

SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4644 of 19 December, 2019

LEGAL NOTICE NO. 245 OF 2019.

EUROPEAN UNION (WITHDRAWAL) ACT 2019

BROADCASTING (EU) EXIT REGULATIONS 2019

In exercise of the powers conferred upon him by section 11(1), 15(1) and Schedule 3 of the European Union (Withdrawal) Act 2019 and all other enabling powers, the Minister with responsibility for broadcasting has made the following Regulations-

Part 1 Introduction

Title and commencement.

1. These Regulations may be cited as the Broadcasting (EU) Exit Regulations 2019 and come into force on exit day.

Interpretation.

2. In these Regulations-

“CTT State” means a State Party which is for the time being a party to the European Convention on Transfrontier Television” and includes Gibraltar once the United Kingdom’s ratification of this Convention is extended to Gibraltar;

“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

“exit day” shall have the same meaning as section 3(1) of the European Union (Withdrawal) Act 2019.

Amendments to primary legislation.

3. The Schedule contains amendments of primary legislation.

Transitional provision relating to EEA broadcasters.

4.(1) This regulation applies to a television licensable content service, digital television programme service or digital additional television service which-

- (a) begun to be provided before exit day; and
- (b) is provided by a person who-
 - (i) immediately before exit day was for the purposes of the AVMS Directive under the jurisdiction of an EEA State other than Gibraltar; and
 - (ii) on and after exit day is not for the purposes of the European Convention on Transfrontier Television under the jurisdiction of Gibraltar, or any other CTT State.

(2) In this regulation, “AVMS Directive” has the meaning given by section 2(1) of the Broadcasting Act 2012.

Saving for existing licences.

5. Nothing in these Regulations affects the validity of licences to provide television licensable content services, digital television programme services or digital additional television services that are in force immediately before exit day.

SCHEDULE

Amendments of primary legislation

Amendment to the Broadcasting Act 2012.

1. The Broadcasting Act 2012 is amended in accordance with paragraphs 2 to 26.

Section 2.

2. Section 2(1) is amended as follows-

- (a) by deleting the definition of “Commission”; and
- (b) in the definition of “European Works”-
 - (i) in paragraph (a), after “Member State” add “of the European Union”;
 - (ii) in paragraph (b), substitute “European States outside the European Union” with “States”; and
 - (iii) in paragraph (c), after the words “European Union and” add “other”; and
- (c) omit the definition for “TFEU”.

3. Section 2(1A) is amended as follows-

- (a) in paragraph (a), after “Union” add “and Gibraltar”;
- (b) in paragraph (c), after “States and” add “other”;
- (c) in paragraph (c)(i) and (ii), after “Union” add “and Gibraltar”.

4. Section 2(1C)(b) is amended by substituting “those to whom subsections (3) or (4) apply” with “those to whom subsection (3) applies”.

5. Section 2(2) is amended as follows-

- (a) in paragraph (b), by substituting-
 - (i) “in a Member State” with “outside Gibraltar”; and
 - (ii) for “a Member State”, in each place it occurs, substitute with “outside Gibraltar”;

(b) in paragraphs (c) and (d), by substituting “a third” with “another”;

6. Omit Section 2(4).

7. Subsection 2(6) is amended as follows-

- (a) in paragraph (a), substitute “in third countries” with “outside Gibraltar”; and
- (b) in paragraph (b), substitute “in one or more Member States” with “outside Gibraltar”.

Section 4.

8. Section 4(1)(d) is amended by omitting “Community law”.

Section 8.

9. Subsection 8(2) is amended as follows-

- (a) in paragraph (d), substitute “;” with “.”; and
- (b) omit paragraph (e).

Section 13.

10. Subsection 13(2) is amended by substituting “relevant European Union” with “domestic”.

Section 14.

11. Section 14 is amended by substituting “European Union” with “domestic”.

Section 15.

12. Subsection 15(1) is amended by substituting “A media service provider under Gibraltar jurisdiction shall require a licence issued by the Authority, except where that person is with respect to such broadcasts under the jurisdiction of a Member State for the purposes of Article 2 of the AVMS Directive, or any retransmissions of broadcasts under such jurisdiction.” with “A media service provider under Gibraltar jurisdiction shall require a licence issued by the Authority.”.

Section 30B.

13. Section 30B is amended as follows-

- (a) by omitting “and with due regard for European Union law,”; and
- (b) substituting “in one or more Member States” with “outside Gibraltar”.

Section 31.

14. Subsection 31(3) is amended by substituting “in the Member State” with “outside Gibraltar”.

Section 36.

15. Subsection 36(1) is amended by substituting-

- (a) in paragraph (a), “Member State” with “country outside Gibraltar”;
- (b) in paragraph (b), “within that Member State” with “outside Gibraltar”; and
- (c) in paragraph (c), “Member State” with “country”.

Section 36B.

16. Omit section 36B.

Section 37.

17. Omit section 37(4).

Section 38.

18. In section 38, for “in a Member State”, in each place it occurs, substitute with “outside Gibraltar”;

Section 39.

19. In subsection 39(10), after “State” add “of the European Union”.

Section 40.

20. Section 40 is amended as follows-

- (a) for “Member State”, in each place it occurs, substitute with “of the European Union”;
- (b) in subsection (2)-
 - (i) after “Member States” add “of the European Union”; and
 - (ii) in paragraph (d), omit “ and the Commission”; and
- (c) in subsection (4), omit “if the Commission informs it, in accordance with Article 3 (2) of the AVMS Directive, that the measure is contrary to European Union law”.

Section 41.

21. Section 41 is amended as follows-

- (a) in subsection (1), after “Member States” add “of the European Union”;
- (b) for “Member State”, in each place it occurs, add “of the European Union”;
- (c) in subsection (4)(b), omit “Commission and the”;
- (d) in subsection (5)-
 - (i) omit “Commission and”; and
 - (ii) substitute “are” with “is”; and
- (e) in subsection (6), omit “where the Commission informs it, in accordance with Article 3(6) of the AVMS Directive, that the measure, or proposed measure, is contrary to European Union law.”,

Section 41A.

22. Omit section 41A(3).

Section 42.

23. Section 42 is amended-

- (a) for “Member State”, in each place it occurs, add “of the European Union”;
- (b) in subsection (2), after “contact the” add “relevant”; and
- (c) in subsection (4)-
 - (i) in paragraph (c), substitute “;and” with “.”; and
 - (ii) omit paragraph (d).

Section 44.

24. Section 44 is amended after “Member States” by adding “of the European Union”.

Section 72A.

25. Section 72A is amended as follows-

- (a) in subsection (1)-
 - (i) substitute “shall cooperate with the regulatory bodies in the Member States” with “may cooperate with the regulatory bodies of Member States of the European Union”; and
 - (ii) in paragraph (b) substitute “in the ” with “of those” in the first place it occurs;
- (b) omit subsection (2).

Section 72B.

26. In Section 72B for “Member State” in each place it occurs, add “of the European Union”.

Amendment to the Communications Act 2006.

27. The Communications Act 2006 is amended in accordance with paragraphs 28 to 29.

Section 28

28. Section 28 is amended as follows-

- (a) in subsection (1), omit “and save for such measures as may be permitted under European Community law”; and
- (b) in subsection (2), omit “ in conformity with European Community law”;

Section 59.

29. Section 59 is amended in subsection (8) by omitting “ in conformity with European Community law”.

Amendment to the Intellectual Property (Copyright and Related Rights) Act 2005.

30. The Intellectual Property (Copyright and Related Rights) Act 2005 is amended in accordance with paragraphs 31 to 35.

Section 10.

31. Section 10 is amended as follows-

- (a) for “another EEA state”, in each place it occurs, substitute with “CTT State”;
- (b) in subsection (3)(b), substitute “European Economic Area” with “CTT State”;
and
- (c) add new subsection (4)-

“(4) For the purposes of this Act, a “CTT State” means a State which is for the time being a party to the Council of Europe Convention on Transfrontier Television which was opened for signature at Strasbourg on 15 May 1989, as amended by the Protocol which was opened for signature at Strasbourg on 1st October 1998.”.

Section 18.

32. Section 18(3) is amended by substituting “another EEA state” with “a CTT State”.

Section 164.

33. Section 164(1) is amended by substituting “another EEA state” with “a CTT State”.

Section 168.

34. Section 168(1) is amended by substituting “another EEA state” with “a CTT State”.

Schedule 1.

35. In paragraph 43(1)(a) of Schedule 1, omit “or another EEA state”.

Dated 19th December, 2019.

A J ISOLA,
Minister with responsibility for broadcasting.

EXPLANATORY MEMORANDUM

These Regulations are made in exercise of the powers conferred by the European Union (Withdrawal) Act 2019 for the purposes to address failures of EU law to operate effectively and other deficiencies arising from the withdrawal of Gibraltar from the European Union.

These Regulations make amendments to the legislation in the field of broadcasting.