure a level playing field between UK broadcasters and broadcasters in other EEA states, such that this measure would in fact meet the concern raised.

9. Guidance

9.1 Ofcom has a statutory duty pursuant to section 104 of the Act to maintain a code of guidance as to the matters it will take into account in determining whether to give, or revoke, its consent under section 101B(1). See:
http://stakeholders.ofcom.org.uk/binaries/broadcast/other-codes/ofcom_code_on_sport.pdf

10. Impact

10.1 The impact on business, charities or voluntary bodies is negligible.

10.2 The impact on the public sector is negligible.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1. The legislation applies to small business because it applies to any broadcaster regulated in the UK.

12. Monitoring & review

12.1. No monitoring or review is regarded as necessary in relation to this instrument as the gross cost to business as a result of this instrument is expected to be less than £1m per annum.

13. Contact

Katharina Ribbe at the Department for Culture, Media and Sport, Tel: 020 7211 2161 or email: Katharina.Ribbe@culture.gsi.gov.uk, can answer any queries regarding the instrument.