



# Digital Economy Act 2017

## 2017 CHAPTER 30

### PART 6

#### MISCELLANEOUS

#### *OFCOM: reports etc*

#### **82 OFCOM reports on infrastructure etc**

- (1) The Communications Act 2003 is amended as follows.
- (2) After section 134A insert—

#### **“134AA Additional OFCOM reports on infrastructure etc**

- (1) OFCOM may prepare reports dealing with—
  - (a) any of the electronic communications network matters listed in section 134B(1);
  - (b) any of the electronic communications services matters listed in section 134B(2).
- (2) OFCOM may publish a report under this section 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.
- (3) Before publishing a report under this section OFCOM must consider—
  - (a) whether any of the information to be contained in it is information that they could refuse to disclose in response to a request under the Freedom of Information Act 2000, and
  - (b) if so, whether that information should be excluded from the report.
- (4) This section does not affect OFCOM’s duty to prepare reports under section 134A.

**134AB Publication of information required for purpose of preparing reports**

- (1) OFCOM may publish—
  - (a) any relevant section 135 information, and
  - (b) any information derived from relevant section 135 information.
- (2) Before publishing information under this section OFCOM must consider—
  - (a) whether any of the information that they propose to publish is information that they could refuse to disclose in response to a request under the Freedom of Information Act 2000, and
  - (b) if so, whether that information should be published.
- (3) In this section “relevant section 135 information” means information required by OFCOM under section 135 for the purpose of preparing a report under section 134A or 134AA.”
- (3) In section 134B (networks and services matters)—
  - (a) in subsections (1) and (2), for “section 134A” substitute “sections 134A and 134AA”, and
  - (b) in subsection (4), after “134A” insert “or 134AA”.
- (4) In section 135(3) (information required for purposes of OFCOM functions), after paragraph (ic) insert—
 

“(ica) preparing a report under section 134AA;”.
- (5) In section 393(6)(a) (general restrictions on disclosure of information), after “26” insert “, 134AB”.

**83 Comparative overviews of quality and prices**

- (1) The Communications Act 2003 is amended as follows.
- (2) After section 134C insert—

*“Comparative overviews*

**134D Comparative overviews of quality and prices**

- (1) OFCOM may, in the interest of the end-users of public electronic communications services, carry out comparative overviews of the quality and prices of such services.
- (2) OFCOM may publish a comparative overview carried out under this section 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.”
- (3) In section 136 (information required for related purposes)—
  - (a) in subsection (1) for “specified in subsection (2)” substitute “of carrying out comparative overviews under section 134D”, and
  - (b) omit subsection (2).

(4) In section 393(6) (general restrictions on disclosure of information), after paragraph (b) insert—

“(ba) limits the matters that may be published as part of a comparative overview carried out by OFCOM under section 134D;”.

*OFCOM: information*

**84 Conditions about allocation of telephone numbers**

In section 58 of the Communications Act 2003 (conditions about allocation and adoption of telephone numbers), after subsection (2) insert—

“(2A) General conditions may also require a communications provider to whom telephone numbers have been allocated—

- (a) to provide OFCOM with any information that was not required to accompany the application for allocation of the numbers when it was made but which is now required to accompany such applications;
- (b) to inform OFCOM of any changes to information that accompanied the application for allocation of the numbers or that has been provided in accordance with a condition set under paragraph (a);
- (c) to inform OFCOM of any proposal by the provider to cease to provide an electronic communications network or electronic communications service;
- (d) to inform OFCOM of any circumstances or events of a description specified in the condition.”

**85 Provision of information to OFCOM**

(1) Section 135 of the Communications Act 2003 (information required for purposes of functions) is amended as follows.

(2) For subsection (1) substitute—

“(1) OFCOM may require a person falling within subsection (2) to provide them with all such information as they consider necessary for the purpose of carrying out their functions under—

- (a) section 14(1),
- (b) section 26, so far as relating to matters in relation to which they have functions under this Chapter, or
- (c) this Chapter.”

(3) In the heading for “Chapter 1” substitute “certain OFCOM”.

**86 Information required from communications providers**

(1) The Communications Act 2003 is amended as follows.

(2) After section 137 insert—

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

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### **“137A Information required from communications providers**

- (1) OFCOM may require a communications provider—
  - (a) to publish any information held by the provider, or
  - (b) to provide any such information to OFCOM for publication by OFCOM.
- (2) The information that OFCOM may require the communications provider to publish or provide under subsection (1) includes information that OFCOM require the provider to produce, generate or obtain for that purpose.
- (3) For that purpose OFCOM may, in particular, require the communications provider—
  - (a) to collect or retain any information that the provider would not otherwise collect or retain,
  - (b) to process, collate or analyse any information held by the provider, or
  - (c) to answer any questions.
- (4) The power conferred by this section may be exercised only—
  - (a) in connection with OFCOM’s functions—
    - (i) under Part 1, so far as relating to electronic communications, or
    - (ii) under this Chapter, and
  - (b) in such a way as is proportionate to the use to which the information is to be put in connection with those functions.
- (5) The power conferred by this section is to be exercised by a demand, contained in a notice served on the communications provider, that—
  - (a) describes the information required to be published or provided, and
  - (b) sets out OFCOM’s reasons for requiring it to be published or provided.
- (6) Before serving the notice on the communications provider, OFCOM must—
  - (a) serve a draft of the notice on the provider and inform the provider of the period for making representations, and
  - (b) consider any representations made by the provider within that period which—
    - (i) identify restrictions on the disclosure or publication of information that would or might prevent the provider from complying with the notice, or
    - (ii) otherwise relate to the practicability of complying with it.
- (7) The communications provider must publish or provide the information required by the notice in such manner and form, in accordance with such other requirements, and within such reasonable period, as may be specified by OFCOM.
- (8) Where OFCOM publish anything provided to them pursuant to subsection (1)
  - (b) they must do so in such manner and form as they consider appropriate.

### **137B Section 137A: confidential matters**

- (1) In exercising functions under section 137A, OFCOM must have regard to the need to exclude from publication, so far as that is practicable, the matters which are confidential in accordance with subsections (2) and (3).
- (2) A matter is confidential under this subsection if—
  - (a) it relates specifically to the affairs of a particular body, and
  - (b) publication of that matter would or might, in OFCOM’s opinion, seriously and prejudicially affect the interests of that body.
- (3) A matter is confidential under this subsection if—
  - (a) it relates to the private affairs of an individual, and
  - (b) publication of that matter would or might, in OFCOM’s opinion, seriously and prejudicially affect the interests of that individual.”
- (3) In section 138 (notification of contravention of information requirements)—
  - (a) in subsection (1), for “135 or 136” substitute “135, 136 or 137A”, and
  - (b) for subsection (2)(d) substitute—
    - “(d) specifies what the person must do in order to comply with the requirement;”.
- (4) In section 140 (suspending service provision for information contraventions), in subsections (1)(a) and (7), for “135 and 136, or either” substitute “135, 136 and 137A, or any”.
- (5) In section 144 (offences in connection with information requirements)—
  - (a) in subsection (1), after “or 136” insert “, or who contravenes a requirement imposed under section 137A,”,
  - (b) in subsection (2)(b), for “provide the required information” substitute “comply with the requirement”,
  - (c) in subsection (3)—
    - (i) for “135 or 136” substitute “135, 136 or 137A”, and
    - (ii) after “provides” (in both places) insert “or publishes”, and
  - (d) in subsection (5), for paragraph (b) substitute—
    - “(b) a confirmation decision has been given under section 139A in respect of that requirement and the period allowed under that decision has expired without the requirement have been complied with; and”.
- (6) In section 145(1) (statement of policy on information gathering)—
  - (a) in paragraph (a), for “135 to 136” substitute “135, 136 and 137A”, and
  - (b) in paragraph (b), for “those sections” substitute “sections 135 and 136”.
- (7) In section 393(6)(a) (general restrictions on disclosure of information), before “or 390” insert “, 137A”.

*Appeals***87 Appeals from decisions of OFCOM and others: standard of review**

- (1) The Communications Act 2003 is amended as follows.
- (2) In section 193(2) (reference of price control matters to the CMA), for “is to be performed” substitute “, having regard to the principles to be applied by the Tribunal under section 194A(2), is to be performed”.
- (3) In subsection (6) of that section omit “on the merits under section 195”.
- (4) Before section 195 (decisions of the Tribunal) insert—

**“194A Disposal of appeals under section 192 (other than against certain decisions of Secretary of State)**

- (1) This section applies to an appeal against a decision referred to in section 192(1)(a), (b), (c), (d)(iii) or (e).
- (2) The Tribunal must decide the appeal, by reference to the grounds of appeal set out in the notice of appeal, by applying the same principles as would be applied by a court on an application for judicial review.
- (3) The Tribunal may—
  - (a) dismiss the appeal or quash the whole or part of the decision to which it relates; and
  - (b) where it quashes the whole or part of that decision, remit the matter back to the decision-maker with a direction to reconsider and make a new decision in accordance with the ruling of the Tribunal.
- (4) The decision-maker must comply with a direction under subsection (3)(b).
- (5) In its application to a decision of the Tribunal under this section, paragraph 1(2)(b) of Schedule 4 to the Enterprise Act 2002 (exclusion of commercial information from documents recording Tribunal decisions) is to have effect as if, for the reference to the undertaking to which commercial information relates, there were substituted a reference to any person to whom it relates.
- (6) In this section “the decision-maker” means the person who made the decision appealed against.”
- (5) Section 195 (decisions of the Tribunal) is amended as follows.
- (6) For subsection (1) substitute—
 

“(1) This section applies to an appeal against a decision referred to in section 192(1)(d)(i), (ii), (iia) or (iv).”
- (7) Until section 20(2) of the Digital Economy Act 2010 comes into force, the amendment made by subsection (6) has effect with the omission of “, (iia)”.
- (8) In subsections (3) to (6), for “the decision-maker” in each place substitute “the Secretary of State”.
- (9) Omit subsection (9).

- (10) For the title substitute “Disposal of appeals under section 192 against certain decisions of Secretary of State”.
- (11) In section 317 (exercise of Broadcasting Act powers for a competition purpose), for subsection (7) substitute—
  - “(7) Sections 192(3) to (5), (7) and (8), 194A and 196 apply in the case of an appeal under subsection (6) as they apply in the case of an appeal under section 192(2).”
- (12) The amendments made by this section do not apply in relation to appeals against decisions made before this section comes into force.

### *Regulation and functions of BBC*

## **88 Functions of OFCOM in relation to the BBC**

- (1) The Communications Act is amended as follows.
- (2) Section 198 (functions of OFCOM in relation to the BBC) is amended as follows.
- (3) In subsection (1) for the words after paragraph (b) substitute—

“to regulate the BBC.”
- (4) After subsection (2) insert—

“(2A) The BBC Charter and Agreement may in particular confer on OFCOM, as a power they are to have by virtue of subsection (2)(a), power to require any person to provide information for the purposes of the carrying out by OFCOM of their function under subsection (1).”
- (5) Omit subsection (9).
- (6) After section 198 insert—

### **“198ZA Penalties for failure to provide information**

- (1) This section applies if—
  - (a) under a power conferred by virtue of section 198(2A), OFCOM require a person other than the BBC to provide information, and
  - (b) OFCOM determine that there are reasonable grounds to believe the person has not provided the information.
- (2) OFCOM may give the person a notice which sets out the determination and specifies—
  - (a) what information the person must provide,
  - (b) the time within which the person must provide it,
  - (c) a penalty that OFCOM may impose if the person does not provide it, and
  - (d) a period in which the person may make representations.
- (3) OFCOM may impose a penalty on the person if they fail without reasonable excuse to provide the information in accordance with the notice.

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- (4) The penalty may include an amount for each day the person fails to provide the information after the time required by the notice.
- (5) The penalty in respect of any notice—
  - (a) must not be more than OFCOM determine to be proportionate,
  - (b) must not be more than the penalty specified in the notice, and
  - (c) must not be more than £250,000.
- (6) OFCOM may withdraw a notice without imposing a penalty, and that does not affect the power to issue a further notice in relation to the same information.
- (7) OFCOM must publish and keep up to date a statement of their proposed approach to issuing notices and imposing and recovering penalties under this section (subject to the guidelines published under section 392).”
- (7) The following cease to have effect—
  - (a) in Part 3 of Schedule 1 to the House of Commons Disqualification Act 1975 (offices disqualifying for membership), the entry relating to a chairman, vice-chairman or ordinary member of the BBC Trust;
  - (b) section 90A of the Scotland Act 1998 (BBC Trust member for Scotland);
  - (c) section 16 of the Scotland Act 2012 (which inserts section 90A of the 1998 Act);
  - (d) in section 77(2)(d) of the Deregulation Act 2015 (review of sanctions in relation to TV licensing), “and be presented to the BBC Trust”.

## **89 TV licence fee concessions by reference to age**

- (1) The Communications Act 2003 is amended as follows.
- (2) Section 365 (TV licence fees) is amended as follows.
- (3) After subsection (1) insert—
 

“(1A) Liability to pay a sum under regulations under subsection (1) is subject to any concession applying in accordance with a determination by the BBC under section 365A.”
- (4) In subsection (4)(a) after “concession” insert “provided for by the regulations”.
- (5) In subsection (5) for “The reference to a concession in subsection (4)” substitute “A reference in this section or section 365A to a concession”.
- (6) After subsection (5) insert—
 

“(5A) Regulations under this section may not provide for a concession that requires the person to whom the TV licence is issued, or another person, to be of or above a specified age, unless—

  - (a) the age specified is below 65, and
  - (b) the requirement is not satisfied if the person concerned is 65 or over at the end of the month in which the licence is issued.

(5B) Subsection (5A) does not apply to—



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- (a) the concession provided for by regulation 3(d) of and Schedule 4 to the Communications (Television Licensing) Regulations 2004 ([S.I. 2004/692](#)) (accommodation for residential care), or
- (b) a concession in substantially the same form.”

(7) After section 365 insert—

**“365A TV licence fee concessions by reference to age**

- (1) For the purposes of section 365(1A) the BBC may determine that a concession in specified terms is to apply.
- (2) Any concession under this section must include a requirement that the person to whom the TV licence is issued, or another person, is of or above a specified age, which must be 65 or higher, at or before the end of the month in which the licence is issued.
- (3) A determination under this section—
  - (a) may in particular provide for a concession to apply, subject to subsection (2), in circumstances where a concession has ceased to have effect by virtue of section 365(5A), but
  - (b) may not provide for a concession to apply in the same circumstances as a concession within section 365(5B).
- (4) A determination under this section may include provision for the means by which an entitlement to a concession must be established.
- (5) A determination under this section—
  - (a) may make different provision for different cases (including different provision in respect of different areas);
  - (b) may include transitional provision.
- (6) A determination under this section—
  - (a) must be in writing;
  - (b) must be published in whatever way the BBC considers appropriate.
- (7) The BBC—
  - (a) may vary a determination by a further determination under this section;
  - (b) may determine that a concession is to cease to apply (and accordingly revoke a determination under this section).
- (8) Before making, varying or revoking a determination the BBC must consult any persons it considers appropriate.”

*Provision of children's programmes*

**90 Provision of children’s programmes**

After section 289 of the Communications Act 2003 insert—

*“Provision of children’s programmes*

**289A Provision of children’s programmes**

- (1) OFCOM may, if they think fit, publish criteria to be applied in accordance with this section to the provision of children’s programmes.
- (2) Where criteria are published by OFCOM, the regulatory regime for every licensed public service channel includes the conditions that OFCOM consider appropriate for securing that the provision of children’s programmes meets the criteria.
- (3) Any condition imposed by virtue of this section—
  - (a) must relate only to the provision of children’s programmes on the licensed public service channel concerned;
  - (b) must take into account OFCOM’s assessment of the provision of children’s programmes on all related services.
- (4) “Related services” in relation to a Channel 3 service means—
  - (a) that service,
  - (b) all other Channel 3 services, and
  - (c) all services within subsection (6) that appear to OFCOM to have a sufficient connection with any Channel 3 service.
- (5) “Related services” in relation to any other licensed public service channel means—
  - (a) that channel, and
  - (b) all services within subsection (6) that appear to OFCOM to have a sufficient connection with that channel.
- (6) A service is within this subsection if—
  - (a) it is available for reception in the United Kingdom, and
  - (b) it is provided without any consideration being required for its reception, disregarding any requirement to pay sums in accordance with regulations under section 365.
- (7) For the purposes of an assessment under subsection (3)(b) no account is to be taken of whether a programme is provided on a licensed public service channel or on another service.
- (8) Any condition imposed by virtue of this section must be the same for all regional Channel 3 services.
- (9) Any criteria published under this section must be published by OFCOM in a statement setting out the criteria and how they propose to apply them.
- (10) OFCOM may from time to time review and revise or withdraw the criteria by publishing a further statement.
- (11) Where OFCOM revise or withdraw criteria, they must take any steps they consider necessary in consequence in relation to conditions imposed by virtue of this section.

- (12) OFCOM must—
- (a) carry out a public consultation for the purposes of any review under subsection (10);
  - (b) where there are no published criteria for the time being, carry out a public consultation before publishing criteria under this section.
- (13) In this section “children’s programme” means a programme made—
- (a) for a television programme service or for an on-demand programme service, and
  - (b) for viewing primarily by persons under the age of sixteen.”

*OFCOM powers relating to criminal content etc*

**91 Suspension of radio licences for inciting crime or disorder**

- (1) In Chapter 2 of Part 3 of the Broadcasting Act 1990 (sound broadcasting services), for section 111B (power to suspend licence to provide satellite service) substitute—

**“111B Suspension of licences for inciting crime or disorder**

- (1) OFCOM must serve a notice under subsection (2) on the holder of a licence granted under this Chapter if they are satisfied that—
- (a) the licence holder has included in the licensed service one or more programmes containing material likely to encourage or incite the commission of crime or to lead to disorder,
  - (b) in doing so the licence holder has failed to comply with a condition included in the licence in compliance with section 263 of the Communications Act 2003, and
  - (c) the failure would justify the revocation of the licence.
- (2) A notice under this subsection must—
- (a) state that OFCOM are satisfied as mentioned in subsection (1),
  - (b) specify the respects in which, in their opinion, the licence holder has failed to comply with the condition mentioned there,
  - (c) state that OFCOM may revoke the licence after the end of the period of 21 days beginning with the day on which the notice is served on the licence holder, and
  - (d) inform the licence holder of the right to make representations to OFCOM in that period about the matters that appear to OFCOM to provide grounds for revoking the licence.
- (3) The effect of a notice under subsection (2) is to suspend the licence from the time when the notice is served on the licence holder until either—
- (a) the revocation of the licence takes effect, or
  - (b) OFCOM decide not to revoke the licence.
- (4) If, after considering any representations made to them by the licence holder in the 21 day period mentioned in subsection (2)(c), OFCOM are satisfied that it is necessary in the public interest to revoke the licence, they must serve on the licence holder a notice revoking the licence.

- (5) The revocation of a licence by a notice under subsection (4) takes effect from whatever time is specified in the notice.
- (6) That time must not be earlier than the end of the period of 28 days beginning with the day on which the notice under subsection (4) is served on the licence holder.
- (7) Section 111 does not apply to the revocation of a licence under this section.”
- (2) In section 62(10) of the Broadcasting Act 1996 (application of sections 109 and 111 of the 1990 Act to digital sound programme services) for the words from “section 109” to “1990 Act” substitute “sections 109, 111 and 111B of the 1990 Act (enforcement)”.
- (3) In section 250(3) of the Communications Act 2003 (application of sections 109 to 111A of the 1990 Act to radio licensable content services) for “111A” substitute “111B”.

## 92 **Digital additional services: seriously harmful extrinsic material**

After section 24 of the Broadcasting Act 1996 (digital additional services) insert—

### **“24A Duty to prevent access to seriously harmful extrinsic material**

- (1) In carrying out their functions, OFCOM must do all that they consider appropriate to prevent digital additional services from enabling members of the public to access seriously harmful extrinsic material.
- (2) “Seriously harmful extrinsic material”, in relation to a digital additional service, means material that—
  - (a) is not included in the service, and
  - (b) appears to OFCOM—
    - (i) to have the potential to cause serious harm, or
    - (ii) to be likely to encourage or incite the commission of crime or lead to disorder.”

### *On-demand programme services*

## 93 **On-demand programme services: accessibility for people with disabilities**

- (1) The Communications Act 2003 is amended as follows.
- (2) After section 368BB insert—

### *“Accessibility*

#### **368BC Accessibility for people with disabilities**

- (1) The Secretary of State may by regulations impose requirements on providers of on-demand programme services for the purpose of ensuring that their services are accessible to people with disabilities affecting their sight or hearing or both.

- (2) The requirements that may be imposed include—
  - (a) requirements for programmes included in the services to be accompanied by subtitling;
  - (b) requirements for such programmes to be accompanied by audio-description for the blind;
  - (c) requirements for such programmes to be presented in, or translated into, sign language.
- (3) The steps set out in subsections (4) to (6) must be taken before regulations are made under this section.
- (4) The Secretary of State must ask the appropriate regulatory authority to consult such persons as appear to the authority likely to be affected by regulations under this section, including—
  - (a) providers of on-demand programme services, and
  - (b) representatives of people with disabilities affecting their sight or hearing or both.
- (5) The appropriate regulatory authority must inform the Secretary of State of—
  - (a) the outcome of the consultation, and
  - (b) any other matters that they think should be taken into account by the Secretary of State for the purposes of the regulations.
- (6) Where OFCOM are not the appropriate regulatory authority, the Secretary of State must consult OFCOM.
- (7) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

### **368BD Enforcement of regulations under section 368BC**

- (1) Where the appropriate regulatory authority determine that a provider of an on-demand programme service is contravening or has contravened regulations under section 368BC, they may do one or both of the following—
  - (a) give the provider an enforcement notification under this section;
  - (b) impose a penalty on the provider in accordance with section 368J.
- (2) The appropriate regulatory authority must not make a determination as mentioned in subsection (1) unless there are reasonable grounds for believing that a contravention of the regulations is occurring or has occurred and they have allowed the provider an opportunity to make representations about that apparent contravention.
- (3) An enforcement notification under this section is a notification which specifies the determination made as mentioned in subsection (1) and imposes a requirement on the provider to take all such steps for complying with the regulations and for remedying the consequences of the contravention of the regulations as may be specified in the notification.
- (4) An enforcement notification must—
  - (a) include reasons for the appropriate regulatory authority's decision to give the enforcement notification, and

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- (b) fix a reasonable period for taking the steps required by the notification.
- (5) It is the duty of a provider to whom an enforcement notification is given to comply with it.
- (6) That duty is enforceable in civil proceedings by the appropriate regulatory authority—
  - (a) for an injunction,
  - (b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988, or
  - (c) for any other appropriate remedy or relief.
- (7) If a provider to whom an enforcement notification has been given does not comply with it within the period fixed by the appropriate regulatory authority in that enforcement notification the appropriate regulatory authority may impose a financial penalty on the provider in accordance with section 368J.”
- (3) In section 368C (duties of the appropriate regulatory authority), omit subsection (2).
- (4) After that section insert—

**“368CA Code on accessibility for people with disabilities**

- (1) It is the duty of the appropriate regulatory authority to draw up, and from time to time review and revise, a code giving guidance as to—
  - (a) the steps to be taken by providers of on-demand programme services so as to meet the requirements of regulations under section 368BC, and
  - (b) other steps to be taken by providers who are subject to requirements under the regulations to ensure that their services are made progressively more accessible to people with disabilities affecting their sight or hearing or both.
- (2) The appropriate regulatory authority must publish the code drawn up under this section, and every revision of it, in such manner as, having regard to the need to make the code or revision accessible to—
  - (a) persons who are deaf or hard of hearing,
  - (b) persons who are blind or partially sighted, and
  - (c) persons with a dual sensory impairment,
 they consider appropriate.”
- (5) In section 368J(1) (financial penalties), after “368BB” insert “, 368BD”.
- (6) In section 368K(1) (suspension or restriction of service for contraventions)—
  - (a) in paragraph (a), after “368D” insert “, or of regulations under section 368BC”,
  - (b) in paragraph (b)—
    - (i) after “368D” insert “or the regulations”, and
    - (ii) for “or 368I” substitute “, 368I or 368BC”.
- (7) In section 368O(2)(a) (power to demand information), after “368D” insert “, or of regulations under section 368CA,”.

- (8) In section 402(2)(a) (procedure for statutory instruments) after “411” insert “or regulations under section 368BC”.

#### **94 On-demand programme services: specially restricted material**

- (1) Section 368E of the Communications Act 2003 (restrictions on harmful material contained in on-demand programme services) is amended as follows.
- (2) In subsection (5), after paragraph (b) omit “or”.
- (3) In that subsection, after paragraph (c) insert—
- “(d) a video work—
    - (i) in respect of which the video works authority has issued an 18 certificate, and
    - (ii) whose nature is such that it is reasonable to assume that its principal purpose is to cause sexual arousal, or
  - (e) material whose nature is such that it is reasonable—
    - (i) to assume that its principal purpose is to cause sexual arousal, and
    - (ii) to expect that, if the material were contained in a video work submitted to the video works authority for a classification certificate, the video works authority would issue an 18 certificate.”
- (4) In subsection (6), after “(5)(b)” insert “or (e)”.
- (5) In subsection (7), after the definition of “the 1984 Act”, insert—
- ““18 certificate” means a classification certificate which—
- (a) contains, pursuant to section 7(2)(b) of the 1984 Act, a statement that the video work is suitable for viewing only by persons who have attained the age of 18 and that no video recording containing that work is to be supplied to any person who has not attained that age, and
  - (b) does not contain the statement mentioned in section 7(2)(c) of the 1984 Act that no video recording containing the video work is to be supplied other than in a licensed sex shop;”.

#### *Electronic Programme Guides*

#### **95 Electronic programme guides and public service channels**

- (1) After section 311 of the Communications Act 2003 insert—

##### **“311A Report on electronic programme guides and public service channels**

- (1) It is the duty of OFCOM from time to time to prepare and publish a report dealing with—
- (a) the provision by electronic programme guides of information about programmes—
    - (i) included in public service channels, or

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- (ii) provided by means of on-demand programme services by persons who also provide public service channels, and
- (b) the facilities provided by such guides for the selection of, and access to, such programmes.
- (2) When preparing the report OFCOM must consult such persons as appear to them appropriate.
- (3) In this section “electronic programme guide” and “public service channel” have the same meanings as in section 310.”
- (2) After publishing the first report under section 311A of the Communications Act 2003 OFCOM must review and revise the code drawn up by them under section 310 of that Act (code of practice for electronic programme guides).
- (3) The revision of the code must be completed before 1 December 2020.
- (4) Subsections (2) and (3) do not affect OFCOM’s duty under section 310 of that Act to review and revise the code from time to time.
- (5) In this section “OFCOM” means the Office of Communications.

*Direct marketing code*

**96 Direct marketing code**

- (1) The Data Protection Act 1998 is amended as follows.
- (2) After section 52A insert—

**“52AA Direct marketing code**

- (1) The Commissioner must prepare a code of practice which contains—
  - (a) practical guidance in relation to the carrying out of direct marketing in accordance with the requirements of this Act and the Privacy and Electronic Communications (EC Directive) Regulations 2003 ([S.I. 2003/2426](#)), and
  - (b) such other guidance as the Commissioner considers appropriate to promote good practice in direct marketing.
- (2) For this purpose “good practice” means such practice in direct marketing as appears to the Commissioner to be desirable having regard to the interests of data subjects and others, and includes (but is not limited to) compliance with the requirements mentioned in subsection (1)(a).
- (3) Before a code is prepared under this section, the Commissioner must consult such of the following as the Commissioner considers appropriate—
  - (a) trade associations (within the meaning of section 51);
  - (b) data subjects;
  - (c) persons who appear to the Commissioner to represent the interests of data subjects.
- (4) In this section “direct marketing” has the meaning given by section 11(3).”



- (3) In section 51(5A) (general duties of Commissioner) at the end insert “or section 52AA (direct marketing code)”.
- (4) In the title of each of sections 52B to 52E for “data-sharing code” substitute “data-sharing and direct marketing codes”.
- (5) In section 52B (procedure for making code)—
  - (a) in subsection (1) after “52A” insert “or 52AA”;
  - (b) in subsection (6) omit “under section 52A”.
- (6) In section 52C (alteration or replacement of code)—
  - (a) in subsection (1)(a) after “data-sharing code” insert “and the direct marketing code”;
  - (b) in subsection (1)(b) for “may prepare an alteration to that code” substitute “in either case, may prepare an alteration to the code”;
  - (c) in subsection (4) after “52A” insert “or 52AA”;
  - (d) in subsection (5) for “means the code” substitute “and “the direct marketing code” mean the codes respectively prepared under sections 52A and 52AA and”.
- (7) In section 52D (publication of code) in subsection (1) for “the code” substitute “any code”.
- (8) In section 52E (effect of code)—
  - (a) in subsection (1) after “data-sharing code” insert “or the direct marketing code”;
  - (b) in subsection (2) for “The data-sharing code is” substitute “Those codes are”;
  - (c) in subsection (3) for “the data-sharing code” substitute “those codes”;
  - (d) in subsection (3)(a) after “Act” insert “or the Privacy and Electronic Communications (EC Directive) Regulations 2003 (S.I. 2003/2426)”;
  - (e) in subsection (3)(c) after “Act” insert “or those Regulations”;
  - (f) in subsection (4) for “means the code” substitute “and “the direct marketing code” mean the codes respectively prepared under sections 52A and 52AA and”.

*Televising events of national interest*

**97 Televising events of national interest: power to amend qualifying conditions**

In section 98 of the Broadcasting Act 1996 (categories of service), after subsection (5) insert—

- “(5A) The Secretary of State may, by regulations made by statutory instrument, amend the percentage figure specified for the time being in subsection (2)(b).
- (5B) An amendment made by regulations under this section does not affect—
  - (a) the validity of any contract entered into before the regulations came into force, or
  - (b) the exercise of any rights acquired under such a contract.
- (5C) Regulations under subsection (5A) may make transitional, transitory or saving provision.

- (5D) A statutory instrument containing regulations under subsection (5A) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.”

*Other provisions relating to OFCOM*

**98 Strategic priorities and provision of information**

- (1) After section 2 of the Communications Act 2003 insert—

*“Strategic priorities*

**2A Statement of strategic priorities**

- (1) The Secretary of State may designate a statement for the purposes of this section if the requirements set out in section 2C (consultation and parliamentary procedure) are satisfied.
- (2) The statement is a statement prepared by the Secretary of State that sets out strategic priorities of Her Majesty’s Government in the United Kingdom relating to—
  - (a) telecommunications,
  - (b) the management of the radio spectrum, and
  - (c) postal services.
- (3) The statement may, among other things, set out particular outcomes identified with a view to achieving the strategic priorities.
- (4) This section does not restrict the Secretary of State’s powers under any other provision of this Act or any other enactment.
- (5) A statement designated under subsection (1) must be published in such manner as the Secretary of State considers appropriate.
- (6) A statement designated under subsection (1) may be amended (including by replacing the whole or a part of the statement with new content) by a subsequent statement designated under that subsection, and this section and sections 2B and 2C apply in relation to any such subsequent statement as in relation to the original statement.
- (7) Except as provided by subsection (8), no amendment may be made under subsection (6) within the period of 5 years beginning with the day on which a statement was most recently designated under subsection (1).
- (8) An earlier amendment may be made under subsection (6) if—
  - (a) since that day—
    - (i) a Parliamentary general election has taken place, or
    - (ii) there has been a significant change in the policy of Her Majesty’s government affecting any matter mentioned in subsection (2)(a), (b) or (c), or

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- (b) the Secretary of State considers that the statement, or any part of it, conflicts with any of OFCOM's general duties (within the meaning of section 3).

## **2B Duties of OFCOM in relation to strategic priorities**

- (1) This section applies where a statement has been designated under section 2A(1).
- (2) OFCOM must have regard to the statement when carrying out—
  - (a) their functions relating to telecommunications,
  - (b) their functions under the enactments relating to the management of the radio spectrum, and
  - (c) their functions relating to postal services.
- (3) OFCOM must within the period of 40 days beginning with the day on which the statement is designated, or such longer period as the Secretary of State may allow—
  - (a) explain in writing what they propose to do in consequence of the statement, and
  - (b) publish a copy of that explanation in such manner as OFCOM consider appropriate.
- (4) OFCOM must, as soon as practicable after the end of—
  - (a) the period of 12 months beginning with the day on which the first statement is designated under section 2A(1), and
  - (b) every subsequent period of 12 months,publish a review of what they have done during the period in question in consequence of the statement.

## **2C Consultation and parliamentary procedure**

- (1) This section sets out the requirements that must be satisfied in relation to a statement before the Secretary of State may designate it under section 2A.
- (2) The Secretary of State must consult the following on a draft of the statement—
  - (a) OFCOM, and
  - (b) such other persons as the Secretary of State considers appropriate.
- (3) The Secretary of State must allow OFCOM a period of at least 40 days to respond to any consultation under subsection (2)(a).
- (4) After that period has ended the Secretary of State—
  - (a) must make any changes to the draft that appear to the Secretary of State to be necessary in view of responses to the consultation, and
  - (b) must then lay the draft before Parliament.
- (5) The Secretary of State must then wait until the end of the 40-day period and may not designate the statement if, within that period, either House of Parliament resolves not to approve it.

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- (6) “The 40-day period” is the period of 40 days beginning with the day on which the draft is laid before Parliament (or, if it is not laid before each House on the same day, the later of the days on which it is laid).
- (7) When calculating the 40-day period, ignore any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days.”

(2) After section 24 of that Act insert—

**“24A Provision of information before publication**

- (1) OFCOM must provide the Secretary of State, at least 24 hours before publication, with any information that they propose to publish.
- (2) If exceptional circumstances make it impracticable to provide the information to the Secretary of State 24 hours before publication it must instead be provided to the Secretary of State as long before publication as is practicable.
- (3) Subsections (1) and (2) have effect in any particular case subject to any agreement made between the Secretary of State and OFCOM in that case.
- (4) The Secretary of State may by regulations specify descriptions of information in relation to which the duty under subsection (1) does not apply.
- (5) Before making regulations under subsection (4), the Secretary of State must consult OFCOM.
- (6) Information provided to the Secretary of State under this section may not be disclosed by the Secretary of State during the protected period, except to another Minister of the Crown.
- (7) A Minister of the Crown to whom the information is disclosed under subsection (6) may not disclose the information during the protected period to any other person.
- (8) A Minister of the Crown may not make any representations to OFCOM during the protected period that specify or describe changes that the Minister considers should be made to information that has been provided under this section when it is published.

(9) In this section—

“the protected period”, in relation to information provided to the Secretary of State under this section, means the period beginning with the provision of the information and ending when either of the following occurs—

- (a) OFCOM publish the information;
- (b) OFCOM inform the Secretary of State that they consent to the disclosure of the information;

“Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975.

### **24B Provision of information to assist in formulation of policy**

- (1) OFCOM may provide the Secretary of State with any information that they consider may assist the Secretary of State in the formulation of policy.
- (2) Information with respect to a particular business that has been obtained in the exercise of a power conferred by—
  - (a) this Act,
  - (b) the 1990 Act,
  - (c) the 1996 Act,
  - (d) the Wireless Telegraphy Act 2006, or
  - (e) Part 3 of the Postal Services Act 2011,is not, so long as the business continues to be carried on, to be provided to the Secretary of State under this section without the consent of the person for the time being carrying on that business.”
- (3) The duty under subsection (1) of section 24A of that Act does not have effect until the day on which regulations made under subsection (4) of that section first come into force.
- (4) In section 393(6) of that Act (general restrictions on disclosure of information), after paragraph (a) insert—

“(aza) prevents the disclosure of information under section 24A or 24B;”.
- (5) In section 111(7) of the Wireless Telegraphy Act 2006 (general restrictions on disclosure of information), after paragraph (a) insert—

“(aa) prevents the disclosure of information under section 24A or 24B of that Act;”.
- (6) In section 56 of the Postal Services Act 2011 (general restrictions on disclosure of information), after subsection (6) insert—

“(6A) Nothing in this section prevents the disclosure of information under section 24A or 24B of the Communications Act 2003.”

## **99 OFCOM and Northern Ireland**

- (1) Section 1 of the Office of Communications Act 2002 (the Office of Communications) is amended as follows.
- (2) In subsection (3), before paragraph (b) insert—

“(ac) a member appointed by the Minister for the Economy in Northern Ireland;”.
- (3) Before subsection (4) insert—

“(3C) Before appointing a member under subsection (3)(ac) the Minister for the Economy must consult the Secretary of State.”
- (4) In subsection (5) in the words before paragraph (a), before “and (b),” insert “, (ac)”.
- (5) At the end insert—

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“(13) Paragraphs 1 and 2 of the Schedule apply in relation to the appointment made under subsection (3)(ac) as if—

- (a) any reference to the Secretary of State were to the Minister for the Economy, and
- (b) at the end of paragraph 2 there were inserted—

“(9) Before the Minister for the Economy removes a person from office the Minister must consult the Secretary of State.””

(6) The Schedule to the Office of Communications Act 2002 is amended as follows.

(7) In paragraph 11 (accounts and audit)—

- (a) in sub-paragraph (3)(c) at the end insert “and the Minister for the Economy in Northern Ireland”;
- (b) at the end insert—

“(6) The Minister for the Economy in Northern Ireland shall lay a copy of the statement and report sent to the Minister under sub-paragraph (3) before the Northern Ireland Assembly.”

(8) In paragraph 12 (annual report)—

- (a) in sub-paragraph (1) before “a report” insert “and the Minister for the Economy in Northern Ireland”;
- (b) at the end insert—

“(6) The Minister for the Economy in Northern Ireland shall lay a copy of every report sent to the Minister under this paragraph before the Northern Ireland Assembly.”

(9) The following provisions of section 44 of the Northern Ireland Act 1998 (power of Assembly to call for witnesses and documents: limitation by reference to transferred matters etc) do not apply in relation to requirements imposed in connection with the discharge of the functions of the Office of Communications in relation to Northern Ireland—

- (a) the words after paragraph (b) in subsection (1);
- (b) subsections (2), (3) and (5)(b).

## **100 Retention by OFCOM of amounts paid under Wireless Telegraphy Act 2006**

(1) The Communications Act 2003 is amended as follows.

(2) In section 400(4)(c) (destination of fees and penalties: account for financial year), for the words from “of principles” to “subsection (4)” substitute “under section 401 for meeting the costs set out in the statement in accordance with subsection (1)(b)”.

(3) In section 401 (retention of amounts by OFCOM), for subsection (1) substitute—

“(1) OFCOM have power to make a statement setting out—

- (a) the principles under which they may retain any or all of the amounts paid to them—
  - (i) in pursuance of obligations imposed by or under Chapter 1 or 2 of Part 2 of the Wireless Telegraphy Act 2006;

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- (ii) in respect of fees charged under section 53D of that Act, and
  - (b) the costs in respect of which the amounts may be retained (which may include costs other than those incurred in the exercise of their functions under those provisions).”
- (4) In subsection (2) of that section, omit “of principles”.
- (5) For subsections (3) to (5) of that section substitute—
- “(3) The provision contained in a statement made by OFCOM under this section must be such as appears to them likely to secure, on the basis of such estimates of the likely costs as it is practicable to make, that the amounts retained by OFCOM are objectively justifiable and proportionate to the costs in respect of which they are retained.”
- (6) In subsection (6) of that section, omit “the principles contained in”.
- (7) In subsection (7) of that section, for “of carrying out the functions mentioned in subsection (4) of this section” substitute “set out in the statement in accordance with subsection (1)(b)”.
- (8) In subsection (8) of that section, omit “of principles”.
- (9) In subsection (10) of that section, after “Treasury” insert “and the Secretary of State”.
- (10) For the heading to that section substitute “Retention by OFCOM of amounts paid under Wireless Telegraphy Act 2006”.

**101 International recognition of satellite frequency assignments: power of OFCOM to charge fees**

- (1) The Communications Act 2003 is amended as follows.
- (2) After section 28 (general power of OFCOM to charge for services), and before the italic heading following that section, insert—

**“28A International recognition of satellite frequency assignments: power to charge fees**

- (1) This section applies where functions conferred on OFCOM under section 22 include functions of the administration of the United Kingdom under the ITU Radio Regulations.
- (2) OFCOM may require any person to pay them a fee for doing satellite filing work at the request of that person.
- (3) In this section “satellite filing work” means anything connected with obtaining or maintaining international recognition under the ITU Radio Regulations of assignments (or changes in assignments) of radio frequencies to stations in satellite systems or satellite networks.
- (4) OFCOM may vary from time to time the amount of any fee set by them under this section.
- (5) OFCOM may not require a person to pay a fee under this section unless they have taken such steps as they consider appropriate to bring the fact that they

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charge the fee, and the amount of the fee, to the attention of those persons who, in their opinion, are likely to be required to pay it.

(6) As soon as reasonably practicable after the end of each reporting year, OFCOM must publish a statement setting out—

- (a) the aggregate amount of the fees charged under this section that have been received by OFCOM during that year;
- (b) the aggregate amount of the fees charged under this section during that year which remain outstanding and are likely to be paid or recovered; and
- (c) the total cost to OFCOM of doing the requested satellite filing work they have done during that year.

(7) If the total of the amounts set out in a statement under subsection (6)(a) and (b) exceeds the total cost set out under subsection (6)(c), OFCOM must take this into account with a view to securing that the aggregate amount of fees charged under this section in the following reporting year does not exceed the likely total cost to them of doing requested satellite filing work during that year.

(8) In this section—

“administration”, “assignment” (of a radio frequency), “station”, “satellite system” and “satellite network” have the same meanings as in the ITU Radio Regulations;

“reporting year” means—

- (a) the period beginning with the coming into force of this section and ending with the next 31st March, or
- (b) any subsequent period of twelve months beginning with 1st April;

“the ITU Radio Regulations” means the radio regulations of the International Telecommunication Union.”

(3) In section 38 (annual administrative charge), after subsection (11) insert—

“(11A) For the purposes of this section, the cost to OFCOM of carrying out the functions mentioned in subsection (5) does not include the cost to OFCOM of doing anything for which they charge a fee under section 28A.”

(4) Section 28A(2) and (6)(c) of the Communications Act 2003, inserted by subsection (2), does not apply to any satellite filing work if OFCOM received the request to do that work before the coming into force of that section.

### *Billing limits for mobile phones*

## **102 Billing limits for mobile phones**

In Chapter 1 of Part 2 of the Communications Act 2003 (electronic communications networks and services) after section 124R insert—



*“Billing limits for mobile phones*

**124S Mobile phone providers’ duty to enable billing limits to be applied**

- (1) The provider of a mobile phone service must not enter into a contract to provide the service unless the customer has been given an opportunity to specify a billing limit in the contract.
- (2) In relation to a contract to provide a mobile phone service—
  - (a) a billing limit is a limit on the amount the customer may be charged for provision of the service in respect of each billing period, and
  - (b) a billing period is one of successive periods specified in the contract and together making up the period for which the contract remains in force.
- (3) A contract to provide a mobile phone service must provide for the customer on reasonable notice at any time—
  - (a) to specify a billing limit if none is specified for the time being,
  - (b) to amend or remove a limit in respect of all billing periods or a specified billing period.
- (4) In any billing period the provider must—
  - (a) so far as practicable, notify the customer in reasonable time if a limit is likely to be reached before the end of the period, and
  - (b) notify the customer as soon as practicable if a limit is reached before the end of the period.
- (5) A limit may be exceeded in relation to a billing period only if the customer agrees after a notification under subsection (4)(a) or (b).
- (6) If the provider continues to provide the service after a limit is reached, the customer’s use of the service does not constitute agreement to the limit being exceeded.
- (7) The provider must give the customer confirmation in writing of—
  - (a) the decision made by the customer in accordance with subsection (1),
  - (b) any decision of the customer under provision made in accordance with subsection (3), and
  - (c) any agreement by the customer in accordance with subsection (5).
- (8) This section applies to agreeing to extend a contract as it applies to entering into a contract, and in that case the reference in subsection (2)(b) to the period for which the contract remains in force is a reference to the period of the extension.
- (9) Nothing in this section affects a provider’s duty to comply with requirements to enable calls to emergency services.
- (10) In this section—

“customer” does not include a person who is a customer as a communications provider;

“mobile phone service” means an electronic communications service which is provided in the course of a business wholly or mainly

so as to be available to members of the public for the purpose of communicating with others, or accessing data, by mobile phone.

#### **124T Enforcement of duty to enable billing limits to be applied**

- (1) Sections 96A to 96C apply in relation to a contravention of a requirement under section 124S as they apply in relation to a contravention of a condition set under section 45, with the following modifications.
- (2) Section 96A(2)(f) and (g) (OFCOM directions) do not apply.
- (3) Section 96A(5) to (7) (action under the Competition Act 1998) do not apply.
- (4) The amount of a penalty imposed under sections 96A to 96C, as applied by this section, other than a penalty falling within section 96B(4), is to be such amount not exceeding £2 million as OFCOM determine to be—
  - (a) appropriate; and
  - (b) proportionate to the contravention in respect of which it is imposed.”

#### *Online social media platforms*

### **103 Code of practice for providers of online social media platforms**

- (1) The Secretary of State must issue a code of practice giving guidance to persons who provide online social media platforms for use by persons in the United Kingdom (“social media providers”).
- (2) The guidance to be given is guidance about action it may be appropriate for providers to take against the use of the platforms they provide for conduct to which subsection (3) applies.
- (3) This subsection applies to conduct which—
  - (a) is engaged in by a person online,
  - (b) is directed at an individual, and
  - (c) involves bullying or insulting the individual, or other behaviour likely to intimidate or humiliate the individual.
- (4) But guidance under this section is not to affect how unlawful conduct is dealt with.
- (5) A code of practice under this section must (subject to subsection (4)) include guidance to social media providers about the following action—
  - (a) maintaining arrangements to enable individuals to notify providers of the use of their platforms for conduct to which subsection (3) applies;
  - (b) maintaining processes for dealing with notifications;
  - (c) including provision on matters within paragraphs (a) and (b) in terms and conditions for using platforms;
  - (d) giving information to the public about action providers take against the use of their platforms for conduct to which subsection (3) applies.
- (6) Before issuing a code of practice under this section, the Secretary of State must consult—
  - (a) those social media providers to whom the code is intended to give guidance, and

- (b) such other persons as the Secretary of State considers it appropriate to consult.
- (7) The Secretary of State must publish any code of practice issued under this section.
- (8) A code of practice issued under this section may be revised from time to time by the Secretary of State, and references in this section to a code of practice include such a revised code.

### *Internet filters*

#### **104 Internet filters**

- (1) A provider of an internet access service to an end-user may prevent or restrict access on the service to information, content, applications or services, for child protection or other purposes, if the action is in accordance with the terms on which the end-user uses the service.
- (2) This section does not affect whether a provider of an internet access service may prevent or restrict access to anything on the service in other circumstances.
- (3) In this section—

“end-user” means an end-user of a public electronic communications service, within the meaning given by section 151(1) of the Communications Act 2003;

“internet access service” has the meaning given by Article 2(2) of [Regulation \(EU\) 2015/2120](#) of the European Parliament and of the Council of 25th November 2015 laying down measures concerning open internet access and amending Directive [2002/22/EC](#) on universal service and users’ rights relating to electronic communications networks and services and [Regulation \(EU\) No 531/2012](#) on roaming on public mobile communications networks within the Union.

### *Ticket sales*

#### **105 Secondary ticketing: duty to provide information about tickets**

In section 90 of the Consumer Rights Act 2015 (duty to provide information about tickets), in subsection (4) omit “and” at the end of paragraph (c), and at the end of paragraph (d) insert “, and

- (e) any unique ticket number that may help the buyer to identify the seat or standing area or its location.”

#### **106 Power to create offence of breaching limits on internet and other ticket sales**

- (1) The Secretary of State may make regulations providing that it is an offence for a person in circumstances within subsection (2) to do an act within subsection (3).
- (2) Circumstances are within this subsection if each of the following applies—
  - (a) tickets for a recreational, sporting or cultural event in the United Kingdom are offered for sale,

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- (b) a purchase may be made wholly or partly by a process that the purchaser completes using an electronic communications network or an electronic communications service, and
  - (c) the offer is subject to conditions that limit the number of tickets a purchaser may buy.
- (3) An act is within this subsection if it consists in using anything that enables or facilitates completion of any part of a process within subsection (2)(b) with intent to obtain tickets in excess of a limit imposed by conditions within subsection (2)(c).
- (4) The regulations may apply whether the offer is made, or anything is done to obtain tickets, in or outside the United Kingdom.
- (5) The regulations—
- (a) may be limited to particular circumstances within subsection (2), and to particular acts within subsection (3);
  - (b) may provide for an offence to be subject to an exception or defence;
  - (c) may make different provision for different areas.
- (6) The regulations must provide in England and Wales and Scotland for an offence to be triable only summarily.
- (7) The regulations may not provide for an offence to be punishable—
- (a) with imprisonment,
  - (b) in Scotland, with a fine exceeding £50,000, or
  - (c) in Northern Ireland, if tried summarily, with a fine exceeding the statutory maximum.
- (8) The power to make regulations under this section is exercisable by statutory instrument.
- (9) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.
- (10) In this section “electronic communications network” and “electronic communications service” have the meaning given by section 32 of the Communications Act 2003.

*Communication devices used for drug dealing*

**107 Prevention or restriction of use of communication devices for drug dealing**

After section 80 of the Serious Crime Act 2015 insert—

**“80A Prevention or restriction of use of communication devices for drug dealing**

- (1) Regulations may make provision conferring power on a court to make a drug dealing telecommunications restriction order.
- (2) “Drug dealing telecommunications restriction order” means an order requiring a communications provider to take whatever action the order specifies for the purpose of preventing or restricting the use of communication devices in connection with drug dealing offences.

- (3) Without limiting the action that may be specified, it includes—
  - (a) action that relates to a specified device;
  - (b) action that relates to a specified phone number or something else that may be used with a device.
- (4) In this section “drug dealing offence” means an offence under section 4(3) of the Misuse of Drugs Act 1971 or section 5 of the Psychoactive Substances Act 2016; and a communication device is used in connection with a drug dealing offence if it is used by a person (“the user”) in the course of—
  - (a) the user committing a drug dealing offence,
  - (b) the user facilitating the commission by the user or another person of a drug dealing offence, or
  - (c) conduct of the user that is likely to facilitate the commission by the user or another person of a drug dealing offence (whether or not an offence is committed).
- (5) Regulations under this section must provide for drug dealing telecommunications restriction orders to be made only on the application of—
  - (a) the Director General or Deputy Director General of the National Crime Agency, or
  - (b) a police officer of the rank of superintendent or above.
- (6) Regulations under this section must—
  - (a) specify the matters about which the court must be satisfied if it is to make an order;
  - (b) make provision about the duration of orders (which may include provision for orders of indefinite duration);
  - (c) make provision about the giving (by a communications provider or any other person) of notice of the making of an order;
  - (d) make provision about variation (including extension) and discharge of orders;
  - (e) make provision about appeals.
- (7) Regulations under this section must provide—
  - (a) for applications for drug dealing telecommunications restriction orders to be made and heard without notice of the application or hearing having been given to persons affected (or their legal representatives), subject to subsection (9)(a);
  - (b) for applications to be heard and determined in the absence of persons affected (and their legal representatives), subject to subsection (9)(b);
  - (c) for applications to be heard and determined in private.
- (8) Regulations under this section must provide for a court hearing an application or an appeal to have power to restrict disclosure of information submitted in connection with the application or appeal if satisfied that it is necessary to do so in the public interest.
- (9) Regulations under this section may—
  - (a) make provision for a communications provider affected by an application to be given notice of the application or hearing;

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

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- (b) make provision for a communications provider affected by an application to be present or represented at the hearing and determination of the application;
  - (c) in connection with any provision under paragraph (b), make provision for a communications provider to have a right to make representations;
  - (d) make provision for a drug dealing telecommunications restriction order to specify that a requirement of the order is not to apply in particular circumstances;
  - (e) make provision authorising a court to include in an order a requirement for the person applying for the order to pay any or all of the costs of complying with it;
  - (f) make provision about time limits for complying with orders;
  - (g) make provision about enforcement of orders (which may include provision creating offences);
  - (h) make provision about costs (or, in Scotland, expenses) in respect of legal proceedings;
  - (i) make provision about compensation;
  - (j) make different provision for different purposes or areas;
  - (k) make incidental, consequential, supplementary or transitional provision, including provision applying any enactment (with or without modifications).
- (10) The power to make regulations under this section is exercisable by statutory instrument made by the Secretary of State.
- (11) A statutory instrument containing regulations under this section is not to be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (12) In this section—
- “communication device” means an item specified in section 1(3) of the Prisons (Interference with Wireless Telegraphy) Act 2012 (mobile telephones etc);
  - “communications provider” means a person providing a telecommunications service;
  - “court” means—
    - (a) in relation to England and Wales, the county court;
    - (b) in relation to Scotland, the sheriff;
    - (c) in relation to Northern Ireland, a county court;
  - “enactment” includes—
    - (a) an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978;
    - (b) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament;
    - (c) Northern Ireland legislation;
  - “telecommunications service” has the meaning given by section 261 of the Investigatory Powers Act 2016.”

*Charges payable to the Information Commissioner*

**108 Regulations about charges payable to the Information Commissioner**

- (1) The Secretary of State may by regulations require data controllers to pay charges of an amount specified in the regulations to the Information Commissioner.
- (2) Regulations under subsection (1) may require a data controller to pay a charge regardless of whether the Information Commissioner has provided, or proposes to provide, a service to the data controller.
- (3) Regulations under subsection (1) may make provision about the time or times at which, or period or periods within which, a charge must be paid.
- (4) Regulations under subsection (1) may make provision—
  - (a) for different charges to be payable in different cases;
  - (b) for cases in which a discounted charge is payable;
  - (c) for cases in which no charge is payable;
  - (d) for cases in which a charge which has been paid is to be refunded.
- (5) The Secretary of State may by regulations make provision—
  - (a) requiring a data controller to provide information to the Information Commissioner, or
  - (b) enabling the Commissioner to require a data controller to provide information to the Commissioner,for either or both of the purposes mentioned in subsection (6).
- (6) Those purposes are—
  - (a) determining whether a charge is payable by the data controller under regulations under subsection (1);
  - (b) determining the amount of a charge payable by the data controller.
- (7) The provision that may be made under subsection (5)(a) includes, in particular, provision requiring a data controller to notify the Information Commissioner of a change in the data controller’s circumstances of a kind specified in the regulations.
- (8) In this section “data controller” means a person who, alone or jointly with others, determines the purposes and means of the processing of personal data.
- (9) In subsection (8) “personal data” means any information relating to an identified or identifiable individual.
- (10) For this purpose an individual is “identifiable” if the individual can be identified, directly or indirectly, in particular by reference to—
  - (a) an identifier such as a name, an identification number, location data or an online identifier, or
  - (b) one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.
- (11) Where the purposes and means of the processing of personal data are determined by or on behalf of the House of Commons or House of Lords, other than where they are determined by or on behalf of the Intelligence and Security Committee of Parliament, the data controller in respect of those data for the purposes of this section is the Corporate Officer of that House.



**109 Functions relating to regulations under section 108**

- (1) Before making regulations under section 108(1) or (5) the Secretary of State must consult—
- (a) the Information Commissioner,
  - (b) such representatives of persons likely to be affected by the regulations as the Secretary of State thinks appropriate, and
  - (c) such other persons as the Secretary of State thinks appropriate.
- (2) In making regulations under section 108(1), the Secretary of State must have regard to the desirability of securing that the charges payable to the Information Commissioner under such regulations are sufficient to offset—
- (a) expenses incurred by the Commissioner in discharging the Commissioner’s functions—
    - (i) under the Data Protection Act 1998,
    - (ii) under or by virtue of the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426),
    - (iii) under the General Data Protection Regulation,
    - (iv) under regulations which implement the General Data Protection Regulation or the Criminal Data Directive,
    - (v) by virtue of section 108, and
    - (vi) under this section,
  - (b) any expenses of the Secretary of State in respect of the Commissioner so far as attributable to those functions,
  - (c) to the extent that the Secretary of State considers appropriate, any deficit previously incurred (whether before or after the passing of this Act) in respect of the expenses mentioned in paragraph (a), and
  - (d) to the extent that the Secretary of State considers appropriate, expenses incurred by the Secretary of State in respect of the inclusion of any officers or staff of the Commissioner in any scheme under section 1 of the Superannuation Act 1972.
- (3) In subsection (2)—
- “the Criminal Data Directive” means [Directive \(EU\) 2016/680](#) of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA;
- “the General Data Protection Regulation” means [Regulation \(EU\) 2016/679](#) of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).
- (4) The Secretary of State may from time to time require the Information Commissioner to provide information about the expenses referred to in subsection (2)(a).
- (5) The Information Commissioner must keep under review the working of regulations under section 108(1) or (5) and may from time to time submit proposals to the Secretary of State for amendments to be made to the regulations.



- (6) The Secretary of State must review the working of regulations under section 108(1) or (5)—
- (a) at the end of the period of five years beginning with the making of the first set of regulations under that section, and
  - (b) at the end of each subsequent five year period.

## **110 Supplementary provision relating to section 108**

- (1) Regulations under section 108(1) or (5) are to be made by statutory instrument.
- (2) A statutory instrument containing regulations under section 108(1) or (5) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (3) Subsection (2) does not apply to a statutory instrument containing regulations which—
  - (a) only make provision increasing a charge for which provision is made by previous regulations under section 108(1), and
  - (b) do so to take account of an increase in the retail prices index since the previous regulations were made.
- (4) Such a statutory instrument is subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) In subsection (3) “the retail prices index” means—
  - (a) the general index of retail prices (for all items) published by the Statistics Board, or
  - (b) where that index is not published for a month, any substituted index or figures published by the Board.
- (6) Regulations under section 108(1) or (5)—
  - (a) may make different provision for different purposes;
  - (b) may make transitional, transitory or saving provision;
  - (c) may make incidental, supplemental or consequential provision.
- (7) Regulations under section 108(1) or (5) may bind the Crown.
- (8) But regulations under section 108(1) or (5) may not apply to—
  - (a) Her Majesty in Her private capacity,
  - (b) Her Majesty in right of the Duchy of Lancaster, or
  - (c) the Duke of Cornwall.
- (9) For the purposes of section 108 each government department is to be treated as a person separate from any other government department.
- (10) In subsection (9) “government department” includes—
  - (a) any part of the Scottish Administration;
  - (b) a Northern Ireland department;
  - (c) the Welsh Government;
  - (d) any body or authority exercising statutory functions on behalf of the Crown.

**111 Amendments relating to section 108**

- (1) The Data Protection Act 1998 is amended in accordance with subsections (2) to (7).
- (2) Omit Part 3 (notification by data controllers).
- (3) In section 33A(1) (manual data held by public authorities) omit paragraph (e) (but not the “and” following that paragraph).
- (4) In section 71 (index of defined expressions) omit the entries relating to “address”, “fees regulations”, “notification requirements”, “prescribed” and “registrable particulars”.
- (5) In Part 2 of Schedule 1 (interpretation of the data protection principles) in paragraph 5 omit paragraph (b) and the “or” preceding that paragraph.
- (6) In Part 1 of Schedule 5 (the Information Commissioner) in paragraph 9(1) (destination of fees etc) after “the Freedom of Information Act 2000” insert “and all charges received by the Commissioner under regulations under section 108(1) of the Digital Economy Act 2017”.
- (7) In Schedule 14 (transitional provisions and savings) omit paragraph 2 (registration under Part 2 of the Data Protection Act 1984).
- (8) In regulation 5(3)(b) of the High Court Enforcement Officers Regulations 2004 ([SI 2004/400](#)) (application procedure) omit paragraph (iii).
- (9) In consequence of the repeal in subsection (2) the following are repealed or revoked—
  - (a) section 71 of the Freedom of Information Act 2000;
  - (b) in paragraph 6 of Schedule 2 to the Transfer of Functions (Miscellaneous) Order 2001 ([SI 2001/3500](#))—
    - (i) in sub-paragraph (1), paragraphs (h) to (m), and
    - (ii) sub-paragraph (2);
  - (c) in paragraph 9(1)(a) of Schedule 2 to the Secretary of State for Constitutional Affairs Order 2003 ([SI 2003/1887](#)), the words “16, 17, 22, 23, 25, 26,”;
  - (d) Part 1 of Schedule 20 to the Coroners and Justice Act 2009;
  - (e) paragraph 26 of Schedule 2 to the Transfer of Tribunal Functions Order 2010 ([SI 2010/22](#)).

*Payment and securities settlement systems***112 Power to apply settlement finality regime to payment institutions**

In Part 24 of the Financial Services and Markets Act 2000 (insolvency) after section 379 insert—

*“Settlement finality***379A Power to apply settlement finality regime to payment institutions**

- (1) The Treasury may by regulations made by statutory instrument provide for the application to payment institutions, as participants in payment or securities settlement systems, of provision in subordinate legislation—

- (a) modifying the law of insolvency or related law in relation to such systems, or
  - (b) relating to the securing of rights and obligations.
- (2) “Payment institution” means—
- (a) an authorised payment institution or small payment institution within the meaning of the Payment Services Regulations 2009 (S.I. 2009/209), or
  - (b) a person whose head office, registered office or place of residence, as the case may be, is outside the United Kingdom and whose functions correspond to those of an institution within paragraph (a).
- (3) “Payment or securities settlement system” means arrangements between a number of participants for or in connection with the clearing or execution of instructions by participants relating to any of the following—
- (a) the placing of money at the disposal of a recipient;
  - (b) the assumption or discharge of a payment obligation;
  - (c) the transfer of the title to, or an interest in, securities.
- (4) “Subordinate legislation” has the same meaning as in the Interpretation Act 1978.
- (5) Regulations under this section may—
- (a) make consequential, supplemental or transitional provision;
  - (b) amend subordinate legislation.
- (6) A statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of either House of Parliament.”

### **113 Bank of England oversight of payment systems**

Schedule 9 extends Part 5 of the Banking Act 2009 (Bank of England oversight of inter-bank payment systems) to other payment systems; and makes consequential provision.

#### *Qualifications in information technology*

### **114 Qualifications in information technology: payment of tuition fees**

- (1) The Apprenticeships, Skills, Children and Learning Act 2009 is amended as follows.
- (2) In section 88(1) (qualifications for persons aged 19 or over: payment of tuition fees), for “1(a) or (b)” substitute “1(a), (b) or (ba)”.
- (3) In paragraph 1 of Schedule 5 (qualifications for persons aged 19 or over), after paragraph (b) insert—
  - “(ba) a specified qualification in making use of information technology;”.
- (4) After paragraph 5 of that Schedule insert—

*“Power to specify qualification in information technology*

- 5A The level of attainment demonstrated by a specified qualification in making use of information technology must be the level which, in the opinion of the Secretary of State, is the minimum required in that respect by persons aged 19 or over in order to be able to operate effectively in day-to-day life.”

*Guarantee of pension liabilities under Telecommunications Act 1984***115 Guarantee of pension liabilities under Telecommunications Act 1984**

- (1) The Secretary of State may make regulations modifying or supplementing section 68 of the Telecommunications Act 1984 (liability of Secretary of State in respect of British Telecommunications public limited company’s liabilities as successor for payment of pensions) in accordance with subsection (4).
- (2) Subsection (4) applies in relation to relevant employees of British Telecommunications public limited company (“BTplc”) becoming employees of another company (a “transferee”) in connection with any part of the undertaking of BTplc being transferred or outsourced (whether or not to the transferee).
- (3) Employees are relevant if the liability of BTplc for the payment of pensions which vested in it by virtue of section 60 of the Telecommunications Act 1984 included, immediately before the employees ceased to be employees of BTplc, liability for the payment of pensions to or in respect of those employees.
- (4) The regulations may provide for the Secretary of State (in addition to any liability apart from the regulations) to become liable—
  - (a) on the winding up of BTplc, to discharge any outstanding liability of BTplc for the payment of pensions to or in respect of relevant employees of the transferee or a successor;
  - (b) on the winding up of the transferee or a successor, to discharge any outstanding liability of the transferee or successor for the payment of pensions to or in respect of relevant employees.
- (5) The regulations may provide for any liability that the Secretary of State is liable to discharge under the regulations not to include liability arising by virtue of a person’s employment on or after a specified date, or by virtue of anything else occurring on or after a specified date.
- (6) The specified date must be not earlier than the date on which the regulations come into force.
- (7) The power to make regulations under this section is exercisable so as to—
  - (a) make provision in relation to all cases or circumstances to which the power extends or in relation to specified cases or circumstances;
  - (b) in particular, make provision in relation to all employees to whom the power extends or in relation to employees of a specified description;
  - (c) make different provision for different purposes.
- (8) The regulations may—

- (a) amend section 68 of the Telecommunications Act 1984;
  - (b) re-enact any provision of that section with or without modifications.
- (9) In this section references to the winding up of a company are references to—
- (a) the passing of a resolution, in accordance with the Insolvency Act 1986, for the voluntary winding up of the company, or
  - (b) the making of an order for the winding up of the company by the court under that Act.
- (10) In this section—
- “specified” means specified in regulations under this section;
  - “successor” means—
    - (a) where relevant employees of a transferee become employees of another person, that person, and
    - (b) where relevant employees of a successor within paragraph (a) or this paragraph become employees of another person, that person;
  - “undertaking” includes anything that may be the subject of a transfer or service provision change, whether or not the Transfer of Undertakings (Protection of Employment) Regulations 2006 ([S.I. 2006/246](#)) apply.

## **116 Regulations under section 115**

- (1) The power to make regulations under section 115 is exercisable by statutory instrument.
- (2) That power is exercisable by the Secretary of State only with the consent of the Treasury.
- (3) A statutory instrument containing regulations under that section 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) Before making regulations under that section the Secretary of State must consult—
  - (a) the Pensions Regulator;
  - (b) BT plc;
  - (c) the trustees of the BT Pensions Scheme;
  - (d) any transferee or successor to which the regulations apply;
  - (e) any other persons the Secretary of State considers it appropriate to consult.