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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

<sup>M1</sup>These Regulations implement Directive 2007/65 EC of the European Parliament and of the Council amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (“the Directive”). These Regulations insert new provisions into the Communications Act 2003 (“the Act”).

Regulation 2 inserts a new Part 4A into the Act in order to regulate on-demand programme services. Section 368A sets out the meaning of an on-demand programme service and section 368B provides for OFCOM to designate a body as an appropriate regulatory authority. OFCOM is also an appropriate regulatory authority under this Part of the Act. Section 368C imposes duties on the appropriate regulatory authority and sections 368D to 368H impose requirements on the provider of an on-demand programme service.

Section 368I sets out an enforcement mechanism for the appropriate regulatory authority in relation to the requirements in sections 368D to 368H. Section 368J regulates the amount of a financial penalty which may be imposed under section 368I and sets out how such a penalty is to be calculated and paid. Sections 368K and 368L confer powers on the appropriate regulatory authority to direct that the entitlement of a provider of an on-demand service to provide that service is suspended or restricted in specified circumstances. A criminal offence to enforce directions made under section 368K or 368L is set out in section 368N.

Section 368O provides a power for the appropriate regulatory authority to require the provision of information from the provider of an on-demand programme service for specified purposes. Section 368P sets out which provisions of the regulations apply to the BBC and Regulation 3 describes the functions of OFCOM in relation to the BBC and its on-demand programme services. Section 368Q sets out which provisions apply to the Welsh Authority. Section 368R defines some of the terms used in Part 4A including in subsection (6) the interpretation of the meaning of “BBC” and “Welsh Authority”.

Regulation 4 inserts amendments into Schedule 12 of the Act to create an obligation on the Welsh Authority to regulate on-demand programme services provided by Sianel Pedwar Cymru, except in respect of advertising which will be regulated by the appropriate regulatory authority.

Regulation 6 amends the definition of television licensable content services, making two changes. Firstly, a principal purpose test is inserted into section 232(2)(b) of the Act and secondly section 233 is amended so that the exclusion of services provided over the internet from the definition of a television licensable content service is removed.

Regulation 7 inserts a new section 335A into the Act. This creates a new co-operation procedure which applies to specified broadcasters and holders of broadcast licences.

Minor amendments are made to the Act by regulations 8 to 11. Regulation 12 amends the Copyright, Designs and Patents Act 1988 so that copyright would not be infringed by the provision of information, making of recordings or the use of material where it provided or used pursuant to specified sections of the Act.

Regulation 13 amends the Wireless Telegraphy Act 2006 to enable OFCOM to require a satellite uplinker to cease or suspend uplinking a relevant regulated television service or an on-demand programme service in certain circumstances. The amendments made by Regulation 13 apply where the service is provided by a person who is deemed to be under the jurisdiction of the United Kingdom for the purpose of the Directive only because that person provides such service by means of a satellite uplink apparatus situated within the United Kingdom.

A transposition note and an impact assessment of the effect that this instrument will have on the costs to business and the voluntary sector are available from the website of the Department

**Changes to legislation:** *There are currently no known outstanding effects for the The Audiovisual Media Services Regulations 2009. (See end of Document for details)*

for Culture, Media and Sport ([www.culture.gov.uk](http://www.culture.gov.uk)). They are also annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website.

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