

SCHEDULES

SCHEDULE 1

Amendments to Communications Act 2003 and related amendments

Communications Act 2003

83. After section 139 insert—

“Enforcement of notification under section 138

139A.—(1) This section applies where—

- (a) a person has been given a notification under section 138;
- (b) OFCOM have allowed the person an opportunity to make representations about the matters notified; and
- (c) the period allowed for the making of representations has expired.

(2) OFCOM may—

- (a) give the person a decision (a “confirmation decision”) confirming the imposition of requirements on the person, or the giving of a direction to the person, or both, in accordance with the notification under section 138; or
- (b) inform the person that they are satisfied with the person’s representations and that no further action will be taken.

(3) OFCOM may not give a confirmation decision to a person unless, after considering any representations, they are satisfied that the person has, in one or more of the respects notified, been in contravention of a requirement notified under section 138.

(4) A confirmation decision—

- (a) must be given to the person without delay;
- (b) must include reasons for the decision;
- (c) may require immediate action by the person to comply with a requirement notified under section 138(2)(d), or may specify a period within which the person must comply with the requirement; and
- (d) may require the person to pay—
 - (i) the penalty specified in the notification under section 138, or
 - (ii) such lesser penalty as OFCOM consider appropriate in the light of the person’s representations or steps taken by the person to comply with the condition or remedy the consequences of the contravention,and may specify the period within which the penalty is to be paid.

(5) It is the duty of the person to comply with any requirement imposed by a confirmation decision.

(6) That duty is enforceable in civil proceedings by OFCOM—

- (a) for an injunction;

Status: This is the original version (as it was originally made).

- (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) A penalty imposed by a confirmation decision—
- (a) must be paid to OFCOM; and
 - (b) if not paid within the period specified by them, is to be recoverable by them accordingly.

Power to deal with urgent cases

- 139B.**—(1) This section applies where OFCOM determine—
- (a) that they are entitled to give a notification under section 138 with respect to a contravention by a person (“P”) of a requirement imposed under section 135 or 136;
 - (b) that there are reasonable grounds for suspecting that the case is an urgent case; and
 - (c) that the urgency of the case makes it appropriate for OFCOM to take action under this section.
- (2) A case is an urgent case for the purposes of this section if the contravention has resulted in, or creates an immediate risk of—
- (a) a serious threat to the safety of the public, to public health or to national security;
 - (b) serious economic or operational problems for persons (other than P) who are communications providers or persons who make associated facilities available; or
 - (c) serious economic or operational problems for persons who make use of electronic communications networks, electronic communications services or associated facilities.
- (3) OFCOM may give P a direction—
- (a) that the entitlement of P to provide electronic communications networks or electronic communications services, or to make associated facilities available, is suspended (either generally or in relation to particular networks, services or facilities); or
 - (b) that that entitlement is restricted in the respects set out in the direction.
- (4) Subsections (3) to (6) of section 140 apply in relation to a direction under subsection (3) as they apply in relation to a direction under section 140.

Confirmation of direction under section 139B

- 139C.**—(1) As soon as reasonably practicable after giving a direction under section 139B(3), OFCOM must give the person to whom it is given—
- (a) an opportunity to make representations to them about the grounds on which it was given and its effect; and
 - (b) an opportunity to propose steps to remedy the situation.
- (2) As soon as practicable after the period allowed by OFCOM for making those representations has ended (and in any event within 3 months beginning with the day on which the direction was given), they must determine—
- (a) whether the contravention providing the grounds for the giving of the direction did occur; and

- (b) whether the circumstances made it an urgent case justifying the giving of the direction.
- (3) The period of 3 months mentioned in subsection (2) may be extended by up to 3 months if OFCOM—
 - (a) require additional time to consider representations received; or
 - (b) decide that it is necessary to obtain additional information from the person in order to make a determination under subsection (2).
- (4) If OFCOM decide that the contravention did occur and that the direction was justified, they may confirm the direction.
- (5) If not, they must exercise their power to revoke it.
- (6) As soon as reasonably practicable after deciding whether to confirm the direction, OFCOM must notify the person to whom it was given of their decision.”