

GUERNSEY STATUTORY INSTRUMENT

2019 No. 33

**The Communications, Broadcasting and Wireless
Telegraphy (Brexit) (Bailiwick of Guernsey)
Regulations, 2019**

<i>Made</i>	<i>March, 2019</i>
<i>Coming into operation</i>	<i>See Regulation 22</i>
<i>Laid before the States</i>	<i>, 2019</i>

THE STATES' POLICY & RESOURCES COMMITTEE, in exercise of the powers conferred on it by sections 5(1) and 11 of the European Union (Brexit) (Bailiwick of Guernsey) Law, 2018^a, and upon receipt of the certificate required under section 5(3) of that Law, hereby makes the following Regulations:-

Amendment of Schedule 2 to the Communications (Bailiwick of Guernsey) Order 2003.

1. Schedule 2 to the Communications (Bailiwick of Guernsey) Order 2003^b (the "2003 Order") is amended as follows.

^a Order in Council No. I of 2019.

^b United Kingdom S.I. 2003/3195; amended by S.I. 2004/715, S.I. 2004/71116, S.I. 2005/856, S.I. 2006/3325, S.I. 2012/2688.

2. In paragraph 5 -

(a) in subparagraph (b), after ""or in a part of the United Kingdom";" omit "and",

(b) in subparagraph (c), for ", (4)(e) and (13)." substitute "and (13); and", and

(c) after subparagraph (c), insert -

"(d) for subsection (4)(e) substitute -

"(e) the desirability of ensuring the security and availability of public electronic communications networks and public electronic communications services;"".

3. After paragraph 27, insert -

"27A. In section 186 (action by OFCOM on dispute reference), in subsection (3)(b) omit "Community"."

4. After paragraph 28, insert -

"28A. Omit section 189 (disputes involving other member States)."

5. After paragraph 29, insert -

"29B. In section 191 (OFCOM's powers to require information in connection with dispute), in subsection (1) -

(a) at the end of paragraph (a), insert "or";

(b) omit paragraph (b) and the "or" following it."

6. In paragraph 33, for subparagraph (b) substitute -

"(b) omit subsections (2) and (3)."

7. In paragraph 35, after subparagraph (a) omit "and", and after subparagraph (b) insert -

"(c) in subsection (2), for paragraphs (b) and (c) substitute -

"(b) television licensable content services that meet the appropriate condition in subsection (4);

(c) digital television programme services that -

(i) can be accessed by means of a regulated electronic programme guide and are not exempt foreign services, or

(ii) cannot be accessed by means of a regulated electronic programme guide but are provided by a person who is within the jurisdiction of the United Kingdom and the Bailiwick of Guernsey for the purposes of the European Convention on Transfrontier Television and included in broadcasts to which that Convention applies.";

(d) in subsection (3), for paragraph (b) substitute -

"(b) digital additional television services that meet the appropriate condition in subsection (4);" and

(e) after that subsection insert -

"(4) For the purposes of subsections (2)(b) and (3)(b) "the appropriate condition" is -

(a) if or to the extent that the service does not consist of an electronic programme guide, that -

(i) the service can be accessed by means of a regulated electronic programme guide and is not an exempt foreign service, or

(ii) the service cannot be accessed by means of a regulated electronic programme guide but is provided by a person who is within the jurisdiction of the United Kingdom and the Bailiwick of Guernsey for the purposes of the European Convention on Transfrontier Television and included in broadcasts to which that Convention applies;

(b) if or to the extent that the service consists of an electronic programme guide, that the electronic programme guide is a regulated electronic programme guide.

(5) In this section -

(a) "electronic programme guide" has the meaning given by section 310(8),

(b) "regulated electronic programme guide" has the meaning given by section 211A, and

(c) "exempt foreign service" has the meaning given by section 211B."

8. After paragraph 35, insert -

"35A. After section 211 insert -

"211A Regulated electronic programme guides

(1) This section has effect for the interpretation of section 211.

(2) "Regulated electronic programme guide" means an electronic programme guide which -

(a) is provided, under a licence to provide television licensable content services or digital additional television services, by a person who was providing an electronic programme guide under that licence immediately before exit day,

(b) is provided by a person designated by the Secretary of State by regulations or by a person having a prescribed connection with a person so designated, or

(c) falls within a prescribed description.

(3) In subsection (2) "prescribed" means prescribed by the regulations.

(4) Regulations under subsection (2)(b) may only designate a person who, at the time when the regulations are made -

(a) is providing an electronic programme guide that is used by members of the public in the United

Kingdom and the Bailiwick of Guernsey as a facility for obtaining access to television programme services, or

- (b) is providing, or has informed OFCOM of an intention to provide, an electronic programme guide with a view to its use by members of the public in the United Kingdom and the Bailiwick of Guernsey as such a facility.

(5) The electronic programme guides that are to be taken for the purposes of this section to be used by members of the public include any electronic programme guide that -

- (a) is used, or available for use, only by persons who subscribe to the service (whether for a period or in relation to a particular occasion) or who otherwise request its provision, but
- (b) is a service the facility of subscribing to which, or of otherwise requesting its provision, is offered or made available to members of the public.

(6) Before making regulations under subsection (2), the Secretary of State must consult OFCOM.

(7) In this section "electronic programme guide" has the meaning given by section 310(8).

211B Exempt foreign services

- (1) In section 211 "exempt foreign service" means—
 - (a) a service provided by a person who is for the purposes of the European Convention on Transfrontier Television within the jurisdiction of a CTT State other than the United Kingdom, or
 - (b) any of the following services -
 - (i) the services known as RTÉ1 and RTÉ2 provided by Raidió Teilifís Éireann, and
 - (ii) the service known as TG4 provided by Teilifís na Gaeilge.
- (2) The Secretary of State may by regulations amend subsection (1)(b) -
 - (a) by adding a reference to a service appearing to the Secretary of State to be a public service channel established in Ireland,
 - (b) by amending the description of any service for the time being specified in that provision, or
 - (c) by omitting the reference to a service for the time being specified in that provision.

(3) In this section "CTT State" means a State which is for the time being a party to the European Convention on Transfrontier Television."."

9. After paragraph 40, insert -

"40A. In section 235 (licensing of television licensable content services), after subsection (6) insert -

"(7) A licence to provide a television licensable content service which authorises the provision of an electronic programme guide ("the guide") must also include such conditions as appear to OFCOM to be appropriate for ensuring that, at any time when the guide is a regulated electronic programme guide as defined by section 211A, the only television programme services that are listed or promoted by, or which can be accessed through, the guide are television programme services that -

(a) are provided by or under a licence under this Part, or

(b) do not fall, in pursuance of section 211(1) of the Communications Act 2003, to be regulated by OFCOM."."

10. In paragraph 46, after subparagraph (b) omit "and", and insert –

"(ba) in subsection (5)(c), for "another EEA State" substitute "an EEA State";".

11. In paragraph 76, in subparagraph (c) after "in subsection (7)(b)(i)," insert "for "Television Without Frontiers Directive" substitute "European Convention on Transfrontier Television", and".

12. After paragraph 80, insert –

"80A. After section 335, insert –

"335A. Co-operation with other parties to European Convention on Transfrontier Television

OFCOM may do any of the things that paragraph 3 of Article 19 of the European Convention on Transfrontier Television requires to be done by an authority designated under paragraph 2 of that Article."."

13. In paragraph 89, for subparagraph (a) substitute –

"(a) in subsection (1) –

(i) after the definition of "digital television programme service" insert -

""the European Convention on Transfrontier Television" means the Council of Europe Convention on Transfrontier Television which was opened for signature at Strasbourg on 5th May 1989, as amended by the Protocol which was opened for

signature at Strasbourg on 1st October 1998;"

(ii) in the definition beginning "EEA State", omit the words from "and "another" to the end; and

(iii) omit the definitions of "S4C and S4C Digital" and "S4C company";".

14. In paragraph 97, in subparagraph (c) for "after the definition of "other Member State" insert", substitute "for the definition of "other Member State" substitute".

15. In paragraph 111 at the end of subparagraph (d) insert ", and for "EEA State" substitute "CTT State"".

Amendment of the Broadcasting (Guernsey) Order 2003.

16. Schedule 1 to the Broadcasting (Guernsey) Order 2003^c is amended as follows.

17. In paragraph 14, after "In section 24," insert "in subsection (1)(b)(ii), for "an EEA State" substitute "a CTT State", and".

18. After paragraph 15, insert –

"15A. In section 26, at the end insert –

^c United Kingdom S.I. 2003/3192; amended by S.I. 2003/3192.

"(3) A digital additional services licence which authorises the provision of an electronic programme guide ("the guide") shall also include such conditions as appear to OFCOM to be appropriate for ensuring that, at any time when the guide is a regulated electronic programme guide as defined by section 211A of the Communications Act 2003, the only digital programme services that are listed or promoted by, or which can be accessed through, the guide are digital programme services that -

- (a) are provided by or under a licence under this Part, or
- (b) do not fall, in pursuance of section 211(1) of the Communications Act 2003, to be regulated by OFCOM."."

19. For paragraph 20, substitute –

"20. In section 39(1) –

- (a) after the definition beginning "Channel 4" insert-

""CTT State" means a State which is for the time being a party to the European Convention on Transfrontier Television;"

- (b) after the definition of "digital sound programme service" insert -

"the European Convention on Transfrontier Television" means the Council of Europe Convention on Transfrontier Television which was opened for signature at Strasbourg on 5th May 1989, as amended by the Protocol which was opened for signature at Strasbourg on 1st October 1998;" and

- (c) omit the definitions of "EEA State", "S4C", "S4C Digital" and "on S4C Digital".

Amendment of the Wireless Telegraphy (Guernsey) Order 2006.

20. In Schedule 1 to the Wireless Telegraphy (Guernsey) Order 2006^d, after subparagraph (c) of paragraph 54 insert -

- "(ca) in the definition of "international obligation of the United Kingdom", omit "any Community obligation and".

Extent.

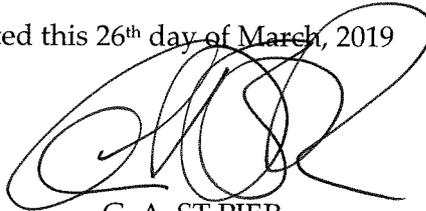
21. These Regulations have effect in the Bailiwick.

Citation and commencement.

22. These Regulations may be cited as the Communications, Broadcasting and Wireless Telegraphy (Brexite) (Bailiwick of Guernsey) Regulations, 2019, and shall come into force on exit day; and for this purpose "exit day" has the meaning given in the European Union (Brexite) (Bailiwick of Guernsey) Law, 2018.

^d United Kingdom S.I. 2006/3325.

Dated this 26th day of March, 2019



G. A. ST PIER

President of the Policy & Resources Committee

For and on behalf of the Committee

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in the Bailiwick consistent with that made in the United Kingdom by the Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019 and the Broadcasting (Amendment) (EU Exit) Regulations 2019. Made under section 5 of the European Union (Brexit) (Bailiwick of Guernsey) Law, 2018, they amend Orders in Council extending to the Bailiwick certain provisions of the Broadcasting Acts 1990 and 1996, the Communications Act 2003 and the Wireless Telegraphy Act 2006 to give effect to changes made to those Acts in the United Kingdom in consequence of the United Kingdom's withdrawal from the EU.

They come into force on exit day within the meaning of the European Union (Brexit) (Bailiwick of Guernsey) Law, 2018.