

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT

Second Delegated Legislation Committee

DRAFT AUDIOVISUAL MEDIA SERVICES  
(AMENDMENT) (EU EXIT) REGULATIONS 2020

*Tuesday 17 November 2020*

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**Saturday 21 November 2020**

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**The Committee consisted of the following Members:**

*Chair:* †GRAHAM STRINGER

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|--|--|
| † Cartlidge, James ( <i>South Suffolk</i> ) (Con)                  | † Onwurah, Chi ( <i>Newcastle upon Tyne Central</i> ) (Lab)    |
| † Caulfield, Maria ( <i>Lewes</i> ) (Con)                          | † Stafford, Alexander ( <i>Rother Valley</i> ) (Con)           |
| † Clark, Feryal ( <i>Enfield North</i> ) (Lab)                     | † Sturdy, Julian ( <i>York Outer</i> ) (Con)                   |
| † Gibson, Peter ( <i>Darlington</i> ) (Con)                        | Thompson, Owen ( <i>Midlothian</i> ) (SNP)                     |
| † Johnson, Gareth ( <i>Dartford</i> ) (Con)                        | Timms, Stephen ( <i>East Ham</i> ) (Lab)                       |
| † Lamont, John ( <i>Berwickshire, Roxburgh and Selkirk</i> ) (Con) | † Whittingdale, Mr John ( <i>Minister for Media and Data</i> ) |
| Lloyd, Tony ( <i>Rochdale</i> ) (Lab)                              | † Wild, James ( <i>North West Norfolk</i> ) (Con)              |
| McDonnell, John ( <i>Hayes and Harlington</i> ) (Lab)              | Nina Foster, <i>Committee Clerk</i>                            |
| Mahmood, Shabana ( <i>Birmingham, Ladywood</i> ) (Lab)             |  |
| † Mayhew, Jerome ( <i>Broadland</i> ) (Con)                        | † <b>attended the Committee</b>                                |

## Second Delegated Legislation Committee

*Tuesday 17 November 2020*

[GRAHAM STRINGER *in the Chair*]

### Draft Audiovisual Media Services (Amendment) (EU Exit) Regulations 2020

9.25 am

**The Minister for Media and Data (Mr John Whittingdale):** I beg to move,

That the Committee has considered the draft Audiovisual Media Services (Amendment) (EU Exit) Regulations 2020.

It is a pleasure to serve under your chairmanship, Mr Stringer, and I welcome my colleagues.

The statutory instrument, which was laid in both Houses on 15 October, is being made under the European Union (Withdrawal) Act 2018. The regulations remedy certain failures of retained EU law arising from the withdrawal of the United Kingdom from the European Union. Through the SI, we are seeking to maintain but not to expand Ofcom's remit to regulate video-sharing platform services. It is necessary to do so to ensure that the law remains operable beyond the end of the transition period.

The EU's audiovisual media services directive, which is known as the AVMS directive, governs the co-ordination of national legislation on audiovisual media services. The directive was initially implemented into UK law in 2010, primarily by way of amendments to existing broadcasting legislation. The directive was subsequently revised by the EU in 2018. The regulations 2020, which transpose the revised AVMS directive, were made and laid in Parliament on 30 September. Those regulations came into force on 1 November, and introduced for the first time rules for video-sharing platform services. The Government have appointed Ofcom as the regulator for those services. The new rules ensure that platforms falling within UK jurisdiction have appropriate systems and processes to protect the public, including minors, from illegal and harmful material.

Three key requirements were placed on VSPs under the AVMSD regulations 2020, namely to take appropriate measure to protect minors from content harmful to those under 18; to take appropriate measures to protect the general public from harmful and certain illegal content; and to introduce standards on advertising. I should also like to draw the Committee's attention to the report from the Secondary Legislation Scrutiny Committee, which considered the SI. I thank it for its work.

I should like to address some of the concerns about jurisdiction before explaining how the SI links to UK policy goals. Under the revised the AVMS directive, currently each EU member state and the UK are only responsible for regulating the VSPs that fall within their respective jurisdiction. The directive sets out technical rules governing when a platform falls within a country's jurisdiction: there should be a physical presence of a platform, or a group undertaking of the platform in the

country. Where there is a physical presence in more than one country, jurisdiction is decided on the basis of factors such as whether the platform is established and whether the platform's main economic activity is centred in that country. There will be only one country which has jurisdiction for each platform at any one time.

Through the SI we are seeking to maintain the same position for Ofcom's remit beyond the end of the transition period. The remit allows Ofcom to regulate VSPs established in the UK and additionally regulate platforms that have a physical presence in the UK but not in any other country covered by the AVMS directive. Although Ofcom's remit will not be extended to include platforms established elsewhere in the EU, we believe that UK users will indirectly benefit from the EU's regulation platforms under the AVMS directive. The regulation under the regime is systems regulation, and not content regulation. We therefore expect that as platforms based outside of the UK set up and invest in the systems, they comply with the AVMS regulations.

In the absence of the SI, Ofcom would no longer be able to regulate any VSPs, which would result in an unacceptable regulatory gap. Our approach also mitigates the small risk that a VSP offering services to countries covered by the AVMS directive but not in the UK would establish itself in the UK to circumvent EU law. Ofcom will continue to actively engage with its regulatory counterparts in Europe after the end of the transition period regarding the determination of jurisdiction, co-operation and consistency.

The Government have always been clear that we intend to introduce legislation that will keep people safe online while protecting freedom of expression and recognising the invaluable role of a free press. The regulations align with UK policy goals and commitments to put in place protection for users, while paving the way for the upcoming online harms regulatory regime. Given that the online harms regulatory framework shares broadly the same objectives as the VSP regime, it is the Government's intention that the regulation of VSPs in the UK will be superseded by the online harms legislation, once the latter comes into force. Further details on the plans for that legislation will be set out in the full Government response to the consultation on the White Paper, which is due to be published later this year, with draft legislation ready in early 2021. I commend the regulations to the Committee.

9.31 am

**Chi Onwurah** (Newcastle upon Tyne Central) (Lab): It is a pleasure to serve under your chairship, Mr Stringer. I thank the Minister for his opening remarks. I declare an interest; as the Minister is aware, before I entered Parliament, I spent six years working for Ofcom as head of technology. Ofcom had responsibility for regulating broadcast audiovisual services and some responsibility for online audiovisual media services at a time when they were beginning to grow in importance, not always legally it must be said.

Online audiovisual media services were then nowhere near as widespread or as important as they have since become. They have been especially critical during these pandemic months. Of those, video-sharing platforms, or VSPs, which are the focus of the SI, have become a major presence in the lives of many in this country. VSPs are online services that enable users to upload and

share videos with members of the public. Popular VSPs such as YouTube and Facebook allow users to engage with a large range of content. They have been of especially critical importance in recent months, although sometimes for worrying reasons. September saw the highest number of public reports of suspected child sexual abuse material ever received in a single month by the Internet Watch Foundation. The National Crime Agency estimates that there are at least 300,000 individuals in the UK who pose a sexual threat to children through contact abuse or online. On TikTok, the hashtag '#vaccinesaredangerous' has had almost 800,000 views, with almost no misinformation warnings. Given that we hope to see a vaccine distributed very soon, the importance of appropriate action on misinformation is clear. Online advertising continues to be rampant on social media, and much of it is weakly regulated in terms of the protection offered to children in particular. The scale, speed and range of possible harms and misinformation facilitated through VSPs are vast. Yet, there is an acute sense of what those very platforms can offer for good—just ask the millions of school and university students who have continued to learn throughout the pandemic with the aid of online educational videos and video-based social engagement. I know many parents in particular who are very grateful to Joe Wicks stepping up to take on the role of the nation's PE teacher during lockdown.

Done right, and regulated well, VSPs can be a boost to wellbeing, social engagement, education and business, and I am a big believer in technology's positive impact on the world, especially well-regulated technology's positive impact. As the Minister said, today's SI is a seemingly narrow fix for deficiencies in the AVMS directive and the audiovisual media services regulations in the light of the UK's withdrawal from the EU. It aims to define the scope of businesses that will be under UK jurisdiction for VSP regulation beyond the transition period—the end of the year, and sets the precise date of the end of the transition period for broadcasting regulation.

On jurisdiction, the SI maintains existing thinking on jurisdictional scope as being based on effectively country of origin principles. A VSP will come under UK jurisdiction if it has the required connection with the UK, the terms of which are narrow and limited to the two cases. First, a VSP will come under UK jurisdiction if it has a fixed establishment in the UK and the centre of its economic activity relating to the relevant service is based in the UK and not in another EU member state. Secondly, if the VSP is not established in the UK and no EU member state has jurisdiction over it, it will come under UK jurisdiction if the VSP has a group undertaking established in the UK. That seemingly narrow fix has wide implications and major deficiencies. It does not remedy failings in jurisdiction nor does it provide a level playing field for online and offline video services, and it does not protect our citizens from harmful content.

The scope of jurisdiction is the central issue relating to effective regulation. The SI continues to require a measure of establishment in the UK, and not in a EU member state, for a VSP to be under the UK's regulatory scope. The SI has been introduced in accordance with the European Union (Withdrawal) Act 2018, which is intended, as I am sure the Minister would agree, to deliver British control of laws to Britain. Analysis commissioned by the Government themselves, however, suggests that under the existing 'establishment' test,

continued under the SI, the largest VSPs—YouTube, Facebook, Instagram, dailymotion and Twitter—are outside of the UK's regulatory scope. Many of those platforms will be under Irish and broader European jurisdiction. From my engagement with the media and technology industry, I know that that arrangement is deeply insufficient for the protection of our citizens and for the provision of a level playing field for British innovators. Fundamentally, it fails to retain, or regain, British regulatory sovereignty. Industry concerns mirror my concerns for child and public protection.

Given the millions of British children and members of public who use VSPs and seek protection from harm, what assurance can the Minister provide to suggest that his regulatory regime will protect them, especially when the Government are handing regulatory control to the EU? Looking beyond the immediate horizon, how does he intend to bring the largest VSPs under effective UK regulatory scope? Under his watch, he has taken back control on VSP regulation, only to give it right back again.

The SI is an incomplete plug to address a policy vacuum on VSP regulation. It is accompanied by temporary guidance from Ofcom on the VSP regulatory obligations, which will be supplemented by further detailed guidance introduced next year. As the Minister said, both sets of guidance will be replaced by an online harms Bill, which he told us to expect next year. That Bill has been expected imminently just about every week in this year, and further reassurances that it is on its way is hardly sufficient at this time.

Between now and the publication of next year's final guidance, Ofcom has said that it will 'prioritise only the most serious potential breaches'.

Why will the UK leave the transition period with no distinct regulation of grave harms that might be suffered by UK citizens? We urgently need an assurance from the Minister that the policy and enforcement vacuum will not endanger the wellbeing of citizens who use online VSP services. When will we have legislation to address that policy hole so that our citizens will be protected from online harms? When will the online harms Bill be brought before Parliament?

Video-sharing platforms continue to profit from content that is harmful and, in some cases, illegal. Online advertising, which the Minister mentioned, drives the VSP business model, and that of the content providers, for example, influencers. That advertising is almost entirely unregulated by statute and that obviously places television companies at a disadvantage, given that their advertising is regulated. It also has implications for our democracy as political advertising is also unregulated online. When will the Minister introduce the appropriate regulation of online advertising? Has any assessment been made of the uncertainty created for media businesses as a result of the Government's constant policy catch-up? At the heart of this, when does he intend to fill the gaping gulf between regulation and the Government's constant catch-up?

Although the SI poses pressing questions about risk and regulation, there are also persisting questions about long-term policy direction. At the fore of that, we will need a VSP regulatory regime that is effective at home and aligned with policy abroad, especially as we diverge from European legislation. That provides some scope for regulatory standards that offer robust protection to British citizens, but it also creates a need to ensure

[Chi Onwurah]

continuity, clarity and consistency for businesses. How does the Minister plan to ensure ongoing alignment with Europe on VSP regulation?

It is worth noting that the online harms Bill is a response to a two-year-old consultation, but the pace of technology, social change and the impact of covid-19 will make some of the consultation's conclusions either obsolete or inadequate in the face of future threats. It would be nice to have a forward-looking regulatory regime as opposed to a backward one. Has the Minister consulted consumer groups and relevant VSPs to ensure the creation of a thought-through policy that is domestically effective and internationally aligned for the UK regulation of VSPs? I fear that the voice of consumer groups is unheard; the big tech companies have many lobbyists and excessive profits to pay for them. In this debate the voice of the consumer and the citizen is not as loud as that of the big tech companies.

The Government have been a static spectator as the debate on and the reality of VSPs' online harms have passed them by. It is deeply concerning that Ministers are failing on such a matter. That failure places businesses in uncertainty, blocks innovation and gives away British regulatory sovereignty, but most of all, it threatens our children and members of the public from unchecked harms, misinformation and unregulated advertising. Despite that ongoing failure, the Government are still playing catch-up and are only now bringing in an SI on VSP regulation beyond the transition period, when there is barely less than a month before that period ends. And even then, they are introducing an SI that merely continues a highly imperfect scenario, in which British regulators cannot regulate to protect British consumers of VSP services. We deserve much better from our Government.

The Opposition will not oppose the SI because we do not think that the Government could now respond quickly enough to fill the gaps in regulation that the SI's failings will leave. I note that the Minister is smiling, but he must take seriously the deficiencies in our regulatory framework that are left unaddressed by the SI. I hope that he can assure us that the Government will finally wake up and deliver effective regulation against harms, misinformation and unregulated advertising on VSP through immediate additional legislation.

9.45 am

**Mr Whittingdale:** I was smiling simply because after the catalogue of failure and disaster that the hon. Lady recounted in describing the SI, she then said that the Opposition will not oppose it, which obviously I welcome very much.

**Chi Onwurah:** I must say as respectfully as I can that there are many catalogues of disaster and inadequacy in the Government's legislative framework, so we are not, unfortunately, able to address each of them given the time that remains before the end of the transition period.

**Mr Whittingdale:** Nevertheless, I welcome the Opposition's decision not to vote against the SI.

I agree with a number of the points raised by the hon. Lady. She is right that particularly in the past few months, when, sadly, so many people have been forced

to remain at home, the internet generally, but VSPs in particular have become a much greater feature of people's lives. I have been known to watch and even go along with Mr Wicks, although that may be hard for some to believe, but I have done so, as have many in this country. Educational provision online, as well as entertainment, have been really important in getting us through this.

The hon. Lady is right that although VSPs and the internet generally offer a lot of benefit, there are harmful aspects, which the Government are keen to address. We share her concern about the rising reports of the number of incidents of child abuse online, and we are determined to tackle that. She will be aware that the Secretary of State recently had a meeting with the big platforms to discuss how to address the problem of anti-vaccine misinformation. I am pleased that the platforms have agreed to take action to ensure that nobody can profit from such material, and to remove it as quickly as possible.

Things are going on, but this particular set of regulations is, as the hon. Lady knows, required under the terms of the withdrawal Act, because the regulations were introduced during the transition period, and therefore we are required to put them into UK law. We believe that they are important in that they ensure that Ofcom has full responsibility for regulating VSPs. She is right that the regulations do not go far enough, and that there are certain deficiencies. She specifically highlighted the issue of jurisdiction. Because the regulations are derived from a new directive it is not surprising that the force of that directive is to impose EU regulations. Ofcom, as currently the regulator within scope of the regulations, regulates those platforms that are established in the UK, and those platforms that are established elsewhere in the EU are regulated by the relevant country regulator there.

The hon. Lady mentioned in particular TikTok. It is an interesting one because it is established in China, but it does have a presence in quite a number of EU countries. At the moment, it is not yet been determined which country should have responsibility for the EU regulation of TikTok, but undoubtedly one of the member states will have that role.

The hon. Lady spoke about how the regulations do not take back control and how we are still subject to EU regulation. At the end of the transition period, we will no longer be bound by the decisions of regulators elsewhere in Europe. At the moment we recognise that in each case the EU regulates the platforms or providers in a particular country, and we trust it to do that. That will not be the case after the transition period comes to an end, and we will be introducing further legislation, as the hon. Lady said. Under that legislation, Ofcom will have responsibility for the regulation of all those providing services into the UK. That will go further than the scope of the existing AVMS regulations. To that extent, the regulations we are debating are a stopgap. They are intended to ensure that the European standard of regulation continues to apply after the end of the transition period, but we intend to go further and to ensure that any platforms that are providing content to UK consumers come within the scope the UK regulatory regime.

That will be achieved through the online harms Bill. The hon. Lady has drawn attention to the fact that that legislation is some time in the coming, and she is right

to that extent. I would simply say that it is absolutely essential that we get it right. She pointed out that this is an area where technology is developing very fast, and we need to ensure that legislation is forward-looking and can take account of future developments. It is vital that we put in place a regulatory regime that protects vulnerable people, young people particularly, from illegal and harmful content. At the same time, we want to be very conscious not to inhibit the growth of technology companies and innovation in the digital sector, which the Government are keen to encourage. Equally, we need to safeguard freedom of speech, freedom of expression and to provide proper safeguards to ensure that professional journalistic content is not caught up in the regulatory regime.

The Government are determined to meet those objectives. It is still the case that the Government will be publishing a response to the consultation paper very shortly, and that

we will be introducing draft legislation next year. The hon. Lady referred to the need to consult, and I can promise her that we are already consulting widely, and will continue to do so. I have regular discussions with all the various stakeholders, as does my colleague the Minister for Digital and Culture. Consumer groups will certainly have the opportunity to make their voice known.

Although I recognise the hon. Lady's unhappiness that this SI is a mere EU regulation that does not go as far as she would like and, indeed, as we would like, I can reassure that we will be bringing forward UK legislation to establish a pioneering UK regime very shortly. On that basis, I invite the Committee to approve the regulations.

*Question put and agreed to.*

9.53 am

*Committee rose.*

