

DIGITAL ECONOMY ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Topic 1: OFCOM reports

Section 1: OFCOM reports on infrastructure, internet domain names etc.

22. This section inserts three new sections into the Communications Act 2003 (“the 2003 Act”) which require OFCOM to report to the Secretary of State on the state of the UK’s communications infrastructure and services.
23. New section 134A requires OFCOM to produce an initial report in the first year after the provision comes into force, followed by subsequent reports at three-yearly intervals. It also requires that, should OFCOM become aware of a marked change which has a significant impact on business or the public in any of the reporting areas, and which they consider should be brought to the attention of the Secretary of State, they should write a further report. OFCOM must publish each report under new section 134A as soon as practicable after they send it to the Secretary of State.
24. New section 134B sets out in detail the subject matter to be covered by the reports on infrastructure. The initial report and the three-yearly reports will consist of a survey of:
 - The different types of electronic communications network and service in the UK;
 - Geographic and population coverage of those networks and services;
 - Downtime, and measures in place to maintain or improve availability;
 - Emergency planning; and
 - A comparison between UK networks and services and equivalent networks and services provided in a range of other countries.
25. Additionally, in relation to UK networks, the reports will cover infrastructure sharing (for example, where two or more mobile operators pool their network of masts and both offer services across them), capacity (the amount of data that networks and parts of networks are able to carry and the rate at which they can carry it) and wholesale arrangements (the extent to which one operator can buy capacity on another operator’s network and then sell it on to retail customers). In relation to services, they will also cover the use of the electromagnetic spectrum.
26. New section 134C of the 2003 Act requires OFCOM to report on matters specified by the Secretary of State relating to internet domain names when requested to do so. These matters might include the management and distribution of internet domain names by registries and the misuse of domain names or the use of unfair practices by registries, end-users of domain names or their agents (known as registrars).
27. The reporting duty would, for example, enable the Secretary of State to ask OFCOM to report on the activities of internet domain registries based in the UK (and their registrars and end-users) in circumstances where the Secretary of State believes that

*These notes refer to the Digital Economy Act 2010
(c.24) which received Royal Assent on 8 April 2010*

the operation of those registries (or the activities of their registrars or end users) could adversely affect, or has already adversely affected, the reputation or operation of the UK's internet economy and/or the interests of consumers or the public in the UK. OFCOM are required to publish these reports.

28. Section 135 of the 2003 Act is amended to enable OFCOM to use their existing information gathering powers to require communications providers and others to supply the information which they will need to write their reports. Those powers are subject to the restrictions in section 137 of that Act on the imposition of information requirements, which means, in particular, that a demand for information must be proportionate to the use to which the information is to be put. Penalties for contravention of the information requirements may be imposed under section 139 of the 2003 Act.

Section 2: OFCOM reports on media content

29. Section 264 of the 2003 Act requires OFCOM to report at least every five years on the fulfilment of the public service remit for television by public service broadcasters, namely television services provided by the British Broadcasting Corporation ("BBC"), Channel 4, Sianel Pedwar Cymru ("S4C"), Channel 3 services, Channel 5 and the public teletext service. The public service remit involves the provision of a balanced diversity of high quality content, which meets the needs and interests of different audiences in the United Kingdom. Paragraphs (b) to (j) of section 264(6) of the 2003 Act provide detailed public service objectives underpinning this remit. According to these objectives, examples of public service media content would include content that reflects, supports and stimulates cultural activity in the United Kingdom, and content that facilitates fair and well informed debates on news and current affairs.
30. This section extends the scope of OFCOM's reviewing and reporting obligations beyond television. Under new section 264A of the 2003 Act, OFCOM will be required to consider the wider delivery of public service media content on other platforms, such as the internet and on-demand programme services, and review the extent to which such content contributes towards the fulfilment of the public service objectives defined in section 264(6)(b) to (j).