

**EXPLANATORY MEMORANDUM TO**  
**THE AUDIOVISUAL MEDIA SERVICES REGULATIONS 2014**

**2014 No. 2916**

**1.** This explanatory memorandum has been prepared by the Department for Culture, Media and Sport and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

2.1 To ensure that video-on-demand material that has been or would be rated R18 by the British Board of Film Classification (BBFC) is put behind access controls and to ban the provision of video-on-demand material that has been or would be refused a classification by the BBFC.

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None.

**4. Legislative Context**

4.1 The statutory framework for the regulation of on-demand programme services (i.e. video-on-demand) is set out in Part 4A of the Communications Act 2003. This was inserted and amended by the Audiovisual Media Services Regulations 2009 and 2010 respectively (S.I. 2009/2979 and 2010/419). These Regulations implemented into UK law the provisions of the now consolidated Audiovisual Media Services Directive (Directive 2010/13/EU). The Transposition Note accompanying the Explanatory Memorandum to the 2009 Regulations is available from the [legislation.gov.uk](http://legislation.gov.uk) website.

4.2 Section 368E(2) – implementing Article 12 of the AVMS Directive – provides that video-on-demand material that might seriously impair the physical, mental or moral development of persons under the age of eighteen must only be made available in a manner which secures that such persons will not normally see or hear it. This instrument amends this provision to provide for new requirements that must be complied with by video-on-demand providers relating to the protection of children from harmful material (see paragraph 7.5 below).

4.2 This instrument therefore changes the way in which the AVMS Directive has been implemented in the Communications Act 2003. In particular, it provides for stricter rules than is required by the Directive. It was therefore necessary to notify these measures as information society services under the Technical Standards Directive (Directive 98/34/EC). The three month standstill period ended on 8 October 2014 without the Government being informed of any objections to the proposed measures.

## 5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

## 6. European Convention on Human Rights

The Minister of State for Culture and the Digital Economy, Ed Vaizey MP has made the following statement regarding Human Rights:

In my view the provisions of the Audiovisual Media Services Regulations 2014 are compatible with the Convention rights.

## 7. Policy background

- What is being done and why

7.1 The popularity of video-on-demand services has grown significantly in recent years. 37% of UK adults with home internet now watch online catch-up TV<sup>1</sup>. The expansion of such services means that there is a greater amount of potentially harmful content more readily available.

7.2 In 2010 the Department wrote to Ofcom raising concerns about whether section 368E(2) would in practice provide sufficient safeguards to protect children from sexually explicit material. Ofcom published their subsequent report in 2011 *Sexually Explicit Material and Video On Demand Services*. This recommended that the Government introduce new legislation to prohibit R18 material from being included in video-on-demand services, unless appropriate mandatory restrictions were in place, and prohibit altogether material whose content the BBFC would refuse to classify.

7.3 The co-regulators for video-on-demand services, Ofcom and the Authority for Television On Demand (ATVOD), were concerned that since research in this area is limited due to the ethical constraints on exposing minors to such material to monitor their development for evidence of harm, the legislative protections currently in place were not sufficiently clear to provide certainty in this important area. In the interim period therefore, pending legislative changes, the co-regulators adopted a precautionary approach, interpreting section 368E(2) as requiring R18 material to be behind access controls.

7.4 In July 2013 the Department published *Connectivity, Content and Consumers: Britain's digital platform for growth* committing to legislate to ensure that video-on-demand material that would be rated R18 by the British Board of Film Classification (BBFC) is put behind access controls and to ban the provision of material that would not receive any classification by the BBFC. As the Prime Minister said in his speech of 22

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<sup>1</sup> [http://stakeholders.ofcom.org.uk/binaries/research/cmr/cmr12/UK\\_2.pdf](http://stakeholders.ofcom.org.uk/binaries/research/cmr/cmr12/UK_2.pdf), p.172.

July 2013 the Government is going to ensure that the same rules apply online as they do offline.

7.5 This instrument amends section 368E in two ways. First, it provides that any material that the BBFC has issued a R18 classification certificate in respect of (or any material that would have been issued such a certificate) must not be included in a video-on-demand service unless it is behind effective access controls which verify that the user is aged eighteen or over. Secondly, it provides that any material that the BBFC has refused to give a classification certificate in respect of (or any material that would have been refused such a certificate) must not be included in a video-on-demand service at all.

7.6 This instrument has the effect of removing any uncertainty from the regulatory framework providing clarity to consumers and providers of video-on-demand services. It also provides the same level of protection that exists on the high street in relation to the sale of hard-copy DVDs to the provision of video-on-demand services. In a converging media world these provisions must be coherent. The BBFC classification regime is a tried and tested system of what content is regarded as harmful for minors.

- Consolidation

7.7 This instrument amends provisions inserted into the Communications Act 2003 by the Audiovisual Media Services Regulations 2009. The Government has no current plans to consolidate this legislation.

## **8. Consultation outcome**

8.1 No comments or detailed opinions were submitted by the European Commission or other member States on the technical standards notification.

## **9. Guidance**

9.1 The ATVOD Rules and Guidance for video-on-demand providers will be updated to reflect the changes made by this instrument.

## **10. Impact**

10.1 The impact on business is that business providing video-on-demand material must ensure that they comply with the revised requirements of section 368E. However, the impact on UK business will be negligible as the current interpretation of the regulatory framework requires R18 material to be behind effective access controls and the quantity of unclassifiable material made available is thought to be small.

10.2 The impact on the public sector is that ATVOD will be required to ensure compliance with the revised requirements of section 368E. This is estimated to require a further case officer at a cost of £36,000 p.a.

10.3 Impact Assessments are attached to this memorandum. They find that the cost to video-on-demand service providers is likely to be negligible because the industry already tends to put R18 material behind access controls. Unclassifiable content can be identified and can be removed at low cost. It is estimated that only 0.25% of revenue for adult content providers is generated from a combined subset of video-on-demand and unclassifiable material.

**11. Regulating small business**

11.1 The legislation applies to small business.

11.2 No measures are proposed to minimise the impact of the requirements on firms employing up to 20 people.

**12. Monitoring & review**

12.1 The co-regulators ATVOD and Ofcom will monitor and review the effectiveness and operation of these provisions from time to time.

**13. Contact**

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