

SCHEDULES

SCHEDULE 1

Amendments to Communications Act 2003 and related amendments

55. After section 96 insert—

“96A Notification of contravention of condition other than SMP apparatus condition

(1) Where OFCOM determine that there are reasonable grounds for believing that a person is contravening, or has contravened, a condition (other than an SMP apparatus condition) set under section 45, they may give that person a notification under this section.

(2) A notification under this section is one which—

- (a) sets out the determination made by OFCOM;
- (b) specifies the condition and contravention in respect of which that determination has been made;
- (c) specifies the period during which the person notified has an opportunity to make representations;
- (d) specifies the steps that OFCOM think should be taken by the person in order to—
 - (i) comply with the condition;
 - (ii) remedy the consequences of the contravention;
- (e) specifies any penalty which OFCOM are minded to impose in accordance with section 96B;
- (f) where the contravention is serious, specifies any direction which OFCOM are minded to give under section 100; and
- (g) where the contravention relates to a condition set under sections 87 to 91, specifies any direction which OFCOM are minded to give under section 100A.

(3) A notification under this section—

- (a) may be given in respect of more than one contravention; and
- (b) if it is given in respect of a continuing contravention, may be given in respect of any period during which the contravention has continued.

(4) Where a notification under this section has been given to a person in respect of a contravention of a condition, OFCOM may give a further notification in respect of the same contravention of that condition if, and only if—

- (a) the contravention is one occurring after the time of the giving of the earlier notification;
- (b) the contravention is a continuing contravention and the subsequent notification is in respect of so much of a period as falls after a period to which the earlier notification relates; or
- (c) the earlier notification has been withdrawn without a penalty having been imposed in respect of the notified contravention.

Changes to legislation: There are currently no known outstanding effects for the The Electronic Communications and Wireless Telegraphy Regulations 2011, Paragraph 55. (See end of Document for details)

- (5) OFCOM must not give a notification under this section in a case in which—
 - (a) they decide that a more appropriate way of proceeding in relation to the contravention in question would be under the Competition Act 1998; and
 - (b) they publish a statement to that effect in such manner as they consider appropriate for bringing their decision to the attention of the persons who, in their opinion, are likely to be affected by it.

96B Penalties for contravention of conditions

(1) This section applies where a person is given a notification under section 96A which specifies a proposed penalty.

(2) Where the notification relates to more than one contravention, a separate penalty may be specified in respect of each contravention.

(3) Where the notification relates to a continuing contravention, no more than one penalty may be specified in respect of the period of contravention specified in the notification.

(4) But, in relation to a continuing contravention, a penalty may be specified in respect of each day on which the contravention continues after—

- (a) the giving of a confirmation decision under section 96C(4)(c) which requires immediate action; or
- (b) the expiry of any period specified in the confirmation decision for complying with a requirement so specified.

(5) The amount of a penalty under subsection (4) is to be such amount not exceeding £20,000 per day as OFCOM determine to be—

- (a) appropriate; and
- (b) proportionate to the contravention in respect of which it is imposed.

96C Enforcement of notification under section 96A

(1) This section applies where—

- (a) a person has been given a notification under section 96A;
- (b) OFCOM have allowed the person an opportunity to make representations about the matters notified; and
- (c) the period allowed for the making of representations has expired.

(2) OFCOM may—

- (a) give the person a decision (a “confirmation decision”) confirming the imposition of requirements on the person, or the giving of a direction to the person, or both, in accordance with the notification under section 96A; or
- (b) inform the person that they are satisfied with the person's representations and that no further action will be taken.

(3) OFCOM may not give a confirmation decision to a person unless, after considering any representations, they are satisfied that the person has, in one or more of the respects notified, been in contravention of a condition specified in the notification under section 96A.

(4) A confirmation decision—

- (a) must be given to the person without delay;
- (b) must include reasons for the decision;

- (c) may require immediate action by the person to comply with requirements of a kind mentioned in section 96A(2)(d), or may specify a period within which the person must comply with those requirements; and
 - (d) may require the person to pay—
 - (i) the penalty specified in the notification under section 96A, or
 - (ii) such lesser penalty as OFCOM consider appropriate in the light of the person's representations or steps taken by the person to comply with the condition or remedy the consequences of the contravention, andmay specify the period within which the penalty is to be paid.
- (5) It is the duty of the person to comply with any requirement imposed by a confirmation decision.
- (6) That duty is enforceable in civil proceedings by OFCOM—
 - (a) for an injunction;
 - (b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988; or
 - (c) for any other appropriate remedy or relief.
 - (7) A penalty imposed by a confirmation decision—
 - (a) must be paid to OFCOM; and
 - (b) if not paid within the period specified by them, is to be recoverable by them accordingly.”

Changes to legislation:

There are currently no known outstanding effects for the The Electronic Communications and Wireless Telegraphy Regulations 2011, Paragraph 55.