



Notification Number: 2009/612/UK

The Audiovisual Media Services Regulations 2010 (“the 2010 Regulations”).

Date received : 13/11/2009

End of Standstill : 15/02/2010

Message

Message 001

Communication from the Commission - SG(2009) D/52663

Directive 98/34/EC

Notificación - Oznámení - Notifikation - Notifizierung - Teavitamine - Γνωστοποίηση - Notification - Notification - Notifica - Pietiekums - Pranešimas - Bejelerentés - Notifika - Kennisgeving - Zawiadomienie - Notificação - Hlášenie-Obvestilo - Ilmoitus - Anmälan - Нотификация : 2009/0612/UK - Notificare.

No abre el plazo - Nezahtuje odklady - Fristerne indledes ikke - Kein Fristbeginn - Viivituste perioodi ei avata - Καμμία έναρξη προθεσμίας - Does not open the delays - N'ouvre pas de délais - Non fa decorrere la mora - Neietekmē atlikšanu - Atidėjimai nepradedami - Nem nyitja meg a késések - Ma' jiftaħ il-perijodi ta' dawmien - Geen termijnbegin - Nie otwiera opóźnień - Nao inicia o prazo - Neotvorí oneskorenia - Ne uvaja zamud - Määräaika ei ala tästä - Inleder ingen frist - He ce предвижда период на прекъсване - Nu deschide perioadele de stagnare - Nu deschide perioadele de stagnare.

(MSG: 200902663.EN)

1. Structured Information Line

MSG 001 IND 2009 0612 UK EN 15-02-2010 13-11-2009 UK NOTIF 15-02-2010

2. Member State

UK

3. Department Responsible

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3. Originating Department

Department for Culture, Media and Sport.

4. Notification Number

2009/0612/UK – SERV30



5. Title

The Audiovisual Media Services Regulations 2010 ("the 2010 Regulations").

6. Products Concerned

The draft rules on services apply to on-demand audiovisual media services as defined at Article 1 of Directive 2007/65 EC OJ No L 332.

7. Notification Under Another Act

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8. Main Content

The Audiovisual Media Services Regulations 2009 ("the 2009 regulations") transpose the requirements of Directive 2007/65 in the UK. The 2010 Regulations also implement that Directive but impose national measures of a stricter nature than those simply required to transpose the Directive so do not fall within the exemption in Article 10 of Directive 98/34/EC. The 2010 Regulations should be read against the 2009 Regulations, as both will be part of a new Part 4A inserted into the Communications Act 2003.

Section 368BA requires providers of on-demand programme services to give advance notification to the regulatory authority of their intention to provide the service. No prior authorisation or administrative approval is required. Section 368BB imposes enforcement powers if service providers do not comply. Section 368D(3)(za) and section 368NA require service providers to pay a fee to the regulatory authority. Those sections enable the regulatory authority to recover the costs of carrying out or preparing to carry out its functions. Section 368D(3)(zb) requires service providers to retain a copy of material included in their service for at least forty-two days.

Sections 368IA, 368JA, 368KA, 368MA, 368MB and 368OA provide further enforcement powers for these rules on services, including the creation of a criminal offence. These enforcement powers are the same as those in the main 2009 Regulations.

Regulation 11 contains transitional provisions about fees and the notification requirement.

Regulation 13 inserts enforcement provisions into the Wireless Telegraphy Act 2006 enabling Ofcom to take enforcement action against a satellite uplinker where an on-demand service is provided otherwise than pursuant to a notification under section 368BA or in breach of the other notified requirements.

9. Brief Statement of Grounds

Article 3(1) of Directive 2007/65 states that Member States remain free to require media service providers to comply with more detailed or stricter rules provided that such rules are in compliance with Community law. The additional rules on services apply only to on-demand service providers established in the UK and do not affect services received from providers under the jurisdiction of another Member State. In the Department's submission, the notification requirement is an important and proportionate means of making implementation effective. It will enable providers to be identified and if necessary their output monitored so that compliance with the requirements of Directive 2007/65 is enforced. The provider of the on-demand service is not required to wait for a reply or any approval from the regulatory authority before beginning to provide services. The requirement for service providers to pay fees is in order to fund the new co-regulatory scheme. The fees charged may not be more than required to



recover the costs of the regulatory authority. Section 368NA contains a range of protections for providers of on-demand services in relation to the fees which may be charged. The requirement to retain copies of programmes is to ensure that complaints about non-compliance with the requirements of Directive 2007/65 can be effectively investigated within a reasonable timescale.

10. Reference Documents - Basic Texts

The notification must be read in conjunction with the 2009 Regulations which set out the main legislative scheme transposing Directive 2007/65 EC. When the 2010 Regulations are made, they will insert the additional rules on services into Part 4A of the Communications Act 2003. The draft 2010 Regulations, as notified, duplicate a number of provisions, particularly the sections relating to enforcement. The duplication of inserted provisions will be omitted when the 2010 Regulations are made. The explanatory memorandum to the 2009 Regulations is also attached.

The Wireless Telegraphy Act 2006 is attached.

11. Invocation of the Emergency Procedure

No

12. Grounds for the Emergency

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13. Confidentiality

No

14. Fiscal measures

No

15. Impact assessment

Impact assessment not available.

16. TBT and SPS aspects

TBT Aspect

No

The draft does not have a significant effect on international trade.

SPS Aspect

No

The draft is not a sanitary or phytosanitary measure in the sense of Annex A of the SPS Agreement.

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