



# Digital Economy Act 2010

## 2010 CHAPTER 24

### *OFCOM reports*

#### **1 OFCOM reports on infrastructure, internet domain names etc**

- (1) In Chapter 1 of Part 2 of the Communications Act 2003 (electronic communications networks and services), after section 134 insert—

*“Reports on infrastructure etc*

#### **134A OFCOM reports on infrastructure etc**

- (1) OFCOM must prepare reports in accordance with subsections (2) and (3) and each report must deal with—
- the electronic communications networks matters listed in section 134B(1), and
  - the electronic communications services matters listed in section 134B(2).
- (2) The first report must—
- relate to the position on a day specified in the report which falls within the period of 12 months beginning with the day on which this section comes into force, and
  - be sent to the Secretary of State by OFCOM not more than 2 months after the specified day.
- (3) A further report must—
- be prepared for each relevant period, and
  - be sent to the Secretary of State by OFCOM as soon as practicable after the end of the relevant period.
- (4) “Relevant period” means—
- the period of 3 years beginning with the day specified in the first report, and

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- (b) each subsequent period of 3 years beginning with the end of the previous period.
- (5) Where there is a significant change in connection with a matter listed in section 134B(1) or (2) and OFCOM consider that the change should be brought to the attention of the Secretary of State, OFCOM must—
  - (a) prepare a report on the change, and
  - (b) send it to the Secretary of State as soon as practicable.
- (6) For the purposes of subsection (5), a change is significant if OFCOM consider that it has, or is likely to have, a significant adverse impact on—
  - (a) persons carrying on business in the United Kingdom or a part of the United Kingdom, or
  - (b) the general public in the United Kingdom or a part of the United Kingdom.
- (7) OFCOM must publish every report under this section—
  - (a) as soon as practicable after they send it to the Secretary of State, and
  - (b) in such manner as they consider appropriate for bringing it to the attention of persons who, in their opinion, are likely to have an interest in it.
- (8) OFCOM may exclude information from a report when it is published under subsection (7) if they consider that it is information that they could refuse to disclose in response to a request under the Freedom of Information Act 2000.

### **134B Networks and services matters**

- (1) For the purposes of section 134A, the electronic communications networks matters are—
  - (a) the different types of electronic communications network provided in the United Kingdom (“UK networks”),
  - (b) the geographic coverage of the different UK networks,
  - (c) the proportion of the population covered by the different UK networks,
  - (d) the extent to which UK networks share infrastructure,
  - (e) the capacity of the different UK networks,
  - (f) the extent to which the providers of the different UK networks allow other communications providers to use their networks to provide services,
  - (g) the amount of time for which the different UK networks are and are not available, including the steps that have been or are to be taken to maintain or improve the level of availability,
  - (h) the preparations made by providers of UK networks for responding to an emergency, including preparations for restoring normal operation of UK networks disrupted by the emergency, and
  - (i) the standard of the different UK networks in comparison with electronic communications networks provided in a range of other countries, having regard, in particular, to their coverage and capacity.
- (2) For the purposes of section 134A, the electronic communications services matters are—

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- (a) the use of the electromagnetic spectrum for wireless telegraphy in the United Kingdom,
  - (b) the different types of electronic communications service provided in the United Kingdom (“UK services”),
  - (c) the geographic coverage of the different UK services,
  - (d) the proportion of the population covered by the different UK services,
  - (e) the amount of time for which the different UK services are and are not available, including the steps that have been or are to be taken to maintain or improve the level of availability,
  - (f) the preparations made by providers of UK services for responding to an emergency, including preparations for restoring normal operation of UK services disrupted by the emergency, and
  - (g) the standard of the different UK services in comparison with electronic communications services provided in a range of other countries.
- (3) The preparations referred to in subsections (1)(h) and (2)(f) include—
- (a) the steps taken to assess the risks of different types of emergency occurring,
  - (b) the steps taken to reduce or remove those risks, and
  - (c) the testing of proposed responses to different types of emergency.
- (4) In a report under section 134A, OFCOM are required to include only information about, and analysis of, such networks, services and providers as they consider appropriate.
- (5) In this section “emergency” means an event or situation that seriously disrupts a UK network or UK service.

#### *Reports on internet domain names*

##### **134C OFCOM reports on internet domain names**

- (1) OFCOM must, if requested to do so by the Secretary of State—
  - (a) prepare a report on matters specified by the Secretary of State relating to internet domain names, and
  - (b) send the report to the Secretary of State as soon as practicable.
- (2) The specified matters may, in particular, include matters relating to—
  - (a) the allocation and registration of internet domain names, and
  - (b) the misuse of internet domain names.
- (3) OFCOM must publish every report under this section—
  - (a) as soon as practicable after they send it to the Secretary of State, and
  - (b) in such manner as they consider appropriate for bringing it to the attention of persons who, in their opinion, are likely to have an interest in it.
- (4) OFCOM may exclude information from a report when it is published under subsection (3) if they consider that it is information that they could refuse to disclose in response to a request under the Freedom of Information Act 2000.”

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(2) In section 135(3) of that Act (information required for purposes of Chapter 1 functions), after paragraph (ib) insert—

- “(ic) preparing a report under section 134A;
- (id) preparing a report under section 134C;”.

## 2 OFCOM reports on media content

After section 264 of the Communications Act 2003 insert—

### “264A OFCOM reports: wider review and reporting obligations

- (1) When carrying out a review under section 264 for a period, OFCOM must also carry out a review of the extent to which material included in media services during that period (taken together over the period as a whole) contributed towards the fulfilment of the public service objectives.
- (2) Every report under section 264 must—
  - (a) include a report on the matters found on the review under this section,
  - (b) specify, and comment on, whatever changes appear to OFCOM to have occurred, during the period to which the report relates, in the extent to which the public service objectives have been fulfilled,
  - (c) specify, and comment on, whatever changes appear to OFCOM to have occurred, during that period, in the manner in which those objectives are fulfilled, and
  - (d) set out OFCOM's conclusions on the current state of material included in media services.
- (3) “The public service objectives” are the objectives set out in paragraphs (b) to (j) of section 264(6) (as modified by subsection (4)).
- (4) Paragraphs (b) to (j) of section 264(6) have effect for the purposes of subsection (3) as if—
  - (a) references to the relevant television services were to media services, and
  - (b) references to programmes were to material included in such services.
- (5) In this section—
  - “material” does not include advertisements;
  - “media services” means any of the following services that are available to members of the public in all or part of the United Kingdom—
    - (a) television and radio services,
    - (b) on-demand programme services, and
    - (c) other services provided by means of the internet where there is a person who exercises editorial control over the material included in the service.
- (6) The services that are to be taken for the purposes of this section to be available to members of the public include any service which—
  - (a) is available for reception by members of the public (within the meaning of section 361); or

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- (b) is available for use by members of the public (within the meaning of section 368R(4)).”

### *Online infringement of copyright*

## **3 Obligation to notify subscribers of reported infringements**

After section 124 of the Communications Act 2003 insert—

*“Online infringement of copyright: obligations of internet service providers*

### **124A Obligation to notify subscribers of copyright infringement reports**

- (1) This section applies if it appears to a copyright owner that—
  - (a) a subscriber to an internet access service has infringed the owner's copyright by means of the service; or
  - (b) a subscriber to an internet access service has allowed another person to use the service, and that other person has infringed the owner's copyright by means of the service.
- (2) The owner may make a copyright infringement report to the internet service provider who provided the internet access service if a code in force under section 124C or 124D (an “initial obligations code”) allows the owner to do so.
- (3) A “copyright infringement report” is a report that—
  - (a) states that there appears to have been an infringement of the owner's copyright;
  - (b) includes a description of the apparent infringement;
  - (c) includes evidence of the apparent infringement that shows the subscriber's IP address and the time at which the evidence was gathered;
  - (d) is sent to the internet service provider within the period of 1 month beginning with the day on which the evidence was gathered; and
  - (e) complies with any other requirement of the initial obligations code.
- (4) An internet service provider who receives a copyright infringement report must notify the subscriber of the report if the initial obligations code requires the provider to do so.
- (5) A notification under subsection (4) must be sent to the subscriber within the period of 1 month beginning with the day on which the provider receives the report.
- (6) A notification under subsection (4) must include—
  - (a) a statement that the notification is sent under this section in response to a copyright infringement report;
  - (b) the name of the copyright owner who made the report;
  - (c) a description of the apparent infringement;
  - (d) evidence of the apparent infringement that shows the subscriber's IP address and the time at which the evidence was gathered;

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- (e) information about subscriber appeals and the grounds on which they may be made;
  - (f) information about copyright and its purpose;
  - (g) advice, or information enabling the subscriber to obtain advice, about how to obtain lawful access to copyright works;
  - (h) advice, or information enabling the subscriber to obtain advice, about steps that a subscriber can take to protect an internet access service from unauthorised use; and
  - (i) anything else that the initial obligations code requires the notification to include.
- (7) For the purposes of subsection (6)(h) the internet service provider must take into account the suitability of different protection for subscribers in different circumstances.
- (8) The things that may be required under subsection (6)(i), whether in general or in a particular case, include in particular—
- (a) a statement that information about the apparent infringement may be kept by the internet service provider;
  - (b) a statement that the copyright owner may require the provider to disclose which copyright infringement reports made by the owner to the provider relate to the subscriber;
  - (c) a statement that, following such a disclosure, the copyright owner may apply to a court to learn the subscriber's identity and may bring proceedings against the subscriber for copyright infringement; and
  - (d) where the requirement for the provider to send the notification arises partly because of a report that has already been the subject of a notification under subsection (4), a statement that the number of copyright infringement reports relating to the subscriber may be taken into account for the purposes of any technical measures.
- (9) In this section “notify”, in relation to a subscriber, means send a notification to the electronic or postal address held by the internet service provider for the subscriber (and sections 394 to 396 do not apply).”

#### **4 Obligation to provide infringement lists to copyright owners**

After section 124A of the Communications Act 2003 insert—

##### **“124B Obligation to provide copyright infringement lists to copyright owners**

- (1) An internet service provider must provide a copyright owner with a copyright infringement list for a period if—
- (a) the owner requests the list for that period; and
  - (b) an initial obligations code requires the internet service provider to provide it.
- (2) A “copyright infringement list” is a list that—
- (a) sets out, in relation to each relevant subscriber, which of the copyright infringement reports made by the owner to the provider relate to the subscriber, but

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(b) does not enable any subscriber to be identified.

(3) A subscriber is a “relevant subscriber” in relation to a copyright owner and an internet service provider if copyright infringement reports made by the owner to the provider in relation to the subscriber have reached the threshold set in the initial obligations code.”

## 5 Approval of code about the initial obligations

After section 124B of the Communications Act 2003 insert—

### “124C Approval of code about the initial obligations

- (1) The obligations of internet service providers under sections 124A and 124B are the “initial obligations”.
- (2) If it appears to OFCOM—
  - (a) that a code has been made by any person for the purpose of regulating the initial obligations; and
  - (b) that it would be appropriate for them to approve the code for that purpose,they may by order approve it, with effect from the date given in the order.
- (3) The provision that may be contained in a code and approved under this section includes provision that—
  - (a) specifies conditions that must be met for rights and obligations under the copyright infringement provisions or the code to apply in a particular case;
  - (b) requires copyright owners or internet service providers to provide any information or assistance that is reasonably required to determine whether a condition under paragraph (a) is met.
- (4) The provision mentioned in subsection (3)(a) may, in particular, specify that a right or obligation does not apply in relation to a copyright owner unless the owner has made arrangements with an internet service provider regarding—
  - (a) the number of copyright infringement reports that the owner may make to the provider within a particular period; and
  - (b) payment in advance of a contribution towards meeting costs incurred by the provider.
- (5) The provision mentioned in subsection (3)(a) may also, in particular, provide that—
  - (a) except as provided by the code, rights and obligations do not apply in relation to an internet service provider unless the number of copyright infringement reports the provider receives within a particular period reaches a threshold set in the code; and
  - (b) if the threshold is reached, rights or obligations apply with effect from the date when it is reached or from a later time.
- (6) OFCOM must not approve a code under this section unless satisfied that it meets the criteria set out in section 124E.
- (7) Not more than one approved code may have effect at a time.

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- (8) OFCOM must keep an approved code under review.
- (9) OFCOM may by order, at any time, for the purpose mentioned in subsection (2)
  - (a) approve modifications that have been made to an approved code; or
  - (b) withdraw their approval from an approved code,
 with effect from the date given in the order, and must do so if the code ceases to meet the criteria set out in section 124E.
- (10) The consent of the Secretary of State is required for the approval of a code or the modification of an approved code.
- (11) An order made by OFCOM under this section approving a code or modification must set out the code or modification.
- (12) Section 403 applies to the power of OFCOM to make an order under this section.
- (13) A statutory instrument containing an order made by OFCOM under this section is subject to annulment in pursuance of a resolution of either House of Parliament.”

## 6 Initial obligations code by OFCOM in the absence of an approved code

After section 124C of the Communications Act 2003 insert—

### “124D Initial obligations code by OFCOM in the absence of an approved code

- (1) For any period when sections 124A and 124B are in force but for which there is no approved initial obligations code under section 124C, OFCOM must by order make a code for the purpose of regulating the initial obligations.
- (2) OFCOM may but need not make a code under subsection (1) for a time before the end of—
  - (a) the period of six months beginning with the day on which sections 124A and 124B come into force, or
  - (b) such longer period as the Secretary of State may specify by notice to OFCOM.
- (3) The Secretary of State may give a notice under subsection (2)(b) only if it appears to the Secretary of State that it is not practicable for OFCOM to make a code with effect from the end of the period mentioned in subsection (2)(a) or any longer period for the time being specified under subsection (2)(b).
- (4) A code under this section may do any of the things mentioned in section 124C(3) to (5).
- (5) A code under this section may also—
  - (a) confer jurisdiction with respect to any matter (other than jurisdiction to determine appeals by subscribers) on OFCOM themselves;
  - (b) provide for OFCOM, in exercising such jurisdiction, to make awards of compensation, to direct the reimbursement of costs, or to do both;



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- (c) provide for OFCOM to enforce, or to participate in the enforcement of, any awards or directions made under the code;
  - (d) make other provision for the enforcement of such awards and directions;
  - (e) establish a body corporate, with the capacity to make its own rules and establish its own procedures, for the purpose of determining subscriber appeals;
  - (f) provide for a person with the function of determining subscriber appeals to enforce, or to participate in the enforcement of, any awards or directions made by the person;
  - (g) make other provision for the enforcement of such awards and directions; and
  - (h) make other provision for the purpose of regulating the initial obligations.
- (6) OFCOM must not make a code under this section unless they are satisfied that it meets the criteria set out in section 124E.
- (7) OFCOM must—
- (a) keep a code under this section under review; and
  - (b) by order make any amendment of it that is necessary to ensure that while it is in force it continues to meet the criteria set out in section 124E.
- (8) The consent of the Secretary of State is required for the making or amendment by OFCOM of a code under this section.
- (9) Section 403 applies to the power of OFCOM to make an order under this section.
- (10) A statutory instrument containing an order made by OFCOM under this section is subject to annulment in pursuance of a resolution of either House of Parliament.”

## 7 Contents of initial obligations code

After section 124D of the Communications Act 2003 insert—

### “124E Contents of initial obligations code

- (1) The criteria referred to in sections 124C(6) and 124D(6) are—
- (a) that the code makes the required provision about copyright infringement reports (see subsection (2));
  - (b) that it makes the required provision about the notification of subscribers (see subsections (3) and (4));
  - (c) that it sets the threshold applying for the purposes of determining who is a relevant subscriber within the meaning of section 124B(3) (see subsections (5) and (6));
  - (d) that it makes provision about how internet service providers are to keep information about subscribers;
  - (e) that it limits the time for which they may keep that information;

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- (f) that it makes any provision about contributions towards meeting costs that is required to be included by an order under section 124M;
  - (g) that the requirements concerning administration and enforcement are met in relation to the code (see subsections (7) and (8));
  - (h) that the requirements concerning subscriber appeals are met in relation to the code (see section 124K);
  - (i) that the provisions of the code are objectively justifiable in relation to the matters to which it relates;
  - (j) that those provisions are not such as to discriminate unduly against particular persons or against a particular description of persons;
  - (k) that those provisions are proportionate to what they are intended to achieve; and
  - (l) that, in relation to what those provisions are intended to achieve, they are transparent.
- (2) The required provision about copyright infringement reports is provision that specifies—
- (a) requirements as to the means of obtaining evidence of infringement of copyright for inclusion in a report;
  - (b) the standard of evidence that must be included; and
  - (c) the required form of the report.
- (3) The required provision about the notification of subscribers is provision that specifies, in relation to a subscriber in relation to whom an internet service provider receives one or more copyright infringement reports—
- (a) requirements as to the means by which the provider identifies the subscriber;
  - (b) which of the reports the provider must notify the subscriber of; and
  - (c) requirements as to the form, contents and means of the notification in each case.
- (4) The provision mentioned in subsection (3) must not permit any copyright infringement report received by an internet service provider more than 12 months before the date of a notification of a subscriber to be taken into account for the purposes of the notification.
- (5) The threshold applying in accordance with subsection (1)(c) may, subject to subsection (6), be set by reference to any matter, including in particular one or more of—
- (a) the number of copyright infringement reports;
  - (b) the time within which the reports are made; and
  - (c) the time of the apparent infringements to which they relate.
- (6) The threshold applying in accordance with subsection (1)(c) must operate in such a way that a copyright infringement report received by an internet service provider more than 12 months before a particular date does not affect whether the threshold is met on that date; and a copyright infringement list provided under section 124B must not take into account any such report.
- (7) The requirements concerning administration and enforcement are—

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- (a) that OFCOM have, under the code, the functions of administering and enforcing it, including the function of resolving owner-provider disputes;
  - (b) that there are adequate arrangements under the code for OFCOM to obtain any information or assistance from internet service providers or copyright owners that OFCOM reasonably require for the purposes of administering and enforcing the code; and
  - (c) that there are adequate arrangements under the code for the costs incurred by OFCOM in administering and enforcing the code to be met by internet service providers and copyright owners.
- (8) The provision mentioned in subsection (7) may include, in particular—
- (a) provision for the payment, to a person specified in the code, of a penalty not exceeding the maximum penalty for the time being specified in section 124L(2);
  - (b) provision requiring a copyright owner to indemnify an internet service provider for any loss or damage resulting from the owner's failure to comply with the code or the copyright infringement provisions.
- (9) In this section “owner-provider dispute” means a dispute that—
- (a) is between persons who are copyright owners or internet service providers; and
  - (b) relates to an act or omission in relation to an initial obligation or an initial obligations code.”

## 8 Progress reports

After section 124E of the Communications Act 2003 insert—

### “124F Progress reports

- (1) OFCOM must prepare the following reports for the Secretary of State about the infringement of copyright by subscribers to internet access services.
- (2) OFCOM must prepare a full report for—
  - (a) the period of 12 months beginning with the first day on which there is an initial obligations code in force; and
  - (b) each successive period of 12 months.
- (3) OFCOM must prepare an interim report for—
  - (a) the period of 3 months beginning with the first day on which there is an initial obligations code in force; and
  - (b) each successive period of 3 months, other than one ending at the same time as a period of 12 months under subsection (2).

But this is subject to any direction by the Secretary of State under subsection (4).
- (4) The Secretary of State may direct that subsection (3) no longer applies, with effect from the date given in the direction.
- (5) A full report under this section must include—

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- (a) an assessment of the current level of subscribers' use of internet access services to infringe copyright;
  - (b) a description of the steps taken by copyright owners to enable subscribers to obtain lawful access to copyright works;
  - (c) a description of the steps taken by copyright owners to inform, and change the attitude of, members of the public in relation to the infringement of copyright;
  - (d) an assessment of the extent of the steps mentioned in paragraphs (b) and (c);
  - (e) an assessment of the extent to which copyright owners have made copyright infringement reports;
  - (f) an assessment of the extent to which they have brought legal proceedings against subscribers in relation to whom such reports have been made;
  - (g) an assessment of the extent to which any such proceedings have been against subscribers in relation to whom a substantial number of reports have been made; and
  - (h) anything else that the Secretary of State directs OFCOM to include in the report.
- (6) An interim report under this section must include—
- (a) the assessments mentioned in subsection (5)(a), (e) and (f); and
  - (b) anything else that the Secretary of State directs OFCOM to include in the report.
- (7) OFCOM must send a report prepared under this section to the Secretary of State as soon as practicable after the end of the period for which it is prepared.
- (8) OFCOM must publish every full report under this section—
- (a) as soon as practicable after they send it to the Secretary of State, and
  - (b) in such manner as they consider appropriate for bringing it to the attention of persons who, in their opinion, are likely to have an interest in it.
- (9) OFCOM may exclude information from a report when it is published under subsection (8) if they consider that it is information that they could refuse to disclose in response to a request under the Freedom of Information Act 2000.”

## **9 Obligations to limit internet access: assessment and preparation**

After section 124F of the Communications Act 2003 insert—

### **“124G Obligations to limit internet access: assessment and preparation**

- (1) The Secretary of State may direct OFCOM to—
- (a) assess whether one or more technical obligations should be imposed on internet service providers;
  - (b) take steps to prepare for the obligations;
  - (c) provide a report on the assessment or steps to the Secretary of State.
- (2) A “technical obligation”, in relation to an internet service provider, is an obligation for the provider to take a technical measure against some or all

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relevant subscribers to its service for the purpose of preventing or reducing infringement of copyright by means of the internet.

- (3) A “technical measure” is a measure that—
  - (a) limits the speed or other capacity of the service provided to a subscriber;
  - (b) prevents a subscriber from using the service to gain access to particular material, or limits such use;
  - (c) suspends the service provided to a subscriber; or
  - (d) limits the service provided to a subscriber in another way.
- (4) A subscriber to an internet access service is “relevant” if the subscriber is a relevant subscriber, within the meaning of section 124B(3), in relation to the provider of the service and one or more copyright owners.
- (5) The assessment and steps that the Secretary of State may direct OFCOM to carry out or take under subsection (1) include, in particular—
  - (a) consultation of copyright owners, internet service providers, subscribers or any other person;
  - (b) an assessment of the likely efficacy of a technical measure in relation to a particular type of internet access service; and
  - (c) steps to prepare a proposed technical obligations code.
- (6) Internet service providers and copyright owners must give OFCOM any assistance that OFCOM reasonably require for the purposes of complying with any direction under this section.
- (7) The Secretary of State must lay before Parliament any direction under this section.
- (8) OFCOM must publish every report under this section—
  - (a) as soon as practicable after they send it to the Secretary of State, and
  - (b) in such manner as they consider appropriate for bringing it to the attention of persons who, in their opinion, are likely to have an interest in it.
- (9) OFCOM may exclude information from a report when it is published under subsection (8) if they consider that it is information that they could refuse to disclose in response to a request under the Freedom of Information Act 2000.”

## **10 Obligations to limit internet access**

After section 124G of the Communications Act 2003 insert—

### **“124H Obligations to limit internet access**

- (1) The Secretary of State may by order impose a technical obligation on internet service providers if—
  - (a) OFCOM have assessed whether one or more technical obligations should be imposed on internet service providers; and
  - (b) taking into account that assessment, reports prepared by OFCOM under section 124F, and any other matter that appears to the Secretary

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of State to be relevant, the Secretary of State considers it appropriate to make the order.

- (2) No order may be made under this section within the period of 12 months beginning with the first day on which there is an initial obligations code in force.
- (3) An order under this section must specify the date from which the technical obligation is to have effect, or provide for it to be specified.
- (4) The order may also specify—
  - (a) the criteria for taking the technical measure concerned against a subscriber;
  - (b) the steps to be taken as part of the measure and when they are to be taken.
- (5) No order is to be made under this section unless—
  - (a) the Secretary of State has complied with subsections (6) to (10), and
  - (b) a draft of the order has been laid before Parliament and approved by a resolution of each House.
- (6) If the Secretary of State proposes to make an order under this section, the Secretary of State must lay before Parliament a document that—
  - (a) explains the proposal, and
  - (b) sets it out in the form of a draft order.
- (7) During the period of 60 days beginning with the day on which the document was laid under subsection (6) (“the 60-day period”), the Secretary of State may not lay before Parliament a draft order to give effect to the proposal (with or without modifications).
- (8) In preparing a draft order under this section to give effect to the proposal, the Secretary of State must have regard to any of the following that are made with regard to the draft order during the 60-day period—
  - (a) any representations, and
  - (b) any recommendations of a committee of either House of Parliament charged with reporting on the draft order.
- (9) When laying before Parliament a draft order to give effect to the proposal (with or without modifications), the Secretary of State must also lay a document that explains any changes made to the proposal contained in the document laid before Parliament under subsection (6).
- (10) In calculating the 60-day period, no account is to be taken of any time during which Parliament is dissolved or prorogued or during which either House is adjourned for more than 4 days.”

## **11 Code by OFCOM about obligations to limit internet access**

After section 124H of the Communications Act 2003 insert—

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### **“124I Code by OFCOM about obligations to limit internet access**

- (1) For any period during which there are one or more technical obligations in force under section 124H, OFCOM must by order make a technical obligations code for the purpose of regulating those obligations.
- (2) The code may be made separately from, or in combination with, any initial obligations code under section 124D.
- (3) A code under this section may—
  - (a) do any of the things mentioned in section 124C(3) to (5) or section 124D(5)(a) to (g); and
  - (b) make other provision for the purpose of regulating the technical obligations.
- (4) OFCOM must not make a code under this section unless they are satisfied that it meets the criteria set out in section 124J.
- (5) OFCOM must—
  - (a) keep a code under this section under review; and
  - (b) by order make any amendment of it that is necessary to ensure that while it is in force it continues to meet the criteria set out in section 124J.
- (6) The consent of the Secretary of State is required for the making or amendment by OFCOM of a code under this section.
- (7) Section 403 applies to the power of OFCOM to make an order under this section.
- (8) A statutory instrument containing an order made by OFCOM under this section is subject to annulment in pursuance of a resolution of either House of Parliament.”

## **12 Contents of code about obligations to limit internet access**

After section 124I of the Communications Act 2003 insert—

### **“124J Contents of code about obligations to limit internet access**

- (1) The criteria referred to in section 124I(4) are—
  - (a) that the requirements concerning enforcement and related matters are met in relation to the code (see subsections (2) and (3));
  - (b) that the requirements concerning subscriber appeals are met in relation to the code (see section 124K);
  - (c) that it makes any provision about contributions towards meeting costs that is required to be included by an order under section 124M;
  - (d) that it makes any other provision that the Secretary of State requires it to make;
  - (e) that the provisions of the code are objectively justifiable in relation to the matters to which it relates;

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- (f) that those provisions are not such as to discriminate unduly against particular persons or against a particular description of persons;
  - (g) that those provisions are proportionate to what they are intended to achieve; and
  - (h) that, in relation to what those provisions are intended to achieve, they are transparent.
- (2) The requirements concerning enforcement and related matters are—
- (a) that OFCOM have, under the code, the functions of administering and enforcing it, including the function of resolving owner-provider disputes;
  - (b) that there are adequate arrangements under the code for OFCOM to obtain any information or assistance from internet service providers or copyright owners that OFCOM reasonably require for the purposes of administering and enforcing the code; and
  - (c) that there are adequate arrangements under the code for the costs incurred by OFCOM in administering and enforcing the code to be met by internet service providers and copyright owners.
- (3) The provision made concerning enforcement and related matters may also (unless the Secretary of State requires otherwise) include, in particular—
- (a) provision for the payment, to a person specified in the code, of a penalty not exceeding the maximum penalty for the time being specified in section 124L(2);
  - (b) provision requiring a copyright owner to indemnify an internet service provider for any loss or damage resulting from the owner's infringement or error in relation to the code or the copyright infringement provisions.
- (4) In this section “owner-provider dispute” means a dispute that—
- (a) is between persons who are copyright owners or internet service providers; and
  - (b) relates to an act or omission in relation to a technical obligation or a technical obligations code.”

### 13 **Subscriber appeals**

After section 124J of the Communications Act 2003 insert—

#### **“124K Subscriber appeals**

- (1) The requirements concerning subscriber appeals are—
- (a) for the purposes of section 124E(1)(h), the requirements of subsections (2) to (8); and
  - (b) for the purposes of section 124J(1)(b), the requirements of subsections (2) to (11).
- (2) The requirements of this subsection are—
- (a) that the code confers on subscribers the right to bring a subscriber appeal and, in the case of a technical obligations code, a further right of appeal to the First-tier Tribunal;



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- (b) that there is a person who, under the code, has the function of determining subscriber appeals;
  - (c) that that person is for practical purposes independent (so far as determining subscriber appeals is concerned) of internet service providers, copyright owners and OFCOM; and
  - (d) that there are adequate arrangements under the code for the costs incurred by that person in determining subscriber appeals to be met by internet service providers, copyright owners and the subscriber concerned.
- (3) The code must provide for the grounds of appeal (so far as an appeal relates to, or to anything done by reference to, a copyright infringement report) to include the following—
  - (a) that the apparent infringement to which the report relates was not an infringement of copyright;
  - (b) that the report does not relate to the subscriber's IP address at the time of the apparent infringement.
- (4) The code must provide for the grounds of appeal to include contravention by the copyright owner or internet service provider of the code or of an obligation regulated by the code.
- (5) The code must provide that an appeal on any grounds must be determined in favour of the subscriber unless the copyright owner or internet service provider shows that, as respects any copyright infringement report to which the appeal relates or by reference to which anything to which the appeal relates was done (or, if there is more than one such report, as respects each of them)—
  - (a) the apparent infringement was an infringement of copyright, and
  - (b) the report relates to the subscriber's IP address at the time of that infringement.
- (6) The code must provide that, where a ground mentioned in subsection (3) is relied on, the appeal must be determined in favour of the subscriber if the subscriber shows that—
  - (a) the act constituting the apparent infringement to which the report relates was not done by the subscriber, and
  - (b) the subscriber took reasonable steps to prevent other persons infringing copyright by means of the internet access service.
- (7) The powers of the person determining subscriber appeals must include power—
  - (a) to secure so far as practicable that a subscriber is not prejudiced for the purposes of the copyright infringement provisions by an act or omission in respect of which an appeal is determined in favour of the subscriber;
  - (b) to make an award of compensation to be paid by a copyright owner or internet service provider to a subscriber affected by such an act or omission; and
  - (c) where the appeal is determined in favour of the subscriber, to direct the copyright owner or internet service provider to reimburse the reasonable costs of the subscriber.
- (8) The code must provide that the power to direct the reimbursement of costs under subsection (7)(c) is to be exercised to award reasonable costs to a

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subscriber whose appeal is successful, unless the person deciding the appeal is satisfied that it would be unjust to give such a direction having regard to all the circumstances including the conduct of the parties before and during the proceedings.

- (9) In the case of a technical obligations code, the powers of the person determining subscriber appeals must include power—
- (a) on an appeal in relation to a technical measure or proposed technical measure—
    - (i) to confirm the measure;
    - (ii) to require the measure not to be taken or to be withdrawn;
    - (iii) to substitute any other technical measure that the internet service provider has power to take;
  - (b) to exercise the power mentioned in paragraph (a)(ii) or (iii) where an appeal is not upheld but the person determining it is satisfied that there are exceptional circumstances that justify the exercise of the power;
  - (c) to take any steps that OFCOM could take in relation to the act or omission giving rise to the technical measure; and
  - (d) to remit the decision whether to confirm the technical measure, or any matter relating to that decision, to OFCOM.
- (10) In the case of a technical obligations code, the code must make provision—
- (a) enabling a determination of a subscriber appeal to be appealed to the First-tier Tribunal, including on grounds that it was based on an error of fact, wrong in law or unreasonable;
  - (b) giving the First-tier Tribunal, in relation to an appeal to it, the powers mentioned in subsections (7) and (9); and
  - (c) in relation to recovery of costs awarded by the Tribunal.
- (11) In the case of a technical obligations code, the code must include provision to secure that a technical measure is not taken against a subscriber until—
- (a) the period for bringing a subscriber appeal, or any further appeal to the First-tier Tribunal, in relation to the proposed measure has ended (or the subscriber has waived the right to appeal); and
  - (b) any such subscriber appeal or further appeal has been determined, abandoned or otherwise disposed of.”

## 14 Enforcement of obligations

After section 124K of the Communications Act 2003 insert—

### “124L Enforcement of obligations

- (1) Sections 94 to 96 apply in relation to a contravention of an initial obligation or a technical obligation, or a contravention of an obligation under section 124G(6), as they apply in relation to a contravention of a condition set out under section 45.
- (2) The amount of the penalty imposed under section 96 as applied by this section is to be such amount not exceeding £250,000 as OFCOM determine to be—
  - (a) appropriate; and

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- (b) proportionate to the contravention in respect of which it is imposed.
- (3) In making that determination OFCOM must have regard to—
  - (a) any representations made to them by the internet service provider or copyright owner on whom the penalty is imposed;
  - (b) any steps taken by the provider or owner towards complying with the obligations contraventions of which have been notified to the provider or owner under section 94 (as applied); and
  - (c) any steps taken by the provider or owner for remedying the consequences of those contraventions.
- (4) The Secretary of State may by order amend this section so as to substitute a different maximum penalty for the maximum penalty for the time being specified in subsection (2).
- (5) No order is to be made containing provision authorised by subsection (4) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.”

## 15 Sharing of costs

After section 124L of the Communications Act 2003 insert—

### “124M Sharing of costs

- (1) The Secretary of State may by order specify provision that must be included in an initial obligations code or a technical obligations code about payment of contributions towards costs incurred under the copyright infringement provisions.
- (2) Any provision specified under subsection (1) must relate to payment of contributions by one or more of the following only—
  - (a) copyright owners;
  - (b) internet service providers;
  - (c) in relation to a subscriber appeal or a further appeal by a subscriber to the First-tier Tribunal, the subscriber.
- (3) Provision specified under subsection (1) may relate to, in particular—
  - (a) payment by a copyright owner of a contribution towards the costs that an internet service provider incurs;
  - (b) payment by a copyright owner or internet service provider of a contribution towards the costs that OFCOM incur.
- (4) Provision specified under subsection (1) may include, in particular—
  - (a) provision about costs incurred before the provision is included in an initial obligations code or a technical obligations code;
  - (b) provision for payment in advance of expected costs (and for reimbursement of overpayments where the costs incurred are less than expected);
  - (c) provision about how costs, expected costs or contributions must be calculated;
  - (d) other provision about when and how contributions must be paid.

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- (5) No order is to be made under this section unless a draft of the order has been laid before Parliament and approved by a resolution of each House.”

## 16 Interpretation and consequential provision

- (1) After section 124M of the Communications Act 2003 insert—

### “124N Interpretation

In sections 124A to 124M and this section—

“apparent infringement”, in relation to a copyright infringement report, means the infringement of copyright that the report states appears to have taken place;

“copyright infringement list” has the meaning given in section 124B(2);

“copyright infringement provisions” means sections 124A to 124M and this section;

“copyright infringement report” has the meaning given in section 124A(3);

“copyright owner” means—

- (a) a copyright owner within the meaning of Part 1 of the Copyright, Designs and Patents Act 1988 (see section 173 of that Act); or
- (b) someone authorised by that person to act on the person's behalf;

“copyright work” has the same meaning as in Part 1 of the Copyright, Designs and Patents Act 1988 (see section 1(2) of that Act);

“initial obligations” has the meaning given in section 124C(1);

“initial obligations code” has the meaning given in section 124A(2);

“internet access service” means an electronic communications service that—

- (a) is provided to a subscriber;
- (b) consists entirely or mainly of the provision of access to the internet; and
- (c) includes the allocation of an IP address or IP addresses to the subscriber to enable that access;

“internet service provider” means a person who provides an internet access service;

“IP address” means an internet protocol address;

“subscriber”, in relation to an internet access service, means a person who—

- (a) receives the service under an agreement between the person and the provider of the service; and
- (b) does not receive it as a communications provider;

“subscriber appeal” means—

- (a) in relation to an initial obligations code, an appeal by a subscriber on grounds specified in the code in relation to—
  - (i) the making of a copyright infringement report;
  - (ii) notification under section 124A(4);

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- (iii) the inclusion or proposed inclusion of an entry in a copyright infringement list; or
  - (iv) any other act or omission in relation to an initial obligation or an initial obligations code;
  - (b) in relation to a technical obligations code, an appeal by a subscriber on grounds specified in the code in relation to—
    - (i) the proposed taking of a technical measure; or
    - (ii) any other act or omission in relation to a technical obligation or a technical obligations code;
- “technical measure” has the meaning given in section 124G(3);  
“technical obligation” has the meaning given in section 124G(2);  
“technical obligations code” means a code in force under section 124I.”
- (2) In section 135(3) of that Act (information required for purposes of Chapter 1 functions), after paragraph (i) insert—
- “(ia) preparing a report under section 124F;
  - (ib) carrying out an assessment, taking steps or providing a report under section 124G;”.
- (3) In Schedule 8 to that Act (decisions not subject to appeal to the Competition Appeal Tribunal), after paragraph 9 insert—

“9A A decision relating to any of sections 124A to 124N or to anything done under them.”

**Commencement Information**

**II** S. 16 wholly in force at 8.6.2010; s. 16(1) in force at Royal Assent and s. 16(2)(3) in force at 8.6.2010 see s. 47(1)(2)(a)

**F1 17 Power to make provision about injunctions preventing access to locations on the internet**

.....

**Textual Amendments**

**F1** S. 17 omitted (26.5.2015) by virtue of [Deregulation Act 2015 \(c. 20\)](#), **ss. 56**, 115(3)(e)

**F2 18 Consultation and Parliamentary scrutiny**

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**Textual Amendments**

**F2** S. 18 omitted (26.5.2015) by virtue of [Deregulation Act 2015 \(c. 20\)](#), **ss. 56**, 115(3)(e)

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*Powers in relation to internet domain registries*

**19 Powers in relation to internet domain registries**

After section 124N of the Communications Act 2003 insert—

*“Powers in relation to internet domain registries*

**124O Notification of failure in relation to internet domain registry**

- (1) This section applies where the Secretary of State—
  - (a) is satisfied that a serious relevant failure in relation to a qualifying internet domain registry is taking place or has taken place, and
  - (b) wishes to exercise the powers under section 124P or 124R.
- (2) The Secretary of State must notify the internet domain registry, specifying the failure and a period during which the registry has the opportunity to make representations to the Secretary of State.
- (3) There is a relevant failure in relation to a qualifying internet domain registry if—
  - (a) the registry, or any of its registrars or end-users, engages in prescribed practices that are unfair or involve the misuse of internet domain names, or
  - (b) the arrangements made by the registry for dealing with complaints in connection with internet domain names do not comply with prescribed requirements.
- (4) A relevant failure is serious, for the purposes of this section, if it has adversely affected or is likely adversely to affect—
  - (a) the reputation or availability of electronic communications networks or electronic communications services provided in the United Kingdom or a part of the United Kingdom, or
  - (b) the interests of consumers or members of the public in the United Kingdom or a part of the United Kingdom.
- (5) In subsection (3) “prescribed” means prescribed by regulations made by the Secretary of State.
- (6) Before making regulations under subsection (3) the Secretary of State must consult such persons as the Secretary of State considers appropriate.
- (7) In this section and sections 124P to 124R—
 

“end-user”, in relation to a qualifying internet domain registry, means a person who has been or wants to be allocated an internet domain name that is or would be included in the register maintained by the registry;

“qualifying internet domain registry” means a relevant body that—

  - (a) maintains a relevant register of internet domain names, and
  - (b) operates a computer program or server that forms part of the system that enables the names included in the register to be used

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to access internet protocol addresses or other information by means of the internet;

“registrar”, in relation to a qualifying internet domain registry, means a person authorised by the registry to act on behalf of end-users in connection with the registration of internet domain names;

“relevant body” means a company formed and registered under the Companies Act 2006 or a limited liability partnership;

“relevant register of internet domain names” means a register of—

- (a) the names of second level internet domains that form part of the same UK-related top level internet domain, or
- (b) the names of third level internet domains that form part of the same UK-related second level internet domain;

“second level internet domain” means an internet domain indicated by the last two elements of an internet domain name;

“third level internet domain” means an internet domain indicated by the last three elements of an internet domain name;

“top level internet domain” means an internet domain indicated by the last element of an internet domain name.

- (8) An internet domain is “UK-related” if, in the opinion of the Secretary of State, the last element of its name is likely to cause users of the internet, or a class of such users, to believe that the domain and its sub-domains are connected with the United Kingdom or a part of the United Kingdom.”

#### Commencement Information

**I2** [S. 19](#) in force at 17.7.2023 for specified purposes by [S.I. 2023/792](#), [art. 2](#)

PROSPECTIVE

## 20 Appointment of manager of internet domain registry

- (1) After section 124O of the Communications Act 2003 insert—

### “124P Appointment of manager of internet domain registry

- (1) This section applies where—
  - (a) the Secretary of State has given a notification under section 124O to a qualifying internet domain registry specifying a failure,
  - (b) the period allowed for making representations has expired, and
  - (c) the Secretary of State is satisfied that the registry has not taken the steps that the Secretary of State considers appropriate for remedying the failure.
- (2) The Secretary of State may by order appoint a manager in respect of the property and affairs of the internet domain registry for the purpose of securing that the registry takes the steps described in subsection (1)(c).
- (3) The person appointed may be anyone whom the Secretary of State thinks appropriate.

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- (4) The appointment of the manager does not affect—
  - (a) a right of a person to appoint a receiver of the registry's property, or
  - (b) the rights of a receiver appointed by a person other than the Secretary of State.
- (5) The Secretary of State must—
  - (a) keep the order under review, and
  - (b) if appropriate, discharge all or part of the order.
- (6) The Secretary of State must discharge the order on the appointment of a person to act as administrative receiver, administrator, provisional liquidator or liquidator of the registry.
- (7) The Secretary of State must discharge the order before the end of the period of 2 years beginning with the day on which it was made (but this does not prevent the Secretary of State from making a further order in the same or similar terms).
- (8) When discharging an order under this section, the Secretary of State may make savings and transitional provision.
- (9) The Secretary of State must send a copy of an order made under this section to the registry as soon as practicable after it is made.
- (10) In subsection (4), “receiver” includes a manager (other than a manager appointed by the registry) and a person who is appointed as both receiver and manager.
- (11) In subsection (6)—
 

“administrative receiver” means an administrative receiver within the meaning of section 251 of the Insolvency Act 1986 or Article 5(1) of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19));

“administrator” means a person appointed to manage the affairs, business and property of the registry under Schedule B1 to that Act or Schedule B1 to that Order.

### **124Q Functions of manager etc**

- (1) An order under section 124P may make provision about the functions to be exercised by, and the powers of, the manager.
- (2) The order may, in particular—
  - (a) provide for the manager to have such of the functions of the registry's directors as are specified in the order (including functions exercisable only by a particular director or class of directors), and
  - (b) provide for one or more of the registry's directors to be prevented from exercising any of those functions.
- (3) The order may make provision about the remuneration of the manager, including in particular—
  - (a) provision for the amount of the remuneration to be determined by the Secretary of State, and



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- (b) provision for the remuneration to be payable from the property of the registry.
- (4) In carrying out the functions conferred by the order, the manager acts as the registry's agent.
- (5) The Secretary of State may apply to the court for directions in relation to any matter arising in connection with the functions or powers of the manager (and the costs of the application are to be paid by the registry).
- (6) On an application under subsection (5) the court may give such directions or make such orders as it thinks fit.
- (7) In this section “the court” means—
  - (a) in England and Wales, the High Court or a county court,
  - (b) in Scotland, the Court of Session or the sheriff, and
  - (c) in Northern Ireland, the High Court.
- (8) Where the registry is a limited liability partnership, this section applies as if references to a director of the registry were references to a member of the limited liability partnership.”
- (2) In section 192(1)(d) of that Act (appeals against decisions of the Secretary of State), after sub-paragraph (ii) insert—
  - “(ia) an order under section 124P;”.
- (3) In section 402(1) of that Act (powers of the Secretary of State to make orders and regulations), after “conferred by” insert “ section 124P and ”.

PROSPECTIVE

## **21 Application to court to alter constitution of internet domain registry**

After section 124Q of the Communications Act 2003 insert—

### **“124R Application to court to alter constitution of internet domain registry**

- (1) This section applies where—
  - (a) the Secretary of State has given a notification under section 124O to a qualifying internet domain registry specifying a failure,
  - (b) the period allowed for making representations has expired, and
  - (c) the Secretary of State is satisfied that the registry has not taken the steps that the Secretary of State considers appropriate for remedying the failure.
- (2) The Secretary of State may apply to the court (as defined in section 124Q) for an order under this section.
- (3) The court may make an order—
  - (a) making alterations of the registry's constitution, and

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- (b) requiring the registry not to make any alterations, or any specified alterations, of its constitution without the leave of the court.
- (4) An order under this section may contain only such provision as the court considers appropriate for securing that the registry remedies the failure specified in the notification under section 124O.
- (5) In this section—
  - “constitution” means, in the case of a company, the articles of association and, in the case of a limited liability partnership, the limited liability partnership agreement;
  - “limited liability partnership agreement” means the agreement or agreements, whether express or implied, between the members of a limited liability partnership, and between the partnership and the members of the partnership, determining—
    - (a) the mutual rights and duties of the members, and
    - (b) their rights and duties in relation to the partnership.”

#### *Channel Four Television Corporation*

## **22 Functions of C4C in relation to media content**

- (1) Before section 199 of the Communications Act 2003 insert—

### **“198A C4C's functions in relation to media content**

- (1) C4C must participate in—
  - (a) the making of a broad range of relevant media content of high quality that, taken as a whole, appeals to the tastes and interests of a culturally diverse society,
  - (b) the making of high quality films intended to be shown to the general public at the cinema in the United Kingdom, and
  - (c) the broadcasting and distribution of such content and films.
- (2) C4C must, in particular, participate in—
  - (a) the making of relevant media content that consists of news and current affairs,
  - (b) the making of relevant media content that appeals to the tastes and interests of older children and young adults,
  - (c) the broadcasting or distribution by means of electronic communications networks of feature films that reflect cultural activity in the United Kingdom (including third party films), and
  - (d) the broadcasting or distribution of relevant media content by means of a range of different types of electronic communications networks.
- (3) In performing their duties under subsections (1) and (2) C4C must—
  - (a) promote measures intended to secure that people are well-informed and motivated to participate in society in a variety of ways, and
  - (b) contribute towards the fulfilment of the public service objectives (as defined in section 264A).

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- (4) In performing their duties under subsections (1) to (3) C4C must—
- (a) support the development of people with creative talent, in particular—
    - (i) people at the beginning of their careers in relevant media content or films, and
    - (ii) people involved in the making of innovative content and films,
  - (b) support and stimulate well-informed debate on a wide range of issues, including by providing access to information and views from around the world and by challenging established views,
  - (c) promote alternative views and new perspectives, and
  - (d) provide access to material that is intended to inspire people to make changes in their lives.
- (5) In performing those duties C4C must have regard to the desirability of—
- (a) working with cultural organisations,
  - (b) encouraging innovation in the means by which relevant media content is broadcast or distributed, and
  - (c) promoting access to and awareness of services provided in digital form.
- (6) In this section—
- “participate in” includes invest in or otherwise procure;
  - “relevant media content” means material, other than advertisements, which is included in any of the following services that are available to members of the public in all or part of the United Kingdom—
    - (a) television programme services, additional television services or digital additional television services,
    - (b) on-demand programme services, or
    - (c) other services provided by means of the internet where there is a person who exercises editorial control over the material included in the service;
- and a film is a “third party film” if C4C did not participate in making it.
- (7) The services that are to be taken for the purposes of this section to be available to members of the public include any service which—
- (a) is available for reception by members of the public (within the meaning of section 361); or
  - (b) is available for use by members of the public (within the meaning of section 368R(4)).”
- (2) In section 199(2) of that Act (functions of C4C), for “C4C's primary functions are” substitute “In subsection (1) “primary functions” means—
- “(za) the performance of C4C's duties under section 198A;” and in the heading for that section, at the beginning insert “ Other ”.
- (3) In Schedule 9 to that Act (arrangements about carrying on C4C's activities)—
- (a) in paragraph 1(1), after paragraph (a) (but before “and”) insert—
    - “(aa) as soon as practicable after the day on which section 198A comes into force,”

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- (b) in paragraph 10, in the definition of “relevant licence period”, after paragraph (a) (but before “and”) insert—
    - “(aa) in relation to the notification under paragraph 1(1)(aa), the period beginning on the day on which section 198A comes into force and ending on the last day of the first licence period to expire after that day;”, and
  - (c) in that definition, in paragraph (b), for “any other such notification” substitute “ any other notification under paragraph 1 ”.
- (4) Accordingly, in the heading for Part 3 of that Act (television and radio services), at the end insert “ ETC ”.
- (5) In section 24(1) of the Broadcasting Act 1990 (Channel 4 to be provided by C4C), for “The function of the Corporation shall be to” substitute “ The Corporation must ”.
- (6) In paragraph 1 of Schedule 3 to that Act (status and capacity of C4C)—
- (a) in sub-paragraph (4)(b), for “primary functions” substitute “ Channel 4 functions ”, and
  - (b) after that sub-paragraph insert—
    - “(5) In sub-paragraph (4) “Channel 4 functions” means—
    - (a) securing the continued provision of Channel 4, and
    - (b) the fulfilment of the public service remit for that Channel under section 265 of the Communications Act 2003.”

## **23 Monitoring and enforcing C4C's media content duties**

- (1) After section 198A of the Communications Act 2003 insert—

### **“198B Statement of media content policy**

- (1) C4C must prepare a statement of media content policy—
  - (a) at the same time as they prepare the first statement of programme policy that is prepared under section 266 after this section comes into force, and
  - (b) subsequently at annual intervals.
- (2) C4C must monitor their performance in carrying out the proposals contained in their statements of media content policy.
- (3) A statement of media content policy must—
  - (a) set out C4C's proposals for securing that, during the following year, they will discharge their duties under section 198A, and
  - (b) include a report on their performance in carrying out the proposals contained in the previous statement.
- (4) In preparing the statement, C4C must—
  - (a) have regard to guidance given by OFCOM, and
  - (b) consult OFCOM.
- (5) C4C must publish each statement of media content policy—
  - (a) as soon as practicable after its preparation is complete, and

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- (b) in such manner as they consider appropriate, having regard to any guidance given by OFCOM.
- (6) OFCOM must—
- (a) from time to time review the guidance for the time being in force for the purposes of this section, and
  - (b) revise that guidance as they think fit.

### **198C OFCOM reports on C4C's media content duties**

- (1) For each relevant period, OFCOM must—
- (a) carry out a review of the extent to which C4C have discharged their duties under section 198A, and
  - (b) prepare a report on the matters found on the review.
- (2) OFCOM must publish each report under this section—
- (a) as soon as practicable after its preparation is complete, and
  - (b) in such manner as they consider appropriate.
- (3) “Relevant period” means each period selected by OFCOM for the purposes of section 264(1)(b) that ends after this section comes into force.

### **198D Directions in relation to C4C's media content duties**

- (1) This section applies if OFCOM—
- (a) are of the opinion that C4C have failed to perform one or more of their duties under section 198A or section 198B(1), (3) or (5),
  - (b) are of the opinion that the failure is serious and is not excused by economic or market conditions, and
  - (c) determine that the situation requires the exercise of their functions under this section.
- (2) In making a determination under subsection (1)(c), OFCOM must have regard, in particular, to—
- (a) C4C's statements of media content policy,
  - (b) C4C's effectiveness and efficiency in monitoring their own performance, and
  - (c) general economic and market conditions affecting the provision of relevant media content (as defined in section 198A).
- (3) OFCOM may give directions to C4C to do one or both of the following—
- (a) to revise the latest statement of media content policy in accordance with the direction;
  - (b) to take such steps for remedying the failure as OFCOM specify in the direction.
- (4) A direction given under this section must set out—
- (a) a reasonable timetable for complying with it, and
  - (b) the factors that OFCOM will take into account in determining whether or not a failure has been remedied.
- (5) OFCOM must consult C4C before giving a direction under this section.”

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(2) After section 271 of that Act insert—

**“271A Remedying failure by C4C to perform media content duties**

- (1) This section applies if OFCOM are satisfied—
- (a) that C4C have failed to comply with a direction under section 198D in respect of a failure to perform one or more of their duties under section 198A,
  - (b) that C4C are still failing to perform that duty or those duties, and
  - (c) that it would be both reasonable and proportionate to the seriousness of the failure to vary the licence under which Channel 4 is licensed (“the Channel 4 licence”) in accordance with this section.
- (2) OFCOM may, by notice to C4C, vary the Channel 4 licence by adding such conditions, or making such modifications of conditions, as OFCOM consider appropriate for remedying (entirely or partly) C4C's failure to perform the duty or duties under section 198A.
- (3) If, at any time following such a variation, OFCOM consider that any of the additional conditions or modifications is no longer necessary, they may again vary the licence with effect from such time as they may determine.
- (4) OFCOM must consult C4C before exercising their power under this section to vary the Channel 4 licence.”

*Independent television services*

**24 Determination of Channel 3 licence areas**

- (1) In section 14 of the Broadcasting Act 1990 (establishment of Channel 3)—
- (a) omit subsection (7) (restriction on providing a single Channel 3 service for the whole of England or the whole of Scotland), and
  - (b) after that subsection insert—
 

“(7A) The areas mentioned in subsection (2) must at all times include at least one area that comprises, or falls entirely within, Scotland.”
- (2) Section 216 of the Communications Act 2003 (renewal of Channel 3 and 5 licences) is amended as follows.
- (3) For subsection (4) substitute—
- “(4) Where OFCOM receive an application under this section for the renewal of a licence they must—
- (a) decide whether to renew the licence; and
  - (b) notify the applicant of their decision.
- (4A) If OFCOM decide to renew the licence they must—
- (a) in the case of a licence to provide a Channel 3 service, determine in accordance with section 216A the area for which the licence will be renewed;

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- (b) in every case, determine in accordance with section 217 the financial terms on which the licence will be renewed; and
- (c) notify the applicant of their determinations.”

(4) After subsection (6) insert—

“(6A) OFCOM may also decide not to renew a licence to provide a Channel 3 service if, for the licensing period in question, they have renewed or propose to renew one or more other licences to provide a Channel 3 service for all of the area to which the licence relates.”

(5) In subsection (8)(a) for “subsection (4)(c)” substitute “ subsection (4A)(c) ”.

(6) In subsection (10) for the words from “, in accordance” to the end substitute “—

- (a) to any determination under subsection (4A)(a);
- (b) in accordance with the determination under subsection (4A)(b), to the requirements imposed by section 217(4).”

(7) After section 216 of that Act insert—

**“216A Renewal of Channel 3 licences: determination of licence areas**

(1) This section applies if OFCOM decide under section 216(4) to renew a licence to provide a Channel 3 service.

(2) The area determined under section 216(4A)(a) for the licence—

- (a) must include all or part of the area to which the licence being renewed currently relates, and
- (b) may include all or part of another area if the holder of the licence to provide a Channel 3 service for the other area gives (and does not withdraw) consent before the determination is made.”

(8) In section 217(1) of that Act, in the opening words, for “section 216(4)(b)” substitute “ section 216(4A)(b) ”.

**25 Initial expiry date for Channel 3 and 5 and public teletext licences**

(1) Section 224 of the Communications Act 2003 (initial expiry date for licences) is amended as follows.

(2) For subsection (1) (meaning of “initial expiry date”) substitute—

“(1) Subject to any postponement under this section, for the purposes of this Part the initial expiry date for the following types of licence is 31 December 2014—

- (a) a licence to provide a Channel 3 service;
- (b) a licence to provide Channel 5;
- (c) the licence to provide the public teletext service.”

(3) In subsection (2) (power to postpone initial expiry date), at the end insert “ for one or more of the types of licence mentioned in subsection (1) ”.

(4) Omit subsection (3) (no postponement if digital switchover is to occur before 1 July 2013).

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## 26 Initial expiry date: consequential provision

- (1) Chapter 2 of Part 3 of the Communications Act 2003 (regulatory structure for independent television services) is amended as follows.
- (2) In each of sections 214(6) and 216(12) (definition of “licensing period” for Channels 3 and 5)—
  - (a) in the opening words, after “licensing period” insert “, in relation to a licence,”
  - (b) in paragraph (a), at the end (but before “or”) insert “ for that type of licence”, and
  - (c) in paragraph (b), at the end insert “ for that type of licence ”.
- (3) In each of sections 219(3) and 222(12) (definition of “licensing period” for public teletext service)—
  - (a) in paragraph (a), at the end (but before “or”) insert “ for the licence to provide the public teletext service ”, and
  - (b) in paragraph (b), at the end insert “ for that type of licence ”.
- (4) In section 225(3) (period for review of financial terms of replacement Channel 3 and 5 and public teletext licences), after “initial expiry date” insert “ for that type of licence ”.
- (5) In section 228(8) (giving effect to review of financial terms of replacement licence), in the definition of “licensing period”—
  - (a) after “ “licensing period”” insert “, in relation to a licence,”
  - (b) in paragraph (a), at the end (but before “or”) insert “ for that type of licence”, and
  - (c) in paragraph (b), at the end insert “ for that type of licence ”.
- (6) Section 229 (report in anticipation of new licensing round) is amended as follows.
- (7) In subsection (1), after “licensing period” insert “ for a type of relevant licence ”.
- (8) In subsection (2)—
  - (a) for “holders of relevant licences” substitute “ holder or holders of that type of licence ”, and
  - (b) for “licence holders” substitute “ licence holder or holders ”.
- (9) In subsection (3)(a) and (b), for “relevant licences” substitute “ that type of licence ”.
- (10) After subsection (4) insert—
 

“(4A) Subsection (5) applies where the Secretary of State—

  - (a) receives a report under this section in anticipation of the end of a licensing period for a type of relevant licence, and
  - (b) subsequently makes an order under section 224 extending the licensing period for that type of licence.”
- (11) In subsection (5)—
  - (a) for the words from the beginning to “the order—” substitute “ Where this subsection applies—”, and
  - (b) in paragraph (a), for “he” substitute “ the Secretary of State ” and at the end (but before “and”) insert “ for that type of licence ”.
- (12) In subsection (6), in the definition of “licensing period”—



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- (a) in the opening words, after “ “licensing period”” insert “ , in relation to a licence, ”,
  - (b) in paragraph (a), at the end (but before “or”) insert “ for that type of licence ”, and
  - (c) in paragraph (b), at the end insert “ for that type of licence ”.
- (13) Section 230 (orders suspending rights of renewal) is amended as follows.
- (14) In subsection (2), for “licences for the time being in force that are of a description specified in the order are” substitute “ a licence for the time being in force that is of a description specified in the order is ”.
- (15) In that subsection, at the end insert “ (but see subsection (7)) ”.
- (16) In each of subsections (3), (4), (5) and (8)(b), for “licences” substitute “ a licence ”.
- (17) In subsection (7), for “Channel 3 licences” substitute “ a Channel 3 licence ”.
- (18) In subsection (11), in the definition of “initial licensing period”—
- (a) after “ “initial licensing period”” insert “ , in relation to a licence, ”, and
  - (b) at the end (but before “and”) insert “ for that type of licence ”.

## **27 Report by OFCOM on public teletext service**

After section 218 of the Communications Act 2003 insert—

### **“218A Duty to report on public teletext service**

- (1) OFCOM must—
  - (a) prepare a report on the public teletext service, and
  - (b) send it to the Secretary of State as soon as practicable after this section comes into force.
- (2) OFCOM must prepare and send to the Secretary of State further reports on the public teletext service when asked to do so by the Secretary of State.
- (3) Each report must include, in particular—
  - (a) an assessment of the advantages and disadvantages for members of the public of the public teletext service being provided, and
  - (b) an assessment of whether the public teletext service can be provided at a cost to the licence holder that is commercially sustainable.
- (4) An assessment under subsection (3)(a) must take account of alternative uses for the capacity that would be available if the public teletext service were not provided.
- (5) OFCOM must publish every report under this section—
  - (a) as soon as practicable after they send it to the Secretary of State, and
  - (b) in such manner as they consider appropriate.
- (6) “Capacity” means capacity on the frequencies on which Channel 3 services, Channel 4, S4C and television multiplex services are broadcast.”

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## **28 Power to remove OFCOM's duty to secure provision of public teletext service**

- (1) Section 218 of the Communications Act 2003 (provision of public teletext service) is amended as follows.
- (2) In subsection (1)—
  - (a) for “must do all that they can to” substitute “ may ”, and
  - (b) at the end insert “ and complies with this section ”.
- (3) In subsection (7)—
  - (a) for “OFCOM must exercise their powers” substitute “ If there is a public teletext provider, OFCOM must take account of the requirements of the public teletext service when exercising their powers ”, and
  - (b) omit the words after paragraph (b).
- (4) Accordingly, in the heading of the section, for “Duty” substitute “ Power ”.
- (5) Omit section 221 of that Act (replacement of existing public teletext provider's licence).
- (6) In section 276(1) of that Act (co-operation with the public teletext provider), for “the provider of the service or channel” substitute “ , if there is a public teletext provider, the provider of the Channel 3 service or Channel 4 ”.
- (7) In section 362 of that Act (interpretation of Part 3), in the definition of “the public teletext service”, for “is required to be” substitute “ is or may be ”.
- (8) The amendments made by this section and the entries in Schedule 2 relating to sections 218(7) and 221 of the Communications Act 2003 (and section 45 so far as relating to those entries) come into force on such day as the Secretary of State may by order made by statutory instrument appoint.
- (9) An order may not be made under subsection (8) unless—
  - (a) condition A or B is met,
  - (b) the Secretary of State is satisfied that making the order is in the public interest, and
  - (c) a draft of the instrument containing the order has been laid before, and approved by a resolution of, each House of Parliament.
- (10) Condition A is that the Secretary of State has laid before Parliament a report by the Office of Communications (“OFCOM”) under section 218A of the Communications Act 2003 (report on public teletext service).
- (11) Condition B is that OFCOM have invited applications for the licence to provide the public teletext service (within the meaning of Part 3 of the Communications Act 2003) and—
  - (a) no applications were made by the closing date, or
  - (b) OFCOM considered that they could not award the licence to any of the applicants.

### **Commencement Information**

**I3** S. 28 partly in force; s. 28(8)-(11) in force at 8.6.2010 see ss. 28(8), 47(1)

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## 29 Broadcasting of programmes in Gaelic

- (1) Omit section 184 of the Broadcasting Act 1990 (broadcasting of programmes in Gaelic on Channel 3 in Scotland).
- (2) Accordingly, omit section 183A(7)(a) and (b) of that Act (representation in Gaelic Media Service of interests of holders of certain licences).

### Commencement Information

14 S. 29 in force at 22.6.2011 by S.I. 2011/1170, art. 2(a)

### *Independent radio services*

## 30 Digital switchover

- (1) In section 86(6) of the Broadcasting Act 1990 (varying licences under Part 3), for “section 110(1)(b)” substitute “section 97B or 110(1)(b)”.
- (2) After section 97 of that Act insert—

### *“Digital switchover*

#### **97A Date for digital switchover**

- (1) The Secretary of State may give notice to OFCOM nominating a date for digital switchover for the post-commencement services specified or described in the notice.
- (2) When nominating a date, or considering whether to nominate a date, the Secretary of State must have regard to any report submitted by OFCOM or the BBC under section 67(1)(b) of the Broadcasting Act 1996 (review of digital radio broadcasting).
- (3) The Secretary of State—
  - (a) may nominate different dates for different services, and
  - (b) may give notice to OFCOM withdrawing a nomination under this section.
- (4) In this section and section 97B—

“date for digital switchover”, in relation to a post-commencement service, means a date after which it will cease to be appropriate for the service to continue to be provided in analogue form;

“post-commencement service” means a local service, national service or additional service that is provided under a licence that—

  - (a) was granted on or after the day on which this section comes into force, or
  - (b) has been renewed under section 103B or 104AA.

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### **97B Variation of licence period after date for digital switchover nominated**

- (1) This section applies if the Secretary of State has nominated a date for digital switchover for a post-commencement service (and has not withdrawn the nomination).
  - (2) If the period for which the licence to provide the post-commencement service is to continue in force ends after the date for digital switchover, OFCOM must by notice vary the licence so that the period ends on or before that date, subject to subsection (3).
  - (3) OFCOM may not reduce the period so that it ends less than 2 years after the day on which they issue the notice, unless the licence holder consents to such a reduction.
  - (4) If the period for which the licence to provide the post-commencement service is to continue in force ends on or before the date for digital switchover, OFCOM may not vary the licence so that the period ends after that date.”
- (3) In section 199(5) of that Act (publication of notices by OFCOM), after “55,” insert “97B, ”.

### **31 Renewal of national radio licences**

- (1) In section 103A of the Broadcasting Act 1990 (renewal of national licences), in subsection (1), after “renewed” insert “ under this section ”.
- (2) After that section insert—

#### **“103B Further renewal of national licences**

- (1) A national licence may be renewed under this section on one occasion for a period of not more than 7 years beginning with the date of renewal (“the renewal period”) (subject to the following provisions of this section).
- (2) Subsections (2) to (9), (11) and (12) of section 103A apply in relation to the renewal of a licence under this section as they apply in relation to the renewal of a licence under section 103A, subject to subsection (3).
- (3) Those provisions apply in relation to the renewal of a licence under this section as if the following were omitted—
  - (a) subsection (4)(b),
  - (b) in subsection (4)(c), the words from “or OFCOM” to the end,
  - (c) subsection (6)(a),
  - (d) subsection (8)(a), and
  - (e) subsection (9)(c).
- (4) Where OFCOM renew a licence under this section they must include in the licence as renewed a condition requiring the licence holder to do all that the licence holder can to secure the broadcasting of a simulcast radio service in digital form throughout the renewal period.”

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- (3) Section 103A(12) of the Broadcasting Act 1990 (as applied by section 103B of that Act) does not prevent the determination of a date falling less than one year after the making of the determination where—
- (a) the Office of Communications consider that the relevant date for the purposes of that section (as applied) is a date which is not more than 15 months after the day on which this section comes into force, and
  - (b) the determination is made as soon as practicable after that day.

## **32 Renewal and variation of local radio licences**

- (1) In section 104A of the Broadcasting Act 1990 (renewal of local licences)—
- (a) in subsection (1), after “renewed” insert “ under this section ”, and
  - (b) after that subsection insert—

“(1A) A local licence may be renewed under this section only if it is granted before the day on which section 104AA comes into force.”

- (2) After that section insert—

### **“104AA Further renewal of local licences**

- (1) A local licence may be renewed under this section on one occasion for a period of not more than 7 years beginning with the date of renewal (subject to the following provisions of this section and section 104AB).
- (2) A local licence may be renewed under this section only if—
  - (a) it has been renewed under section 104A, or
  - (b) it is granted on or after the day on which this section comes into force.
- (3) Subsections (3) to (12), (13) and (14) of section 104A apply in relation to the renewal of a licence under this section as they apply in relation to the renewal of a licence under section 104A, subject to subsections (4) and (5).
- (4) Section 104A(3) (as applied) has effect as if the words “Subject to subsection (2)” were omitted.
- (5) In the case of an approved licence, if an applicant for renewal of the licence under this section makes a national nomination in accordance with section 104AB, section 104A (as applied) has effect as if—
  - (a) subsections (4) and (13)(b) were omitted,
  - (b) references to the nominated local digital sound programme service were references to the national digital sound programme service nominated under section 104AB, and
  - (c) references to the nominated local radio multiplex service were references to the national radio multiplex service nominated under section 104AB.
- (6) In this section and sections 104AB and 104AC—

“approved licence” means a local licence approved by OFCOM for the purposes of this section;

“local digital sound programme service”, “local radio multiplex service”, “national digital sound programme service” and “national

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radio multiplex service” have the same meanings as in Part 2 of the Broadcasting Act 1996.

- (7) Before approving a licence for the purposes of this section, OFCOM must publish a document specifying—
- (a) the licence proposed to be approved, and
  - (b) a period in which representations may be made to OFCOM.

#### **104AB Renewal under section 104AA: nomination of national services**

- (1) For the purposes of section 104AA, a “national nomination” by an applicant for the renewal of an approved licence is the nomination of—
- (a) a national digital sound programme service provided or to be provided by the applicant, and
  - (b) a national radio multiplex service.
- (2) A national nomination must be made in the application for the renewal of the approved licence or before OFCOM consider the application.
- (3) The applicant may not nominate a national digital sound programme service unless OFCOM are satisfied that, if the application in question were granted, the programmes included in that service in each calendar month would include at least 80% of the programmes included in the service provided under the approved licence.
- (4) A national nomination must specify the other approved licences (if any) in relation to which, in reliance on the nomination, an application may be made under section 104AC.

#### **104AC Variation of conditions relating to digital services**

- (1) This section applies where—
- (a) a licence that is an approved licence has been renewed under section 104A and includes a local digital services condition,
  - (b) an application has been made under section 104AA for the renewal of another approved licence and the applicant has made a national nomination under section 104AB, and
  - (c) the nomination specifies the licence mentioned in paragraph (a) in accordance with section 104AB(4).
- (2) OFCOM may, if the requirements of subsections (3) and (4) are met, vary the licence mentioned in subsection (1)(a) by—
- (a) removing the local digital services condition, and
  - (b) adding a national digital services condition.
- (3) OFCOM must have received an application for the variation from the licence holder.
- (4) OFCOM must be satisfied that, if they varied the licence, the programmes included in the nominated national digital sound programme service in each calendar month would include at least 80% of the programmes included in the service provided under that licence.
- (5) In this section—

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“local digital services condition” means a condition requiring the licence holder to do all that the licence holder can to ensure that a local digital sound programme service is broadcast by means of a local radio multiplex service;

“national digital services condition” means a condition requiring the licence holder to do all that the licence holder can to ensure that the nominated national digital sound programme service is broadcast by means of the nominated national radio multiplex service until the day on which the licence (as renewed under section 104A) is to expire;

“nominated” means nominated in the nomination referred to in subsection (1)(b).”

- (3) Section 104A(14) of the Broadcasting Act 1990 (as applied by section 104AA of that Act) does not prevent the determination of a date falling less than one year after the making of the determination where—
  - (a) the Office of Communications consider that the relevant date for the purposes of that section (as applied) is a date which is not more than 15 months after the day on which this section comes into force, and
  - (b) the determination is made as soon as practicable after that day.
- (4) The requirement under section 104AA(7) of the Broadcasting Act 1990 may be satisfied by the publication of a document before this section comes into force.

### **33 Variation of licence period following renewal**

- (1) In section 86(6) of the Broadcasting Act 1990 (variation of licence period etc), after “section 97B” (inserted by section 30) insert “, 105A ”.
- (2) Before section 106 (but after the heading preceding that section) insert—

#### **“105A Variation of licence period following renewal**

- (1) This section applies if the Secretary of State—
  - (a) has not nominated a date for digital switchover under section 97A for one or more relevant renewed services, or
  - (b) has withdrawn the nomination of such a date and has not nominated another such date under that section.
- (2) The Secretary of State may give notice to OFCOM fixing a date (the “termination date”) in relation to that service or such of those services as are specified or described in the notice.
- (3) The Secretary of State may fix different dates for different services but may not fix a date falling before 31 December 2015.
- (4) If the period for which a licence to provide a relevant renewed service is to continue in force ends after the termination date fixed for the service, OFCOM must by notice vary the licence so that the period ends on or before that date, subject to subsection (5).
- (5) OFCOM may not reduce the period so that it ends on a day falling less than 2 years after the date on which they issue the notice, unless the licence holder consents to such a reduction.

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- (6) If the period for which a licence to provide a relevant renewed service is to continue in force ends on or before the termination date fixed for the service, OFCOM may not vary the licence so that the period ends after that date.
- (7) “Relevant renewed service” means a national service provided under a licence that has been renewed under section 103B or a local service provided under a licence that has been renewed under section 104AA.”
- (3) In section 199(5) of that Act (publication of notices by OFCOM), after “103,” insert “ 105A, ”.
- (4) If on 31 December 2012, in relation to a relevant renewed service (as defined in section 105A(7) of the Broadcasting Act 1990)—
  - (a) section 105A of that Act applies, but
  - (b) the Secretary of State has not given a notice under that section,
 the Secretary of State must, before 31 December 2013, consider whether to give a notice under that section in relation to that service.

### **34 Content and character of local sound broadcasting services**

- (1) In section 106(1A) of the Broadcasting Act 1990 (conditions relating to departures from character of licensed service), after paragraph (d) insert “; or
  - (e) that, in the case of a local licence—
    - (i) the departure would result from programmes included in the licensed service ceasing to be made at premises in the area or locality for which the service is provided, but
    - (ii) those programmes would continue to be made wholly or partly at premises within the approved area (as defined in section 314 of the Communications Act 2003 (local content and character of services)).”
- (2) Section 314 of the Communications Act 2003 (local content and character of local sound broadcasting services) is amended as follows.
- (3) In subsection (1), in paragraph (a), omit the words from “but” to “that case”.
- (4) After that subsection insert—
 

“(1A) Paragraphs (a) and (b) of subsection (1) apply in the case of each local sound broadcasting service only if and to the extent (if any) that OFCOM consider it appropriate in that case.”
- (5) In subsection (7)—
  - (a) before the definition of “local material” insert—
 

““approved area”, in relation to programmes included in a local sound broadcasting service, means an area approved by OFCOM for the purposes of this section that includes the area or locality for which the service is provided;”, and
  - (b) in the definition of “locally-made”, at the end insert “ or, if there is an approved area for the programmes, that area ”.
- (6) After subsection (8) insert—



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- “(9) Before approving an area for the purposes of this section, OFCOM must publish a document specifying—
- (a) the area that they propose to approve, and
  - (b) a period in which representations may be made to OFCOM about the proposals.
- (10) OFCOM may withdraw their approval of all or part of an area at any time if the holder of the licence to provide the local sound broadcasting service concerned consents.
- (11) Where OFCOM approve an area or withdraw their approval of an area, they must publish, in such manner as they consider appropriate, a notice giving details of the area.”
- (7) The requirement under section 314(9) of the Communications Act 2003 may be satisfied by the publication of a document before this section comes into force.

### **35 Radio multiplex services: frequency and licensed area**

After section 54 of the Broadcasting Act 1996 insert—

#### **“54A Variation of radio multiplex licences: frequency or licensed area**

- (1) OFCOM may, if the requirements of subsections (3) to (5) are met, vary a national radio multiplex licence by extending the area in which the licensed service is required to be available.
- (2) OFCOM may, if the requirements of subsections (3) to (6) are met, vary a local radio multiplex licence by—
  - (a) varying the frequency on which the licensed service is required to be provided,
  - (b) reducing the area or locality in which the licensed service is required to be available, or
  - (c) extending that area or locality to include an adjoining area or locality.
- (3) OFCOM must have received an application for the variation from the licence holder.
- (4) The application must include a technical plan relating to the service proposed to be provided under the licence indicating, in particular—
  - (a) the area or locality which would be within the coverage area of the service,
  - (b) the timetable in accordance with which that coverage would be achieved, and
  - (c) the technical means by which it would be achieved.
- (5) Before deciding whether to grant the application, OFCOM must publish a notice specifying—
  - (a) the proposed variation of the licence, and
  - (b) a period in which representations may be made to OFCOM about the proposal.

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- (6) In the case of a local radio multiplex licence, OFCOM may vary the licence in accordance with the application only if they are satisfied that doing so would not unacceptably narrow the range of programmes available by way of local digital sound programme services to persons living in the area or locality for which, before the proposed variation, the local radio multiplex service is required to be available.”

### 36 Renewal of radio multiplex licences

- (1) After section 58 of the Broadcasting Act 1996 insert—

#### “58A Renewal of radio multiplex licences: supplementary

- (1) The Secretary of State may by regulations—
- (a) amend section 58, and
  - (b) make further provision about the renewal of radio multiplex licences.
- (2) The regulations may, in particular, make provision about—
- (a) the circumstances in which OFCOM may renew a radio multiplex licence,
  - (b) the period for which a licence may be renewed,
  - (c) the information that OFCOM may require an applicant for renewal of a licence to provide,
  - (d) the requirements that must be met by such an applicant,
  - (e) the grounds on which OFCOM may refuse an application for renewal of a licence,
  - (f) payments to be made in respect of a licence following its renewal, and
  - (g) further conditions to be included in a licence following its renewal.
- (3) The regulations may, in particular, amend or modify this Part of this Act.
- (4) A statutory instrument containing the regulations may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (5) The power to make regulations under this section may not be exercised after 31 December 2015 (but this does not affect the continuation in force of any regulations made under this section before that date).”
- (2) In section 72(1) of that Act (interpretation of Part 2), before the definition of “radio multiplex service” insert—
- ““radio multiplex licence” means a licence to provide a radio multiplex service;”.

#### *Regulation of television and radio services*

### 37 Application of regulatory regimes to broadcasters

In section 263 of the Communications Act 2003 (application of regulatory regimes to broadcasters), for subsection (4) substitute—

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- “(4) The Secretary of State may by order provide for—
- (a) a condition included by virtue of this Act in a regulatory regime to be excluded from the regime;
  - (b) a condition excluded from a regulatory regime by an order under this subsection to be included in the regime again.
- (4A) An order under subsection (4) may, in particular, provide for a condition to be included or excluded for a period specified in the order.”

### *Access to electromagnetic spectrum*

## **38 Payment for licences**

- (1) Section 12 of the Wireless Telegraphy Act 2006 (charges for grant of licence) is amended as follows.
- (2) In subsection (5) at the end insert “, but this is subject to subsection (6).”
- (3) After subsection (5) insert—
  - “(6) Regulations under or for the purposes of subsection (1)(b), so far as it relates to payments during the term of a licence, may be made so as to apply in relation to a licence granted in accordance with regulations under section 14, but only in the following cases—
    - (a) where provision included in the licence with the consent of the holder of the licence provides for the regulations to apply;
    - (b) where the licence includes terms restricting the exercise by OFCOM of their power to revoke the licence before the end of a period and that period has expired;
    - (c) where the licence would, but for a variation, have ceased to have effect at the end of a period and that period has expired;
    - (d) where the licence is a surrendered-spectrum licence.
  - (7) Provision may not be made by virtue of subsection (6)(c) or (d) without the consent of the Secretary of State.
  - (8) A wireless telegraphy licence is a “surrendered-spectrum licence” if —
    - (a) it is granted under arrangements involving (before the grant or later) the variation, revocation or expiry of another wireless telegraphy licence;
    - (b) the arrangements are with a view to enabling the holder of that other licence to comply with a limit applying to frequencies in respect of which a person may hold licences; and
    - (c) it authorises the use after that variation, revocation or expiry of a frequency whose use until then was or is authorised by that other licence.
  - (9) In relation to a surrendered-spectrum licence there may be more than one such other licence (“predecessor licence”) and a licence may be a predecessor licence to more than one surrendered-spectrum licence.”
- (4) Section 14 of the Wireless Telegraphy Act 2006 (bidding for licences) is amended as follows.

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(5) In subsection (5) after “those sums must” insert “, subject to subsection (5A),”.

(6) After subsection (5) insert—

“(5A) The regulations may, with the consent of the Secretary of State, make provision permitting or requiring a surrendered-spectrum licence to which the regulations apply to include—

- (a) provision requiring all or part of a sum that would otherwise be payable to OFCOM under subsection (5) to be paid to a person who was or is the holder of a predecessor licence;
- (b) provision requiring a sum in addition to that payable to OFCOM under subsection (5) to be paid to such a person;
- (c) provision specifying any such sum or part or the method for determining it.”

(7) After subsection (8) insert—

“(9) In subsection (5A) “surrendered-spectrum licence” and “predecessor licence” have the meaning given by section 12(8) and (9).”

**F339 Enforcement of licence terms etc**

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<p><b>Textual Amendments</b></p> <p><b>F3</b> S. 39 omitted (27.6.2017) by virtue of <a href="#">Digital Economy Act 2017 (c. 30)</a>, <b>ss. 9(12)</b>, 118(2) (with s. 9(13))</p>
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*Video recordings*

**40 Classification of video games etc**

(1) Section 2 of the Video Recordings Act 1984 (exempted video works) is amended as follows.

(2) In subsection (1)—

- (a) after “video work” insert “ other than a video game ”,
- (b) after paragraph (a) insert “ or ”, and
- (c) omit paragraph (c) (and the word “or” before it).

(3) After that subsection insert—

“(1A) Subject to subsection (2) or (3) below, a video game is for the purposes of this Act an exempted work if—

- (a) it is, taken as a whole, designed to inform, educate or instruct;
- (b) it is, taken as a whole, concerned with sport, religion or music; or
- (c) it satisfies one or more of the conditions in section 2A.”

(4) After subsection (3) insert—

“(4) The Secretary of State may by regulations amend this section—

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- (a) by adding or removing a case in which a video work is not an exempted work, or
- (b) by amending a description of such a case.”

(5) After section 2 of that Act insert—

**“2A Conditions relating to video games**

- (1) The conditions referred to in section 2(1A)(c) are as follows.
  - (2) The first condition is that the video game does not include any of the following—
    - (a) depictions of violence towards human or animal characters, whether or not the violence looks realistic and whether or not the violence results in obvious harm,
    - (b) depictions of violence towards other characters where the violence looks realistic,
    - (c) depictions of criminal activity that are likely, to any extent, to stimulate or encourage the commission of offences,
    - (d) depictions of activities involving illegal drugs or the misuse of drugs,
    - (e) words or images that are likely, to any extent, to stimulate or encourage the use of alcohol or tobacco,
    - (f) words or images that are intended to convey a sexual message,
    - (g) swearing, or
    - (h) words or images that are intended or likely, to any extent, to cause offence, whether on the grounds of race, gender, disability, religion or belief or sexual orientation or otherwise.
  - (3) In subsection (2) “human or animal character” means a character that is, or whose appearance is similar to that of—
    - (a) a human being, or
    - (b) an animal that exists or has existed in real life,but does not include a simple stick character or any equally basic representation of a human being or animal.
  - (4) The second condition is that the designated authority, or a person nominated by the designated authority for the purposes of this section, has confirmed in writing that the video game is suitable for viewing by persons under the age of 12.
  - (5) The Secretary of State may by regulations amend this section—
    - (a) by amending the first condition, or
    - (b) by adding a further condition (or by amending or removing such a condition).
  - (6) Regulations under this section may make provision by reference to documents produced by the designated authority.”
- (6) In section 3 of that Act (exempted supplies), after subsection (8) insert—

“(8A) The supply of a video recording in the form of a machine of a type designed primarily for use in an amusement arcade is an exempted supply unless the video game (or, if more than one, any of the video games) that it contains—

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- (a) depicts, to any significant extent, anything falling within section 2(2)(a), (b), (c) or (d) or (3), or
  - (b) is likely to any significant extent to stimulate or encourage anything falling within section 2(2)(a) or, in the case of anything falling within section 2(2)(b), is likely to any extent to do so.
- (8B) The supply of any other video recording is an exempted supply if the recording is supplied for the purpose only of its use in connection with a supply that is an exempted supply under subsection (8A).”
- (7) At the end of that section insert—
- “(13) The Secretary of State may by regulations amend this section and the regulations may, in particular—
- (a) add a case in which the supply of a video recording is an exempted supply for the purposes of this Act, or
  - (b) repeal a provision of this section.”

#### Commencement Information

- I5** S. 40 partly in force; s. 40(1)(4)(7) in force at 8.6.2010 see s. 47(1)(3)(c)
- I6** S. 40(2)(3)(5)(6) in force at 30.7.2012 by S.I. 2012/1766, art. 2(a)

## 41 Designated authority for video games etc

- (1) After section 4 of the Video Recordings Act 1984 insert—

### “4ZA Designated authorities for video games and other video works

- (1) The power to designate a person by notice under section 4 includes power to designate different persons—
- (a) as the authority responsible for making arrangements in respect of video games (“the video games authority”), and
  - (b) as the authority responsible for making arrangements in respect of other video works (“the video works authority”).
- (2) Where there are two designated authorities, references in this Act to the designated authority, in relation to a video work, are references to the designated authority responsible for making arrangements in respect of the video work, taking account of any allocation in force under section 4ZB.

### 4ZB Designated authorities: allocation of responsibility for video games

- (1) Where there are two designated authorities, the video games authority may, with the consent of the video works authority, allocate to that authority responsibility—
- (a) for a class of video games, or
  - (b) for video games, or a class of video games, when (and only when) they are contained in a video recording that is described in the allocation (whether by reference to its contents, to the manner in which it is, or is to be, supplied or otherwise).

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- (2) If an allocation is in force—
  - (a) the video works authority is responsible for making arrangements under this Act in respect of the allocated video games, and
  - (b) the video games authority ceases to be responsible for making such arrangements.
- (3) An allocation—
  - (a) must be made by a notice, and
  - (b) may be withdrawn at any time by a notice given by the video games authority with the consent of the video works authority.
- (4) When making or withdrawing an allocation under this section, the video games authority must have regard to any guidance issued by the Secretary of State.
- (5) A notice under this section must be—
  - (a) sent to the Secretary of State, and
  - (b) published in such manner as the video games authority considers appropriate.
- (6) A question as to which designated authority is responsible for making arrangements in respect of a video game may be conclusively determined by the video games authority.

#### **4ZC Designated authorities: video works included in video games**

- (1) The video games authority may make such arrangements in respect of video works included in video games as it considers are necessary for the purposes of fulfilling its responsibilities in respect of video games.
  - (2) Where there are two designated authorities, the arrangements made by the video games authority under section 4 must, to the extent that the video games authority considers appropriate, include either or both of the following—
    - (a) arrangements for having regard to any classification certificate issued by the video works authority in respect of a video work included in a video game;
    - (b) arrangements for obtaining and having regard to a determination by the video works authority as to the suitability of all or part of a video work included in a video game.
  - (3) For the purpose of determining the extent to which arrangements described in subsection (2)(a) or (b) are appropriate, the video games authority must—
    - (a) consult the video works authority, and
    - (b) have regard to any guidance issued by the Secretary of State.
  - (4) In this section, “suitability” means suitability for the issue of a classification certificate or suitability for the issue of a classification certificate of a particular description.”
- (2) Schedule 1 (which contains further amendments of the Video Recordings Act 1984) has effect.

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#### Commencement Information

- I7** S. 41 partly in force; s. 41(2) in force for specified purposes at 8.6.2010 see s. 47(1)(3)(c)  
**I8** S. 41(1) in force at 1.5.2012 by S.I. 2012/1164, **art. 2(a)**  
**I9** S. 41(2) in force for specified purposes at 1.5.2012 by S.I. 2012/1164, **art. 2(b)**

#### *Copyright and performers' property rights: penalties*

### 42 Increase of penalties relating to infringing articles or illicit recordings

[<sup>F4</sup>(1) The Copyright, Designs and Patents Act 1988 is amended as follows.

- (2) In section 107 (criminal liability for making or dealing with infringing articles etc.) in subsections (4)(a) and (4A)(a) for “the statutory maximum” substitute “ £50,000 ”.
- (3) In section 198 (criminal liability for making, dealing with or using illicit recordings) in subsections (5)(a) and (5A)(a) for “the statutory maximum” substitute “ £50,000 ”.]

#### Textual Amendments

- F4** S. 42 omitted (E.W.) (12.3.2015) by virtue of [The Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(Fines on Summary Conviction\) Regulations 2015](#) (S.I. 2015/664), reg. 1(1), **Sch. 4 para. 103** (with reg. 5(1))

#### *Public lending right*

### 43 Public lending right

(1) Section 5(2) of the Public Lending Right Act 1979 (interpretation) is amended as follows.

(2) Before the definition of “local library authority” insert—

““author”, in relation to a work recorded as a sound recording, includes a producer or narrator;

“book” includes—

- (a) a work recorded as a sound recording and consisting mainly of spoken words (an “audio-book”), and
- (b) a work, other than an audio-book, recorded in electronic form and consisting mainly of (or of any combination of) written or spoken words or still pictures (an “e-book”);

“lent out”—

- (a) means made available to a member of the public for use away from library premises for a limited time, but
- (b) does not include being communicated by means of electronic transmission to a place other than library premises,

and “loan” and “borrowed” are to be read accordingly;



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“library premises” has the meaning given in section 8(7) of the Public Libraries and Museums Act 1964;”.

(3) After the definition of “prescribed” insert—

““producer” has the meaning given in section 178 of the Copyright, Designs and Patents Act 1988;”.

(4) At the end of the definition of “the register” omit “and”.

(5) [<sup>F5</sup>At the end insert]—

““sound recording” has the meaning given in section 5A(1) of the Copyright, Designs and Patents Act 1988.”

(6) The Copyright, Designs and Patents Act 1988 is amended as follows.

(7) In section 40A (permitted acts in relation to copyright works: lending of copies by libraries or archives), for subsection (1) substitute—

“(1) Copyright in a work of any description is not infringed by the following acts by a public library in relation to a book within the public lending right scheme—

- (a) lending the book;
- (b) in relation to an audio-book or e-book, copying or issuing a copy of the book as an act incidental to lending it.

(1A) In subsection (1)—

- (a) “book”, “audio-book” and “e-book” have the meanings given in section 5 of the Public Lending Right Act 1979,
- (b) “the public lending right scheme” means the scheme in force under section 1 of that Act,
- (c) a book is within the public lending right scheme if it is a book within the meaning of the provisions of the scheme relating to eligibility, whether or not it is in fact eligible, and
- (d) “lending” is to be read in accordance with the definition of “lent out” in section 5 of that Act (and section 18A of this Act does not apply).”

(8) In Schedule 2, in paragraph 6B (permitted acts in relation to performances: lending of copies by libraries or archives)—

(a) at the beginning insert—

“(A1) The rights conferred by this Chapter are not infringed by the following acts by a public library in relation to a book within the public lending right scheme—

- (a) lending the book;
- (b) in relation to an audio-book or e-book, copying or issuing a copy of the book as an act incidental to lending it.

(A2) Expressions used in sub-paragraph (A1) have the same meaning as in section 40A(1).”;

<sup>F6</sup>(b) .....

*Status: This version of this Act contains provisions that are prospective.*

*Changes to legislation: Digital Economy Act 2010 is up to date with all changes known to be in force on or before 22 February 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

#### Textual Amendments

- F5** Words in s. 43(5) substituted (1.10.2013) by [The Public Bodies \(Abolition of the Registrar of Public Lending Right\) Order 2013 \(S.I. 2013/2352\)](#), art. 1(2), **Sch. 1 para. 14** (with art. 8)
- F6** [S. 43\(8\)\(b\)](#) omitted (1.6.2014) by virtue of [The Copyright and Rights in Performances \(Research, Education, Libraries and Archives\) Regulations 2014 \(S.I. 2014/1372\)](#), reg. 1, **Sch. para. 12**

#### Commencement Information

- I10** [S. 43](#) in force at 30.6.2014 by [S.I. 2014/1659](#), **art. 2**

### General

#### 44 Power to make consequential provision etc

- (1) The Secretary of State may by regulations made by statutory instrument make incidental, supplementary, consequential, transitional, transitory or saving provision in connection with the amendments made by this Act.
- (2) The regulations may—
  - (a) make different provision for different purposes,
  - (b) modify an Act passed before or in the same Session as this Act or subordinate legislation made before this Act is passed, and
  - (c) where they are made in connection with an amendment made by section 28 or by a provision listed in section 47(3), modify a provision of an Act passed, or subordinate legislation made, before the day on which that amendment comes into force.
- (3) A statutory instrument containing regulations under this section that amend or repeal a provision of an Act may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (4) Any other statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) In this section—
  - “modify” includes amend, repeal or revoke;
  - “subordinate legislation” has the same meaning as in the Interpretation Act 1978.

#### 45 Repeals

Schedule 2 (repeals) has effect.

#### Commencement Information

- I11** [S. 45](#) partly in force; [s. 45](#) in force for specified purposes at 8.6.2010 see [s. 47\(1\)\(3\)\(b\)-\(d\)](#)
- I12** [S. 45](#) in force for specified purposes at 22.6.2011 by [S.I. 2011/1170](#), **art. 2(c)**
- I13** [S. 45](#) in force for specified purposes at 1.5.2012 by [S.I. 2012/1164](#), **art. 2(c)**
- I14** [S. 45](#) in force for specified purposes at 30.7.2012 by [S.I. 2012/1766](#), **art. 2(b)**
- I15** [S. 45](#) in force for specified purposes at 30.6.2014 by [S.I. 2014/1659](#), **art. 2**

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## 46 Extent

- (1) This Act extends to England and Wales, Scotland and Northern Ireland.
- (2) An amendment of the following enactments that is made by this Act may be extended to any of the Channel Islands or the Isle of Man under the relevant extending power—
  - (a) Part 1 of the Copyright, Designs and Patents Act 1988;
  - (b) the Broadcasting Act 1990;
  - (c) the Broadcasting Act 1996;
  - (d) the Communications Act 2003;
  - (e) the Wireless Telegraphy Act 2006.
- (3) “Relevant extending power” means—
  - (a) in relation to amendments of Part 1 of the Copyright, Designs and Patents Act 1988, section 157(2) of that Act;
  - (b) in relation to amendments of the Broadcasting Act 1990, section 204(6) of that Act;
  - (c) in relation to amendments of the Broadcasting Act 1996, section 150(4) of that Act;
  - (d) in relation to amendments of the Communications Act 2003, section 411(6) of that Act;
  - (e) in relation to amendments of the Wireless Telegraphy Act 2006, section 118(3) of that Act.
- (4) The power conferred by section 157(2)(c) of the Copyright, Designs and Patents Act 1988 (power to extend to British overseas territories) is exercisable in relation to any amendment made by this Act to Part 1 of that Act.

## 47 Commencement

- (1) This Act comes into force at the end of the period of two months beginning with the day on which it is passed, but this is subject to—
  - (a) section 28(8), and
  - (b) subsections (2) and (3).
- (2) The following come into force on the day on which this Act is passed—
  - (a) sections 5, 6, 7, 15 and 16(1),
  - (b) sections 30 to 32, and
  - (c) this section and sections 46 and 48.
- (3) The following come into force on such day as the Secretary of State may by order made by statutory instrument appoint—
  - (a) sections 19 to 21,
  - (b) section 29 and the entries in Schedule 2 relating to sections 183A and 184 of the Broadcasting Act 1990 and Schedule 15 to the Communications Act 2003 (and section 45 so far as it relates to those entries),
  - (c) sections 40(2), (3), (5) and (6) and 41(1), paragraphs 2 to 4, 6 to 9 and 10(2) of Schedule 1 (and section 41(2) so far as it relates to those provisions) and the entries in Schedule 2 relating to sections 2, 4 and 22 of the Video Recordings Act 1984 (and section 45 so far as it relates to those entries), and

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- (d) section 43 and the entry in Schedule 2 relating to the Public Lending Right Act 1979 (and section 45 so far as it relates to that entry).
- (4) The Secretary of State may appoint different days for different purposes.

#### **48 Short title**

This Act may be cited as the Digital Economy Act 2010.

**Status:**

This version of this Act contains provisions that are prospective.

**Changes to legislation:**

Digital Economy Act 2010 is up to date with all changes known to be in force on or before 22 February 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

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**Changes and effects yet to be applied to :**

- s. 19 coming into force by [S.I. 2023/792 art. 3\(a\)](#)
- s. 20 coming into force by [S.I. 2023/792 art. 3\(b\)](#)
- s. 21 coming into force by [S.I. 2023/792 art. 3\(c\)](#)