

2014 No. 2916

ELECTRONIC COMMUNICATIONS

BROADCASTING

The Audiovisual Media Services Regulations 2014

<i>Made</i> - - - -	<i>4th November 2014</i>
<i>Laid before Parliament</i>	<i>6th November 2014</i>
<i>Coming into force</i> - -	<i>1st December 2014</i>

These Regulations are made by the Secretary of State in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a).

The Secretary of State is a Minister designated for the purposes of that section in relation to information society services (b).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Audiovisual Media Services Regulations 2014 and come into force on 1st December 2014.

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

Amendment of section 368E of the 2003 Act (harmful material)

2. In section 368E(d) of the 2003 Act (harmful material), for subsection (2) substitute—

“(2) An on-demand programme service must not contain any prohibited material.

(3) “Prohibited material” means—

- (a) a video work which the video works authority has determined for the purposes of the 1984 Act not to be suitable for a classification certificate to be issued in respect of it, or
- (b) material whose nature is such that it is reasonable to expect that, if the material were contained in a video work submitted to the video works authority for a classification certificate, the video works authority would determine for those purposes that the video work was not suitable for a classification certificate to be issued in respect of it.

(a) 1972 c.68; section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c.51) and Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c.7).

(b) S.I. 2001/2555.

(c) 2003 c.21.

(d) Section 368E was inserted by S.I. 2009/2979.

(4) An on-demand programme service must not contain any specially restricted material unless the material is made available in a manner which secures that persons under the age of 18 will not normally see or hear it.

(5) “Specially restricted material” means—

- (a) a video work in respect of which the video works authority has issued a R18 classification certificate,
- (b) material whose nature is such that it is reasonable to expect that, if the material were contained in a video work submitted to the video works authority for a classification certificate, the video works authority would issue a R18 classification certificate, or
- (c) other material that might seriously impair the physical, mental or moral development of persons under the age of 18.

(6) In determining whether any material falls within subsection (3)(b) or (5)(b), regard must be had to any guidelines issued by the video works authority as to its policy in relation to the issue of classification certificates.

(7) In this section—

“the 1984 Act” means the Video Recordings Act 1984;

“classification certificate” has the same meaning as in the 1984 Act (see section 7 of that Act);

“R18 classification certificate” means a classification certificate containing the statement mentioned in section 7(2)(c) of the 1984 Act that no video recording containing the video work is to be supplied other than in a licensed sex shop;

“the video works authority” means the person or persons designated under section 4(1) of the 1984 Act as the authority responsible for making arrangements in respect of video works other than video games;

“video work” has the same meaning as in the 1984 Act (see section 1(2) of that Act).”.

Amendment of section 368B of the 2003 Act (supply of information)

3. In section 368B(a) of the 2003 Act (the appropriate regulatory authority), in subsection (10), after paragraph (c) insert—

- “(d) OFCOM may supply information to the video works authority, within the meaning of section 368E, for use by the video works authority in connection with functions of OFCOM as the appropriate regulatory authority;
- (e) a designated body may supply information to the video works authority, within the meaning of section 368E, for use by the video works authority in connection with functions of the designated body as the appropriate regulatory authority.”

4th November 2014

Ed Vaizey
Minister of State
Department for Culture, Media and Sport

(a) Section 368B was inserted by S.I. 2009/2979.

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Audiovisual Media Services Regulations 2009(a) and 2010(b) 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 provision of audiovisual media services(c) (“the AVMS Directive”).

The 2009 Regulations inserted Part 4A of the Communications Act 2003 (“the Act”) which provides for the regulatory framework for on-demand programme services.

Regulation 2 amends section 368E(2) of the Act to provide that an on-demand programme service must not contain a video work that the video works authority (the British Board of Film Classification (“BBFC”)) has refused to give a classification certificate under arrangements made pursuant to the Video Recordings Act 1984(d) or any material that would have been refused such a certificate.

Regulation 2 also amends section 368E(2) of the Act to provide that an on-demand programme service must not contain a video work that the BBFC has given a R18 certificate to, any material that would have received such a certificate or other material that might seriously impair the physical, mental or moral development of persons under the age of 18 unless the material is made available in a manner which secures that such persons will not normally see or hear it.

Regulation 3 amends section 368B(10) of the Act to confer power on OFCOM and the designated body, the Authority for Television On Demand (ATVOD), to supply information to the BBFC for use by the BBFC in connection with the functions of Ofcom and ATVOD as the co-regulators for on-demand programme services.

An impact assessment of the effect that this instrument will have on the costs to business and the voluntary sector is available from the website of the Department for Culture, Media and Sport (www.gov.uk/government/organisations/department-for-culture-media-sport). It is also annexed to the Explanatory Memorandum which is available on the legislation.gov.uk website.

These Regulations were notified in draft to the European Commission in accordance with Directive 98/34/EC(e) as amended by Directive 98/48/EC(f).

It is normal practice to make available to Parliament, alongside primary or secondary legislation giving effect to European Directives, a Transposition Note that sets out how the Government will transpose the main elements of those Directives into UK law. However, in the present case a Transposition Note has not been made available. This is because, in the Government’s view, the resources required to produce a Transposition Note are significantly greater than can be justified by the resulting added benefit to the reader. The Transposition Note accompanying the Explanatory Memorandum to the Audiovisual Media Services Regulations 2009 is available from the legislation.gov.uk website.

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(a) S.I. 2009/2979.

(b) S.I. 2010/419.

(c) Directive 2007/65 EC OJ No L 332, 18.12.2007, p.27 amending Directive 89/552/EEC OJ No L 298, 17.10.1989, p.23 as amended by Directive 97/36/EC OJ No L 202, 30.7.1997, p.60.

(d) 1984 c.39; this Act was repealed and revived by the Video Recordings Act 2010 (c.1).

(e) Directive 98/34/EC of the European Parliament and of the Council laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services OJ No L 24, 21.7.1998, p.37.

(f) Directive 98/48/EC of the European Parliament and of the Council amending Directive 98/34/EC laying down a procedure for the provision of information in the field of technical standards and regulations OJ No L 217, 5.8.1998, p.18.

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