

2010 No. 419

ELECTRONIC COMMUNICATIONS

The Audiovisual Media Services Regulations 2010

<i>Made</i>	- - - -	<i>22nd February 2010</i>
<i>Laid before Parliament</i>		<i>25th February 2010</i>
<i>Coming into force</i>	- -	<i>18th March 2010</i>

These Regulations are made by the Secretary of State, being a Minister designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) 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

(a) The European Communities (Designation)(No.2) Order 2001 S.I. 2001/2555.

(b) 1972 c.68; section 2(2) was amended by the Legislative and Regulatory Reform Act 2006 (c.51), section 27(1)(a).

(c) 2003 c.21.

- (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 on-demand 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 sub-paragraph (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)(jb) 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(a) 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(b) (“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(c) 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(za) requires the provider of an on-demand service to pay the regulatory authority a fee under section 368Q. Inserted section 368D(zb) 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).

(a) 2006 c.36.

(b) 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.

(c) S.I. 2009/2979.

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(a), as amended by Directive 98/48/EC(b).

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- (a) 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.
- (b) 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.

STATUTORY INSTRUMENTS

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