

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Sixth Delegated Legislation Committee

DRAFT BROADCASTING (AMENDMENT)
(EU EXIT) REGULATIONS 2019

Tuesday 29 January 2019

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Saturday 2 February 2019

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The Committee consisted of the following Members:

Chair: MRS MADELEINE MOON

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| † Bardell, Hannah (<i>Livingston</i>) (SNP) | † Keegan, Gillian (<i>Chichester</i>) (Con) |
| † Brennan, Kevin (<i>Cardiff West</i>) (Lab) | Mahmood, Shabana (<i>Birmingham, Ladywood</i>) (Lab) |
| † Clark, Colin (<i>Gordon</i>) (Con) | † Masterton, Paul (<i>East Renfrewshire</i>) (Con) |
| † Dunne, Mr Philip (<i>Ludlow</i>) (Con) | † Philp, Chris (<i>Croydon South</i>) (Con) |
| † Efford, Clive (<i>Eltham</i>) (Lab) | † Smeeth, Ruth (<i>Stoke-on-Trent North</i>) (Lab) |
| † Elliott, Julie (<i>Sunderland Central</i>) (Lab) | † Stephenson, Andrew (<i>Vice-Chamberlain of Her Majesty's Household</i>) |
| † Elmore, Chris (<i>Ogmore</i>) (Lab) | |
| † Gaffney, Hugh (<i>Coatbridge, Chryston and Bellshill</i>) (Lab) | Hannah Wentworth, Laura-Jane Tiley, <i>Committee Clerks</i> |
| † Hall, Luke (<i>Thornbury and Yate</i>) (Con) | |
| † Huddleston, Nigel (<i>Mid Worcestershire</i>) (Con) | |
| † James, Margot (<i>Minister for Digital and the Creative Industries</i>) | † attended the Committee |

Sixth Delegated Legislation Committee

Tuesday 29 January 2019

[MRS MADELEINE MOON *in the Chair*]

Draft Broadcasting (Amendment) (EU Exit) Regulations 2019

8.55 am

The Minister for Digital and the Creative Industries (Margot James): I beg to move,

That the Committee has considered the draft Broadcasting (Amendment) (EU Exit) Regulations 2019.

It is a pleasure to serve under your chairmanship, Mrs Moon. The Department for Digital, Culture, Media and Sport has worked hard to prepare for the UK's departure from the EU and to ensure that our statute book continues to function. The draft regulations will achieve three broad aims and were laid before the House on 13 December 2018.

First, the regulations will ensure that Ofcom, as the UK's audiovisual regulator, can continue to regulate broadcasters effectively. If the UK leaves the EU without an agreement in place, the EU's audiovisual media services directive will no longer apply. The directive provides for freedom of reception and re-transmission for audiovisual services such as television and video on demand. It also establishes minimum content standards and provides that a service that is regulated in one member state can adhere to that country's rules while being available across all the EU. This is known as the country of origin principle.

The audiovisual media services directive underpins several pieces of UK primary legislation, including the Communications Act 2003. We are therefore using section 8 powers in the European Union (Withdrawal) Act 2018 to fix deficiencies and inoperabilities in primary legislation to ensure that Ofcom continues to have jurisdiction over services that are available to UK audiences or established in the UK. The draft regulations also ensure that cross-border services that originate from Europe under the Council of Europe convention on transfrontier television can broadcast to the UK. Services from countries that are not parties to the convention will be regulated by Ofcom.

We are not amending the current standards or restrictions placed on UK broadcasters through this instrument; they will continue as before. Should the Government wish to make any changes to the standards or restrictions in the future, that will be subject to consultation and the parliamentary process as normal.

Secondly, the draft regulations will implement the aforementioned Council of Europe treaty in UK law. The European convention on transfrontier television was signed and ratified by the UK in 1993, but it has not been implemented in the UK because the treaty provides that EU member states must apply the relevant EU legislation in their mutual relations instead. The ECTT provides for a similar system of freedom of reception and transmission between the parties to the convention. Both the AVMSD and the ECTT provide

that a majority of transmission time on a television channel must be reserved for works of European origin. The AVMSD references the ECTT in its definition of European works, and that in turn safeguards the UK's status as a producer of European works. The quota system provides a preferential market for the UK's excellent content across other European states and has benefited our production sector enormously in the last decade.

Finally, the draft regulations will ensure that services with Irish-language content—RTÉ One, RTÉ Two and TG4—will continue to be available in Northern Ireland. The UK made those commitments in the Good Friday agreement and later through the European charter for regional or minority languages. Because those services are established in Ireland, which is not a party to the ECTT, they would need to be licensed by Ofcom under the changes introduced through the draft regulations, but that would not be in the spirit of the Good Friday agreement, so the UK has decided unilaterally to exempt the services from the requirement to hold an Ofcom licence.

Kevin Brennan (Cardiff West) (Lab): Before the Minister concludes, paragraph 7.3 of the explanatory memorandum states that the instrument will remedy the deficiency by amending the Communications Act 2003

“to require that any television service that is available in the UK, whatever its country of origin, is required to be licensed by Ofcom”.

How many businesses that have not required a licence from Ofcom will now have to get one?

Margot James: I know what the hon. Gentleman is driving at concerning the risk to businesses that transmit and will require a new licence from Ofcom. I will try to cover that in my concluding remarks, if I may.

My officials have worked closely with Ofcom to ensure that the regulatory regime remains operable and effective in the case of no deal. I believe that the draft regulations are necessary to ensure that the UK statute book works and that audiences are protected from harm.

I can now give the hon. Gentleman something of an answer to his question. Approximately 50 to 60 channels have been identified that may need a licence from Ofcom to continue to be received in the UK. They are mostly specialist minority language channels, religious channels or adult services. I commend the regulations to the Committee.

9.1 am

Kevin Brennan: It is a pleasure to serve under your chairmanship, Mrs Moon, especially in the light of your recent eminent elevation elsewhere, about which I have been told not to go into any detail. I will say only that we will all sleep safer in our bed in the knowledge that you are looking after our interests.

I thank the Minister for her explanation, which highlights just one of the myriad complexities of Brexit and the prospect of no deal. Today, we should rule out that prospect, rather than continue to play chicken with the EU, but that will take place elsewhere and is not within the scope of this Committee's business. Nevertheless, the instrument highlights one of the many complexities we face in trying to take the egg back out of the omelette, which is what Brexit entails.

I intervened on the Minister because I noticed that the Government say in the explanatory memorandum that they felt no need to conduct an impact assessment for this statutory instrument, and the explanatory note says:

“A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private or voluntary sector is foreseen.”

Yet the Minister has just told the Committee that 50 to 60 channels, at the very least, will be required for the first time to be licensed by Ofcom. If that is not a significant impact on the private sector, I do not know what is. I understand that the Department and the Government have an incredibly difficult task in passing all these statutory instruments at great speed, and I am glad that we are scrutinising the legislation this morning; that is our job. However, it seems to be a dereliction not to produce an impact assessment of a statutory instrument of this kind, which is just one example of the significant impact on the private sector.

Through this statutory instrument, we are essentially trying to minimise the failure that Brexit represents to a great British success story. Hundreds of television, broadcast and audiovisual content companies currently have a choice of where they can be licensed. Under the audiovisual media services directive and its country of origin principle, a licence in one EU country licenses the holder in all the other member states. Part of the requirement is that the company’s headquarters and essential editorial establishment must be located in the member country where it is licensed. Companies choose to license here in the UK because we have a widely admired and trusted regulatory regime, with a high-quality regulator in the form of Ofcom. The Minister and I probably agree on that point. Leaving the EU and, worse still, leaving with no deal, will have a serious impact on those companies and on the sector. We have already heard press reports about companies such as WarnerMedia, the Discovery Channel and even the BBC having to move some of their operations out of the UK as a result of needing to license their operations in the EU post UK withdrawal. That is the context of the draft regulations.

The statutory instrument is intended to ensure that broadcast licences granted by Ofcom would still be legally valid after a no deal Brexit because they have been issued in the context of our membership of the European Union. From the point of view of Her Majesty’s Opposition, I accept what the Minister says: this is a necessary measure that has to be taken. As a responsible Opposition, it is not our intention to divide the Committee this morning, because the Minister is correct that it is important for the directive to go through. However, I have a number of questions on which I would be grateful for clarification.

First, as the Minister knows, the way in which content is consumed by viewers is changing rapidly, with the advent of streaming services such as Netflix. Surprisingly, Netflix is licensed in the Netherlands. My understanding is that under the SI, on-demand services such as Netflix that are located in the EU will in future be treated the same as on-demand services licensed in other parts of the world—particularly the USA, where most on-demand services are located. Will the Minister confirm that my understanding is correct, and that services such as Netflix will now be treated the same way as streaming and on-demand services located elsewhere in the world, rather than having the European model of treatment?

Secondly, what are the implications for the UK of this change—for example, what if post Brexit we were to introduce new regulations to limit the advertising of junk food? Lively debate is taking place on that issue at the moment. Currently, we would be able to argue our case within the EU that on-demand services licensed in the EU should respect that change in our domestic law. We have a forum and a means by which we can press that case. What will be the position after we leave the European Union, should we decide to take that kind of action? In her remarks the Minister referred to the implications post Brexit if we decided to make changes in our own standards relating to broadcasting and streaming.

Thirdly, what will be the impact on on-demand services with adult content? The Minister referred to the fact that many of the services that will be required for the first time to get a licence from Ofcom as a result of our leaving the European Union with no deal will be adult services—that is, content that we do not want to be available to people under the age of 18. Will there be any impact on the UK’s ability to place effective age restrictions on such services when they are treated on the same basis as on-demand services located in the rest of the world?

An opportunity offered by the SI has been lost. Why have the Government not taken the opportunity to create a level playing field for on-demand and linear services? If my understanding of the instrument is correct, a linear service wishing to operate in the UK—for example, German news broadcasting into the UK, licensed in a European Union state—will in future require an Ofcom licence to do so. The Government could surely have taken this opportunity to require all on-demand services to set up a presence here and to license in the UK. Why should on-demand providers not be required to be licensed and have a presence here if they do business in the United Kingdom, if such requirements are placed on linear services? Will the Minister at least commit today to launching a consultation on what licensing policy should be for all overseas services targeting the UK market?

Next, in relation to the need for broadcasters currently licensed by Ofcom to license in an EU jurisdiction post Brexit, what estimate has the Minister made of the number of jobs that will be transferred out of the United Kingdom as a result? The Government say in the impact assessment that there is no impact on businesses from a lot of these changes. The Minister knows, as I do, that many businesses are already making arrangements because of the future requirement to license in European Union countries. To make the country of origin principle effective, they will have to move their headquarters and a minimum editorial establishment. At this moment, jobs are being relocated out of the UK to Dublin, Amsterdam and Luxembourg as a result of that requirement. What estimate have the Government made of how many jobs will be affected by that and what the economic value of the jobs lost to the UK will be? If the Minister is able to tell the Committee what she knows about which companies are having to take those steps, that would be useful. We have read some press reports, as I mentioned earlier, but we do not have the full picture.

Which companies have told her Department that they are moving their editorial operation or headquarters out of the UK, and where are they relocating? What

[Kevin Brennan]

estimate has the Minister made of the likelihood that countries that are party to the Council of Europe ECTT will choose to use its provisions to continue broadcasting? Will she also clarify which of the Irish language services she referred to are exempted from licensing in the UK by this regulation?

9.12 am

Margot James: I welcome the hon. Gentleman's scrutiny of what he rightly calls a complex area post Brexit. The 50 or 60 companies that will for the first time require licences from Ofcom are foreign owned, which is why there is no requirement for an impact assessment, as impact assessments are designed to consider the cost implications of changes in regulations to UK-based companies.

The hon. Gentleman rightly describes the UK's performance in film, broadcast and television as a great success. A sector that grows at 25% more than the average rate of the economy is certainly a success. In part, that success is indeed down to the very beneficial regime, the AVMSD. As he said, to comply with the requirements of one regulator allows transmission across the entire European Union. The entire European Union's production in that sector grows by about 18% per annum, following the introduction of the directive. The UK constitutes 21% of the entire European television market, with 1,200 out of 3,000 European channels emanating from the UK. That sector is indeed a great success.

The hon. Gentleman talked about jobs transferring, and some companies have already started to seek licences elsewhere within the European Union. Discovery Channel, NBC, Sony and Turner are all seeking licences elsewhere. Of those four channels, only Sony proposes to move its European headquarters out of the UK. The other companies are content to seek a licence elsewhere, whether in the Netherlands, Ireland or Germany, and move a number of editorial staff so that they have a meaningful presence in the country that entitles them to the country of origin broadcasting privileges. At the moment, it is not possible to assess the number of jobs that are transferring and what will constitute a meaningful presence in a market to get the benefits of the European directive, but the signs are that the majority of companies will continue to operate in the UK, with a presence outside the UK should they need one to qualify for country of origin privileges.

The hon. Gentleman asked about the advertising of junk food and other such issues, which he is right to say that we are looking at, and the question of on-demand

services licensed in the EU respecting UK rules on advertising foods high in fat, sugar, salt and so on. The UK has been unable to insist on country of destination rules up until now, either under AVMSD or through country of origin services that adhere only to host country rules. However, the existing standards will continue to apply.

The hon. Gentleman mentioned Netflix and other video-on-demand providers, which are currently regulated differently. In practical terms, Netflix will still be regulated under AVMSD because, as he says, it is based in the Netherlands. The same content standards will apply after exit as now. We recognise that after exit we may need to consider a long-term and future-proofed approach to video-on-demand regulation.

I think that deals with most of the hon. Gentleman's questions. I hope that the Committee has found the sitting informative.

Kevin Brennan: I also asked whether the Minister could tell us about the likelihood that countries that are party to the Council of Europe ECTT would choose to use its provisions? If she needs to write to me, I am happy for her to do that, because I realise that that is a technical question, I would be interested to have an answer. Perhaps she should to other Committee members as well, if that is acceptable to them.

Secondly, which Irish language services are exempted from licensing in the UK by the regulation? Again, if that information is not immediately to hand, I am happy for the Minister to communicate that to me and the rest of the Committee later.

Margot James: The hon. Gentleman is very generous. I will write to him with any further information. The ECTT guarantees similar content standards and freedom of reception between signatories, but as he will know, approximately six EU member states are not signatories to it. We will therefore not be relying on that, but I will write to him with any further technicalities associated with the ECTT. The Irish channels exempted from the requirement to seek Ofcom licences for continued transmission are the three that I mentioned: RTÉ One, RTÉ Two and TG4.

I commend the regulations to the Committee. I hope that Members will join me in supporting the draft regulations. I appreciate that the hon. Gentleman has already indicated that he will do so.

Question put and agreed to.

9.19 am

Committee rose.

