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STATUTORY INSTRUMENTS

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**2020 No. 1419**

**EXITING THE EUROPEAN UNION  
ELECTRONIC COMMUNICATIONS**

The Electronic Communications and Wireless  
Telegraphy (Amendment) (European Electronic  
Communications Code and EU Exit) Regulations 2020

*Made - - - - 2nd December 2020  
Coming into force in accordance with regulation 1(2)  
and (3)*

The Secretary of State makes these Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972<sup>(1)</sup> and section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018<sup>(2)</sup>.

The Secretary of State has been designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to wireless telegraphy including radio equipment<sup>(3)</sup> and in relation to electronic communications<sup>(4)</sup>.

In accordance with paragraph 2(2) of Schedule 2 to the European Communities Act 1972 and paragraph 1(3) of Schedule 7 to the European Union (Withdrawal) Act 2018, a draft of these Regulations has been laid before Parliament and approved by a resolution of each House of Parliament.

**Citation and commencement**

1.—(1) These Regulations may be cited as the Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020.

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- (1) 1972 c. 68. The European Communities Act 1972 was repealed by section 1 of the European Union (Withdrawal) Act 2018 (c. 16) with effect from exit day, but saved with modifications until IP completion day by section 1A of that Act (as inserted by section 1 of the European Union (Withdrawal Agreement) Act 2020 (c. 1)). Section 2(2) of the European Communities Act 1972 was amended by section 27(1) of the Legislative and Regulatory Reform Act 2006 (c. 51) and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7).
- (2) 2018 c. 16. Section 8 was amended by section 27 of the European Union (Withdrawal Agreement) Act 2020 (c. 1); paragraph 21 of Schedule 7 was amended by paragraph 53(2) of Schedule 5 to that Act.
- (3) S.I. 1999/2788. There are amendments which are not relevant for the purposes of these Regulations.
- (4) S.I. 2001/3495. There are amendments which are not relevant for the purposes of these Regulations.

(2) These Regulations, except the provisions mentioned in paragraph (3), come into force on 21st December 2020.

(3) The following provisions come into force on IP completion day—

- (a) Parts 2 and 4 of Schedule 1 (and regulation 2 so far as relating to those Parts);
- (b) Part 2 of Schedule 2 (and regulation 3 so far as relating to that Part); and
- (c) regulation 4 and Schedule 3.

### **Amendments of primary legislation**

2. Schedule 1 contains amendments of primary legislation.

### **Amendments of subordinate legislation**

3. Schedule 2 contains amendments of subordinate legislation.

### **Amendments of retained direct EU legislation**

4. Schedule 3 contains amendments of retained direct EU legislation.

### **Review of legacy services**

5. During the period beginning with 21st December 2020 and ending with IP completion day, section 72A(5) of the Communications Act 2003(6) is to have effect as if after subsection (3) there were inserted—

“(3A) OFCOM may on their own initiative review and report to the Secretary of State on the extent to which any provision falling within section 65(2BC) made by the universal service order continues to be necessary in the circumstances.”(7).

### **Saving for existing universal service conditions relating to social tariffs**

6.—(1) The amendments made by paragraphs 22(5), 24 and 29 of Schedule 1 and paragraph 1 of Schedule 2 do not affect the continuation in force of any universal service condition which—

- (a) relates to the matter mentioned in paragraph 5(2) of the Schedule to the Electronic Communications (Universal Service) Order 2003(8); and
- (b) is in force immediately before 21st December 2020.

(2) OFCOM may not, without the consent of the Secretary of State—

- (a) modify or revoke a universal service condition falling within paragraph (1)(a) and (b); or
- (b) under a power conferred by such a universal service condition, give a direction that has the effect of modifying—

- (i) the level of a tariff (as defined by section 68(8) of the Communications Act 2003) required by the condition; or
- (ii) the persons to whom it is to be made available.

(3) This regulation ceases to have effect when, in accordance with a direction of the Secretary of State under section 72D(7)(9) of the Communications Act 2003, a social tariff condition is set under

(5) Section 72A was inserted by section 1(7) of the Digital Economy Act 2017 (c. 30).

(6) 2003 c. 21.

(7) Section 65(2BC) is inserted by paragraph 22(3) of Schedule 1 to these Regulations.

(8) S.I. 2003/1904; paragraph 5(2) of the Schedule is revoked by paragraph 1 of Schedule 2 to these Regulations.

(9) Section 72D is inserted by paragraph 29 of Schedule 1 to these Regulations.

section 45 of that Act and applied to providers of public electronic communications services who include the designated universal service providers.

(4) Expressions used in this regulation and in Chapter 1 of Part 2 of the Communications Act 2003 have the same meaning as in that Chapter.

2nd December 2020

*Matt Warman*  
Parliamentary Under Secretary of State  
Department for Digital, Culture, Media and  
Sport

## SCHEDULE 1

Regulation 2

## Amendments of primary legislation

## PART 1

## Amendments of Communications Act 2003 coming into force on 21st December 2020

1. The Communications Act 2003 is amended as follows.
  - 2.—(1) Section 3 (general duties of OFCOM) is amended as follows.
    - (2) In subsection (4)(10), before paragraph (f) insert—
 

“(eb) the desirability of ensuring that relevant markets facilitate end-to-end connectivity in the interests of consumers in those markets;”.
    - (3) In subsection (14), after the definition of “communications matters” insert—
 

““end-to-end connectivity” has the meaning given by section 74(3);”.
  - 3.—(1) Section 4 (duties for the purpose of fulfilling EU obligations)(11) is amended as follows.
    - (2) In subsection (2)—
      - (a) for “six” substitute “seven”;
      - (b) for “Article 8 of the Framework Directive” substitute “Article 3 of the EECC Directive”.
    - (3) In subsection (9), for the “and” at the end of paragraph (a) substitute—
 

“(aa) facilitating end-to-end connectivity;

(ab) facilitating the changing by end-users of their communications provider;

(ac) facilitating the retention by end-users of their telephone numbers after a change of communications provider; and”.
    - (4) In subsection (10)(a), after “Framework Directive” insert “or Article 39 of the EECC Directive”.
    - (5) After subsection (10) insert—
 

“(10A) The seventh Community requirement is a requirement to promote connectivity and access to very high capacity networks by members of the public and businesses in the United Kingdom.”.
    - (6) In subsection (12)—
      - (a) before the definition of “network access” insert—
 

““end-to-end connectivity” has the meaning given by section 74(3);”;
      - (b) at the end insert—
 

““telephone number” has the meaning given by section 56(5).”.
    - (7) After subsection (12) insert—
 

“(12A) In this Act “very high capacity network” means an electronic communications network which—

      - (a) consists wholly of optical fibre elements at least up to the distribution point at the serving location; or

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(10) Subsection (4)(ea) is prospectively inserted by [S.I. 2019/246](#).

(11) Section 4 was amended by [S.I. 2011/1210](#) and is prospectively amended by [S.I. 2019/246](#) and by [S.I. 2019/919](#).

- (b) is capable of delivering, under usual peak-time conditions, network performance that, in OFCOM’s opinion, is similar, in terms of available downlink and uplink bandwidth, resilience, error-related parameters and latency and its variation, to the network performance of a network falling within paragraph (a).

(12B) For the purposes of subsection (12A)(b), network performance can be considered similar regardless of whether the end-user experience varies due to the inherently different characteristics of the medium by which the network ultimately connects with the network termination point.”.

- (8) For subsection (13) substitute—

“(13) In this section and sections 4A and 5, “the Framework Directive” means [Directive 2002/21/EC](#) of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services, as amended by [Directive 2009/140/EC](#) of the European Parliament and of the Council.”.

- 4. In section 4A (duty to take account of European Commission recommendations for harmonisation)(12), in subsection (2), at the end insert “or Article 38(1) of the EECC Directive”.

- 5. In section 5 (directions in respect of networks and spectrum functions)(13), in subsection (3A), for “requires” substitute “would have required”.

- 6. In section 32 (meaning of electronic communications networks and services), for subsection (2) substitute—

“(2) In this Act “electronic communications service” means a service of any of the types specified in subsection (2A) provided by means of an electronic communications network, except so far as it is a content service.

(2A) Those types of service are—

- (a) an internet access service;
- (b) a number-based interpersonal communications service; and
- (c) any other service consisting in, or having as its principal feature, the conveyance of signals, such as a transmission service used for machine-to-machine services or for broadcasting.

(2B) In subsection (2A)(a) “internet access service” means a service that provides access to the internet and thereby connectivity to virtually all end points of the internet, irrespective of the network technology and terminal equipment used.”.

- 7. After section 32 insert—

### **“32A Meaning of number-based interpersonal communications service**

(1) In this Chapter “number-based interpersonal communications service” means an interpersonal communications service which—

- (a) connects with publicly assigned numbering resources, namely a number or numbers in a national or international numbering plan, or
- (b) enables communication with a number or numbers in a national or international numbering plan.

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(12) Section 4A was inserted by [S.I. 2011/1210](#); subsection (2) is prospectively amended by paragraph 4(2) of Schedule 1 to [S.I. 2019/246](#) (which is omitted by paragraph 4(2)(b) of Schedule 2 to these Regulations), and a new subsection (2) is substituted by paragraph 68 of Schedule 1 to these Regulations.

(13) Section 5 was amended by [S.I. 2011/1210](#) and is prospectively amended by paragraph 5 of Schedule 1 to [S.I. 2019/246](#) (which is omitted by paragraph 4(2)(c) of Schedule 2 to these Regulations).

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

(2) In subsection (1), “interpersonal communications service” means a service which enables direct interpersonal and interactive exchange of information by means of electronic communications networks between a finite number of persons, where the persons initiating or participating in the communication determine its recipient.”.

- 8.** In section 33 (advance notification to OFCOM)(**14**), in subsection (5)—
- (a) in paragraph (a), after “notification” insert “, including a short description of the network, service or facility”;
  - (b) in paragraph (c), after “notification” insert “, including the person’s legal status and, in the case of a body corporate, details of its incorporation”;
  - (c) after paragraph (c) insert—
    - “(ca) the address of the person’s main establishment and, if that is outside the United Kingdom, of any secondary establishment in the United Kingdom;
    - (cb) the person’s website address, where applicable, associated with the provision of electronic communications networks or services;”;
  - (d) omit paragraph (e);
  - (e) in paragraph (f), for “to (e)” substitute “and (d)”.
- 9.** In section 38 (fixing of charges)(**15**), in subsection (6), after paragraph (e) insert—
- “(ea) their functions under sections 93A to 93D;
  - (eb) the monitoring of compliance with commitments that are made binding by a commitments decision;
  - (ec) their functions under sections 105A to 105D;”.
- 10.**—(1) Section 45 (power of OFCOM to set conditions) is amended as follows.
- (2) In subsection (2)(b), after sub-paragraph (i) insert—
- “(ia) a social tariff condition;”.
- (3) After subsection (4) insert—
- “(4A) A social tariff condition is a condition which contains only provision authorised by section 72F.”.
- 11.**—(1) Section 46 (persons to whom conditions may apply) is amended as follows.
- (2) After subsection (5) insert—
- “(5A) A social tariff condition may be applied—
- (a) generally to every person providing a public electronic communications service;
  - (b) generally to every person providing such a service of a particular description specified in the condition; or
  - (c) to a particular person specified in the condition.”.
- (3) In subsection (6), for the “and” at the end of paragraph (a) substitute—
- “(aa) in the case of a condition falling within section 74(2A), must be—
- (i) a person providing a public electronic communications network; or
  - (ii) the owner of a line or associated facility;

(14) Section 33 is prospectively amended by [S.I. 2019/246](#).

(15) Section 38 was amended by [S.I. 2011/1210](#) and by section 101(3) of the Digital Economy Act 2017 (c. 30).

- (ab) in the case of a condition falling within section 74A, must be a person who provides an electronic communications network; and”.
- (4) After subsection (8) insert—
- “(8A) A person whom OFCOM have previously determined to be a person having significant market power in a services market but whom OFCOM determine no longer to be a person having significant market power in that market is to be treated as continuing to fall within subsection (8) for so long as OFCOM consider necessary to ensure a sustainable transition for those benefitting from obligations imposed on that person as a result of the previous determination.”.
- 12.** In section 47 (test for setting or modifying conditions), at the end insert—
- “(4) This section does not apply in relation to the setting or modification of a social tariff condition in accordance with a direction under section 72D(7).”.
- 13.—**(1) Section 48A (domestic consultation for section 45 conditions)(**16**) is amended as follows.
- (2) After subsection (2) insert—
- “(2A) This section also does not apply to the proposed setting, modification or revocation of a social tariff condition.”.
- (3) In subsection (4), for “one month” substitute “30 days”.
- 14.—**(1) Section 48B (EU consultation for section 45 conditions)(**17**) (as it has effect until its repeal by the Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019(**18**)) is amended as follows.
- (2) In subsection (3)—
- (a) for “Article 7(3) of the Framework Directive” substitute “Article 32(3) of the EECC Directive”;
- (b) for “Article 7a(1)” substitute “Article 33(1)”.
- (3) In subsection (7), for “Article 7a of the Framework Directive” substitute “Article 33 of the EECC Directive”.
- (4) In subsection (9), for “Article 7a of the Framework Directive” substitute “Article 33 of the EECC Directive”.
- 15.** In section 49 (directions and approvals for the purposes of a section 45 condition)(**19**), in subsection (3), for “six” substitute “seven”.
- 16.** In section 49A (domestic consultation for directions, approvals and consents)(**20**), in subsection (4), for “one month” substitute “30 days”.
- 17.—**(1) Section 49B (EU consultation for directions, approvals and consents)(**21**) (as it has effect until its repeal by the Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019) is amended as follows.
- (2) In subsection (3)—

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(16) Section 48A was inserted by [S.I. 2011/1210](#) and is prospectively amended by [S.I. 2019/246](#).

(17) Section 48B was inserted by [S.I. 2011/1210](#) and is prospectively repealed by [S.I. 2019/246](#).

(18) [S.I. 2019/246](#).

(19) Section 49 was amended by [S.I. 2011/1210](#); subsection (3) is prospectively amended by paragraph 13(2) of Schedule 1 to [S.I. 2019/246](#) (which is omitted by paragraph 4(2)(d) of Schedule 2 to these Regulations) and is further amended by paragraph 69 of Schedule 1 to these Regulations.

(20) Section 49A was inserted by [S.I. 2011/1210](#) and is prospectively amended by [S.I. 2019/246](#).

(21) Section 49B was inserted by [S.I. 2011/1210](#) and is prospectively repealed by [S.I. 2019/246](#).

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

- (a) for “Article 7(3) of the Framework Directive” substitute “Article 32(3) of the EECC Directive”;
  - (b) for “Article 7a(1)” substitute “Article 33(1)”.
- (3) In subsection (7), for “Article 7a of the Framework Directive)” substitute “Article 33 of the EECC Directive”.
- (4) In subsection (10), for “Article 7a of the Framework Directive” substitute “Article 33 of the EECC Directive”.
- 18.** In section 49C (delivery of copies of notifications etc. in respect of directions, approvals and consents)(**22**), in subsection (4)—
- (a) in paragraph (f) (as it has effect until its repeal by the Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019), for “Article 7a(1) of the Framework Directive” substitute “Article 33(1) of the EECC Directive”;
  - (b) in paragraph (g) (as it so has effect), for “Article 7a(5)(a) of the Framework Directive” substitute “Article 33(5)(a) of the EECC Directive”.
- 19.**—(1) Section 51 (matters to which general conditions may relate)(**23**) is amended as follows.
- (2) In subsection (1)(d), after “section 71” insert “or 72H”.
- (3) In subsection (2), after paragraph (b) insert—
- “(ba) relate to any of the elements of a bundled contract;”.
- (4) Before subsection (3) insert—
- “(2B) The power to set general conditions falling within subsection (1)(b) includes power to require negotiations relating to service interoperability or network access to be conducted through an intermediary who—
- (a) is independent of the parties; and
  - (b) is either appointed by the parties with the approval of OFCOM or appointed by OFCOM.”.
- (5) After subsection (7) insert—
- “(8) In this Chapter “bundled contract” means a contract, or two or more closely related or linked contracts, between the provider of a public electronic communications service and a qualifying end-user, which—
- (a) relates, or together relate, to the provision of at least one of the following—
    - (i) an internet access service; and
    - (ii) a number-based interpersonal communications service; and
  - (b) also relates, or together also relate, to the provision of at least one of the following—
    - (i) another service falling within paragraph (a)(i) or (ii);
    - (ii) any other public electronic communications service;
    - (iii) an information society service;
    - (iv) a content service; and
    - (v) terminal equipment.

(22) Section 49C was inserted by [S.I. 2011/1210](#); subsections (2), (3), (4)(d) to (g), (5) and (6) are prospectively repealed by [S.I. 2019/246](#).

(23) Section 51 was amended by [S.I. 2011/1043](#) and [S.I. 2011/1210](#) and by sections 2 and 3 of the Digital Economy Act 2017 and is prospectively amended by [S.I. 2019/246](#).



(9) In subsection (8)—

“content service” has the meaning given by section 32(7);

“information society service” is to be read in accordance with Article 1(1)(b) of Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (codification);

“internet access service” has the meaning given by section 32(2B);

“qualifying end-user” means an end-user who is—

- (a) an individual acting for purposes other than those of a business;
- (b) acting in the course of a business which is carried on by the end-user, and for which no more than 10 individuals work, whether as employees or volunteers or otherwise;
- (c) a not-for-profit body for which no more than 10 individuals work, whether as employees or otherwise but excluding volunteers.”.

**20.** In section 60 (modification of documents referred to in numbering conditions), in subsection (4), for “one month” substitute “30 days”.

**21.** In section 61 (withdrawal of telephone number allocations), in subsection (6)(b), for “one month” substitute “30 days”.

**22.—(1)** Section 65 (obligations to be secured by universal service conditions)(**24**) is amended as follows.

(2) In subsection (2)—

- (a) at the end of paragraph (a), insert “and”;
- (b) omit paragraphs (c) to (e).

(3) In subsection (2B), after “services”, in the first place it occurs, insert “at a fixed location”.

(4) After subsection (2B) insert—

“(2BA) The universal service order may in particular say that mobile services must be provided to any extent, but may not do so unless this appears to the Secretary of State necessary to ensure the full social and economic participation in society of qualifying end-users.

(2BB) In subsection (2BA)—

- (a) “mobile services” means—
  - (i) broadband services provided otherwise than at a fixed location; and
  - (ii) telephone services provided otherwise than at a fixed location;
- (b) “qualifying end-user” means an end-user who is—
  - (i) an individual acting for purposes other than those of a business;
  - (ii) a micro, small or medium-sized enterprise, as defined by Article 2(1) of the Annex to Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises; or
  - (iii) a not-for-profit body.

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(24) Section 65 was amended by [S.I. 2011/1210](#) and by section 1(3) and (4) of the Digital Economy Act 2017 and is prospectively amended by [S.I. 2019/246](#).

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

(2BC) The universal service order may continue to contain provision setting out the extent to which any of the following things must be provided, made available or supplied throughout the United Kingdom—

- (a) public pay telephone or other public voice telephony access points;
- (b) particular methods of billing for electronic communications services or of accepting payment for them;
- (c) directories capable of being used in connection with the use of an electronic communications network or electronic communications service;
- (d) directory enquiry facilities capable of being used for purposes connected with the use of such a network or service;
- (e) publicly available telephone services capable of allowing end-users to send and receive facsimile.”.

(5) In subsection (2C)(a), after “speed” insert “to be provided by broadband connections or services at a fixed location”.

(6) In subsection (3), at the end insert “, other than matters relating only to social tariffs as defined by section 72F(2)”.

(7) After subsection (5) insert—

“(6) In this section “public pay telephone” means a telephone available to the general public, for the use of which the means of payment may include one or more of the following—

- (a) coins;
- (b) credit or debit cards; and
- (c) pre-payment cards, including cards for use with dialling codes.”.

**23.** In section 67 (subject-matter of universal service conditions), in subsection (3)(**25**)—

- (a) after paragraph (a), insert “and”;
- (b) omit paragraph (c) and the “and” preceding it.

**24.** In section 68 (tariffs etc. for universal services), after subsection (2) insert—

“(2A) The special tariffs that may be required by virtue of subsection (2)(b) do not include social tariffs as defined by section 72F(2).”.

**25.** For the heading to section 70 substitute “Review of compliance costs: universal service conditions”.

**26.** For the heading to section 72 substitute “Report on sharing mechanism: universal service obligations”.

**27.** In section 72A (review of universal service order)(**26**), in subsection (1), omit the words from “in relation to” to the end.

**28.** In section 72B (broadband download speeds: duty to give direction under section 72A)(**27**), in subsection (1)(a), after “services” insert “at a fixed location”.

**29.** After section 72B insert—

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(25) Subsection (3) is prospectively amended by paragraph 21(2) of Schedule 1 to [S.I. 2019/246](#) (which is omitted by paragraph 4(2)(f) of Schedule 2 to these Regulations).

(26) Section 72A was inserted by section 1(7) of the Digital Economy Act 2017.

(27) Section 72B was inserted by section 1(7) of the Digital Economy Act 2017.

*“Further duty to review tariffs”*

**72C Duty to review certain tariffs that are not universal service tariffs**

- (1) It is the duty of OFCOM—
  - (a) to keep under review qualifying service tariffs, other than—
    - (i) universal service tariffs; or
    - (ii) tariffs available only to end-users who are carrying on a business; and
  - (b) to monitor changes to those tariffs.
- (2) The reference in subsection (1) to qualifying service tariffs is a reference to the tariffs used by the providers of qualifying services.
- (3) In this section—

“qualifying services” means—

  - (a) broadband services at a fixed location;
  - (b) telephone services at a fixed location; and
  - (c) mobile services, as defined by section 65(2BB)(a);

“tariff” includes a pricing structure.

*Social tariff conditions*

**72D Social tariff conditions: procedure**

- (1) The Secretary of State may direct OFCOM—
  - (a) to review the affordability of qualifying services for individuals on low incomes or with special social needs, with a view to considering whether to recommend to the Secretary of State the setting of a social tariff condition; and
  - (b) to report to the Secretary of State on the results of the review.
- (2) OFCOM may in their report recommend—
  - (a) the setting of a social tariff condition to be applied—
    - (i) generally to every person providing a public electronic communications service;
    - (ii) generally to every person providing a public electronic communications service of a particular description specified in the report; or
    - (iii) to a particular person (or particular persons) specified in the report; or
  - (b) the modification or revocation of a social tariff condition.
- (3) OFCOM may recommend the application of a social tariff condition to a particular person (or particular persons) specified in their report only in exceptional circumstances, in particular where the application of a social tariff condition to all providers of public electronic communications services of a particular description would result in an excessive administrative or financial burden on those providers, on OFCOM or on any government department.
- (4) The Secretary of State may give guidance to OFCOM as to the matters to which OFCOM are to have regard—
  - (a) in carrying out a review under subsection (1)(a); and
  - (b) in making a recommendation under subsection (2).

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

(5) OFCOM must not recommend the setting or modification of a social tariff condition unless they are satisfied that the condition or (as the case may be) the modification satisfies the test in section 47(2).

(6) Where section 72E does not apply to the recommendation because of subsection (2) of that section—

- (a) the recommendation must relate to a social tariff condition that is to be temporary, or to a temporary modification or revocation;
- (b) the recommendation must state the period for which it is proposed that the condition, or the modification or revocation, should have effect; and
- (c) section 72E does not apply in relation to any recommendation by OFCOM in relation to the extension or making permanent of the temporary condition, modification or revocation.

(7) The Secretary of State may direct OFCOM to implement any recommendation made under subsection (2).

(8) The Secretary of State must publish—

- (a) a direction given under subsection (1) or (7); and
- (b) guidance given under subsection (4).

(9) OFCOM must publish any report made under subsection (1)(b).

(10) In this section “qualifying services” has the same meaning as in section 72C.

#### **72E Consultation by OFCOM on proposed recommendation**

(1) This section applies where—

- (a) OFCOM propose to recommend the setting, modification or revocation of a social tariff condition; and
- (b) the implementation of the proposed recommendation would, in OFCOM’s opinion, have a significant impact on a market for any of the services, facilities, apparatus or directories in relation to which they have functions under this Chapter.

(2) But this section does not apply where in OFCOM’s opinion—

- (a) there are exceptional circumstances; and
- (b) there is an urgent need to act in order to safeguard competition and to protect the interests of consumers.

(3) OFCOM must publish a notification—

- (a) stating that they are proposing to recommend the setting, modification or revocation of the social tariff condition specified in the notification;
- (b) setting out the effect of that condition, modification or revocation;
- (c) giving their reasons for proposing the recommendation; and
- (d) specifying the period within which representations may be made to OFCOM about their proposal.

(4) That period must end no less than 30 days after the day of the publication of the notification.

(5) But where OFCOM are satisfied that there are exceptional circumstances justifying the use of a shorter period, the period specified as the period for making representations may be whatever shorter period OFCOM consider reasonable in those circumstances.

(6) OFCOM must consider every representation about the proposal made to them during the period specified in the notification.

(7) The publication of a notification under this section must be in such manner as appears to OFCOM to be appropriate for bringing the contents of the notification to the attention of such persons as OFCOM consider appropriate.

#### **72F Social tariff conditions: general**

(1) The only provision that may be contained in a social tariff condition set under section 45 is provision requiring the use in relation to a qualifying service, in such cases as may be specified or described in the condition, of such social tariffs as may be so specified or described.

(2) For this purpose a “social tariff” is a special tariff that differs from the tariff provided under normal commercial conditions and is available to an individual who meets criteria relating to low income or special social needs.

(3) A social tariff condition may not be set, modified or revoked under section 45 except in accordance with a direction under section 72D(7).

(4) Subsection (3) does not apply to modifications that in the opinion of OFCOM—

- (a) relate only to matters of administration; and
- (b) are minor in character.

(5) If by virtue of subsection (4) OFCOM modify a social tariff condition under section 45 in the absence of a direction under section 72D(7), they must, when publishing a notification of the modification under section 48(1), send a copy of the notification to the Secretary of State.

(6) In this section “qualifying service” and “tariff” each has the same meaning as in section 72C.

#### **72G Review of compliance costs: social tariff conditions**

(1) OFCOM may from time to time review the extent (if any) of the financial burden for a particular communications provider of complying in relation to any matter with a social tariff condition applied to the provider.

(2) The financial burden of so complying is to be taken to be the amount calculated by OFCOM to be the net cost of compliance after allowing for market benefits accruing to the communications provider from the application to the provider of the social tariff condition.

(3) After carrying out a review under this section OFCOM must either—

- (a) cause the calculations made by them on the review to be audited by a person who appears to them to be independent of the communications providers who are subject to the social tariff condition; or
- (b) themselves carry out an audit of those calculations.

(4) OFCOM must ensure, in the case of every audit carried out under subsection (3), that a report on the audit—

- (a) is prepared; and
- (b) if not prepared by OFCOM, is provided to them.

(5) It shall be the duty of OFCOM, in the case of every review under this section, to publish—

- (a) their conclusions on the review; and

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(b) a summary of the report of the audit which was carried out as respects the calculations made for the purposes of that review.

(6) The publication of anything under subsection (5) must be a publication in such manner as OFCOM consider appropriate for bringing it to the attention of the persons who, in their opinion, are likely to be affected by it.

#### **72H Sharing of burden of social tariff obligations**

(1) This section applies where OFCOM—

(a) have concluded, on a review under section 72G, that complying in relation to any matter with social tariff conditions imposes a financial burden on a particular communications provider (“the social tariff provider”); and

(b) have published that conclusion in accordance with that section.

(2) OFCOM must determine, in the case of the social tariff provider, whether they consider it would be unfair for that provider to bear, or to continue to bear, the whole or any part of so much of the burden.

(3) If—

(a) OFCOM determine that it would be unfair for the social tariff provider to bear, or to continue to bear, the whole or a part of the burden, and

(b) an application for a determination under this subsection is made to OFCOM by that provider,

OFCOM may determine that contributions are to be made by communications providers to whom general conditions are applicable for meeting that burden.

(4) Subsections (4) to (9) of section 71 apply for the purposes of this section as if—

(a) references to the designated universal service provider were references to the social tariff provider;

(b) references to universal service conditions were references to social tariff conditions;

(c) the reference to an application for the purposes of subsection (3)(b) of that section were a reference to an application for the purposes of subsection (3)(b) of this section;

(d) references to contributions under subsection (3) of that section were references to contributions under subsection (3) of this section;

(e) references to regulations made under that section were references to regulations made under subsections (4) to (7) of that section as applied by this subsection.

#### **72I Report on sharing mechanism: social tariff obligations**

(1) This section applies where regulations made under section 71(4) to (7) as applied by section 72H(4) provide for a scheme for the assessment, collection and distribution of contributions under subsection (3) of that section.

(2) OFCOM must prepare and publish a report setting out, in relation to the period to which it applies—

(a) every determination by OFCOM that has had effect in relation to a time in that period as a determination of the costs of providing anything contained in a social tariff condition;

- (b) the market benefits for each communications provider to whom a social tariff condition applies that have accrued to that provider during that period from the application to the provider of the social tariff condition; and
- (c) the contribution made under section 72H(3) by every person who has made a contribution during that period.

(3) The first report under this section must be prepared in relation to the period of twelve months beginning with the coming into force of the first regulations to be made under section 71(4) to (7) as applied by section 72H(4).

(4) Every subsequent report must be prepared in relation to the period of 12 months beginning with the end of the period to which the previous report applied.

(5) Every report under this section—

- (a) must be prepared as soon as practicable after the end of the period to which it is to apply; and
- (b) must be published as soon as practicable after its preparation is complete.

(6) OFCOM are not required under this section—

- (a) to publish any matter that is confidential in accordance with section 72(7) or (8); or
- (b) to publish anything that it would not be reasonably practicable to publish without disclosing such a matter.

(7) The publication of a report under this section must be a publication in such manner as OFCOM consider appropriate for bringing it to the attention of the persons who, in their opinion, are affected by the matters to which it relates.”.

**30.**—(1) Section 73 (permitted subject-matter of access-related conditions)(**28**) is amended as follows.

(2) In subsection (2), after paragraph (b) insert—

“(bza) the bringing into operation, where OFCOM consider it appropriate, of very high capacity networks;”.

(3) Before subsection (5) insert—

“(4A) Access-related conditions may include conditions permitted by section 74A.”.

**31.**—(1) Section 74 (specific types of access-related conditions) is amended as follows.

(2) After subsection (2) insert—

“(2A) The conditions that may be set by virtue of section 73(2) also include conditions imposing on a person who provides an electronic communications network that includes a line or associated facility to which this subsection applies, or who owns such a line or associated facility, obligations for the purposes of giving to other persons such entitlements as OFCOM may from time to time direct as respects the availability and use of the line or associated facility in cases where OFCOM are satisfied that it would be economically inefficient or physically impracticable for those other persons to replicate the line or associated facility.

(2B) Subsection (2A) applies—

- (a) to a line or associated facility that is—
  - (i) in a building, or

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(28) Section 73 was amended by [S.I. 2011/1210](#).

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- (ii) between the network termination point as determined by OFCOM and the first concentration or distribution point as so determined; and
  - (b) in a case where OFCOM consider, having regard where applicable to any analysis of a services market under section 79, that obligations imposed by virtue of paragraph (a) will not in their opinion sufficiently address high and non-transitory economic or physical barriers to replication which underlie an existing or emerging market situation significantly limiting competitive outcomes for end-users, to a line or associated facility that is outside a building beyond the first concentration or distribution point to a point determined by OFCOM to be the closest point to end-users that is capable of hosting a sufficient number of end-user connections to be commercially viable for those seeking access.
- (2C) OFCOM may not apply a condition authorised by virtue of subsection (2B)(b) to a person providing an electronic communications network if—
- (a) the network concerned is not publicly funded and the person providing the network makes available a viable and similar alternative means of reaching end-users by providing any undertaking with access to a very high capacity network on fair, non-discriminatory and reasonable terms and conditions; or
  - (b) the obligations would compromise the economic or financial viability of the bringing of a new network into operation.
- (2D) The conditions authorised by subsection (2A) may include provision—
- (a) for securing fairness and reasonableness in the way in which requests for entitlements are made and responded to;
  - (b) for securing that the obligations contained in the conditions are complied with within the periods and at the times required by or under the conditions;
  - (c) requiring the person to whom the condition applies (“the relevant provider”) not to discriminate unduly against particular persons, or against a particular description of persons, in relation to matters connected with the entitlements mentioned in subsection (2A);
  - (d) requiring the relevant provider to publish, in such manner as OFCOM may from time to time direct, all such information as they may direct for the purpose of securing transparency in relation to such matters;
  - (e) requiring the relevant provider to publish, in such manner as OFCOM may from time to time direct, the terms and conditions on which the relevant provider is willing to enter into a contract giving the entitlements mentioned in subsection (2A);
  - (f) requiring the terms and conditions on which the relevant provider is willing to enter into such a contract to include such terms and conditions as may be specified or described in the condition;
  - (g) requiring the relevant provider to make such modifications as OFCOM may direct of any offer by that provider which sets out the terms and conditions on which that provider is willing to enter into such a contract;
  - (h) imposing rules about the apportionment and recovery of costs.”.
- (3) At the end of subsection (3) insert—
- ““line” means any wire, cable, tube, pipe or similar thing (including its casing or coating) which is designed or adapted for use in connection with the provision of any electronic communications network or electronic communications service.”.

**32.** After section 74 insert—



**“74A Access-related conditions in certain cases involving use of radio spectrum**

(1) OFCOM may apply a condition falling within subsection (2) to a person who provides an electronic communications network (“the host network”) if it appears to OFCOM that—

- (a) in a particular local area within the United Kingdom (“the relevant area”), access by end-users to electronic communications services which depend on the use of wireless telegraphy is unavailable or severely restricted;
- (b) the unavailability or restriction results from the physical characteristics of the relevant area or from other characteristics of the relevant area that tend to make the bringing into operation of infrastructure uneconomic;
- (c) the provider of the host network has not made network access available on fair and reasonable commercial terms and conditions to other persons providing electronic communications services; and
- (d) when granting or varying the wireless telegraphy licence relating to the host network, OFCOM had made clear the possibility that a requirement to provide network access or to enter into wholesale roaming access agreements might subsequently be imposed.

(2) A condition falling within this subsection is one requiring the provider of the host network—

- (a) to provide network access in relation to network elements which are not active; or
- (b) to enter into wholesale roaming access agreements relating to the relevant area or any part of the relevant area, on such terms and conditions as may be specified or described in the condition, in response to a request meeting specified requirements.

(3) If OFCOM are satisfied as to the matters in subsection (1) but it appears to them that in the circumstances a condition falling within subsection (2) does not suffice to address the situation, OFCOM may also apply a condition requiring the provider of the host network to provide network access in relation to network elements which are active.

(4) The conditions authorised by subsection (2) or (3) may include any provision mentioned in subsection (2D) of section 74, reading references in that subsection to subsection (2A) of that section as references to subsection (2) or (3) of this section (as the case requires).

(5) In exercising their powers under this section, OFCOM must have regard to—

- (a) the need to maximise the coverage and availability of electronic communications services throughout the member States, along major transport paths and in particular territorial areas;
- (b) the desirability of significantly increasing choice, and improving the quality of service, for end-users;
- (c) the desirability of promoting the efficient use of radio spectrum;
- (d) the technical feasibility of network access and associated conditions;
- (e) the extent of infrastructure-based and service-based competition in the market concerned;
- (f) the desirability of promoting technological innovation;
- (g) the need to maintain incentives for investment in infrastructure.

(6) In this section “a wholesale roaming access agreement” means an agreement between the provider of the host network and the provider of a public electronic communications service that depends on the use of wireless telegraphy (“the roaming provider”) for the

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purpose of enabling public electronic communications services to be provided in the relevant area to the customers of the roaming provider.

#### **74B Review of access-related conditions**

(1) This section applies to a condition set by virtue of section 73(2) or (4A) and applied to a particular person, so long as the condition remains in force, but does not apply to a condition required by section 75(2).

(2) OFCOM must within the specified period review the results of imposing the obligations in question and consider whether the condition should be modified or revoked.

(3) OFCOM must, as soon as reasonably practicable after complying with subsection (2), publish—

- (a) a report on the review, and
- (b) if the review concludes that the condition should be modified or revoked, a notification under section 48(1) or, where section 48A applies, section 48A(3).

(4) In this section “the specified period”, in relation to a condition, means the period of 5 years beginning with the latest of the following days—

- (a) the commencement of this section;
- (b) the date of the most recent notification under section 48(1) setting or modifying the condition;
- (c) the date of the most recent report under subsection (3)(a) in relation to the condition.”.

**33.**—(1) Section 75 (conditional access systems and access to digital services)(**29**) is amended as follows.

(2) In subsection (2)(b), for “Annex I to the Access Directive” substitute “Annex 2 to the EECC Directive”.

(3) Before subsection (3) insert—

“(2B) OFCOM may also apply access-related conditions to any person who provides a conditional access system in relation to services which are not protected programme services but appear to OFCOM to be complementary to protected programme services; and those conditions may contain any provision of the kind mentioned in subsection (2)(b).”.

**34.**—(1) Section 78 (circumstances required for the setting of SMP conditions)(**30**) is amended as follows.

(2) In subsection (2) (as it has effect until the substitution to be made by the Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019), for “Article 14 of the Framework Directive” substitute “Article 63 of the EECC Directive”.

(3) Omit subsection (5).

**35.** In section 79 (market power determinations)(**31**), after subsection (2) insert—

“(2A) In determining whether to identify a market for the purpose of considering whether to make a market power determination, OFCOM must consider whether the criteria in subsection (2B) are met; and OFCOM may not identify that market for that purpose unless they consider that the criteria are met.

(29) Section 75 was repealed in part by [S.I. 2011/1210](#) and is prospectively amended by [S.I. 2019/224](#).

(30) Section 78 is prospectively amended by [S.I. 2019/246](#).

(31) Section 79 was amended by [S.I. 2011/1043](#) and is prospectively amended by [S.I. 2019/246](#).

(2B) Those criteria are—

- (a) that high and non-transitory structural, legal or regulatory barriers to entry are present;
- (b) that there is a market structure which, having regard to the state of infrastructure-based competition and other sources of competition behind the barriers to entry, does not tend towards effective competition within such period as OFCOM determine to be appropriate in relation to the review;
- (c) that competition law alone is insufficient adequately to address the identified market failure.

(2C) Where OFCOM carry out an analysis of a market that is included in a Recommendation on Relevant Product and Service Markets adopted by the European Commission under Article 64(1) of the EECC Directive, OFCOM must presume that the criteria in subsection (2B)(a), (b) and (c) are met unless there is evidence showing that one or more of those criteria are not met.”

**36.** In section 80A (domestic consultation for market identifications and market power determinations)(**32**), in subsection (6), for “one month” substitute “30 days”.

**37.**—(1) Section 80B (EU consultation for market identifications and market power determinations)(**33**) (as it has effect until its repeal by the Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019) is amended as follows.

(2) In subsection (3), for “Article 7 of the Framework Directive” substitute “Article 32 of the EECC Directive”.

(3) In subsection (6), for “Article 7(5)(a) of the Framework Directive” substitute “Article 32(6)(a) of the EECC Directive”.

(4) In subsection (8)—

(a) in paragraph (a), for “paragraph (5)(b) of Article 7 of the Framework Directive” substitute “paragraph (6)(b) of Article 32 of the EECC Directive”;

(b) in paragraph (b)—

(i) for “(5)(a)” substitute “(6)(a)”;

(ii) for “(5)(b)” substitute “(6)(b)”.

**38.** In section 83 (special rules for transnational markets)(**34**) (as it has effect until its repeal by the Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019), in subsection (1), for “Article 15(4) of the Framework Directive” substitute “Article 65(1) of the EECC Directive”.

**39.** In section 84 (review of services market identifications and determinations)(**35**), in subsection (2), for “may (and, when required to do so by section 84A, must)” substitute “must, when required to do so by section 84A and at such other times as they may consider appropriate,”.

**40.**—(1) Section 84A (timing of services market identifications and determinations)(**36**) is amended as follows.

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(32) Section 80A was inserted by [S.I. 2011/1210](#) and is prospectively repealed by [S.I. 2019/246](#).

(33) Section 80B was inserted by [S.I. 2011/1210](#) and is prospectively repealed by [S.I. 2019/246](#).

(34) Section 83 is prospectively repealed by [S.I. 2019/246](#).

(35) Section 84 was amended by [S.I. 2011/1210](#) and is prospectively amended by [S.I. 2019/246](#).

(36) Section 84A was inserted by [S.I. 2011/1210](#) and is prospectively amended by [S.I. 2019/246](#).

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(2) In subsection (2) (as it has effect until its repeal by the Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019), for “Article 15(1) of the Framework Directive” substitute “Article 64(1) of the EECC Directive”.

(3) In subsection (5) (as it so has effect), for “Article 16(7) of the Framework Directive” substitute “Article 67(6) of the EECC Directive”.

(4) In subsection (7) (as it has effect until the substitution to be made by the Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019)—

(a) in paragraph (a), for “2 years” substitute “3 years”;

(b) in paragraph (b)—

(i) for “3 years” substitute “5 years”;

(ii) for “Article 16(6)(a) of the Framework Directive” substitute “Article 67(5)(a) of the EECC Directive”.

**41.**—(1) Section 87 (conditions about network access etc.)**(37)** is amended as follows.

(2) After subsection (3) insert—

“(3A) The assets as respects which entitlements may be given under subsection (3) include, in the case of assets which are not active, any which, although forming part of the relevant network or the relevant facilities, do not form part of the services market to which the determination relates.”.

(3) In subsection (4)—

(a) after paragraph (b) insert—

“(ba) any technological developments that, in OFCOM’s opinion, are likely to affect the design and management of the relevant network or (as the case may be) the relevant facilities;

(bb) the need to ensure that the provision of the proposed network access does not have the effect of favouring one form of technology over another in relation to the design and management of electronic communications networks;”.

(b) in paragraph (d), after “term” insert “and to support innovative business models that support sustainable competition”.

**42.**—(1) Section 88 (conditions about network access pricing etc.) is amended as follows.

(2) In subsection (1)(b)—

(i) at the end of sub-paragraph (ii), omit “and”;

(ii) at the end of sub-paragraph (iii), insert “having regard, where relevant to the market analysis, to the long-term interests of end-users in the use of next-generation networks; and”;

(iii) after sub-paragraph (iii) insert—

“(iv) where relevant to the market analysis, promoting the availability and use of new and enhanced networks.”.

(3) After subsection (1) insert—

“(1A) Even if the tests in subsection (1)(a) and (b) are satisfied, OFCOM may consider not imposing an SMP condition if they consider—

(a) that a demonstrable retail price constraint is present; and

(b) that obligations imposed by SMP conditions not falling within section 87(9) ensure effective and non-discriminatory access.”.

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**(37)** Section 87 was amended by [S.I. 2011/1210](#) and is prospectively amended by [S.I. 2019/246](#).

(4) For subsection (2) substitute—

“(2) In setting an SMP condition falling within section 87(9), OFCOM must take account of—

- (a) the extent of the investment in the matters to which the condition relates of the person to whom it is to apply; and
- (b) where the condition involves price controls on the provision of network access to existing network elements, the benefits of predictable and stable wholesale prices in ensuring—
  - (i) efficient market entry; and
  - (ii) sufficient incentives for all undertakings to bring into operation new and enhanced networks.”.

43. After section 91 insert—

*“SMP services conditions: wholesale-only undertakings*

**91A SMP services conditions: wholesale-only undertakings**

(1) Subsection (2) applies where—

- (a) OFCOM make or have made a market power determination that a person (“the dominant provider”) has significant market power in an identified services market; and
- (b) the dominant provider is not engaged in any of the following—
  - (i) the provision of a public electronic communications network to end-users of public electronic communications services;
  - (ii) the provision of a public electronic communications service to end-users;
  - (iii) the making available of associated facilities to end-users of public electronic communications services.

(2) OFCOM must consider whether the following tests are satisfied in the case of the dominant provider.

(3) The first test is that none of the persons specified in subsection (4) has activities in any retail market for electronic communications services provided to end-users in the member States.

(4) Those persons are—

- (a) the dominant provider;
- (b) any subsidiary undertaking or parent undertaking of the dominant provider;
- (c) any subsidiary undertaking of a parent undertaking of the dominant provider.

(5) The second test is that the dominant provider is not bound to deal with a single and separate undertaking operating downstream that is active in any retail market for electronic communications services provided to end-users, because of an exclusive agreement, or an agreement which amounts in effect to an exclusive agreement.

(6) If OFCOM are satisfied that both those tests are satisfied, OFCOM are not to apply to the dominant provider any SMP condition except one or more of the following—

- (a) a condition authorised by section 87(3);
- (b) a condition authorised by section 87(6)(a);

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(c) a condition which is authorised by section 87(9) and relates to fair and reasonable pricing in connection with the provision of network access to the dominant provider’s network.

(7) Subsection (6) does not restrict OFCOM’s powers in a case where, by reason of the terms and conditions on which the dominant provider is willing to enter into an access contract, OFCOM conclude that competition problems have arisen or are likely to arise to the detriment of end-users.

(8) The dominant provider must notify OFCOM as soon as reasonably practicable of any change in circumstances relevant to the application of the tests in subsections (3) and (5).

(9) If, as a result of a notification under subsection (8) or otherwise, OFCOM determine that either of the tests in subsections (3) and (5) is no longer satisfied in relation to the dominant provider, OFCOM must consider whether to set or modify SMP conditions applying to the dominant provider.

(10) In this section “parent undertaking” and “subsidiary undertaking” each has the meaning given by section 1162 of the Companies Act 2006.”.

44. After section 93 insert—

*“Commitments by network provider*

**93A Notification to OFCOM of proposed commitments**

(1) This section applies where OFCOM have made, or are considering the making of, a determination that a person who provides a public electronic communications network (“the dominant provider”) has significant market power in an identified services market.

(2) The dominant provider may notify OFCOM of a proposal to address the competition problems that are identified in the market power determination, or the possible competition problems that are identified in the proposal for a market power determination, by making commitments to provide network access to, or co-investment in, that network.

(3) The proposal must—

- (a) be sufficiently detailed to enable OFCOM to undertake a detailed consideration under subsection (6);
- (b) specify the period during which the dominant provider is willing to be bound by the commitments; and
- (c) comply with such other requirements as OFCOM may publish for the purposes of this subsection.

(4) If the proposal complies with subsection (3), OFCOM must publish a notification of the proposal.

(5) The notification must—

- (a) state that OFCOM are considering whether to accept the proposed commitments;
- (b) set out the effect of the proposal and an initial analysis by OFCOM of the proposal; and
- (c) specify the period within which representations may be made to OFCOM about the proposal and analysis.

(6) OFCOM must—

- (a) consider every representation about the proposal and analysis made to them during the period specified in the notification under subsection (5);

- (b) notify the dominant provider of their opinion—
  - (i) that the proposal is adequate to address the competition problems, or possible competition problems, mentioned in subsection (2); or
  - (ii) that if specified changes were made the proposal would be adequate to address those problems; or
  - (iii) that for specified reasons the proposal is inadequate to address those problems; and
- (c) publish the notification given under paragraph (b).

(7) The dominant provider may then revise the proposal in the light of OFCOM's opinion.

(8) If the dominant provider notifies OFCOM that the dominant provider is willing to implement the proposal, or the proposal as revised under subsection (7), OFCOM may decide to make the commitments binding, for such period as they may specify in the decision.

(9) A decision under subsection (8) (referred to in this Chapter as a “commitments decision”) takes effect on being notified by OFCOM to the dominant provider and published by OFCOM.

(10) The publication of a notification under this section must be in such manner as appears to OFCOM to be appropriate for bringing the notification to the attention of the persons who, in OFCOM's opinion, are likely to be affected by the matters notified.

### **93B Notification of proposed commitments relating to very high capacity network**

- (1) Section 93A has effect subject to the provisions of this section in a case where—
  - (a) the dominant provider referred to in section 93A(1) proposes commitments which include a commitment to open up investment in a network to co-investment (“a co-investment commitment”);
  - (b) the network is a very high capacity network which consists of optical fibre elements—
    - (i) up to the premises of the end-user or, where this is technically impracticable, up to the immediate proximity of those premises; or
    - (ii) up to the base station; and
  - (c) the bringing into operation of the network was not publicly announced before 21 December 2018;
  - (d) the dominant provider has notified OFCOM under subsection (2) of section 93A of a proposal complying with subsection (3) of that section.

(2) OFCOM are not required to publish under section 93A(4) a notification complying with section 93A(5) in relation to the proposed co-investment commitment if in their opinion the proposal does not address all the matters specified in subsection (3) of this section.

(3) In considering the proposed co-investment commitment under section 93A(6), OFCOM must, in particular, consider whether in their opinion the offer to co-invest satisfies the following requirements—

- (a) it is open at any moment during the lifetime of the network to any provider of electronic communications networks or services;
- (b) it would allow other co-investors who are providers of electronic communications networks or services to compete effectively and sustainably in the long term in

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downstream markets in which the dominant provider is active on terms which include—

- (i) fair, reasonable and non-discriminatory terms allowing access to the full capacity of the network to the extent that it is subject to co-investment;
  - (ii) flexibility in terms of the value and timing of the participation of each co-investor;
  - (iii) the possibility of increasing such participation in the future;
  - (iv) reciprocal rights awarded by the co-investors after the bringing into operation of the co-invested infrastructure;
- (c) it is made public by the dominant provider in a timely manner and, if the dominant provider is not a wholesale-only undertaking, within such period of not less than 6 months before the bringing into operation of the new network as OFCOM consider appropriate;
- (d) persons seeking access to the network but not participating in the co-investment can benefit from the outset from the same quality, speed, conditions and end-user reach as were available before the bringing into operation of the network;
- (e) it is accompanied by a mechanism of adaptation over time, confirmed by OFCOM in light of developments on the related retail markets, that—
- (i) maintains the incentives to participate in the co-investment; and
  - (ii) ensures that persons seeking access at any time have access to the very high capacity elements of the network on transparent and non-discriminatory terms which reflect appropriately the degrees of risk incurred by the respective co-investors at different stages of the bringing into operation of the network and take into account the competitive situation in retail markets;
- (f) it complies with—
- (i) the criteria set out in points (a) to (d) of Annex 4 to the EECC Directive; and
  - (ii) any additional criteria that OFCOM consider necessary to ensure accessibility of potential investors to the co-investment and publish for the purposes of this section; and
- (g) it is made in good faith.
- (4) OFCOM must, by a commitments decision, make the co-investment commitment binding if—
- (a) in considering the proposal under section 93A(6), they determine that the co-investment commitment—
    - (i) satisfies (or, if changes specified under section 93A(6) were made, would satisfy) the requirements in subsection (3); and
    - (ii) is adequate (or, if changes so specified were made, would be adequate) to address the competition problems, or possible competition problems, mentioned in section 93A(2); and
  - (b) the dominant provider notifies OFCOM under section 93A(8) in relation to the proposal (or, as the case requires, the proposal as revised under section 93A(7)).
- (5) In the case of a co-investment commitment, the period specified by OFCOM in a commitments decision must be at least 7 years.



### **93C Giving effect to commitments decision**

(1) It is the duty of the dominant provider to comply with the commitments specified in a commitments decision during the period specified in the decision.

(2) As soon as practicable after making a commitments decision in a case where SMP services conditions have been applied or would have been applied to the dominant provider, OFCOM must review the appropriateness, having regard to the commitments decision, of the conditions that have been or would have been applied.

(3) In carrying out the review, the matters to which OFCOM are to have regard include—

- (a) evidence regarding the fair and reasonable character of the commitments;
- (b) whether the commitments involve obligations to all market participants;
- (c) whether the commitments promote the timely availability of access under fair, reasonable and non-discriminatory conditions, including access to very high capacity networks, before the launch of related retail services;
- (d) the overall adequacy of the commitments to enable sustainable competition on downstream markets and to facilitate co-operative deployment and take-up of very high capacity networks in the interests of end-users.

(4) If, in the case of a commitment made binding as a result of section 93B(4), at least one person has entered into an agreement for co-investment with the dominant provider under the commitments decision, OFCOM must take steps to revoke or modify any SMP services conditions that they consider to be affected by the decision.

(5) Subsection (4) does not apply where, in OFCOM's opinion, the characteristics of the services market to which the determination referred to in section 93A(1) relates are such that, despite the commitments to which effect is given by the commitments decision, the SMP services condition continues to be necessary in order to address significant competition problems.

(6) If as a result of a review under this section OFCOM send a copy of a proposal to any person in accordance with section 48B(2) or 49B(2), OFCOM must also send that person a copy of the commitments decision.

(7) In this section “dominant provider” means the person who made the proposal to which the commitments decision relates.

### **93D Modification of commitments**

(1) This section applies where a commitments decision has effect in relation to a person who provides a public electronic communications network (“the dominant provider”).

(2) The dominant provider may notify OFCOM of a proposed modification of the commitments that are made binding by the commitments decision.

(3) In a case where OFCOM consider that the modification would not have a material effect, they may make a decision under section 93A(8) relating to the commitments as proposed to be modified.

(4) In any other case, OFCOM must notify the dominant provider of their opinion that the proposed modification would have a material effect; and subsections (2) to (10) of section 93A then apply in relation to the commitments as proposed to be modified.”.

**45.** In section 96A (notification of contravention of condition other than SMP apparatus condition)(**38**), after subsection (7) insert—

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(38) Section 96A was inserted by [S.I. 2011/1210](#); subsections (5) to (7) were substituted for subsection (5) by the Enterprise and Regulatory Reform Act [2013 \(c. 24\)](#), Schedule 14, paragraph 18.

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“(8) This section applies in relation to a commitment that is made binding by a commitments decision as it applies in relation to a condition (other than an SMP apparatus condition) set under section 45.”.

**46.**—(1) Section 96C (enforcement of notification under section 96A)(**39**) is amended as follows.

(2) In subsection (3), after “condition” insert “or commitment”.

(3) In subsection (4)(d)(ii), for “condition or” substitute “condition or commitment or to”.

**47.** In section 97 (amount of penalty under section 96 or 96A)(**40**), in subsection (5), in the definition of “relevant period”, after “section 45” insert “or of a commitment that is made binding by a commitments decision”.

**48.** In section 98 (power to deal with urgent cases)(**41**), in subsection (1)(a), after “section 45” insert “or of a commitment that is made binding by a commitments decision”.

**49.** In section 100 (suspending service provision for contraventions of conditions)(**42**), after subsection (7) insert—

“(8) This section applies in relation to a commitment that is made binding by a commitments decision as it applies in relation to a condition set under section 45, other than an SMP apparatus condition.”.

**50.**—(1) Section 100A (suspending service provision for breach of SMP services condition)(**43**) is amended as follows.

(2) In subsection (1)(a), after “91” insert “or of commitments that are made binding by a commitments decision”.

(3) In subsection (3)(a), after “condition” insert “or commitment”.

**51.** In section 102 (procedure for directions under sections 100 and 101)(**44**), in subsection (2) (b), for “one month” substitute “30 days”.

**52.**—(1) Section 104 (civil liability for breach of conditions or confirmation decision)(**45**) is amended as follows.

(2) In subsection (1)—

(a) after paragraph (a) insert—

“(aa) the person’s commitments that are made binding by a commitments decision,”;

(b) after “a contravention of the condition” insert “, commitment”.

(3) In subsection (3), after “condition” insert “, commitment”.

(4) In subsection (4), after “subsection (1)(a)” insert “or (aa)”.

**53.** In section 107 (procedures for directions applying code)(**46**), in subsections (3C) and (9), for “one month” substitute “30 days”.

**54.** After section 124T(**47**) insert—

(39) Section 96C was inserted by [S.I. 2011/1210](#).

(40) Section 97 was amended by [S.I. 2011/1210](#).

(41) Section 98 was amended by [S.I. 2011/1210](#).

(42) Section 100 was amended by [S.I. 2011/1210](#).

(43) Section 100A was inserted by [S.I. 2011/1210](#).

(44) Section 102 was amended by [S.I. 2011/1210](#).

(45) Section 104 was amended by [S.I. 2011/1210](#).

(46) Section 107 was amended by [S.I. 2011/1210](#).

(47) Section 124T was inserted by [S.I. 2011/1210](#).

*“Rights of end-users in relation to contract termination*

**124U Rights of end-users in relation to contract termination**

(1) Where an end-user has (whether under an enactment or at common law) the right to terminate a contract for a public electronic communications service before the end of the agreed contract period—

- (a) no compensation is to be due by the end-user, except compensation for any retained terminal equipment;
- (b) if the end-user chooses to retain terminal equipment to which the contract relates—
  - (i) the compensation payable for the equipment is not to exceed the amount determined under subsection (2); and
  - (ii) on payment of the compensation, the provider must lift any conditions restricting the use of the terminal equipment on an electronic communications network of another communications provider.

(2) The maximum amount of compensation is whichever is the lesser of the following—

- (a) the remaining part of any fee for the service until the end of the agreed contract period; or
- (b) a proportion of the value of the terminal equipment, as agreed at the time of the conclusion of the contract, corresponding to the proportion of the agreed contract period that remains unexpired.

(3) Where the public electronic communications service is a transmission service involving an automated transfer of data and information between devices or software-based applications with limited or no human interaction, subsection (1) does not apply unless the end-user is a qualifying end-user, as defined by section 51(9).

(4) Where the contract referred to in subsection (1) is, or is included in, a bundled contract, subsection (1) applies to all the elements of the bundled contract, unless the end-user—

- (a) falls within paragraph (b) or (c) of the definition of “qualifying end-user” in section 51(9); and
- (b) has waived the rights conferred by this subsection.

**124V Further rights relating to bundled contracts**

(1) Subsection (2) applies where—

- (a) an individual, acting for purposes other than those of a business, has entered into a bundled contract;
- (b) the individual has (whether under an enactment or at common law) the right to terminate any element of the bundled contract before the end of the agreed contract period because of a lack of conformity with the contract or a failure to supply.

(2) The individual has the right to terminate all elements of the bundled contract.

**124W Enforcement of obligations of providers under sections 124U and 124V**

(1) Sections 96A to 96C apply in relation to a contravention by the provider of a public electronic communications service of the requirements imposed on the provider by

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

sections 124U and 124V as they apply in relation to a contravention of a condition set under section 45, other than an SMP apparatus condition, but with the following modifications.

(2) Section 96A(2)(f) and (g) (OFCOM directions) do not apply.

(3) Section 96A(5) to (7) (action under the Competition Act 1998) do not apply.

(4) The amount of a penalty imposed under sections 96A to 96C, as applied by this section, other than a penalty falling within section 96B(4), is to be such amount not exceeding £2 million as OFCOM determine to be—

(a) appropriate; and

(b) proportionate to the contravention in respect of which it is imposed.”

**55.** In section 134A (OFCOM reports on infrastructure etc)(**48**), in subsection (4), for paragraph (b) substitute—

“(b) each subsequent period beginning with the end of the previous period and ending at such time not more than 3 years after the end of the previous period as OFCOM may determine.”

**56.** After section 134AB(**49**) insert—

**“134AC Use of reports**

(1) The Secretary of State must have regard to reports received from OFCOM under section 134A, or published by OFCOM under section 134AA, when exercising functions for any of the relevant purposes.

(2) The relevant purposes are—

(a) the allocation of public funds for the bringing into operation of electronic communications networks;

(b) the design of national broadband plans;

(c) verifying the availability of services to which universal service conditions apply.

(3) Any other public authority must have regard to reports published by OFCOM under section 134AA when exercising functions for either of the purposes specified in subsection (2)(a) and (b).”

**57.** In section 134B (networks and services matters)(**50**), in subsection (1)—

(a) after paragraph (f) insert—

“(fa) the quality of service available on different UK networks, by reference to such parameters as OFCOM consider appropriate;”;

(b) at the end of paragraph (h), omit “and”;

(c) at the end of paragraph (i), insert “and”;

(d) at the end insert—

“(j) any proposals that providers of UK networks may at any time have to do any of the following within the next 3 years—

(i) to bring into operation a new very high capacity network, other than a mobile network, or

**(48)** Section 134A was inserted by section 1(1) of the Digital Economy Act 2010 (c. 24).

**(49)** Section 134AB was inserted by section 82(2) of the Digital Economy Act 2017.

**(50)** Section 134B was inserted by section 1(1) of the Digital Economy Act 2010 and amended by section 82(3) of the Digital Economy Act 2017 (c. 30).

- (ii) to extend or upgrade any part of a fixed line network or its equivalent, such as a fixed wireless access network, so as to provide a download speed of at least 100 megabits per second.”.

**58.**—(1) Section 135 (information required for purposes of certain OFCOM functions)(**51**) is amended as follows.

(2) In subsection (2), after paragraph (f) insert—

“(g) a person who provides or has provided a number-independent interpersonal communications service and appears to OFCOM to have information relevant to their functions under section 14(1).”.

(3) In subsection (3), after paragraph (f) insert—

“(fa) ascertaining whether a commitment which is made binding by a commitments decision continues to be effective for the purpose for which it was made binding under section 93A(8);”.

(4) After subsection (3A) insert—

“(3B) In subsection (2)(g), “number-independent interpersonal communications service” means an interpersonal communications service, as defined by section 32A(2), other than—

- (a) a number-based interpersonal communications service; or
- (b) a service where the interpersonal and interactive communication is merely a minor ancillary feature that is intrinsically linked to another service.”.

**59.** In section 144 (offences in connection with information requirements), after subsection (5) insert—

“(6) Nothing in this section applies in relation to a contravention of a requirement imposed on a person by virtue of section 135(2)(g).”.

**60.** In section 150A (proposals of EU significance)(**52**) (as it has effect until its repeal by the Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019), in subsection (2)(a)—

- (a) for “Article 7 of the Framework Directive” substitute “Article 32 of the EECC Directive”;
- (b) for “paragraph (9)” substitute “paragraph (10)”.

**61.**—(1) Section 151 (interpretation of Chapter 1) is amended as follows.

(2) In subsection (1)—

(a) omit the definition of “the Access Directive”;

(b) after the definition of “apparatus market” insert—

““bundled contract” has the meaning given by section 51(8);

“commitments decision” means a decision under section 93A(8);”;

(c) after the definition of “network access” insert—

““not-for-profit body” means a body which, by virtue of its constitution or any enactment—

- (a) is required (after payment of outgoings) to apply the whole of its income, and any capital which it expends, for charitable or public purposes; and

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(51) Section 135 was amended by sections 1(2) and 16(2) of the Digital Economy Act 2010, by [S.I. 2011/1210](#) and by sections 1(8), 82(4) and 85(2) and (3) of the Digital Economy Act 2017.

(52) Section 150A was inserted by [S.I. 2011/1210](#) and is prospectively repealed by [S.I. 2019/246](#).

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

- (b) is prohibited from directly or indirectly distributing amongst its members any part of its assets (otherwise than for charitable or public purposes);  
“number-based interpersonal communications service” has the meaning given by section 32A(1);”;
  - (d) in the definition of “relevant international standards”, in paragraph (a), after “Article 17 of the Framework Directive” insert “or Article 39 of the EECC Directive”;
  - (e) after the definition of “SMP condition” insert—  
““social tariff condition” means a condition set as a social tariff condition under section 45;”;
  - (f) after the definition of “telephone number” insert—  
““terminal equipment” means—  
(a) equipment directly or indirectly connected to the interface of a public electronic communications network to send, process or receive information, with the direct or indirect connection being made by a wire or optical fibre or electromagnetically; or  
(b) equipment which is capable of being used for the transmission or reception, or both, of radio communication signals by means of satellites or other space-based systems;”;
  - (g) omit the definition of “the Universal Service Directive”.
- (3) In subsection (4B)(53), in the definition of “information society service”, for the words from “Article 2(a)” to the end substitute “section 51(9)”.
- (4) In subsection (5), for “Framework Directive” substitute “EECC Directive”.
- 62.**—(1) Section 197 (interpretation of Chapter 3) is amended as follows.
- (2) In subsection (2) (as it has effect until its repeal by the Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019), for “Framework Directive” substitute “EECC Directive”.
- (3) Omit subsection (3).
- 63.** In section 403 (regulations and orders made by OFCOM), in subsection (6), for “one month” substitute “30 days”.
- 64.** In section 405 (general interpretation), in subsection (1)—
- (a) after the definition of “distribute” insert—  
““the EECC Directive” means Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code;”;
  - (b) after the definition of “TV licence” insert—  
““very high capacity network” has the meaning given by section 4(12A);”.
- 65.** In Schedule 8 (decisions not subject to appeal), in paragraph 7, after “71” insert “or under section 71(4) to (7) as applied by section 72H(4)”.

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(53) Subsection (4B) was inserted by [S.I. 2011/1210](#).

## PART 2

### Amendments of Communications Act 2003 coming into force on IP completion day

**66.** The Communications Act 2003 is further amended as follows.

**67.**—(1) Section 4 (duties for the purpose of fulfilling EU obligations) is amended as follows.

(2) In subsection (2), for the words from “seven” to the end substitute “six requirements set out in the following provisions of this section”.

(3) In subsection (10)(a)(**54**), after “EECC Directive” insert “(whether before or after IP completion day)”.

(4) In subsection (10A)(**55**), for “seventh Community” substitute “sixth”.

(5) In subsection (11)(**56**), for “Community requirements” substitute “six requirements in this section”.

**68.** In section 4A (duty to take account of European Commission recommendations for harmonisation)(**57**), for subsection (2) substitute—

“(2) In carrying out those functions, OFCOM may take account of recommendations issued by the European Commission under Article 19(1) of the Framework Directive or Article 38(1) of the EECC Directive (including recommendations issued before the coming into force of this section or after IP completion day) if the recommendations appear to OFCOM to be relevant to those functions.”.

**69.** In section 49 (directions and approvals for the purposes of a section 45 condition), in subsection (3)(**58**), for “seven Community” substitute “six”.

**70.** In section 51 (matters to which general conditions may relate), in subsection (2), for paragraph (b) substitute—

“(b) provide protection for such end-users that is the same as, or similar to, any protection that was, immediately before IP completion day, required by Title 3 of Part 3 of the EECC Directive (end-user rights);”.

**71.** In section 74A (access-related conditions in certain cases involving use of radio spectrum)(**59**), in subsection (5)(a), for “member States” substitute “United Kingdom”.

**72.**—(1) Section 75 (conditional access systems and access to digital services)(**60**) is amended as follows.

(2) In subsection (2), in paragraph (b), at the end insert “as it had effect immediately before IP completion day”.

(3) After that subsection insert—

“(2A) For the purposes of subsection (2)(b), Part 1 of Annex 2 to the EECC Directive is to be read as if—

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(54) Subsection (10) was amended by [S.I. 2011/1210](#) and is amended by paragraph 3(4) of Schedule 1 to these Regulations.

(55) Subsection (10A) is inserted by paragraph 3(5) of Schedule 1 to these Regulations.

(56) Subsection (11) is prospectively amended by paragraph 3(10) of Schedule 1 to [S.I. 2019/246](#) (which is omitted by paragraph 4(2)(a) of Schedule 2 to these Regulations).

(57) Section 4A was inserted by [S.I. 2011/1210](#); subsection (2) is prospectively amended by paragraph 4(2) of Schedule 1 to [S.I. 2019/246](#) (which is omitted by paragraph 3(a) of Schedule 2 to these Regulations) and is amended by paragraph 4 of Schedule 1 to these Regulations.

(58) Subsection (3) is amended by paragraph 15 of Schedule 1 to these Regulations.

(59) Section 74A is inserted by paragraph 32 of Schedule 1 to these Regulations.

(60) Section 75 is amended by paragraph 33 of Schedule 1 to these Regulations.

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

- (a) the reference to viewers and listeners in the Union were a reference to viewers and listeners in the United Kingdom;
- (b) the reference to member States were a reference to OFCOM;
- (c) the words “in accordance with Article 62” were omitted;
- (d) in point (a), the references to Union competition law were references to any provision relating to competition that is contained in or made under an enactment.”

**73.**—(1) Section 79 (market power determinations)(**61**) is amended as follows.

(2) Before subsection (2A) insert—

“(2ZA) In identifying or analysing a services market for the purposes of this Chapter, OFCOM may have regard to EECC materials relating to market identification and analysis.”.

(3) After subsection (2B) insert—

“(2BA) In considering whether to make or revise a market power determination in relation to a services market, OFCOM may have regard to EECC materials relating to market analysis or the determination of what constitutes significant market power.”.

(4) Omit subsection (2C).

(5) After subsection (6) insert—

“(6A) In this section “EECC materials” means recommendations or guidelines published by the European Commission, and guidelines published by BEREC, under the Framework Directive or the EECC Directive (including those published after IP completion day).”.

**74.** In section 84A (timing of services market identifications and determinations)(**62**), for subsection (7) substitute—

“(7) In subsection (3), “the specified period” means the period of 5 years from the publication under section 79(4) of the notification of the market power determination made on the basis of the earlier analysis, but this is subject to subsection (8).

(8) If, in relation to an analysis and review that would otherwise be required within the period mentioned in subsection (7), OFCOM are of the opinion that exceptionally a longer period is justified, OFCOM may, by publishing a statement of the reasons for their opinion, extend the specified period by up to one additional year.”.

**75.** In section 91A (SMP services conditions: wholesale-only undertakings)(**63**), in subsection (3), for “member States” substitute “United Kingdom”.

**76.** In section 93B (notification of proposed commitments relating to very high capacity network)(**64**), after subsection (5) insert—

“(6) In determining whether the requirements of subsection (3) are met, OFCOM may have regard to any guidelines that are from time to time published by BEREC under Article 76(4) of the EECC Directive (whether before or after IP completion day).”.

**77.** In section 93C (giving effect to commitments decision), omit subsection (6).

**78.** In section 151 (interpretation of Chapter 1), omit subsection (5).

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(61) Section 79 is amended by paragraph 35 of Schedule 1 to these Regulations and is prospectively amended by [S.I. 2019/246](#).

(62) Section 84A was inserted by [S.I. 2011/1210](#), is amended by paragraph 40 of Schedule 1 to these Regulations, and is amended prospectively by [S.I. 2019/246](#).

(63) Section 91A is inserted by paragraph 43 of Schedule 1 to these Regulations.

(64) Sections 93B and 93C are inserted by paragraph 44 of Schedule 1 to these Regulations.



**79.** In section 186 (action by OFCOM on dispute reference)(**65**), in subsection (3)(b), for “Community” substitute “six”.

## PART 3

### Amendments of Wireless Telegraphy Act 2006 coming into force on 21st December 2020

**80.** The Wireless Telegraphy Act 2006(**66**) is amended as follows.

**81.**—(1) Section 8 (licences and exemptions)(**67**) is amended as follows.

(2) In subsection (3A) (as it has effect until its repeal by the Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019), for “Part A of the Annex to [Directive 2002/20/EC](#) of the European Parliament and of the Council” substitute “Part A or B of Annex 1 to the EECC Directive”.

(3) In subsection (5), after paragraph (c) insert—

“(ca) inhibit the development of effective arrangements for the sharing of frequencies;”.

**82.** In section 8C (consultation before grant of exclusive licence)(**68**), in subsection (4), for “one month” substitute “30 days”.

**83.**—(1) Section 9 (terms, provisions and limitations)(**69**) is amended as follows.

(2) In subsection (1A) (as it has effect until its repeal by the Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019), for “Part B of the Annex to [Directive 2002/20/EC](#) of the European Parliament and of the Council” substitute “Part D of Annex 1 to the EECC Directive”.

(3) In subsection (4), after paragraph (c) insert—

“(ca) terms or provisions requiring the holder of the licence to enter into wholesale roaming access agreements in specified circumstances on terms specified or described in the licence;”.

(4) After subsection (7) insert—

“(7A) In this section “wholesale roaming access agreement”, in relation to the holder of a wireless telegraphy licence, means an agreement between the holder and the provider of a public electronic communications service that depends on the use of wireless telegraphy (“the roaming provider”) for the purpose of enabling public electronic communications services to be provided to the customers of the roaming provider in all or part of the area to which the licence relates.”.

**84.** In section 14 (bidding for licences)(**70**), after subsection (3B) insert—

“(3C) In exercising their power to make regulations under this section, OFCOM must consider whether, if they were to specify under subsection (3)(h) a term, provision or limitation requiring a specified level of use of any station, apparatus or frequency to which the licence relates, they would by doing so promote the optimal use of the electromagnetic spectrum.”.

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(65) Section 186(3)(b) is prospectively amended by paragraph 37 of Schedule 1 to [S.I. 2019/246](#) (which is omitted by paragraph 4(2)(i) of Schedule 2 to these Regulations).

(66) [2006 c. 36](#).

(67) Subsections (3A), (3B) and (5) were inserted by [S.I. 2011/1210](#); subsection (3A) is prospectively repealed by [S.I. 2019/246](#).

(68) Section 8C was inserted by [S.I. 2011/1210](#).

(69) Section 9 was amended by [S.I. 2009/2979](#) and [S.I. 2011/1210](#) and subsection (1A) is prospectively repealed by [S.I. 2019/246](#).

(70) Section 14 was amended by section 38 of the Digital Economy Act 2010 ([c. 24](#)) and by [S.I. 2011/1210](#).

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

85. In section 30 (spectrum trading), omit subsection (1A)(71).

86. After section 30 insert—

**“30A General duty of OFCOM to allow leasing or transfer**

(1) OFCOM must exercise the powers mentioned in subsection (2) in such a way as to ensure that, except in the cases excluded by subsection (4), the holder of a wireless telegraphy licence can do at least one of the following—

- (a) confer the benefit of the licence on another person in respect of any station or apparatus to which the licence relates; or
- (b) transfer to another person rights and obligations arising as a result of the licence.

(2) The powers are—

- (a) their power under section 9 to impose terms, provisions and limitations on a wireless telegraphy licence; and
- (b) their power to make regulations under section 30.

(3) OFCOM must exercise their powers to make regulations under section 30 so as to authorise the transfer to another person by the holder of a grant of recognised spectrum access of rights and obligations arising as a result of such a grant, except in the cases excluded by subsection (5).

(4) The duty in subsection (1) does not apply where—

- (a) no charge was payable to OFCOM on the grant of the licence;
- (b) the licence contains terms, provisions or limitations as a result of which the services for which the use of the station or apparatus is authorised consist of or include the transmission or provision of relevant television or radio services;
- (c) the duration of the licence does not exceed 12 months;
- (d) the licence contains terms, provisions or limitations as a result of which the purposes for which the use of the station or apparatus is authorised consist of or include experimental, innovation, research, demonstration or trial purposes;
- (e) the licence contains terms, provisions or limitations as a result of which the purposes for which the use of the station or apparatus is authorised consist of or include safety of life services; or
- (f) the licence relates to frequencies that are not subject to individual frequency planning or co-ordination.

(5) The duty in subsection (3) does not apply where—

- (a) no charge was payable to OFCOM on the making of the grant of recognised spectrum access;
- (b) the grant contains restrictions or conditions as a result of which the services for which the use of the station or apparatus is authorised consist of or include the transmission or provision of relevant television or radio services;
- (c) the duration of the grant does not exceed 12 months;
- (d) the grant contains restrictions or conditions as a result of which the purposes for which the use of the station or apparatus is authorised consist of or include experimental, innovation, research, demonstration or trial purposes;

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(71) Subsection (1A) was inserted by [S.I. 2011/1210](#) and is prospectively repealed by paragraph 45(4) of Schedule 1 to [S.I. 2019/246](#) (which is omitted by paragraph 4(2)(k) of Schedule 2 to these Regulations).

- (e) the grant contains restrictions or conditions as a result of which the purposes for which the use of the station or apparatus is authorised consist of or include safety of life services; or
  - (f) the grant relates to frequencies that are not subject to individual frequency planning or co-ordination.
- (6) In subsections (4)(b) and (5)(b) “relevant television or radio services” means—
- (a) services provided under the authority of a licence under the Broadcasting Act 1990 or the Broadcasting Act 1996;
  - (b) sound broadcasting services (as defined by section 126(1) of the Broadcasting Act 1990) provided by the British Broadcasting Corporation;
  - (c) television multiplex services (as defined by section 241 of the Communications Act 2003) for which a licence under Part 1 of the Broadcasting Act 1996 is not required;
  - (d) radio multiplex services (as defined by section 258 of the Communications Act 2003) for which a licence under Part 2 of the Broadcasting Act 1996 is not required;
  - (e) general multiplex services (as defined by section 362(1) of the Communications Act 2003).”.
- 87.** In section 31 (wireless telegraphy register), in subsection (3)—
- (a) omit the “or” at the end of paragraph (a);
  - (b) at the end of paragraph (b) insert—
    - “or
    - (c) the conferring by the holder of a wireless telegraphy licence on another person of the benefit of the licence in respect of any station or apparatus to which the licence relates.”.
- 88.** In section 115 (general interpretation), in subsection (1), after the definition of “dynamic spectrum access service”(72) insert—
- ““the EECC Directive” means Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code;”.
- 89.** In section 122 (orders and regulations made by OFCOM), in subsection (6), for “one month” substitute “30 days”.
- 90.** In Schedule 1 (procedure for wireless telegraphy licences)(73), in paragraphs 4(b) and 7(3) (b), for “one month” substitute “30 days”.
- 91.** In Schedule 2 (procedure for grants of recognised spectrum access), in paragraphs 3(2) and 6(3), for “one month” substitute “30 days”.

## PART 4

### Amendments of Wireless Telegraphy Act 2006 coming into force on IP completion day

- 92.** The Wireless Telegraphy Act 2006 is further amended as follows.

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(72) This definition was inserted by the Digital Economy Act 2017 (c. 30), section 8(3).

(73) Schedule 1 was amended by S.I. 2011/1210.

93. In section 14 (bidding for licences), in subsection (3A), omit “, 9(1A)”.

94. In section 115 (general interpretation)(74), in subsection (1), omit the definition of “the EECC Directive”.

## SCHEDULE 2

Regulation 3

### Amendments of subordinate legislation

## PART 1

### Amendments coming into force on 21st December 2020

#### **Electronic Communications (Universal Service) Order 2003**

1. In the Electronic Communications (Universal Service) Order 2003(75), in the Schedule, omit paragraph 5(2).

#### **Electronic Communications and Wireless Telegraphy Regulations 2011**

2. In the Electronic Communications and Wireless Telegraphy Regulations 2011(76), omit regulation 5(77).

#### **Broadcasting (Amendment) (EU Exit) Regulations 2019**

3. In the Broadcasting (Amendment) (EU Exit) Regulations 2019(78), in Schedule 1, in paragraph 19, omit sub-paragraphs (2)(b) and (3).

#### **Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019**

4.—(1) The Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019(79) are amended as follows.

(2) In Schedule 1, omit the following—

- (a) paragraph 3(2) and (10);
- (b) paragraph 4(2);
- (c) paragraph 5;
- (d) paragraph 13(2);
- (e) paragraph 17(2);
- (f) paragraph 21(2);
- (g) paragraph 23(3);

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(74) The definition of “the EECC Directive” is inserted by paragraph 88 of Schedule 1 to these Regulations.

(75) S.I. 2003/1904.

(76) S.I. 2011/1210.

(77) Regulation 5 is prospectively amended by paragraph 1 of Schedule 2 to S.I. 2019/246 (which is omitted by paragraph 4(3) of Schedule 2 to these Regulations).

(78) S.I. 2019/224.

(79) S.I. 2019/246.

- (h) paragraph 31(5);
  - (i) paragraph 37;
  - (j) in paragraph 40, the words “and (3)”;
  - (k) paragraph 45(4).
- (3) In Schedule 2, omit paragraph 1.

### **Electronic Communications (Amendment etc.) (EU Exit) Regulations 2019**

5. In the Electronic Communications (Amendment etc.) (EU Exit) Regulations 2019(80), omit regulation 2.

## **PART 2**

### **Amendments coming into force on IP completion day**

6. In Schedule 1 to these Regulations, omit the following—
- (a) paragraphs 14, 17 and 18;
  - (b) paragraph 34(2);
  - (c) paragraphs 37 and 38;
  - (d) paragraph 40;
  - (e) paragraph 60;
  - (f) paragraph 62(2);
  - (g) paragraph 81(2);
  - (h) paragraph 83(2).

## **SCHEDULE 3**

Regulation 4

### **Amendments of retained direct EU legislation**

#### **Commission Implementing Regulation (EU) 2019/2243**

1.—(1) Commission Implementing Regulation (EU) 2019/2243 of 17 December 2019 establishing a template for the contract summary to be used by providers of publicly available electronic communications services pursuant to Directive (EU) 2018/1972 of the European Parliament and of the Council is amended as follows.

- (2) Before Article 1 insert—

*“Article 1*

*Interpretation*

In this Regulation “electronic communications service” has the same meaning as in the Communications Act 2003.”.

- (3) After Article 3, omit “This Regulation shall be binding in its entirety and directly applicable in all Member States.”.

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(80) S.I. 2019/919.

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

- (4) In Part A of the Annex, under the heading “Contract summary”, omit “as required by EU law”.
- (5) In Part B of the Annex—
- (a) in the text under the heading “Section “Services and equipment””—
    - (i) for “bundles pursuant to Article 107 of Directive (EU) 2018/1972,” substitute “bundled contracts as defined by section 51(8) of the Communications Act 2003,”;
    - (ii) for “bundles”, in the second and third place it occurs, substitute “bundled contracts”;
  - (b) in the text under the heading “Section “Duration, renewal and termination””, for “by Union or national law” substitute “by an enactment or at common law”;
  - (c) in the text under the heading “Section “Other relevant information””, for “by Union or national law” substitute “by an enactment or at common law”.

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations implement Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (“the EECC Directive”). The EECC Directive repeals and replaces four previous directives:

[Directive 2002/19/EC](#) of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive),

[Directive 2002/20/EC](#) of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive),

[Directive 2002/21/EC](#) of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive), and

[Directive 2002/22/EC](#) of the European Parliament and of the Council of 7 March 2002 on universal service and users’ rights relating to electronic communications networks and services (Universal Service Directive).

Part 1 of Schedule 1 contains amendments of the Communications Act 2003 implementing the EECC Directive. These amendments include, in particular, amendments relating to:

- very high capacity networks;
- network access;
- end-user rights and bundled contracts;
- universal service obligations and social tariffs; and
- commitments that may be entered into by the provider of a public electronic communications network for the purpose of addressing competition problems.

Part 3 of Schedule 1 contains amendments of the Wireless Telegraphy Act 2006 implementing the EECC Directive, including amendments relating to the efficient use of the radio spectrum.

Part 1 of Schedule 2 contains related amendments of subordinate legislation. These include the omission of certain provisions of regulations previously made under section 8(1) of the European

Union (Withdrawal) Act 2018 which were due to come into force on IP completion day but are superseded by the amendments made by Schedule 1.

The amendments implementing the EECC Directive come into force on 21 December 2020 (the date specified in Article 124 of the EECC Directive).

The further amendments in Parts 2 and 4 of Schedule 1, Part 2 of Schedule 2 and Schedule 3 come into force on IP completion day. They are made in exercise of the powers conferred by section 8(1) of the European Union (Withdrawal) Act 2018 (c. 16) in order to address failures of retained EU law to operate effectively (in particular under section 8(2)(a) to (c), (e) and (g)) arising from the withdrawal of the UK from the European Union.

Regulation 5 is a temporary provision implementing Article 87 of the EECC Directive until IP completion day by enabling certain universal service requirements to be reviewed.

Regulation 6 is a saving provision relating to existing universal service conditions that require social tariffs.

A full impact assessment has not been produced for this instrument. An Explanatory Memorandum and a transposition note are available alongside these Regulations on <https://legislation.gov.uk>.