

SCHEDULES

SCHEDULE 11

Section 49(5)

SCHEDULE TO BE INSERTED AS SCHEDULE 16B TO THE 2003 ACT

After [Schedule 16A](#) to the Communications Act 2003 (as inserted by [Schedule 10](#)) insert—

“SCHEDULE 16B

Section 392B

PARTS 3A AND 3B: LIABILITY OF PARENT ENTITIES ETC

Interpretation

1 In this Schedule—

“confirmation decision” means a notice under [section 362AZ1](#) or [362BS](#);

“designated internet programme service” has the same meaning as in Part 3A (and a reference to providing an internet programme service is to be construed in accordance with [section 362AZ12\(2\)](#) to [\(5\)](#));

“designated radio selection service” has the same meaning as in Part 3B;

“fellow subsidiary undertaking” has the meaning given by [section 1161\(4\)](#) of the Companies Act 2006;

“parent undertaking” and “subsidiary undertaking” are to be read in accordance with [section 1162](#) of that Act;

“penalty notice” means a notice under [section 362AZ4](#), [362AZ7\(6\)](#), [362BV](#) or [362BY\(6\)](#);

“provisional notice of contravention” means a notice under [section 362AZ](#) or [362BR](#);

“regulated television selection service” has the same meaning as in Part 3A;

“relevant internet radio service” has the same meaning as in Part 3B.

Joint provisional notices of contravention

2 (1) This paragraph applies where—

(a) OFCOM are satisfied that there are grounds for giving a person a provisional notice of contravention in respect of—

(i) a regulated television selection service that is or was at any time provided by that person,

(ii) a designated internet programme service that is or was at any time provided by that person,

(iii) a designated radio selection service that is or was at any time provided by that person, or

(iv) a relevant internet radio service that is or was at any time provided by that person, and

(b) that person is an entity (“E”).

Status: This is the original version (as it was originally enacted).

- (2) If there is an entity which is a parent undertaking in relation to E, the provisional notice of contravention may be given—
 - (a) to E alone, or
 - (b) jointly to E and to an entity which is a parent undertaking in relation to E.
- (3) If there is an entity which is a subsidiary undertaking in relation to E, the provisional notice of contravention may be given—
 - (a) to E alone, or
 - (b) jointly to E and to an entity which is a subsidiary undertaking in relation to E.
- (4) If E is a subsidiary undertaking and there is an entity which is a fellow subsidiary undertaking in relation to E, the provisional notice of contravention may be given—
 - (a) to E alone, or
 - (b) jointly to E and to an entity that is a fellow subsidiary undertaking in relation to E.
- (5) If an individual or individuals control E, the provisional notice of contravention may be given—
 - (a) to E alone, or
 - (b) jointly to E and to the individual or individuals who control E.
- (6) For the purposes of [sub-paragraph \(5\)](#), an individual or individuals are to be taken to control E if that individual or those individuals would, if they were an undertaking, be a parent undertaking in relation to E within the meaning of section 1162 of the Companies Act 2006 by reason of meeting the condition in subsection (2)(a), (b), (c) or (d) or (4)(a) of that section.
- (7) If a provisional notice of contravention is given jointly as mentioned in [sub-paragraph \(2\)\(b\)](#), [\(3\)\(b\)](#), [\(4\)\(b\)](#) or [\(5\)\(b\)](#), the statement under section [362AZ\(6\)\(a\)](#) or (as the case may be) [362BR\(6\)\(a\)](#) must include, among the matters about which representations may be made to OFCOM, the matter of whether joint and several liability would be appropriate.

Liability of parent entities for failures by subsidiary entities

- 3 (1) This paragraph applies where—
 - (a) OFCOM are satisfied that there are grounds for giving a person—
 - (i) a confirmation decision which requires the person to take steps or imposes a penalty (or both), or
 - (ii) a penalty notice,
 in respect of a service of a type specified in [sub-paragraph \(2\)](#) that is or was at any time provided by the person,
 - (b) the person is an entity (“E”), and
 - (c) there is another entity which is a parent undertaking in relation to E (a “parent entity”).
- (2) The types of service referred to in [sub-paragraph \(1\)\(a\)](#) are—
 - (a) a regulated television selection service;
 - (b) a designated internet programme service;
 - (c) a designated radio selection service;

Status: This is the original version (as it was originally enacted).

- (d) a relevant internet radio service.
- (3) The confirmation decision or penalty notice may be given—
 - (a) to E alone, or
 - (b) jointly to E and to a parent entity.
- (4) Before giving a penalty notice to a parent entity, or giving a confirmation decision to a parent entity which was not previously given a provisional notice of contravention relating to the same matter, OFCOM must give that entity an opportunity to make representations to OFCOM about—
 - (a) the matters contained in the penalty notice or confirmation decision, and
 - (b) whether joint and several liability would be appropriate.
- (5) OFCOM may not give a confirmation decision or a penalty notice to a parent entity (“P”) if—
 - (a) P meets the condition in section 1162(2)(a) of the Companies Act 2006 in relation to E, and
 - (b) P makes representations to OFCOM, in pursuance of [paragraph 2\(7\)](#) or [sub-paragraph \(4\)](#), that satisfy OFCOM that P does not meet any condition in section 1162(2)(b), (c) or (d) or (4) of that Act in relation to E.
- (6) If a confirmation decision or a penalty notice is given to entities jointly under [sub-paragraph \(3\)\(b\)](#), those entities are jointly and severally liable to comply with the requirements or (as the case may be) pay the penalty imposed by the decision or notice.
- (7) See also [paragraph 4](#) of [Schedule 16A](#).

Liability of subsidiary entities for failures by parent entities

- 4 (1) This paragraph applies where—
 - (a) OFCOM are satisfied that there are grounds for giving a person—
 - (i) a confirmation decision which requires the person to take steps or imposes a penalty (or both), or
 - (ii) a penalty notice,in respect of a service of a type specified in [sub-paragraph \(2\)](#) that is or was at any time provided by the person,
 - (b) the person is an entity (“E”),
 - (c) there is another entity which is a subsidiary undertaking in relation to E (a “subsidiary entity”), and
 - (d) OFCOM are satisfied that the other entity’s acts or omissions contributed to the failure to which the confirmation decision or penalty notice relates.
- (2) The types of service referred to in [sub-paragraph \(1\)\(a\)](#) are—
 - (a) a regulated television selection service;
 - (b) a designated internet programme service;
 - (c) a designated radio selection service;
 - (d) a relevant internet radio service.
- (3) The confirmation decision or penalty notice may be given—
 - (a) to E alone, or
 - (b) jointly to E and to a subsidiary entity.

Status: This is the original version (as it was originally enacted).

- (4) Before giving a penalty notice to a subsidiary entity, or giving a confirmation decision to a subsidiary entity which was not previously given a provisional notice of contravention relating to the same matter, OFCOM must give that entity an opportunity to make representations to OFCOM about—
 - (a) the matters contained in the penalty notice or the confirmation decision, and
 - (b) whether joint and several liability would be appropriate.
- (5) If a confirmation decision or penalty notice is given to entities jointly under [sub-paragraph \(3\)\(b\)](#), those entities are jointly and severally liable to comply with the requirements or (as the case may be) pay the penalty imposed by the decision or notice.
- (6) See also [paragraph 4](#) of [Schedule 16A](#).

Liability of fellow subsidiary entities for failures by subsidiary entities

- 5 (1) This paragraph applies where—
 - (a) OFCOM are satisfied that there are grounds for giving a person—
 - (i) a confirmation decision which requires the person to take steps or imposes a penalty (or both), or
 - (ii) a penalty notice,in respect of a service of a type specified in [sub-paragraph \(2\)](#) that is or was at any time provided by the person,
 - (b) the person is an entity (“E”),
 - (c) E is a subsidiary undertaking,
 - (d) there is another entity which is a fellow subsidiary undertaking in relation to E (a “fellow subsidiary entity”), and
 - (e) OFCOM are satisfied that the acts or omissions of the fellow subsidiary entity contributed to the failure to which the confirmation decision or penalty notice relates.
- (2) The types of service referred to in [sub-paragraph \(1\)\(a\)](#) are—
 - (a) a regulated television selection service;
 - (b) a designated internet programme service;
 - (c) a designated radio selection service;
 - (d) a relevant internet radio service.
- (3) The confirmation decision may be given—
 - (a) to E alone, or
 - (b) jointly to E and to a fellow subsidiary entity.
- (4) Before giving a penalty notice to a fellow subsidiary entity, or giving a confirmation decision to a fellow subsidiary entity which was not previously given a provisional notice of contravention relating to the same matter, OFCOM must give that entity an opportunity to make representations to OFCOM about—
 - (a) the matters contained in the confirmation decision or the penalty notice, and
 - (b) whether joint and several liability would be appropriate.
- (5) If a confirmation decision or penalty notice is given to entities jointly under [sub-paragraph \(3\)\(b\)](#), those entities are jointly and severally liable to comply with the

requirements or (as the case may be) pay the penalty imposed by the decision or notice.

(6) See also [paragraph 4](#) of [Schedule 16A](#).

Liability of controlling individuals for failures by entities

- 6 (1) This paragraph applies where—
- (a) OFCOM are satisfied that there are grounds for giving a person—
 - (i) a confirmation decision which requires the person to take steps or imposes a penalty (or both), or
 - (ii) a penalty notice,in respect of a service of a type specified in [sub-paragraph \(2\)](#) that is or was at any time provided by the person,
 - (b) the person is an entity (“E”), and
 - (c) an individual or individuals control E.
- (2) The types of service referred to in [sub-paragraph \(1\)\(a\)](#) are—
- (a) a regulated television selection service;
 - (b) a designated internet programme service;
 - (c) a designated radio selection service;
 - (d) a relevant internet radio service.
- (3) The confirmation decision may be given—
- (a) to E alone, or
 - (b) jointly to E and to the individual or individuals who control E.
- (4) Before giving a penalty notice to an individual, or giving a confirmation decision to an individual who was not previously given a provisional notice of contravention relating to the same matter, OFCOM must give that individual an opportunity to make representations to OFCOM about—
- (a) the matters contained in the confirmation decision or the penalty notice, and
 - (b) whether joint and several liability would be appropriate.
- (5) For the purposes of this paragraph, an individual or individuals are to be taken to control E if that individual or those individuals would, if they were an undertaking, be a parent undertaking in relation to E within the meaning of section 1162 of the Companies Act 2006 by reason of meeting the condition in subsection (2)(a), (b), (c) or (d) or (4)(a) of that section.
- (6) OFCOM may not give a confirmation decision or a penalty notice to an individual or individuals (“P”) if—
- (a) the condition by reason of which P controls E is the condition in section 1162(2)(a) of the Companies Act 2006, and
 - (b) P makes representations to OFCOM in pursuance of [paragraph 2\(7\)](#) or [sub-paragraph \(4\)](#) which satisfy OFCOM that P does not control E by reason of any condition in section 1162(2)(b), (c) or (d) or (4) of that Act.
- (7) If a confirmation decision or penalty notice is given jointly to E and to an individual or individuals under [sub-paragraph \(3\)\(b\)](#), E and that individual or those individuals are jointly and severally liable to comply with the requirements or (as the case may be) pay the penalty, imposed by the decision or notice.

Status: This is the original version (as it was originally enacted).

General

- 7 In its application for the purposes of this Schedule, paragraph 4 of Schedule 7 to the Companies Act 2006 is to be read as if the reference to operating and financial policies were to policies relating to compliance with the regulatory requirements imposed by Parts 3A and 3B.
- 8 For the purposes of this Schedule, sections 1161(4) and 1162 of, and Schedule 7 to, the Companies Act 2006—
- (a) are to apply in relation to an entity which is not an undertaking (as defined in section 1161(1) of that Act) as they apply in relation to an undertaking, and
 - (b) are to be read with any necessary modifications if applied to an entity formed under the law of a country or territory outside the United Kingdom.”