

Member State: United Kingdom

Synopsis of national legislation with AVMS Directive

2009 No. 2979

Electronic Communications

Broadcasting

The Audiovisual Media Services Regulations 2009

Made 9th November 2009

Laid before Parliament 10th November 2009

Coming into force 19th December 2009

These Regulations are made by the Secretary of State, being a Minister designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to information society services and measures relating to television broadcasting, in exercise of the powers conferred by section 2(2) of that Act.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Audiovisual Media Services Regulations 2009 and come into force on 19th December 2009.

(2) In these Regulations “the 2003 Act” means the Communications Act 2003.

On-demand programme services

2. In the 2003 Act, after section 368 insert—

“Part 4A On-demand programme services

Preliminary

368A Meaning of “on-demand programme service”

(1) For the purposes of this Act, a service is an “**on-demand programme service**” if—

368A (1) on-demand programme service	Art. 1(g) AVMSD on-demand audiovisual media service:
<p>(a) its principal purpose is the provision of programmes the form and content of which are comparable to the form and content of programmes normally included in television programme services;</p> <p>(b) access to it is on-demand;</p> <p>(c) there is a person who has editorial responsibility for it;</p> <p>(d) it is made available by that person for use by members of the public; and</p>	<p>an audiovisual media service provided by a media service provider for the viewing of programmes at the moment chosen by the user and at his individual request on the basis of a catalogue of programmes selected by the media service provider;</p>
	Art. 2 AVMSD
(e) that person is under the jurisdiction of the United Kingdom for the purposes of the Audiovisual Media Services Directive.	<p>1. Each Member State shall ensure that all audiovisual media services transmitted by media service providers under its jurisdiction comply with the rules of the system of law applicable to audiovisual media services intended for the public in that Member State.</p> <p>2. For the purposes of this Directive, the media service providers under the jurisdiction of a Member State are any of the following:</p> <p>(a) those established in that Member State in accordance with paragraph 3;</p> <p>(b) those to whom paragraph 4 applies.</p> <p>3. For the purposes of this Directive, a media service provider shall be deemed to be established in a Member State in the following cases:</p> <p>(a) the media service provider has its head office in that Member State and the editorial decisions about the audiovisual media service are taken in that Member State;</p> <p>(b) if a media service provider has its head office in one Member State but editorial decisions on the audiovisual media service are taken in another Member State, it shall be deemed to be established in the Member State where a significant part of the workforce involved in the pursuit of the</p>

	<p>audiovisual media service activity operates. If a significant part of the workforce involved in the pursuit of the audiovisual media service activity operates in each of those Member States, the media service provider shall be deemed to be established in the Member State where it has its head office. If a significant part of the workforce involved in the pursuit of the audiovisual media service activity operates in neither of those Member States, the media service provider shall be deemed to be established in the Member State where it first began its activity in accordance with the law of that Member State, provided that it maintains a stable and effective link with the economy of that Member State;</p> <p>(c) if a media service provider has its head office in a Member State but decisions on the audiovisual media service are taken in a third country, or vice versa, it shall be deemed to be established in the Member State concerned, provided that a significant part of the workforce involved in the pursuit of the audiovisual media service activity operates in that Member State.</p> <p>4. Media service providers to whom the provisions of paragraph 3 are not applicable shall be deemed to be under the jurisdiction of a Member State in the following cases:</p> <p>(a) they use a satellite up-link situated in that Member State;</p> <p>(b) although they do not use a satellite up-link situated in that Member State, they use satellite capacity appertaining to that Member State.</p> <p>5. If the question as to which Member State has jurisdiction cannot be determined in accordance with paragraphs 3 and 4, the competent Member State shall be that in which the media service provider is established within the meaning of Articles 49 to 55 of the Treaty on the Functioning of the European Union.</p> <p>6. This Directive does not apply to audiovisual media services intended exclusively for reception in third countries and which are not received with standard consumer equipment directly or indirectly by</p>
--	--

	the public in one or more Member States.
--	--

(2) Access to a service is on-demand if—

368A (2)	Art. 1(g) AVMSD on-demand audiovisual media service :
(a) the service enables the user to view, at a time chosen by the user, programmes selected by the user from among the programmes included in the service; and (b) the programmes viewed by the user are received by the user by means of an electronic communications network (whether before or after the user has selected which programmes to view).	an audiovisual media service provided by a media service provider for the viewing of programmes at the moment chosen by the user and at his individual request on the basis of a catalogue of programmes selected by the media service provider;

(3) For the purposes of subsection (2)(a), the fact that a programme may be viewed only within a period specified by the provider of the service does not prevent the time at which it is viewed being one chosen by the user.

(4) A person has **editorial responsibility** for a service if that person has general control—

368A (4) editorial responsibility	Art. 1(c) AVMSD editorial responsibility :
(a) over what programmes are included in the range of programmes offered to users; and (b) over the manner in which the programmes are organised in that range; and the person need not have control of the content of individual programmes or of the broadcasting or distribution of the service (and see section 368R(6)).	the exercise of effective control both over the selection of the programmes and over their organisation either in a chronological schedule, in the case of television broadcasts, or in a catalogue, in the case of on-demand audiovisual media services. Editorial responsibility does not necessarily imply any legal liability under national law for the content or the services provided;

(5) If an on-demand programme service (“the main service”) offers users access to a relevant ancillary service, the relevant ancillary service is to be treated for the purposes of this Part as a part of the main service.

(6) In subsection (5), “relevant ancillary service” means a service or facility that consists of or gives access to assistance for disabled people in relation to some or all of the programmes included in the main service.

(7) In this section “assistance for disabled people” has the same meaning as in Part 3.

368B The appropriate regulatory authority

(1) OFCOM may designate any body corporate to be, to the extent provided by the designation, the appropriate regulatory authority for the purposes of any provision of this Part, subject to subsection (8).

(2) To the extent that no body is designated for a purpose, OFCOM is the appropriate regulatory authority for that purpose.

(3) Where a body is designated for a purpose, OFCOM may act as the appropriate regulatory authority for that purpose concurrently with or in place of that body.

(4) OFCOM may provide a designated body with assistance in connection with any of the functions of the body under this Part.

(5) A designation may in particular—

(a) provide for a body to be the appropriate regulatory authority in relation to on-demand programme services of a specified description;

(b) provide that a function of the appropriate regulatory authority is exercisable by the designated body—

(i) to such extent as may be specified;

(ii) either generally or in such circumstances as may be specified; and

(iii) either unconditionally or subject to such conditions as may be specified.

(6) The conditions that may be specified pursuant to subsection (4)(b)(iii) include a condition to the effect that a function may, generally or in specified circumstances, be exercised by the body only with the agreement of OFCOM.

(7) A designation has effect for such period as may be specified and may be revoked by OFCOM at any time.

(8) OFCOM must publish any designation in such manner as they consider appropriate for bringing it to the attention of persons who, in their opinion, are likely to be affected by it.

(9) OFCOM may not designate a body unless, as respects that designation, they are satisfied that the body—

(a) is a fit and proper body to be designated;

(b) has consented to being designated;

(c) has access to financial resources that are adequate to ensure the effective performance of its functions as the appropriate regulatory authority;

(d) is sufficiently independent of providers of on-demand programme services; and

(e) will, in performing any function to which the designation relates, have regard in all cases—

(i) to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed; and

(ii) to such of the matters mentioned in section 3(4) as appear to the body to be relevant in the circumstances.

(10) Subject to any enactment or rule of law restricting the disclosure or use of information by OFCOM or by a designated body—

(a) a designated body may supply information to another designated body for use by that other body in connection with any of its functions as the appropriate regulatory authority;

(b) a designated body may supply information to OFCOM for use by OFCOM in connection with any of their functions under this Part;

(c) OFCOM may supply information to a designated body for use by that body in connection with any of its functions as the appropriate regulatory authority.

(11) In carrying out their functions as the appropriate regulatory authority, a designated body may carry out, commission or support (financially or otherwise) research.

(12) In this section—

“designation” means a designation under this section and cognate expressions are to be construed accordingly; “specified” means specified in a designation.

Duties of the appropriate regulatory authority

368C Duties of the appropriate regulatory authority

(1) It is the duty of the appropriate regulatory authority to take such steps as appear to them best calculated to secure that every provider of an on-demand programme service complies with the requirements of section 368D.

368C (2)	Art. 7 AVMSD
(2) The appropriate regulatory authority must encourage providers of on-demand programme services to ensure that their services are progressively made more accessible to people with disabilities affecting their sight or hearing or both.	Member States shall encourage media service providers under their jurisdiction to ensure that their services are gradually made accessible to people with a visual or hearing disability.
368C (3)	Art. 13 AVMSD
The appropriate regulatory authority must ensure that providers of on-demand programme services promote, where practicable and by appropriate means,	1. Member States shall ensure that on-demand audiovisual media services provided by media service providers under their jurisdiction promote, where practicable and by

production of and access to European works (within the meaning given in Article 1(n) of the Audiovisual Media Services Directive).	appropriate means, the production of and access to European works. Such promotion could relate, inter alia, to the financial contribution made by such services to the production and rights acquisition of European works or to the share and/or prominence of European works in the catalogue of programmes offered by the on-demand audiovisual media service. [...]
--	--

(4) The appropriate regulatory authority must encourage providers of on-demand programme services to develop codes of conduct regarding standards concerning the appropriate promotion of food or beverages by sponsorship of, or in advertising which accompanies or is included in, children’s programmes.

Duties of service providers

368D Duties of service providers

(1) The provider of an on-demand programme service must ensure that the service complies with the requirements of sections 368E to 368H.

368D (2)	Art. 5 AVMSD
<p>(2) The provider of an on-demand programme service (“P”) must supply the following information to users of the service—</p> <p>(a) P’s name;</p> <p>(b) P’s address;</p> <p>(c) P’s electronic address;</p> <p>(d) the name, address and electronic address of any body which is the appropriate regulatory authority for any purpose in relation to P or the service that P provides.</p>	<p>Member States shall ensure that audiovisual media service providers under their jurisdiction shall make easily, directly and permanently accessible to the recipients of a service at least the following information:</p> <p>(a) the name of the media service provider;</p> <p>(b) the geographical address at which the media service provider is established;</p> <p>(c) the details of the media service provider, including its electronic mail address or website, which allow it to be contacted rapidly in a direct and effective manner;</p> <p>(d) where applicable, the competent regulatory or supervisory bodies.</p>

- (3) The provider of an on-demand programme service must—
- (a) comply with any requirement under section 368O (provision of information);
 - (b) co-operate fully with the appropriate authority for any purpose within section 368O(2) or (3).

368D (4)	Art. 5 (c) AVMSD
In this section “electronic address” means an electronic address to which users may send electronic communications, and includes any number or address used for the purposes of receiving such communications.	[...] (c) the details of the media service provider, including its electronic mail address or website, which allow it to be contacted rapidly in a direct and effective manner; [...]

368E Harmful material

368E (1)	Art. 6 AVMSD
An on-demand programme service must not contain any material likely to incite hatred based on race, sex, religion or nationality.	Member States shall ensure by appropriate means that audiovisual media services provided by media service providers under their jurisdiction do not contain any incitement to hatred based on race, sex, religion or nationality.
368E (2)	Art. 12 AVMSD
If an on-demand programme service contains material which might seriously impair the physical, mental or moral development of persons under the age of eighteen, the material must be made available in a manner which secures that such persons will not normally see or hear it.	Member States shall take appropriate measures to ensure that on-demand audiovisual media services provided by media service providers under their jurisdiction which might seriously impair the physical, mental or moral development of minors are only made available in such a way as to ensure that minors will not normally hear or see such on-demand audiovisual media services.

368F Advertising

368F (1)	Art. 9 (1) (d), (f) AVMSD
<p>Advertising of the following products is prohibited in on-demand programme services—</p> <p>(a) cigarettes or other tobacco products;</p> <p>(b) any prescription-only medicine.</p>	<p>[...]</p> <p>(d) all forms of audiovisual commercial communications for cigarettes and other tobacco products shall be prohibited;</p> <p>[...]</p> <p>(f) audiovisual commercial communication for medicinal products and medical treatment available only on prescription in the Member State within whose jurisdiction the media service provider falls shall be prohibited;</p>
368F (2)	Art. 9 (1) (e) AVMSD
<p>Advertising of alcoholic drinks is prohibited in on-demand programme services unless—</p> <p>(a) it is not aimed at persons under the age of eighteen, and</p> <p>(b) it does not encourage excessive consumption of such drinks.</p>	<p>[...]</p> <p>(e) audiovisual commercial communications for alcoholic beverages shall not be aimed specifically at minors and shall not encourage immoderate consumption of such beverages;</p> <p>[...]</p>
368F (3)	Art. 1 (a), (b) AVMSD
<p>Advertising included in an on-demand programme service—</p> <p>(a) must be readily recognisable as such, and</p> <p>(b) must not use techniques which exploit the possibility of conveying a message subliminally or surreptitiously.</p>	<p>1. Member States shall ensure that audiovisual commercial communications provided by media service providers under their jurisdiction comply with the following requirements:</p> <p>(a) audiovisual commercial communications shall be readily recognisable as such. Surreptitious audiovisual commercial communication shall be prohibited;</p> <p>(b) audiovisual commercial communications shall not use subliminal techniques;</p> <p>[...]</p>
368F (4)	Art. 9 (1) (c) AVMSD

<p>Advertising included in an on-demand programme service must not—</p> <p>(a) prejudice respect for human dignity;</p> <p>(b) include or promote discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation;</p> <p>(c) encourage behaviour prejudicial to health or safety;</p> <p>(d) encourage behaviour grossly prejudicial to the protection of the environment;</p> <p>(e) cause physical or moral detriment to persons under the age of eighteen;</p> <p>(f) directly exhort such persons to purchase or rent goods or services in a manner which exploits their inexperience or credulity;</p> <p>(g) directly encourage such persons to persuade their parents or others to purchase or rent goods or services;</p> <p>(h) exploit the trust of such persons in parents, teachers or others; or</p> <p>(i) unreasonably show such persons in dangerous situations.</p>	<p>[...]</p> <p>(c) audiovisual commercial communications shall not:</p> <p>(i) prejudice respect for human dignity;</p> <p>(ii) include or promote any discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation;</p> <p>(iii) encourage behaviour prejudicial to health or safety;</p> <p>(iv) encourage behaviour grossly prejudicial to the protection of the environment;</p> <p>[...]</p>
--	--

368G Sponsorship

<p>368G (1) – (3)</p>	<p>Art. 10 (2) – (4) AVMSD</p>
<p>(1) An on-demand programme service or a programme included in an on-demand programme service must not be sponsored—</p> <p>(a) for the purpose of promoting cigarettes or other tobacco products, or</p> <p>(b) by an undertaking whose principal activity is the manufacture or sale of cigarettes or other tobacco products.</p>	<p>2. Audiovisual media services or programmes shall not be sponsored by undertakings whose principal activity is the manufacture or sale of cigarettes and other tobacco products.</p>

<p>(2) An on-demand programme service or a programme included in an on-demand programme service must not be sponsored for the purpose of promoting a prescription, only medicine.</p> <p>(3) An on-demand programme service may not include a news programme or current affairs programme that is sponsored.</p> <p>(a) anything included for the purpose of complying with subsection (8) or (9), and</p> <p>(b) anything included at the same time as or otherwise in conjunction with anything within paragraph (a).</p>	<p>3. The sponsorship of audiovisual media services or programmes by undertakings whose activities include the manufacture or sale of medicinal products and medical treatment may promote the name or the image of the undertaking, but shall not promote specific medicinal products or medical treatments available only on prescription in the Member State within whose jurisdiction the media service provider falls.</p> <p>4. News and current affairs programmes shall not be sponsored. Member States may choose to prohibit the showing of a sponsorship logo during children’s programmes, documentaries and religious programmes.</p>
---	--

(4) Subsections (5) to (11) apply to an on-demand programme service that is sponsored or that includes any programme that is sponsored.

<p>368G (5), (6)</p>	<p>Art. 10 (1) AVMSD</p>
<p>(5) The sponsoring of a service or programme must not influence the content of that service or programme in a way that affects the editorial independence of the provider of the service.</p> <p>(6) Where a service or programme is sponsored for the purpose of promoting goods or services, the sponsored service or programme and sponsorship announcements relating to it must not directly encourage the purchase or rental of the goods or services, whether by making promotional reference to them or otherwise.</p>	<p>1. Audiovisual media services or programmes that are sponsored shall meet the following requirements:</p> <p>(a) their content and, in the case of television broadcasting, their scheduling shall in no circumstances be influenced in such a way as to affect the responsibility and editorial independence of the media service provider;</p> <p>(b) they shall not directly encourage the purchase or rental of goods or services, in particular by making special promotional references to those goods or services;</p>

(7) Where a service or programme is sponsored for the purpose of promoting an alcoholic drink, the service or programme and sponsorship announcements relating to it must not—

- (a) be aimed specifically at persons under the age of eighteen; or
- (b) encourage the immoderate consumption of such drinks.

368G (8), (9)	Art. 10 (1) (c) AVMSD
<p>(8) A sponsored service must clearly inform users of the existence of a sponsorship agreement.</p> <p>(9) The name of the sponsor and the logo or other symbol (if any) of the sponsor must be displayed at the beginning or end of a sponsored programme.</p>	<p>(c) viewers shall be clearly informed of the existence of a sponsorship agreement. Sponsored programmes shall be clearly identified as such by the name, logo and/or any other symbol of the sponsor such as a reference to its product(s) or service(s) or a distinctive sign thereof in an appropriate way for programmes at the beginning, during and/or at the end of the programmes.</p>

(10) Techniques which exploit the possibility of conveying a message subliminally or surreptitiously must not be used in a sponsorship announcement.

(11) A sponsorship announcement must not—

- (a) prejudice respect for human dignity;
- (b) include or promote discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation;
- (c) encourage behaviour prejudicial to health or safety;
- (d) encourage behaviour grossly prejudicial to the protection of the environment;
- (e) cause physical or moral detriment to persons under the age of eighteen;
- (f) directly encourage such persons to persuade their parents or others to purchase or rent goods or services;
- (g) exploit the trust of such persons in parents, teachers or others; or
- (h) unreasonably show such persons in dangerous situations.

(12) For the purposes of this Part a programme included in an on-demand programme service is “**sponsored**” if a person (“the sponsor”) other than—

368G (12)	Art. 1(k) AVMSD sponsorship:
<p>(a) the provider of that service, or</p> <p>(b) the producer of that programme, has met some or all of the costs of the programme for the purpose of promoting the name,</p>	<p>means any contribution made by public or private undertakings or natural persons not engaged in providing audiovisual media services or in the production of audiovisual</p>

trademark, image, activities, services or products of the sponsor or of another person.	works, to the financing of audiovisual media services or programmes with a view to promoting their name, trade mark, image, activities or products;
---	---

(13) But a programme is not sponsored if it falls within this section only by virtue of the inclusion of product placement (see section 368H(1)) or prop placement (see section 368H(2)).

(14) For the purposes of subsection (12) a person meets some or all of the costs of a programme included in a service only if that person makes a payment or provides other resources for the purpose of meeting or saving some or all of the costs of—

- (a) producing that programme;
- (b) transmitting that programme; or
- (c) making that programme available as part of the service.

(15) For the purposes of this Part an on-demand programme service is “sponsored” if a person (“the sponsor”) other than the provider of the service has met some or all of the costs of providing the service for the purpose of promoting the name, trademark, image, activities, services or products of the sponsor or another person.

(16) For the purposes of subsection (15) a person is not to be taken to have met some or all of the costs of providing a service only because a programme included in the service is sponsored by that person.

(17) In this section a “sponsorship announcement” means—

- (a) anything included for the purpose of complying with subsection (8) or (9), and
- (b) anything included at the same time as or otherwise in conjunction with anything within paragraph (a).

368H Prohibition of product placement and exceptions

368H	Art. 1(m) AVMSD product placement:
(1) “ Product placement ”, in relation to a programme included in an on-demand programme service, means the inclusion in the programme of, or of a reference to, a product, service or trade mark, where the inclusion— (a) is for a commercial purpose, (b) is in return for the making of any payment, or the giving of other valuable consideration, to any relevant provider or any connected	any form of audiovisual commercial communication consisting of the inclusion of or reference to a product, a service or the trade mark thereof so that it is featured within a programme, in return for payment or for similar consideration;

person, and (c) is not prop placement.	
---	--

(2) “Prop placement”, in relation to a programme included in an on-demand programme service, means the inclusion in the programme of, or of a reference to, a product, service or trade mark where—

- (a) the provision of the product, service or trade mark has no significant value; and
- (b) no relevant provider, or person connected with a relevant provider, has received any payment or other valuable consideration in relation to its inclusion in, or the reference to it in, the programme, disregarding the costs saved by including the product, service or trademark, or a reference to it, in the programme.

368H (3)	Art. 11 (3) (b), second sentence AVMSD
Product placement is prohibited in children’s programmes included in on-demand programme services.	[...] The derogation provided for in point (a) shall not apply to children’s programmes. [...]
368H (4)	Art. 11 (4)
(4) Product placement is prohibited in on-demand programme services if— (a) it is of cigarettes or other tobacco products, (b) it is by or on behalf of an undertaking whose principal activity is the manufacture or sale of cigarettes or other tobacco products, or (c) it is of prescription-only medicines.	4. In any event programmes shall not contain product placement of: (a) tobacco products or cigarettes or product placement from undertakings whose principal activity is the manufacture or sale of cigarettes and other tobacco products; (b) specific medicinal products or medical treatments available only on prescription in the Member State under whose jurisdiction the media service provider falls.

- (5) Product placement of alcoholic drinks must not —
- (a) be aimed specifically at persons under the age of eighteen;
 - (b) encourage immoderate consumption of such drinks.
- (6) Product placement is otherwise permitted in programmes included in on-demand programme services provided that—
- (a) conditions A to F are met, and
 - (b) if subsection (14) applies, condition G is also met.

368 (7)	
<p>Condition A is that the programme in which the product, service or trademark, or the reference to it, is included is—</p> <p>(a) a film made for cinema;</p> <p>(b) a film or series made for a television programme service or for an on-demand programme service;</p> <p>(c) a sports programme; or</p> <p>(d) a light entertainment programme.</p> <p>(8) Condition B is that the product placement has not influenced the content of the programme in a way that affects the editorial independence of the provider of the service.</p> <p>(9) Condition C is that the product placement does not directly encourage the purchase or rental of goods or services, whether by making promotional reference to those goods or services or otherwise.</p> <p>(10) Condition D is that the programme does not give undue prominence to the products, services or trade marks concerned.</p> <p>(11) Condition E is that the product placement does not use techniques which exploit the possibility of conveying a message subliminally or surreptitiously.</p> <p>(12) Condition F is that the way in which the product, service or trade mark, or the reference to it, is included in the programme by way of product placement does not—</p> <p>(a) prejudice respect for human dignity;</p> <p>(b) promote discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation;</p> <p>(c) encourage behaviour prejudicial to health</p>	<p>[...]</p> <p>3. By way of derogation from paragraph 2, product placement shall be admissible in the following cases unless a Member State decides otherwise:</p> <p>(a) in cinematographic works, films and series made for audiovisual media services, sports programmes and light entertainment programmes;</p> <p>(b) where there is no payment but only the provision of certain goods or services free of charge, such as production props and prizes, with a view to their inclusion in a programme.</p> <p>[...]</p> <p>Programmes that contain product placement shall meet at least all of the following requirements:</p> <p>(a) their content and, in the case of television broadcasting, their scheduling shall in no circumstances be influenced in such a way as to affect the responsibility and editorial independence of the media service provider;</p> <p>(b) they shall not directly encourage the purchase or rental of goods or services, in particular by making special promotional references to those goods or services;</p> <p>(c) they shall not give undue prominence to the product in question;</p>

<p>or safety;</p> <p>(d) encourage behaviour grossly prejudicial to the protection of the environment;</p> <p>(e) cause physical or moral detriment to persons under the age of eighteen;</p> <p>(f) directly encourage such persons to persuade their parents or others to purchase or rent goods or services;</p> <p>(g) exploit the trust of such persons in parents, teachers or others; or</p> <p>(h) unreasonably show such persons in dangerous situations.</p> <p>(13) Condition G is that the on-demand programme service in question signals appropriately the fact that product placement is contained in a programme, no less frequently than—</p> <p>(a) at the start and end of such a programme, and</p> <p>(b) in the case of an on-demand programme service which includes advertising breaks within it, at the recommencement of the programme after each such advertising break.</p>	<p>(d) viewers shall be clearly informed of the existence of product placement. Programmes containing product placement shall be appropriately identified at the start and the end of the programme, and when a programme resumes after an advertising break, in order to avoid any confusion on the part of the viewer.</p>
---	--

(14) This subsection applies where the programme featuring the product placement has been produced or commissioned by the provider of the service or any connected person.

(15) This section applies only in relation to programmes the production of which begins after 19th December 2009.

(16) In this section— “connected” has the same meaning as it has in the Broadcasting Act 1990 by virtue of section 202 of that Act; “film made for cinema” means a film made with a view to its being shown to the general public first in a cinema; “producer”, in relation to a programme, means the person by whom the arrangements necessary for the making of the programme are undertaken; “relevant provider”, in relation to a programme, means—

- (a) the provider of the on-demand programme service in which the programme is included; and
- (b) the producer of the programme; “residual value” means any monetary or other economic value in the hands of the relevant provider other than the cost saving of including the product, service or trademark, or a reference to it, in a programme; “significant value” means a residual value that is more than trivial; and “trade mark”, in relation to a business, includes any image (such as a logo) or sound commonly associated with that business or its products or services.

368I Enforcement of section 368D

(1) Where the appropriate regulatory authority determine that a provider of an on-demand programme service is contravening or has contravened section 368D they may do one or both of the following—

(a) give the provider an enforcement notification under this section;

(b) impose a financial penalty on the provider in accordance with section 368J.

(2) The appropriate regulatory authority must not make a determination as mentioned in subsection (1) unless there are reasonable grounds for believing that a contravention of section 368D is occurring or has occurred and they have allowed the provider an opportunity to make representations about that apparent contravention.

(3) An enforcement notification under this section is a notification which specifies the determination made as mentioned in subsection (1) and imposes requirements on the provider to take such steps for complying with section 368D and for remedying the consequences of the contravention of that section as may be specified in the notification.

(4) The requirements specified in an enforcement notification may in particular include requirements to do one or more of the following—

(a) cease providing or restrict access to—

(i) a specified programme, or

(ii) programmes of a specified description;

(b) cease showing or restrict access to—

(i) a specified advertisement, or

(ii) advertisements of a specified description;

(c) provide additional information to users of the service prior to the selection of a specified programme by the user for viewing;

(d) show an advertisement only with specified modifications;

(e) publish a correction in the form and place and at the time specified; or

(f) publish a statement of the findings of the appropriate regulatory authority in the form and place and at the time specified.

(5) An enforcement notification must—

(a) include reasons for the appropriate regulatory authority's decision to give the enforcement notification, and

(b) fix a reasonable period for the taking of the steps required by the notification.

(6) Where a provider is required by an enforcement notification to publish a correction or a statement of findings, the provider may publish with the correction or statement of findings a statement that it is published in pursuance of the enforcement notification.

(7) It is the duty of a provider to whom an enforcement notification has been given to comply with it.

- (8) That duty is enforceable in civil proceedings by the appropriate regulatory authority—
- (a) for an injunction;
 - (b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988; or
 - (c) for any other appropriate remedy or relief.
- (9) If a provider to whom an enforcement notification has been given does not comply with it within the period fixed by the appropriate regulatory authority in that enforcement notification the appropriate regulatory authority may impose a financial penalty on that provider in accordance with section 368J.

Financial penalties

368J Financial penalties

- (1) The amount of a penalty imposed on a provider under section 368I is to be such amount not exceeding 5 per cent. of the provider's applicable qualifying revenue or £250,000 whichever is the greater amount, as the appropriate regulatory authority determine to be—
- (a) appropriate; and
 - (b) proportionate to the contravention in respect of which it is imposed.
- (2) In determining the amount of a penalty under subsection (1) the appropriate regulatory authority must have regard to any statement published by OFCOM under section 392 (guidelines to be followed in determining amount of penalties).
- (3) The “applicable qualifying revenue”, in relation to a provider, means—
- (a) the qualifying revenue for the provider's last complete accounting period falling within the period during which the provider has been providing the service to which the contravention relates; or
 - (b) in relation to a person whose first complete accounting period falling within that period has not ended when the penalty is imposed, the amount that the appropriate regulatory authority estimate to be the qualifying revenue for that period.
- (4) For the purposes of subsection (3) the “qualifying revenue” for an accounting period consists of the aggregate of all the amounts received or to be received by the provider of the service to which the contravention relates or by any connected person in the accounting period —
- (a) for the inclusion in that service of advertisements, product placement and sponsorship; and
 - (b) in respect of charges made in that period for the provision of programmes included in that service.
- (5) For the purposes of subsection (4), “connected” has the same meaning as it has in the Broadcasting Act 1990 by virtue of section 202 of that Act.
- (6) A financial penalty imposed under this section—

- (a) must be paid into the appropriate Consolidated Fund; and
 - (b) if not paid within the period fixed by the appropriate regulatory authority, is to be recoverable by the appropriate regulatory authority as a debt due to them from the person obliged to pay it.
- (7) For the purposes of subsections (3) and (6)—
- (a) the amount of a person's qualifying revenue for an accounting period, or
 - (b) the amount of any payment to be made into the appropriate Consolidated Fund by any person in respect of any such revenue, is, in the event of a disagreement between the appropriate regulatory authority and that person, the amount determined by the appropriate regulatory authority.
- (8) The references in this section to the payment of an amount into the appropriate Consolidated Fund—
- (a) in the case of an amount received in respect of matters appearing to OFCOM to have no connection with Northern Ireland, is a reference to the payment of the amount into the Consolidated Fund of the United Kingdom;
 - (b) in the case of an amount received in respect of matters appearing to OFCOM to have a connection with Northern Ireland but no connection with the rest of the United Kingdom, is a reference to the payment of the amount into the Consolidated Fund of Northern Ireland; and
 - (c) in any other case, is a reference to the payment of the amount, in such proportions as OFCOM consider appropriate, into each of those Funds.

Suspension or restriction of service

368K Suspension or restriction of service for contraventions

- (1) The appropriate regulatory authority must serve a notice under subsection (2) on a provider of an on-demand programme service if they are satisfied—
- (a) that the provider is in contravention of section 368D;
 - (b) that an attempt to secure compliance with section 368D by the imposition of one or more financial penalties or enforcement notifications under section 368I has failed; and
 - (c) that the giving of a direction under this section would be appropriate and proportionate to the seriousness of the contravention.
- (2) A notice under this subsection must—
- (a) state that the appropriate regulatory authority are satisfied as mentioned in subsection (1);
 - (b) state the reasons why they are satisfied as mentioned in subsection (1);
 - (c) state that the appropriate regulatory authority will give a direction under this section unless the provider takes, within a period specified in the notice, such steps to remedy the contravention within subsection (1)(a) as are so specified;

(d) specify any conditions that the appropriate regulatory authority propose to impose in the direction under section 368M(5)(b); and

(e) inform the provider that the provider has the right to make representations to the appropriate regulatory authority about the matters appearing to the authority to provide grounds for giving the proposed direction within the period specified for the purposes of paragraph (c).

(3) If, after considering any representations made to them by the provider within that period, the appropriate regulatory authority are satisfied that the provider has failed to take the steps specified in the notice for remedying the contravention and that it is necessary in the public interest to give a direction under this section, the appropriate regulatory authority must give such of the following as appears to them appropriate and proportionate as mentioned in subsection (1)(c)—

(a) a direction that the entitlement of the provider to provide an on-demand programme service is suspended (either generally or in relation to a particular service);

(b) a direction that that entitlement is restricted in the respects set out in the direction.

368L Suspension or restriction of service for inciting crime or disorder

(1) The appropriate regulatory authority must serve a notice under subsection (2) on a provider of an on-demand programme service if they are satisfied—

(a) that the service has failed to comply with any requirement of section 368E to 368H and that accordingly the provider has contravened section 368D(1);

(b) that the failure is due to the inclusion in the service of material likely to encourage or to incite the commission of crime, or to lead to disorder; and

(c) that the contravention is such as to justify the giving of a direction under this section.

(2) A notice under this subsection must—

(a) state that the appropriate regulatory authority are satisfied as mentioned in subsection (1);

(b) specify the respects in which, in their opinion, the provider has contravened section 368D;

(c) specify the effect of the notice in accordance with subsection (3);

(d) state that the appropriate regulatory authority may give a direction under this section after the end of the period of twenty-one days beginning with the day on which the notice is served on the provider; and

(e) inform the provider of the provider's right to make representations to the appropriate regulatory authority within that period about the matters appearing to the appropriate regulatory authority to provide grounds for giving a direction under this section.

(3) A notice under subsection (2) has the effect specified under subsection (2)(c), which may be either—

(a) that the entitlement of the provider to provide an on-demand programme service is suspended (either generally or in relation to a particular service), or

- (b) that that entitlement is restricted in the respects set out in the notice.
- (4) The suspension or restriction has effect as from the time when the notice is served on the provider until either—
 - (a) a direction given under this section takes effect; or
 - (b) the appropriate regulatory authority decide not to give such a direction.
- (5) If, after considering any representations made to them by the provider within the period mentioned in subsection (2)(d), the appropriate regulatory authority are satisfied that it is necessary in the public interest to give a direction under this section, they must give such of the following as appears to them justified as mentioned in subsection (1)(c)—
 - (a) a direction that the entitlement of the provider to provide an on-demand programme service is suspended (either generally or in relation to a particular service);
 - (b) a direction that that entitlement is restricted in the respects set out in the direction.

368M Supplementary provision about directions

- (1) This section applies to a direction given to a provider under section 368K or 368L.
- (2) A direction must specify the service to which it relates or specify that it relates to any on-demand programme service provided or to be provided by the provider.
- (3) A direction, except so far as it otherwise provides, takes effect for an indefinite period beginning with the time at which it is notified to the provider.
- (4) A direction under section 368L must specify a time for it to take effect, and that time must not fall before the end of twenty-eight days beginning with the day on which the direction is notified to the provider.
- (5) A direction—
 - (a) may provide for the effect of a suspension or restriction to be postponed by specifying that it takes effect only at a time determined by or in accordance with the terms of the direction; and
 - (b) in connection with the suspension or restriction contained in the direction or with the postponement of its effect, may impose such conditions on the provider as appear to the appropriate regulatory authority to be appropriate for the purpose of protecting that provider's customers.
- (6) If the appropriate regulatory authority consider it appropriate to do so (whether or not in consequence of representations or proposals made to them), they may revoke a direction or modify its conditions—
 - (a) with effect from such time as they may direct;
 - (b) subject to compliance with such requirements as they may specify; and
 - (c) to such extent and in relation to such services as they may determine.

368N Enforcement of directions under section 368K or 368L

- (1) A person (“P”) is guilty of an offence if P provides an on-demand programme service—
- (a) while P’s entitlement to do so is suspended by a direction under section 368K or 368L, or
 - (b) in contravention of a restriction contained in such a direction.
- (2) A person guilty of an offence under this section is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to a fine.

Information

368O Power to demand information

- (1) The appropriate regulatory authority may require a person who appears to them to be or to have been a provider of an on-demand programme service and to have information that they require for a purpose within subsection (2) to provide them with all such information as they consider necessary for that purpose.
- (2) The following are within this subsection—
- (a) the purposes of an investigation which the appropriate regulatory authority are carrying out in order for it to be determined whether a contravention of section 368D has occurred or is occurring, where—
 - (i) the investigation relates to a matter about which they have received a complaint, or
 - (ii) they otherwise have reason to suspect that there has been a contravention of either of those sections;
 - (b) the purpose of ascertaining or calculating applicable qualifying revenue under section 368J.

368O (3)	Art. 30 AVMSD
(3) The appropriate regulatory authority may require a person who appears to them to be or to have been a provider of an on-demand programme service and to have information that they require for the purpose of securing compliance with the obligations of the United Kingdom under the Audiovisual Media Services Directive to provide them with all such information as they consider necessary for that purpose.	Member States shall take appropriate measures to provide each other and the Commission with the information necessary for the application of this Directive, in particular Articles 2, 3 and 4, in particular through their competent independent regulatory bodies.

- (4) The appropriate regulatory authority may not require the provision of information under this section unless they have given the person from whom it is required an opportunity of making

representations to them about the matters appearing to them to provide grounds for making the request.

(5) The appropriate regulatory authority must not require the provision of information under this section except by a demand for the information contained in a notice served on the person from whom the information is required that describes the required information and sets out the appropriate regulatory authority's reasons for requiring it.

(6) A person who is required to provide information under this section must provide it in such manner and within such reasonable period as may be specified by the appropriate regulatory authority in the demand for information.

(7) Sections 368I and 368K apply in relation to a failure to comply with a demand for information imposed under this section as if that failure were a contravention of a requirement of section 368D.

(8) In this section "information" includes copies of programmes.

Application and interpretation of Part 4A

368P Application of Part 4A in relation to the BBC

(1) Section 368D(3) (duties of providers of on-demand programme services) does not apply to the BBC.

(2) In the following provisions references to a provider of an on-demand programme service do not include references to the BBC—

(a) section 368C (duties of appropriate regulatory authority);

(b) section 368F (advertising);

(c) section 368G (sponsorship);

(d) section 368I (enforcement by appropriate regulatory authority);

(e) section 368K (suspension or restriction of service for contraventions);

(f) section 368L (suspension or restriction of service for inciting crime or disorder);

(g) section 368O (power to demand information).

(3) Paragraph 2(2)(b) of Schedule 12 includes provision imposing obligations on the BBC in relation to on-demand programme services.

368Q Application of Part 4A in relation to the Welsh Authority

(1) In section 368C (duties of appropriate regulatory authority) references to a provider of an on-demand programme service do not include references to the Welsh Authority.

(2) It is the duty of the appropriate regulatory authority—

- (a) to take such steps as appear to them best calculated to secure that the requirements of sections 368E and 368F are complied with by the Welsh Authority in relation to advertising, and
- (b) to encourage the Welsh Authority to develop the codes of conduct referred to in section 368C(4) so far as it relates to advertising.
- (3) It is the duty of the Welsh Authority in the provision of any on-demand programme service to promote, where practicable and by appropriate means, production of and access to European works (within the meaning given in Article 1(n) of the Audiovisual Media Services Directive).
- (4) Section 368D(3)(duties of providers of on-demand programme services) does not apply to the Welsh Authority except in relation to advertising or in relation to the inclusion of advertising in on-demand programme services provided by the Welsh Authority.
- (5) Section 368I (enforcement by appropriate regulatory authority), section 368K (suspension or restriction of service for contraventions) and section 368L (suspension or restriction of service for inciting crime or disorder) do not apply in relation to the contravention of section 368D by the Welsh Authority except in the case of a contravention of section 368E or 368F that relates to advertising.
- (6) Section 368O does not apply in relation to information held by the Welsh Authority except where that information is required by the appropriate regulatory authority for the purposes of—
- (a) an investigation which the appropriate regulatory authority are carrying out (whether or not following receipt by them of a complaint) into a matter relating to compliance by the Welsh Authority with section 368E or 368F in relation to advertising; or
- (b) securing compliance with the international obligations of the United Kingdom under the Audiovisual Media Services Directive in relation to advertising.
- (7) Part 2 of Schedule 12 includes provision imposing obligations on the Welsh Authority in relation to on-demand programme services.

368R Interpretation of Part 4A

(1) In this Part—

“appropriate regulatory authority” is to be construed in accordance with 368B;

“children’s programme” means a programme which is intended for viewing primarily by persons under the age of sixteen;

“prescription-only medicine” means a medicinal product of a description or falling within a class specified in an order made under section 58 of the Medicines Act 1968;

“product placement” has the meaning given by section 368H(1);

“sponsorship” is to be construed in accordance with section 368G;

“tobacco product” has the meaning given in section 1 of the Tobacco Advertising and Promotion Act 2002.

(2) For the purposes of this Part, a programme is included in an on-demand programme service if it is included in the range of programmes the service offers to users.

(3) For the purposes of this Part, advertising is included in an on-demand programme service if it can be viewed by a user of the service as a result of the user selecting a programme to view.

(4) The services that are to be taken for the purposes of this Part to be available for use by members of the public include any service which—

(a) is made available for use only to 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.

(5) The person, and the only person, who is to be treated for the purposes of this Part as providing an on-demand programme service is the person who has editorial responsibility for the service (see section 368A(4)).

(6) For the purposes of this Part—

(a) the provision of a service by the BBC does not include its provision by a BBC company;

(b) the provision of a service by the Welsh Authority does not include its provision by an S4C company; and, accordingly, control that is or is capable of being exercised by the BBC or the Welsh Authority over decisions by a BBC company or an S4C company about what is to be comprised in a service is to be disregarded for the purposes of determining who has editorial responsibility for the service.”

The BBC

3.—(1) In section 198 of the 2003 Act (functions of OFCOM in relation to the BBC)—

(a) in subsection (3), after paragraph (a) (before “or”) insert—

“(aa) Part 4A,” and

(b) in subsection (9), after “245” insert “or by the appropriate regulatory authority by virtue of section 368C”.

(2) In paragraph 2(2)(b) of Schedule 12 to the 2003 Act (duty to publicise complaints procedures), after the words “under section 319”, insert— “or about compliance by the BBC with the requirements imposed by section 368D”.

The Welsh Authority

4.—(1) Part 2 of Schedule 12 to the 2003 Act (corresponding obligations of the Welsh Authority) is amended as follows.

(2) In paragraph 15 (directions by OFCOM following breach of duty by Welsh Authority)—

(a) in sub-paragraphs (1)(a) and (6), after “14”, insert “or 23A, or under section 368D”;

(b) in sub-paragraphs (1)(b), (2) and (5), after “public television services”, insert “or on-demand programme services”.

(3) In paragraph 19(2)(b) (duty to publicise complaints procedures), after the words “under section 319”, insert— “or about compliance by the Authority with the requirements imposed by section 368D and section 368Q(3), except the requirement imposed by section 368D(1) so far as it relates to advertising”.

(4) After paragraph 23, insert—

“On-demand programme services

23A.—(1) It is the duty of the Welsh Authority to comply with a direction given to them by OFCOM in relation to the establishment of procedures for the handling and resolution of complaints about compliance by the Authority with the requirements imposed by section 368D or section 368Q(3).

(2) But OFCOM must not give any such direction in relation to the handling and resolution of complaints about compliance with the requirement imposed by section 368D(1) so far as it relates to advertising.”

5. In section 341 of the 2003 Act (imposition of penalties on the Welsh Authority), after subsection (1)(j) insert—

“(ja) the requirement imposed by paragraph 23A of that Schedule (complaints procedures for on-demand programme services) to comply with a direction under that paragraph;

(jb) the requirements imposed by section 368D and section 368Q(3) (on-demand programme services), except the requirement imposed by section 368D(1) so far as it relates to advertising.”

Television licensable content services

6.—(1) In section 232(2)(b) of the 2003 Act (television licensable content services), after “consists of” insert “or has as its principal purpose the provision of”.

(2) In section 233 of the 2003 Act (services that are not television licensable content services), omit subsection (3).

Co-operation with other Member States

7. In the 2003 Act, after section 335 insert—

“Co-operation with other Member States

335A Co-operation with other Member States

335A	Art. 3 (4) (b AVMSD)
<p>(1) Where OFCOM—</p> <p>(a) receive under Article 3 of the Audiovisual Media Services Directive a request from another member State relating to a relevant broadcaster, and</p> <p>(b) consider that the request is substantiated, they must ask the broadcaster to comply with the rule identified in that request.</p> <p>(2) In this section “relevant broadcaster” means—</p> <p>(a) the BBC;</p> <p>(b) C4C;</p> <p>(c) the Welsh Authority; or</p> <p>(d) the holder of—</p> <p>(i) a Channel 3 licence;</p> <p>(ii) a Channel 5 licence; or</p> <p>(iii) a licence to provide any relevant regulated television service within the meaning of section 13(1) of the Broadcasting Act 1990.”</p>	<p>[...]</p> <p>(b) before taking the measures in question and without prejudice to court proceedings, including preliminary proceedings and acts carried out in the framework of a criminal investigation, the Member State has:</p> <p>(i) asked the Member State under whose jurisdiction the media service provider falls to take measures and the latter did not take such measures, or they were inadequate;</p> <p>(ii) notified the Commission and the Member State under whose jurisdiction the media service provider falls of its intention to take such measures.</p> <p>[...]</p>

Minor amendments of the 2003 Act

8. In the following provisions of the 2003 Act, for “Television without Frontiers Directive” substitute “Audiovisual Media Services Directive”—

- (a) section 211(2)(b) and (3)(b) (regulation of independent television services);
- (b) section 329(7)(b)(i) (proscription orders).

9. In section 361 of the 2003 Act (meaning of “available for reception by members of the public”)—

(a) for subsections (2) to (5) substitute—

“(2) A service is not to be treated as available for reception by members of the public if it is an on-demand programme service.”;

(b) omit subsection (9).

10. In section 362(1) of the 2003 Act (expressions used in Part 3 of that Act) omit the definition of “the Television without Frontiers Directive”.

11. In section 405(1) of the 2003 Act (general interpretation)—

(a) after the definition of “associated facility”, insert— ““the Audiovisual Media Services Directive” means Directive 89/552/EEC of the European Parliament and of the Council on the Coordination of certain provisions laid down by law, regulation or administrative action in member States concerning the provision of audiovisual media services, together with the modifications of that Directive by—

(a) Directive 97/36/EC of the European Parliament and of the Council; and

(b) Directive 2007/65 EC of the European Parliament and of the Council;”;

(b) after the definition of “OFCOM” insert—

““on-demand programme service” has the meaning given by section 368A(1);”.

On-demand programme services: consequential amendments of the Copyright, Designs and Patents Act 1988

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

(2) In section 69 (copyright: recording for purposes of supervision and control of broadcasts and other services)—

(a) in subsection (1), after “them” insert “or included in any on-demand programme service provided by them”,

(b) in subsection (2)(d), after “334(3)” insert “, 368O(1) or (3)”, and

(c) after subsection (4) insert—

“(5) Copyright is not infringed by the use by an appropriate regulatory authority designated under section 368B of the Communications Act 2003, in connection with the performance of any of their functions under that Act, of any recording, script or transcript which is provided to them under or by virtue of any provision of that Act.

(6) In this section “on-demand programme service” has the same meaning as in the Communications Act 2003 (see section 368A of that Act).”

(3) In paragraph 17 of Schedule 2 (rights in performances: recordings for purposes of supervision and control of broadcasts and other services)—

(a) in sub-paragraph (1), after “them” insert “or included in any on-demand programme service provided by them”,

(b) in sub-paragraph (2)(d), after “334(3)” insert “, 368O(1) or (3)”, and

(c) after sub-paragraph (4) insert—

“(5) The rights conferred by this Chapter are not infringed by the use by the appropriate regulatory authority designated under section 368B of the Communications Act 2003, in connection with the performance of any of their functions under that Act, of any recording, script or transcript which is provided to them under or by virtue of any provision of that Act.

(6) In this paragraph “on-demand programme service” has the same meaning as in the Communications Act 2003 (see section 368A of that Act).”

Amendments of the Wireless Telegraphy Act 2006

13.—(1) The Wireless Telegraphy Act 2006 is amended as follows.

(2) In section 9(4) (terms, provision and limitations in wireless telegraphy licences), after paragraph (c) insert—

“(d) terms, provisions or limitations requiring a satellite uplinker to suspend or cease uplinking, by means of satellite uplink apparatus, a service named by OFCOM in a notice given to the satellite uplinker under section 9A;

(e) terms or provisions requiring a satellite uplinker to provide OFCOM with such information necessary for the purpose of determining whether section 9A applies in relation to a service uplinked by the satellite uplinker or for any purpose connected with the giving of a notice under section 9A as OFCOM may request by a notice in writing.”

(3) After section 9 insert—

“Notice to satellite uplinkers

9A	Art. 2 (4) (a) AVMSD
(1) This section applies where a relevant regulated television service or an ondemand programme service is provided by a person who is deemed to be under the jurisdiction of the United Kingdom for the purpose of the Audiovisual Media Services Directive by reason only of the person providing such a service by means of satellite uplink apparatus situated within the United Kingdom.	4. Media service providers to whom the provisions of paragraph 3 are not applicable shall be deemed to be under the jurisdiction of a Member State in the following cases: (a) they use a satellite up-link situated in that Member State;

(2) OFCOM may give a notice in writing under this section to a satellite uplinker in relation to a relevant regulated television service if OFCOM are satisfied that the service is provided—

(a) in contravention of a licence under Part 1 of the Broadcasting Act 1990 or Part 1 of the Broadcasting Act 1996; or

(b) otherwise than pursuant to such a licence.

(3) OFCOM may give a notice in writing under this section to a satellite uplinker in relation to an on-demand programme service if OFCOM are satisfied that the service is provided in contravention of a requirement of Part 4A of the Communications Act 2003.

(4) Where a notice is given to a satellite uplinker under subsection (2)(a) or (3) the notice must—

(a) name the service;

(b) specify the reasons why OFCOM consider that subsection (2)(a) or (3) is satisfied; and

(c) specify—

(i) the date by which the satellite uplinker must cease the uplinking of the service; or

(ii) a period during which the satellite uplinker must suspend the uplinking of the service.

(5) Where a notice is given to a satellite uplinker under subsection (2)(b) the notice must—

(a) name the service; and

(b) specify—

(i) the date by which the satellite uplinker must cease the uplinking of the service; or

(ii) a period during which the satellite uplinker must suspend the uplinking of the service.

(6) In this section— “relevant regulated television service” has the same meaning as in section 13 of the Broadcasting Act 1990; “on-demand programme service” has the same meaning as in the Communications Act 2003 (see section 368A of that Act).”

(4) In section 39 (contravention of terms, etc)—

(a) in subsection (4) for “(7)” substitute “(8)”, and

(b) after subsection (7) insert—

“(8) The person notified also has a shorter period if—

(a) OFCOM have reasonable grounds for believing that that person is contravening, or has contravened, a notice given under section 9A or a term or provision as mentioned in section 9(4)(e);

(b) OFCOM have determined, taking into account all relevant circumstances, that a shorter period would be appropriate; and

(c) the shorter period has been specified in the notification.”

(5) Section 115 (general interpretation) is amended as follows.

(6) After the definition of “associated facility” insert—

““the Audiovisual Media Services Directive” means Directive 89/552/EEC of the European Parliament and of the Council on the Coordination of certain provisions laid down by law, regulation or administrative action in member States concerning the provision of audiovisual media services, together with the modifications of that Directive by —

(a) Directive 97/36/EC of the European Parliament and of the Council; and

(b) Directive 2007/65 EC of the European Parliament and of the Council;”.

(7) After the definition of “receiving apparatus” insert— ““satellite uplink apparatus” means wireless telegraphy apparatus, the purpose of which is to emit, to one or more satellites, energy to which section 116(2) applies; “satellite uplinker” means a person who operates satellite uplink apparatus, but where a person is employed or engaged to operate satellite uplink apparatus under the direction or control of another person, references to a satellite uplinker are references only to that other person;”.

Siôn Simon

Parliamentary Under Secretary of State

9th November 2009 Department for Culture, Media and Sport

Explanatory Note

(This note is not part of the Regulations)

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

2010 No. 419

Electronic Communications

The Audiovisual Media Services Regulations 2010

Made 22nd February 2010

Laid before Parliament 25th February 2010

Coming into force 18th March 2010

These Regulations are made by the Secretary of State, being a Minister designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to information society services, in exercise of the powers conferred by section 2(2) of that Act.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Audiovisual Media Services Regulations 2010 and come into force on 18th March 2010.

(2) In these Regulations “the 2003 Act” means the Communications Act 2003(c).

Amendments of Part 4A of the Communications Act 2003: on-demand programme services

2. Part 4A of the 2003 Act is amended as follows.

3. In section 368B—

(1) In subsection (1) for “(8)” substitute “(9)”, and

(2) In subsection (6), for “(4)(b)(iii)” substitute “(5)(b)(iii)”.

4. After section 368B (the appropriate regulatory authority) insert—

“Notification by providers

368BA Advance notification to appropriate regulatory authority

(1) A person must not provide an on-demand programme service unless, before beginning to provide it, that person has given a notification to the appropriate regulatory authority of the person's intention to provide that service.

(2) A person who has given a notification for the purposes of subsection (1) must, before—

(a) providing the notified service with any significant differences; or

(b) ceasing to provide it, give a notification to the appropriate regulatory authority of the differences or (as the case may be) of an intention to cease to provide the service.

(3) A notification for the purposes of this section must—

(a) be sent to the appropriate regulatory authority in such manner as the authority may require; and

(b) contain all such information as the authority may require.

368BB Enforcement of section 368BA

(1) Where the appropriate regulatory authority determine that the provider of an ondemand programme service has contravened section 368BA, they may do one or both of the following—

(a) give the provider an enforcement notification under this section;

(b) impose a penalty on the provider in accordance with section 368J.

(2) The appropriate regulatory authority must not make a determination as mentioned in subsection (1) unless there are reasonable grounds for believing that a contravention of section 368BA has occurred and they have allowed the provider an opportunity to make representations about that apparent contravention.

(3) An enforcement notification under this section is a notification which specifies the determination made as mentioned in subsection (1) and imposes a requirement on the provider to take all such steps for remedying the contravention of section 368BA as may be specified in the notification.

(4) An enforcement notification must—

(a) include reasons for the appropriate regulatory authority's decision to give the enforcement notification, and

(b) fix a reasonable period for taking the steps required by the notification.

(5) It is the duty of a person to whom an enforcement notification has been given to comply with it.

(6) That duty is enforceable in civil proceedings by the appropriate regulatory authority—

(a) for an injunction;

(b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988; or

(c) for any other appropriate remedy or relief.”

5. In section 368D(3) (duties of service providers) before paragraph (a) insert—

“(za) pay to the appropriate regulatory authority such fee as that authority may require under section 368NA;

(zb) retain a copy of every programme included in the service for at least forty-two days after the day on which the programme ceases to be available for viewing;

(3A) A copy of a programme retained for the purposes of subsection (3)(zb) must be of a standard and in a format which allows the programme to be viewed as it was made available for viewing.”

6. In section 368G(2) for “prescription,only” substitute for “prescription-only”.

7. In section 368J(1) (financial penalties) after “section” insert “ 368BB or”.

8.—(1) Section 368K(1) (suspension or restriction of service for contraventions) is amended as follows.

(2) In paragraph (a) after “section” insert “368BA or ”.

(3) In paragraph (b) —

(a) after the first “section” insert “ 368BA or ”;

(b) after “368D” insert “ (as the case may be)”;

(c) after the second “section” insert “368BB or ”.

9. After section 368N (enforcement of directions under section 368K or 368L) insert—

“Fees

368NA Fees

(1) In this section “the authority” means each of these—

(a) the appropriate regulatory authority;

(b) (where they are not the appropriate regulatory authority) OFCOM.

(2) The authority may require a provider of an on-demand programme service to pay them a fee.

(3) The authority must be satisfied that the amount of any fee required under subsection

(2)—

(a) represents the appropriate contribution of the provider towards meeting the likely costs described in subsection (5)(a), and

(b) is justifiable and proportionate having regard to the provider who will be required to pay it and the functions in respect of which it is imposed.

(4) A different fee may be required in relation to different cases or circumstances.

(5) The authority must, for each financial year—

(a) prepare such estimate as it is practicable for them to make of the likely costs of carrying out the relevant functions during that year;

(b) ensure that the aggregate amount of the fees that are required to be paid to them under subsection (2) during that year is sufficient to enable them to meet, but not exceed, the costs estimated under paragraph (a);

(c) consult in such manner as they consider appropriate the providers likely to be required to pay them a fee under subsection (2) during that year;

(d) publish in such manner as they consider appropriate the amount of the fees they will require providers to pay to them under subsection (2) during that year.

(6) As soon as reasonably practicable after the end of the financial year, the authority must publish a statement setting out, for that year—

(a) the aggregate amount received by them during that year in respect of fees required to be paid under subsection (2);

(b) the aggregate amount outstanding and likely to be paid or recovered in respect of fees that were required to be so paid under subsection (2); and

(c) the costs to them of carrying out the relevant functions during that year.

(7) Any deficit or surplus shown (after applying this subsection for all previous years) by a statement under subsection (6) is to be—

(a) carried forward; and

(b) taken into account in determining what is required to satisfy the requirement imposed by virtue of subsection (5)(b) in relation to the following year.

(8) The authority may repay to a person some or all of a fee paid to them by a person under subsection (2) if—

(a) that person has ceased to provide an on-demand programme service at some time during the period to which the fee relates;

(b) before ceasing to provide that service, that person gave the appropriate regulatory authority a notification under section 368BA(2); and

(c) that person did not cease to provide the service following a direction given by the appropriate regulatory authority under section 368K or 368L.

(9) The authority may make arrangements with any body designated under section 368B for that body to provide the authority with assistance in connection with the collection or repayment of fees required by them under this section.

(10) For the purposes of this section—

(a) the authority's costs of carrying out the relevant functions during a financial year include their costs of preparing to carry out the relevant functions incurred during that year; and

(b) the authority's costs of preparing to carry out the relevant functions incurred after 19 December 2009 but before the financial year in which those functions were first carried out by them are to be treated as if they were incurred during that year.

(11) In this section “relevant functions” means—

(a) in relation to the appropriate regulatory authority, their functions as the appropriate regulatory authority;

(b) in relation to OFCOM (where they are not the appropriate regulatory authority), their other functions under this Part.

(12) In this section “financial year” means a period of 12 months ending with 31 March.”

10. In section 368O(2)(a) (power to demand information) after “section” insert “ 368BA or section”.

11. In section 368P (application of Part 4A in relation to the BBC)—

(a) before subsection (1) insert—

“(A1) Section 368BA (advance notification) does not apply in relation to an on-demand programme service provided or to be provided by the BBC.”;

(b) for subsection (1) substitute—

“(1) The following provisions do not apply to the BBC—

(a) section 368D(3) (duties of providers of on-demand programme services);

(b) section 368F (advertising);

(c) section 368G (sponsorship);

(d) section 368NA (fees).”;

(c) in subsection (2) omit paragraphs (b) and (c).

12. In section 368Q (application of Part 4A in relation to the Welsh Authority)—

(1) before subsection (1) insert—

“(A1) Section 368BA (advance notification) does not apply in relation to an on-demand programme service provided or to be provided by the Welsh Authority, other than a service that includes advertising.”

(2) in subsection (4) for “(duties of providers of on-demand programme services) does” substitute “(zb), (a), and (b) (duties of providers of on-demand programme services) do”;

(3) in subsection (5), at the end insert “or in the case of a contravention of section 368D(3)(za)”.

Amendments of Part 4A of the Communications Act 2003: transitional provision

13.—(1) Where, on the day on which section 368BA of the 2003 Act (advance notification by providers of on-demand programme services) comes into force, an on-demand programme service is already being provided by a person—

(a) that person's obligation under that section to give a notification before beginning to provide that service has effect as an obligation to give a notification before 30 April 2010; and

(b) that notification must state that that person is already providing the service (rather than that the person intends to do so).

(2) Section 368NA of the 2003 Act (fees) applies in relation to the period beginning with 19 December 2009 and ending with 31 March 2010 as if that period were a financial year but with the following modifications.

(3) Subsection (3)(a) of that section, as it applies in relation to the appropriate regulatory authority, has effect as if the reference to the likely costs described in subsection (5)(a) were a reference to the likely costs of carrying out functions as the appropriate regulatory authority set out in any estimate prepared or approved by OFCOM in relation to that period (an "OFCOM estimate").

(4) Subsection (5) of that section does not apply but paragraphs (5) and (6) below apply instead.

(5) For the purposes of that section as it applies in relation to the appropriate regulatory authority, the appropriate regulatory authority must—

(a) ensure so far as reasonably practicable that the aggregate amount of the fees that are required to be paid to them under section 368NA(2) during that period is sufficient to enable them to meet, but not exceed, the costs set out in any OFCOM estimate;

(b) publish in such manner as they consider appropriate the amount of the fees they will require providers to pay to them under section 368NA(2) during that period.

(6) For the purposes of that section as it applies in relation to OFCOM otherwise than as the appropriate regulatory authority, OFCOM must—

(a) prepare such estimate as it is practicable for them to make of the likely costs of carrying out their functions under Part 4A of the 2003 Act otherwise than as the appropriate regulatory authority during that period;

(b) ensure so far as reasonably practicable that the aggregate amount of the fees that are required to be paid to them under section 368NA(2) during that period is sufficient to enable them to meet, but not exceed, the costs set out in that estimate;

(c) publish in such manner as they consider appropriate the amount of the fees they will require providers to pay to them under section 368NA(2) during that period.

The Welsh Authority: amendments of the Communications Act 2003

14.—(1) Part 2 of Schedule 12 of the 2003 Act (corresponding obligations of the Welsh Authority) is amended as follows.

(2) In paragraph 15(1)(a) (directions by OFCOM following breach of duty by the Welsh Authority) after “368D” insert “except the requirement imposed by section 368D(1) so far as it relates to advertising, and the requirement imposed by section 368D(3)(za)”.

(3) In paragraph 15(6) for the words “imposed” to “368D” substitute “mentioned in subparagraph (1)(a)”.

(4) In paragraph 19(2)(b) (duty to publicise complaints procedures) for the words from “requirement” to the end substitute “requirements mentioned in sub-paragraph (3)”.

(5) After paragraph (19)(2) insert—

“(3) The requirements mentioned in this sub-paragraph are the requirement imposed by section 368D(1) so far as it relates to advertising and the requirement imposed by section 368D(3)(za)”.

(6) In paragraph 23A(2), after “advertising” insert “or with the requirement imposed by section 368D(3)(za)”.

(7) In section 341 of the 2003 Act (imposition of penalties on the Welsh Authority), in subsection (1)(b) after “advertising” insert “and the requirement imposed by section 368D(3)(za)”.

Consequential amendments of the Wireless Telegraphy Act 2006

15.—(1) Section 9A of the Wireless Telegraphy Act 2006 is amended as follows.

(2) In subsection (3) —

(a) after “provided” insert—

“— (a) ”; (b) after “2003” insert— “; or

(b) otherwise than pursuant to a notification under section 368BA of the Communications Act 2003.”

(3) In subsection (4), after “(3)” (in both places where it appears) insert “(a)”.

(4) In subsection (5) after “(2)(b)” insert “ or (3)(b)”.

Ben Bradshaw

Secretary of State

22nd February 2010 Department for Culture, Media and Sport

Explanatory Note

(This note is not part of the Order)

These Regulations are part of the implementation of 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”). These Regulations make provisions additional to those in the Audiovisual Media Services Regulations 2009 the “2009 Regulations”. Regulation 3 corrects an error in section 368B of the Act. Regulation 4 inserts new sections 368BA and 368BB into the Act. Section 368BA sets out the requirement for the provider of an on-demand programme service to notify the regulatory authority of its intention to provide a service and section 368BB provides powers to enforce that requirement, including by way of the imposition of a financial penalty. Regulation 5 inserts new requirements in section 368D(3) of the Act. Inserted section 368D requires the provider of an on-demand service to pay the regulatory authority a fee under section 368Q. Inserted section 368D requires providers to retain a copy of material provided on the on-demand service for at least forty two days. Regulation 6 corrects an error in section 368G(2).

Regulations 7 and 8 insert references to section 368BA and section 368BB into the existing enforcement regime which applies in relation to on-demand programme services. Regulation 9 inserts section 368NA which makes provision in relation to the fees that an appropriate regulatory authority and OFCOM may require a provider of an on-demand programme service to pay. Regulation 11 makes provision in relation to the BBC and paragraphs (b) and (c) correct a drafting error in section 368P. Regulation 12 makes insertions to specify the extent of the application of the new provisions to the Welsh Authority. Regulation 13 sets out transitional provisions. Regulation 14 amends Part 2 of Schedule 12 of the Act in relation to the Welsh Authority. Regulation 15 amends the Wireless Telegraphy Act 2006 to enable OFCOM to require a satellite uplinker to cease or suspend uplinking of an on-demand programme service where such service is provided otherwise than pursuant to a notification under section 368BA. Regulation 15 only applies 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 because that person provides such service by means of a satellite uplink apparatus situated within the United Kingdom. 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 for Culture, Media and Sport (www.culture.gov.uk). They are also annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website. These regulations, so far as required, were notified in draft to the European Commission in accordance with Directive 98/34/EC, as amended by Directive 98/48/EC.

Code on the scheduling of television advertising

[This version of the Code includes the revisions shown in Annex 1, and will come into effect from 1 June 2009]

Introduction

1. This Code sets out the rules with which television broadcasters licensed by Ofcom ('broadcasters') must comply when carrying advertising. These rules give effect to relevant provisions of the Audio Visual Media Services (AVMS) Directive and those policies determined by Ofcom following consultation. In accordance with Article 20 of the Directive, Ofcom may disapply some or all of the relevant rules to channels that are not receivable outside the United Kingdom.

2. Broadcasters must also comply with the Television Advertising Standards Code issued by the Broadcast Committee on Advertising Practice.

Definitions

3. In this Code:

a) ' television advertising '	Art. 1(i) AVMSD television advertising :
means any form of announcement broadcast whether in return for payment or for similar consideration or broadcast for self-promotional purposes by a public or private undertaking or natural person in connection with a trade, business, craft or profession in order to promote the supply of goods and services, including immovable property, rights and obligations, in return for payment;	any form of announcement broadcast whether in return for payment or for similar consideration or broadcast for self-promotional purposes by a public or private undertaking or natural person in connection with a trade, business, craft or profession in order to promote the supply of goods or services, including immovable property, rights and obligations, in return for payment;

b) the 'broadcasting day' for the purposes of this Code is deemed to start at 6am and run for the following 24 hours;

c) 'Parliamentary proceedings' includes proceedings on the floor of either House and Parliamentary Committees;

d) 'public service channels' means those television services designated in accordance with section 310 of the Communications Act 2003 other than the BBC services

e) a 'formal Royal ceremony' means a formal ceremony or occasion of which the Sovereign or members of the British Royal Family enjoying the prefix 'Royal Highness' are the centre. It applies to occasions such as the State Opening of Parliament and Trooping the Colour;

f) 'films' includes cinematographic works and films made for television, but excludes series, serials and documentaries;

g) 'self promotion' means advertising for the broadcaster's own products and services; and

h) 'teleshopping'	Art. 1(l) AVMSD teleshopping :
means television advertising which includes direct offers to the public with a view to the supply of goods or services, including immovable property, rights and obligations, in return for payment.	direct offers broadcast to the public with a view to the supply of goods or services, including immovable property, rights and obligations, in return for payment;

Allowances for advertising and teleshopping

4.	Art. 23 AVMSD
<p>Subject to paragraphs 5 to 8 below, time devoted to television advertising and teleshopping spots on any channel in any one hour must not exceed 12 minutes, and:</p> <p>a) on public service channels must not exceed: i) an average of 7 minutes per hour for every hour of transmission time across the broadcasting day; and</p> <p>ii) subject to (i) above, an average of 8 minutes an hour between 6pm and 11pm;</p> <p>b) on other channels must not exceed: iii) an average of 9 minutes of television advertising for every hour of transmission across the broadcasting day; and</p> <p>iv) an average of 3 minutes of teleshopping spots for every hour of transmission across the broadcasting day.</p>	<p>1. The proportion of television advertising spots and teleshopping spots within a given clock hour shall not exceed 20 %.</p> <p>[...]</p>

5. During programmes broadcast by the national Channel 3 licensee, the amount of time permitted for television advertising and teleshopping spots between 6am to 9.25am may be averaged across the week.

6.	Art. 25 AVMSD
Channels exclusively comprised of teleshopping and advertising are not subject to the limits on advertising and teleshopping spots set out in paragraph 4(b) above.	This Directive shall apply <i>mutatis mutandis</i> to television channels exclusively devoted to advertising and teleshopping as well as to television channels exclusively devoted to self-promotion. However, Chapter VI as well as Articles 20 and 23 shall not apply to these channels.
7.	Art. 23 AVMSD
Channels exclusively comprised of self-promotional content are not subject to the limits on advertising set out in paragraph 4(b), notwithstanding that self-promotional content is defined as television advertising in paragraph 3(a) above. On those channels comprising both self-promotional and other content, the self-promotional content will be treated as advertising, and will be subject to the limits on advertising set out in paragraph 4(b)(i).	[...] 2. Paragraph 1 shall not apply to announcements made by the broadcaster in connection with its own programmes and ancillary products directly derived from those programmes, sponsorship announcements and product placements.
8.	Art. 24 AVMSD
Teleshopping windows must be at least 15 minutes long: a) on public service channels, teleshopping windows may be scheduled only between midnight and 6am; and b) on other channels, there are no limits on the number or scheduling of teleshopping windows.	Teleshopping windows shall be clearly identified as such by optical and acoustic means and shall be of a minimum uninterrupted duration of 15 minutes.

9. Channels licensed by Ofcom which are available only in a locality within the United Kingdom and which are not receivable outside the United Kingdom may use all or part of their teleshopping windows for local advertising features that do not include direct offers for sale, provided that a significant proportion of each feature refers specifically to the locality in which it appears.

Transfer of minutage

10. If broadcasters have been unable to use their full allowance for television advertising and teleshopping spots for reasons of good programme presentation, or because of unforeseen technical or human errors, they may transfer the unused minutage to other parts of the schedule on the same or any other day within 7 days, provided that they comply with the rules in paragraph 4. If a proposed transfer would result in a breach of the rules in paragraph 4 (a) or paragraph 4(b), the broadcaster should seek Ofcom's prior permission. Until 31 December 2009, Channel 4 will be allowed to continue with the present arrangements for substituting advertising minutage which would otherwise be used between schools programmes with an amount equivalent to 60% elsewhere in the schedule, subject to complying with the peak-time restrictions in paragraph 4(a)(ii) and the overall limit of 12 minutes of advertising and teleshopping spots in any one hour.

11.	Art. 19 (1) AVMSD
Broadcasters must ensure that television advertising and teleshopping is readily recognisable and distinguishable from editorial content and kept distinct from other parts of the programme service. This shall be done by optical (including spatial) means; acoustic signals may also be used as well.	1. Television advertising and teleshopping shall be readily recognisable and distinguishable from editorial content. Without prejudice to the use of new advertising techniques, television advertising and teleshopping shall be kept quite distinct from other parts of the programme by optical and/or acoustic and/or spatial means. [...]

Advertising and teleshopping breaks during programmes

12.	Art. 20 (1) AVMSD
Where television advertising or teleshopping is inserted during programmes, television broadcasters must ensure that the integrity of the programme is not prejudiced, having regard to the nature and duration of the programme, and where natural breaks occur.	1. Member States shall ensure, where television advertising or teleshopping is inserted during programmes, that the integrity of the programmes, taking into account natural breaks in and the duration and the nature of the programme concerned, and the rights of the right holders are not prejudiced. [...]

13. To avoid excessive abruptness, transition between live coverage of Parliamentary proceedings and advertising should take place where natural breaks occur via a programme

presenter in sound or vision. Programme directors / editors must have the discretion to reschedule or cancel breaks to avoid artificial interruptions in live proceedings. Breaks should be dropped altogether where this would be incompatible with editorial responsibility, for example in coverage of matters of great gravity or emotional sensitivity.

14. Breaks during programmes on public service channels may not exceed 3 minutes 50 seconds, of which advertisements may not exceed 3 minutes 30 seconds.

Scheduling restrictions

15.	Art. 19 (2) AVMSD
Isolated television advertising and teleshopping spots, other than in the transmission of sports events, shall remain the exception.	[...] 2. Isolated advertising and teleshopping spots, other than in transmissions of sports events, shall remain the exception.
16.	Art. 20 (2) AVMSD
Restrictions apply when inserting advertising breaks during the following programmes: a) films and news programmes may only include one advertising or teleshopping break for each scheduled period of at least 30 minutes; b) children's programmes (other than schools programmes) with a scheduled duration of 30 minutes or less may not include an advertising or teleshopping break. Such programmes with a scheduled duration of longer than 30 minutes may have one break for each scheduled period of at least 30 minutes. Breaks are not permitted within schools programmes, but may be scheduled between programmes; c) programmes including a religious service may not include advertising or teleshopping breaks during the service;	[...] 2. The transmission of films made for television (excluding series, serials and documentaries), cinematographic works and news programmes may be interrupted by television advertising and/or teleshopping once for each scheduled period of at least 30 minutes. The transmission of children's programmes may be interrupted by television advertising and/or teleshopping once for each scheduled period of at least 30 minutes, provided that the scheduled duration of the programme is greater than 30 minutes. No television advertising or teleshopping shall be inserted during religious services.

d) broadcasts of a formal Royal ceremony may not include advertising or teleshopping breaks during the ceremony;

- e) broadcasts of live Parliamentary proceedings may not include advertising and teleshopping breaks in programmes of a scheduled duration of 30 minutes or less;
- f) in programmes of live events, more breaks may be taken than are indicated in Tables 1 and 2 below, provided that:
 - i) the timing of the event and its constituent parts are outside the control of the programme provider; and
 - ii) there would not be sufficient time within the number of permitted breaks which are also natural breaks to schedule the permitted amount of advertising.
- g) live programme feeds from an overseas broadcaster may take the break pattern of the originating broadcaster. The broadcaster retransmitting the feed from the UK remains responsible for ensuring compliance with other relevant parts of this Code and the Television Advertising Standards Code.

17. With the exceptions described in paragraph 16 above, the number of internal breaks permitted in programmes on public service channels is set out Table 1; the number permitted in programmes on other channels is set out in Table 2. For every additional 20-minute period beyond that set out in the tables, a further break is permitted.

Table 1: Number of internal breaks permitted in programmes on public service channels

Scheduled duration of programme	Number of breaks
21 – 44 minutes	One
45 – 54 minutes	Two
55 - 65 minutes	Three
66 – 85 minutes	Four
86 – 105 minutes	Five
106 – 125 minutes	Six

Table 2: Number of internal breaks permitted in programmes on other channels

Scheduled duration of programme	Number of breaks
< 26 minutes	One
26 – 45 minutes	Two
46 – 65 minutes	Three
66 – 85 minutes	Four
86 – 105 minutes	Five
106 – 125 minutes	Six

Broadcasting Act 1996

[...]

Part IV Sporting and other events of national interest

97 Listed events

97	Art. 14 AVMSD
<p>(1) For the purposes of this Part, a listed event is a sporting or other event of national interest which is for the time being included in a list drawn up by the Secretary of State for the purposes of this Part.</p> <p>(2) The Secretary of State shall not at any time draw up, revise or cease to maintain such a list as is mentioned in subsection (1) unless he has first consulted—</p> <p>(a) the BBC,</p> <p>(b) the Welsh Authority,</p> <p>(c) the Commission, and</p> <p>(d) in relation to a relevant event, the person from whom the rights to televise that event may be acquired; and for the purposes of this subsection a relevant event is a sporting or other event of national interest which the Secretary of State proposes to include in, or omit from, the list.</p> <p>(3) As soon as he has drawn up or revised such a list as is mentioned in subsection (1), the Secretary of State shall publish the list in such manner as he considers appropriate for bringing it to the attention of—</p> <p>(a) the persons mentioned in subsection (2), and</p> <p>(b) every person who is the holder of a licence granted by the Commission under Part I of the</p>	<p>1. Each Member State may take measures in accordance with Union law to ensure that broadcasters under its jurisdiction do not broadcast on an exclusive basis events which are regarded by that Member State as being of major importance for society in such a way as to deprive a substantial proportion of the public in that Member State of the possibility of following such events by live coverage or deferred coverage on free television. If it does so, the Member State concerned shall draw up a list of designated events, national or non-national, which it considers to be of major importance for society. It shall do so in a clear and transparent manner in due time. In so doing the Member State concerned shall also determine whether these events should be available by whole or partial live coverage or, where necessary or appropriate for objective reasons in the public interest, whole or partial deferred coverage.</p> <p>2. Member States shall immediately notify to the Commission any measures taken or to be taken pursuant to paragraph 1. Within a period of 3 months from the notification, the Commission shall verify that such measures are compatible with Union law and communicate them to the other Member States. It shall seek the opinion of the contact committee established pursuant to Article 29. It shall forthwith publish the measures taken in</p>

<p>1990 Act or a digital programme licence granted by them under Part I of this Act.</p> <p>(4) In this section “national interest” includes interest within England, Scotland, Wales or Northern Ireland.</p> <p>(5) The addition of any relevant event to such a list as is mentioned in subsection (1) shall not affect—</p> <p>(a) the validity of any contract entered into before the date on which the Secretary of State consulted the persons mentioned in subsection (2) in relation to the proposed addition, or</p> <p>(b) the exercise of any rights acquired under such a contract.</p> <p>(6) The list drawn up by the Secretary of State for the purposes of section 182 of the 1990 Act, as that list is in force immediately before the commencement of this section, shall be taken to have been drawn up for the purposes of this Part.</p>	<p>the <i>Official Journal of the European Union</i> and at least once a year the consolidated list of the measures taken by Member States.</p> <p>3. Member States shall ensure, by appropriate means within the framework of their legislation, that broadcasters under their jurisdiction do not exercise the exclusive rights purchased by those broadcasters after 18 December 2007 in such a way that a substantial proportion of the public in another Member State is deprived of the possibility of following events which are designated by that other Member State in accordance with paragraphs 1 and 2 by whole or partial live coverage or, where necessary or appropriate for objective reasons in the public interest, whole or partial deferred coverage on free television as determined by that other Member State in accordance with paragraph 1.</p>
---	---

98 Categories of service

(1) For the purposes of this Part television programme services shall be divided into two categories as follows—

(a) such of the services specified in subsection (2) as are provided without any charge being made for the reception of programmes included in the service, and

(b) all television programme services not for the time being falling within paragraph (a).

(2) The services referred to in subsection (1)(a) are—

(a) regional and national Channel 3 services,

(b) Channel 4, and

(c) the television broadcasting services provided by the BBC.

(3) The Secretary of State may by order amend subsection (2) so as to remove any service from, or add any service to, the services specified in it.

(4) An order under subsection (3) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

99 Contract for exclusive right to televise listed event to be void

(1) Any contract entered into after the commencement of this section under which a television programme provider acquires rights to televise the whole or any part of a listed event live for reception in the United Kingdom, or in any area of the United Kingdom, shall be void so far as it purports, in relation to the whole or any part of the event or in relation to reception in the United Kingdom or any area of the United Kingdom, to grant those rights exclusively to any one television programme provider.

(2) In this Part “television programme provider” means the BBC, the Welsh Authority or any person who is the holder of any licence under Part I of the 1990 Act or a digital programme licence under Part I of this Act.

(3) For the purposes of this section rights to televise the whole or any part of an event live for reception in any area granted to a television programme provider are granted exclusively if the person granting them—

(a) has not granted any such right to any other television programme provider, and

(b) is precluded by the terms of the contract from doing so.

100 Contract for televising listed event must specify category of service

(1) Any contract entered into after the commencement of this section shall be void so far as it purports to grant to a television programme provider rights to televise the whole or any part of a listed event live for reception in the United Kingdom, or any area of the United Kingdom, unless the contract complies with subsection (2).

(2) A contract complies with this subsection if the terms of the contract allow the television programme provider to include the live coverage of the listed event—

(a) only in a television programme service falling within paragraph (a) of subsection (1) of section 98, or

(b) only in a television programme service falling within paragraph (b) of that subsection.

101 Restriction on televising of listed event

(1) A person providing a service falling within either of the categories set out in subsection (1) of section 98 (“the first service”) for reception in the United Kingdom or in any area of the United Kingdom shall not, without the previous consent of the Commission, include in that service live coverage of the whole or any part of a listed event unless—

(a) another person, who is providing a service falling within the other category set out in that subsection (“the second service”), has acquired the right to include in the second service live coverage of the whole of the event or of that part of the event, and

(b) the area for which the second service is provided consists of or includes the whole, or substantially the whole, of the area for which the first service is provided.

(2) The Commission may revoke any consent given by them under subsection (1).

(3) Failure to comply with subsection (1) shall not affect the validity of any contract.

(4) Subsection (1) shall not have effect where the television programme provider providing the first service is exercising rights acquired before the commencement of this section.

102 Power of Commission to impose penalty

(1) If the Commission—

(a) are satisfied that the holder of a licence under Part I of the 1990 Act or a digital programme licence under Part I of this Act has failed to comply with subsection (1) of section 101, and

(b) are not satisfied that in all the circumstances it would be unreasonable to expect him to have complied with that subsection,

they may require him to pay, within a specified period, a specified financial penalty to the Commission.

(2) If the Commission are satisfied that, in connection with an application for consent under subsection (1) of section 101, the holder of a licence under Part I of the 1990 Act or a digital programme licence under Part I of this Act has—

(a) provided them with information which was false in a material particular, or

(b) withheld any material information with the intention of causing the Commission to be misled, they may require him to pay, within a specified period, a specified financial penalty to the Commission.

(3) The amount of any financial penalty imposed on any person under subsection (1) or (2) shall not exceed the amount produced by multiplying the relevant consideration by the prescribed multiplier.

(4) In subsection (3)—

(a) “the relevant consideration” means an amount determined by the Commission as representing so much of any consideration paid by the person on whom the penalty is being imposed as is attributable to the acquisition of the rights to televise the event in question, and

(b) “the prescribed multiplier” means such number as the Secretary of State may from time to time by order prescribe.

(5) An order under subsection (4)(b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(6) Where the Commission receive any amount payable to them by virtue of subsection (1) or (2), that amount shall not form part of the revenues of the Commission but shall be paid into the Consolidated Fund.

(7) Any amount payable by any person to the Commission by virtue of subsection (1) or (2) shall be recoverable by them as a debt due to them from that person.

103 Report to Secretary of State

(1) If the Commission—

(a) are satisfied that a broadcasting body has failed to comply with subsection (1) of section 101, and

(b) are not satisfied that in all the circumstances it would be unreasonable to expect the body to have complied with that subsection,

they shall make a report on the matter to the Secretary of State.

(2) If the Commission are satisfied that, in connection with an application for consent under subsection (1) of section 101, a broadcasting body has—

(a) provided them with information which was false in a material particular, or

(b) withheld any material information with the intention of causing the Commission to be misled, they shall make a report on the matter to the Secretary of State.

(3) In this section “broadcasting body” means the BBC or the Welsh Authority.

104 Code of guidance

(1) The Commission shall draw up, and may from time to time review, a code—

(a) specifying the circumstances in which the televising of listed events generally, or of a particular listed event, is, or is not, to be treated as live for the purposes of this Part, and

(b) giving guidance as to the matters which they will take into account in determining—

(i) whether to give or revoke their consent under section 101(1), or

(ii) for the purposes of section 102(1) or 103(1), whether in all the circumstances it is unreasonable to expect a television programme provider to comply with section 101(1).

(2) In exercising their powers under this Part, the Commission shall have regard to the provisions of the code.

(3) Before drawing up or revising the code the Commission shall consult such persons as appear to the Commission to be appropriate.

(4) As soon as the Commission have drawn up or revised such a code, the Commission shall publish the code in such manner as they consider appropriate for bringing it to the attention of—

(a) the BBC,

(b) the Welsh Authority,

(c) every person from whom the rights to televise a listed event may be acquired, and

(d) every person who is the holder of a licence granted by the Commission under Part I of the 1990 Act or a digital programme licence granted by them under Part I of this Act.

105 Interpretation of Part IV and supplementary provisions

(1) In this Part (unless the context otherwise requires)—

“Channel 4” has the same meaning as in Part I of the 1990 Act;

“the Commission” means the Independent Television Commission;

“listed event” has the meaning given by section 97(1);

“live” shall be construed in accordance with the code drawn up under section 104;

“national Channel 3 service” and “regional Channel 3 service” have the same meaning as in Part I of the 1990 Act;

“television broadcasting service” has the same meaning as in Part I of the 1990 Act;

“television programme provider” has the meaning given by section 99(2);

“television programme service” has the same meaning as in Part I of the 1990 Act.

(2) Section 182 of the 1990 Act (certain events not to be shown on pay-per-view terms) shall cease to have effect.

[...]

Part VII Copyright and related matters

137 Avoidance of certain terms relating to use for purpose of news reporting of visual images from broadcast or cable programme

137	Art. 15 AVMSD
(1) Any provision in an agreement is void in so far as it purports to prohibit or restrict relevant dealing with a broadcast or cable programme in any circumstances where by virtue of section 30(2) of the [1988 c. 48.] Copyright, Designs and Patents Act 1988 (fair dealing for the purpose of reporting current events) copyright in the broadcast or cable programme is not infringed.	1. Member States shall ensure that for the purpose of short news reports, any broadcaster established in the Union has access on a fair, reasonable and non-discriminatory basis to events of high interest to the public which are transmitted on an exclusive basis by a broadcaster under their jurisdiction. [...]

<p>(2) In subsection (1)—</p> <p>(a) “relevant dealing”, in relation to a broadcast or cable programme, means dealing by including visual images taken from it in another broadcast or cable programme, and</p> <p>(b) “broadcast” and “cable programme” have the same meaning as in Part I of the Copyright, Designs and Patents Act 1988.</p>	
---	--

[...]

Copyright, Designs and Patents Act 1988

[...]

30 Criticism, review and news reporting

(1) Fair dealing with a work for the purpose of criticism or review, of that or another work or of a performance of a work, does not infringe any copyright in the work provided that it is accompanied by a sufficient acknowledgement.

<p>30 (2), (3)</p>	<p>Art. 15 AVMSD</p>
<p>(2) Fair dealing with a work (other than a photograph) for the purpose of reporting current events does not infringe any copyright in the work provided that (subject to subsection (3)) it is accompanied by a sufficient acknowledgement.</p> <p>(3) No acknowledgement is required in connection with the reporting of current events by means of a sound recording, film, broadcast or cable programme.</p>	<p>1. Member States shall ensure that for the purpose of short news reports, any broadcaster established in the Union has access on a fair, reasonable and non-discriminatory basis to events of high interest to the public which are transmitted on an exclusive basis by a broadcaster under their jurisdiction.</p> <p>2. If another broadcaster established in the same Member State as the broadcaster seeking access has acquired exclusive rights to the event of high interest to the public, access shall be sought from that broadcaster.</p> <p>3. Member States shall ensure that such</p>

	<p>access is guaranteed by allowing broadcasters to freely choose short extracts from the transmitting broadcaster's signal with, unless impossible for reasons of practicality, at least the identification of their source.</p> <p>4. As an alternative to paragraph 3, Member States may establish an equivalent system which achieves access on a fair, reasonable and non-discriminatory basis through other means.</p> <p>5. Short extracts shall be used solely for general news programmes and may be used in on-demand audiovisual media services only if the same programme is offered on a deferred basis by the same media service provider.</p> <p>6. Without prejudice to paragraphs 1 to 5, Member States shall ensure, in accordance with their legal systems and practices, that the modalities and conditions regarding the provision of such short extracts are defined, in particular, with respect to any compensation arrangements, the maximum length of short extracts and time limits regarding their transmission. Where compensation is provided for, it shall not exceed the additional costs directly incurred in providing access.</p>
--	--

[...]

Communications Act 2003

<p>405 General interpretation</p> <p>(1) In this Act, except in so far as the context otherwise requires—</p>	<p>Art. 1(1) (b) AVMSD programme:</p>
<p>[...]</p> <p>“programme” includes an advertisement and, in relation to a service, anything included in that service;</p> <p>[...]</p> <p>“television programme” means any programme (with or without sounds) which—</p> <p>(a) is produced wholly or partly to be seen on television; and</p> <p>(b) consists of moving or still images or of legible text or of a combination of those things;</p>	<p>a set of moving images with or without sound constituting an individual item within a schedule or a catalogue established by a media service provider and the form and content of which are comparable to the form and content of television broadcasting.</p> <p>Examples of programmes include feature-length films, sports events, situation comedies, documentaries, children’s programmes and original drama;</p>