[GB] Government publishes draft of post-Brexit Audiovisual Media Services (Amendment) Regulations 2021

IRIS 2021-3:1/27

Kelsey Farish
Dac Beachcroft

In late January 2021, the Government of the United Kingdom (UK) published its draft Audiovisual Media Services (Amendment) Regulations 2021 (referred to as the "2021 AV Regulations" for ease in this note). The objective of these new 2021 AV Regulations is to address the deficiencies that were not earlier addressed during the run-up to the UK's full withdrawal from the European Union.

When enacted, the UK's 2021 AV Regulations will update certain technical elements of the existing framework established by the European Union's Audiovisual Media Services Directive (the AVMSD) and subsequent laws. Some background to this regulatory landscape is set out below, together with a comment on the practical implications.

By way of background, the European Union's AVMSD was amended in 2018 to modernise and harmonise national legislation pertaining to audiovisual media across the Union's member states. Amongst other things, the AVMSD seeks to ensure a level playing field between the traditional TV broadcasting and new media services such as on-demand programme services (ODPS) like Netflix, and video-sharing platforms (VSPs) like YouTube.

In addition to harmonisation, the AVMSD also implements certain public policies to address the potential risks associated with media content. For example, it requires VSPs to put in place systems and policies to protect their users from harmful content, and to implement "the strictest measures such as encryption and effective parental controls" to protect children from content which may harm their physical, mental or moral development.

The implementation deadline for member states to bring the AVMSD into domestic legislation was in the autumn of 2020. Of course, the United Kingdom formally left the European Union in January 2020, although for one year (January 2020 through December 2020 inclusive) the UK benefited from a regulatory transition period during which time EU laws still applied (the "Transition Period").

Accordingly, the UK transposed the AVMSD into its national legislation in September 2020, by way of the Audiovisual Media Services Regulations 2020 (the "transposing Regulations"). That said, with the end of the Transition Period

© European Audiovisual Observatory (Council of Europe) 2026

looming, the UK Government was obliged to prepare for the eventuality of the UK no longer being a member state from January 2021. The challenge for UK legislators was therefore to ensure that new laws worked for a post-Brexit landscape, whilst still meeting the practical demands of continued business with its European neighbours.

To that end, the UK's Audiovisual Media Services (EU Exit) (Amendment) Regulations 2020 (SI 2020/1536) were laid down on 15 October 2020 to address several substantive problems with the transposing Regulations. Nevertheless, some deficiencies and inoperabilities regarding the operation of the transposing Regulations remained. This is where the 2021 AV Regulations enter the scene to amend the law in two key ways. Firstly, they update the responsibilities of Ofcom, which is the UK's communications regulator. Secondly, they ensure some degree of continuity for European works under the AVMSD regime.

With respect to Ofcom, under the 2021 AV Regulations, the regulator is still obliged to maintain lists of linear TV, ODPS and VSP services, but it is no longer required to notify the Commission of the same. Instead, Ofcom will just publish lists of the service providers that they regulate on their website. The new law also amends Ofcom's duty to cooperate with other regulators. Under the transposing Regulations, Ofcom was required to take all necessary steps to assist European Union member states and the Commission in complying with the AVMSD as it applies in relation to providers of ODPS and VSPs. Since the end of the Transition Period, these duties are no longer in effect. The new law therefore ensures that there are powers for Ofcom to cooperate and share information with EU and EEA regulators as appropriate, for example in relation to investigations.

The UK Government has noted in its explanatory memorandum to the 2021 AV Regulations (Explanatory Memorandum) that the sharing of information between Ofcom and its EU counterparts is "vital to ensure that UK users remain protected by supporting effective AVMSD regulatory regimes", and demonstrates that the UK "is abiding by its commitment to protecting minors from damaging content online." Interestingly, the Explanatory Memorandum also notes that it believes this spirit of open communication will also "incentivise other national regulators to cooperate if Ofcom engage with them."

The second issue concerns European works, and will be of interest to content creators and producers. As many in the sector will be aware, the AVMSD contains specific rules for the promotion of the distribution and production of European works, including reserving a minimum quota for European works. Despite Brexit, the UK will continue to participate in the European works regime, as eligibility is based on either EU membership, or being a signatory to the European Convention on Transfrontier Television (ECTT). Although the UK has left the European Union, it remains a signatory to the ECTT, which guarantees freedom of reception between

© European Audiovisual Observatory (Council of Europe) 2026

parties and prohibits any restriction on the retransmission of compliant programmes within their jurisdictions. Likewise, any guidance issued by the European Commission with respect to audiovisual regulations will continue to have relevance in the UK as updated from time to time. In the Explanatory Memorandum, the UK notes that "eligibility is strongly in the UK's interests and reference to the relevant Commission guidance is evidence of the UK's commitment to the European works regime."

In conclusion, the UK Government maintains that there is currently a "high degree of similarity of the regulatory regimes for both the UK and the EU". As such, only a "low impact" on businesses is expected as a result of these new 2021 AV Regulations. However, although the outcome of the UK's new audiovisual regulations are indeed similar to those before Brexit, stakeholders would be prudent to note the context and consequences in any event.

Proposed Audiovisual Media Services (Amendment) Regulations 2021

https://assets.publishing.service.gov.uk/media/601965568fa8f53fbe1a0795/_Proposed_Negative_SI__-_Audiovisual_Media_Services__Amendment__Regulations_2021_SI.pdf

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026