

SCHEDULE 1

Amendments of primary legislation

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,

(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—

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- (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)(1) 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 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)(2), 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”.

(1) Subsection (7) was inserted by [S.I. 2006/2131](#).

(2) Subsection (7)(b)(i) was amended by [S.I. 2009/2979](#).

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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(3) 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”(4), 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”)(5), in subsection (1)—

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

(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)(6), omit subsection (3).

31. In Schedule 11A(7) (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)”.

(3) Section 335A was inserted by [S.I. 2009/2979](#) and amended by [S.I. 2010/1883](#).

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

(5) Section 368A was inserted by [S.I. 2009/2979](#).

(6) Section 368O was inserted by [S.I. 2009/2979](#).

(7) Schedule 11A was inserted by [S.I. 2010/831](#).