

SCHEDULES

SCHEDULE 1

Amendments to Communications Act 2003 and related amendments

Communications Act 2003

23. After section 48 insert—

“Domestic consultation for section 45 conditions

48A.—(1) This section applies where OFCOM propose to set, modify or revoke—

- (a) SMP apparatus conditions; or
- (b) any other conditions set under section 45 where what is proposed would, in OFCOM’s opinion, have a significant impact on a market for any of the services, facilities, apparatus or directories in relation to which they have functions under this Chapter.

(2) But this section does not apply where the proposal is of EU significance and in OFCOM’s opinion—

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

(3) OFCOM must publish a notification—

- (a) stating that they are proposing to set, modify or revoke the conditions that are specified in the notification;
- (b) setting out the effect of those conditions, modifications or revocations;
- (c) giving their reasons for making the proposal; and
- (d) specifying the period within which representations may be made to OFCOM about their proposal.

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

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

(6) OFCOM must—

- (a) consider every representation about the proposal made to them during the period specified in the notification; and
- (b) have regard to every international obligation of the United Kingdom (if any) which has been notified to them for the purposes of this paragraph by the Secretary of State.

(7) Where the proposal is not of EU significance, OFCOM may then give effect to it, with any modifications that appear to OFCOM to be appropriate.

EU consultation for section 45 conditions

48B.—(1) This section applies where, after complying with section 48A(6) in relation to a proposal of EU significance, OFCOM wish to proceed with the proposal.

(2) After making any modifications of the proposal that appear to OFCOM to be appropriate, OFCOM must send a copy of the proposal, and of a statement setting out the reasons for it, to—

- (a) the European Commission;
- (b) BEREC; and
- (c) the regulatory authorities in every other member State.

(3) If at the end of the period of one month referred to in Article 7(3) of the Framework Directive no notification has been given to OFCOM by the Commission under Article 7a(1) of that Directive, OFCOM may give effect to the proposal, with any modifications that appear to OFCOM to be appropriate.

(4) Before giving effect to the proposal under subsection (3), OFCOM must consider any comments made by—

- (a) the Commission;
- (b) BEREC; and
- (c) any regulatory authority in any other member State.

(5) Subsections (6) to (9) apply where such a notification is given by the Commission to OFCOM during that period.

(6) During the period of 3 months beginning with the notification, OFCOM must co-operate with the Commission and BEREC to identify the most appropriate and effective measure.

(7) OFCOM may give effect to the proposal, with any modifications that appear to them to be appropriate, within one month (or such longer period as may be allowed under paragraph (6) of Article 7a of the Framework Directive) of the Commission—

- (a) issuing a recommendation to amend or withdraw the proposal in accordance with paragraph (5)(a) of that Article; or
- (b) taking a decision to lift its reservations in accordance with paragraph (5)(b) of that Article.

(8) In a case in which OFCOM give effect to the proposal despite a recommendation of the Commission to amend or withdraw the proposal, OFCOM must send to the Commission a copy of a reasoned justification for their decision.

(9) If at the end of the period of one month referred to in paragraph (5) of Article 7a of the Framework Directive the Commission has neither issued a recommendation nor lifted its reservations in accordance with that paragraph, OFCOM may give effect to the proposal, with any modifications that appear to them to be appropriate.

Delivery of copies of notifications etc. in respect of section 45 conditions

48C.—(1) OFCOM must send to the Secretary of State a copy of every notification published under section 48(1) or 48A(3).

(2) OFCOM must send to the European Commission a copy of every notification published under section 48(1) with respect to—

- (a) a universal service condition;
- (b) an access-related condition falling within section 73(2);

(c) an SMP services condition.

(3) OFCOM must send to BEREC a copy of every notification published under section 48(1) with respect to a proposal of EU significance.

(4) Where a notification published under section 48(1) relates to a proposal to which section 48A did not apply because of subsection (2) of that section, OFCOM must send a copy of a statement setting out the reasons for the proposal and for the urgent need to act to—

(a) the Commission;

(b) BEREC; and

(c) the regulatory authorities in every other member State.”