

## SCHEDULES

### SCHEDULE 18

#### TRANSITIONAL PROVISIONS

*Conditions relating to premium rate services and conditions corresponding to SMP or access-related conditions*

- 9 (1) This paragraph applies where OFCOM give a continuation notice to the holder of a licence granted under section 7 of the 1984 Act.
- (2) A continuation notice is a notice that a provision contained in a condition of the licence is to have effect, after the abolition of licensing—
- (a) to the extent specified in the notice; and
  - (b) subject to such modifications (if any) as may be so specified.
- (3) OFCOM are not to give a continuation notice except to the extent that they consider that provision to which it will give effect, as modified by the notice, (“the continued provision”)—
- (a) regulates the provision of premium rate services; or
  - (b) falls within sub-paragraph (4).
- (4) The continued provision falls within this sub-paragraph in so far as it corresponds to provision of one or more of the following descriptions—
- (a) provision that OFCOM have power to include in SMP conditions;
  - (b) provision authorised by section 73(2) or (4) for inclusion in access-related conditions;
  - (c) provision relating to matters mentioned in Article 16 of the Universal Service Directive or Article 7 of the Access Directive.
- (5) A continuation notice relating to provision corresponding to anything that OFCOM have power to include in SMP conditions—
- (a) may identify the market by reference to which an SMP condition replacing the provision would have to be set; and
  - (b) in so far as the provision corresponds to anything that OFCOM have power to include only in SMP apparatus conditions, must do so.
- (6) OFCOM are not to give a continuation notice relating to provision corresponding to anything that OFCOM have power to include only in SMP apparatus conditions except to the extent that it has effect in relation to the supply of electronic communications apparatus of a description supplied in the market identified in the notice as the market by reference to which SMP conditions replacing the continued provision would have to be set.
- (7) The modifications for which a continuation notice may provide—

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- (a) must be confined to modifications for the purpose of securing that the provision to which they relate continues to have effect for so long as the notice is in force; but
  - (b) in the case of provision which is expressed to impose a requirement to be met before the abolition of licensing, may include a modification under which that requirement must continue to be met for so long as the notice remains in force.
- (8) Notwithstanding any repeal or revocation made by this Act—
  - (a) the continued provision,
  - (b) every provision made by a direction, determination or consent given or made for the purposes of the continued provision, and
  - (c) so far as necessary for giving effect to anything mentioned in paragraph (a) or (b), every provision made by or under the licence under the 1984 Act that is not so mentioned,are to remain in force for so long as the continuation notice is in force.
- (9) A continuation notice shall cease to have effect if OFCOM give a notice to that effect to the holder of the licence.
- (10) Where the continued provision is one that OFCOM have power to include only in an SMP apparatus condition, it shall be their duty, as soon as reasonably practicable after giving the continuation notice—
  - (a) to carry out an analysis of the market which, under sub-paragraph (5), is identified in that notice;
  - (b) to take all other steps necessary for enabling them to decide whether or not to set an SMP apparatus condition by reference to that market for the purpose of replacing the continued provision; and
  - (c) to decide whether or not to exercise their power to set such a condition for that purpose.
- (11) In the case of every other continued provision falling within sub-paragraph (4), it shall be OFCOM's duty, as soon as reasonably practicable after giving the continuation notice—
  - (a) to take all steps necessary for enabling them to decide whether or not to set a condition of any other description under Chapter 1 of Part 2 of this Act for the purpose of replacing the continued provision; and
  - (b) to decide whether or not to exercise their power to set a condition under that Chapter for that purpose.
- (12) It shall be the duty of OFCOM—
  - (a) as soon as reasonably practicable after making a decision required by sub-paragraph (10) or (11), but
  - (b) in a case where that decision is a decision to set a condition, not before the coming into force of that condition,to give a notice under sub-paragraph (9) with respect to the continuation notice.
- (13) The duties imposed by sub-paragraphs (10) to (12) apply only where OFCOM have not previously given a notice under sub-paragraph (9) with respect to the continuation notice in question.
- (14) This paragraph has effect in the case of a licence granted under section 7 of the 1984 Act to persons of a particular class as if—

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- (a) references to the holder of that licence were references to the members of that class; and
  - (b) the manner in which a continuation notice or notice under sub-paragraph (9) is to be given to members of that class were by its publication in such manner as, in OFCOM’s opinion, is appropriate for bringing it to the attention of the members of that class who are affected by the notice.
- (15) Section 192 applies to a decision by OFCOM to give a notice under this paragraph as it applies to a decision by them under Part 2 of this Act.
- (16) In this paragraph “Access Directive”, “electronic communications apparatus”, “the provision of premium rate services”, “SMP condition”, “SMP apparatus condition” and “Universal Service Directive” each has the same meaning as in Chapter 1 of Part 2 of this Act.