

# Digital Economy Bill

---

---

## EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Department for Culture, Media and Sport, are published separately as Bill 45 – EN.

## EUROPEAN CONVENTION ON HUMAN RIGHTS

Secretary John Whittingdale has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Digital Economy Bill are compatible with the Convention rights.

# Digital Economy Bill

---

---

## CONTENTS

### PART 1

#### ACCESS TO DIGITAL SERVICES

- 1 Universal service broadband obligations
- 2 General conditions: switching communications provider
- 3 Automatic compensation for failure to meet performance standards

### PART 2

#### DIGITAL INFRASTRUCTURE

##### *Electronic communications code*

- 4 The electronic communications code
- 5 Power to make transitional provision in connection with the code
- 6 Power to make consequential provision etc in connection with the code
- 7 Application of the code: protection of the environment

##### *Dynamic spectrum access services*

- 8 Regulation of dynamic spectrum access services

##### *Other regulation of spectrum*

- 9 Statement of strategic priorities
- 10 Penalties for contravention of wireless telegraphy licences
- 11 Fixed penalties under Wireless Telegraphy Act 2006
- 12 Search warrants under Wireless Telegraphy Act 2006
- 13 Disposal of seized property under Wireless Telegraphy Act 2006
- 14 Time limits for prosecutions under Wireless Telegraphy Act 2006

### PART 3

#### ONLINE PORNOGRAPHY

- 15 Internet pornography: requirement to prevent access by persons under the age of 18

- 16 Meaning of “pornographic material”
- 17 The age-verification regulator: designation and funding
- 18 Parliamentary procedure for designation of age-verification regulator
- 19 Age-verification regulator’s power to require information
- 20 Enforcement of sections 15 and 19
- 21 Financial penalties
- 22 Age-verification regulator’s power to give notice of contravention to payment service providers and ancillary service providers
- 23 Exercise of functions by the age-verification regulator
- 24 Requirements for notices given by regulator under this Part
- 25 Interpretation of this Part

#### **PART 4**

##### INTELLECTUAL PROPERTY

- 26 Offences: infringing copyright and making available right
- 27 Registered designs: infringement: marking product with internet link
- 28 Copyright etc where broadcast retransmitted by cable

#### **PART 5**

##### DIGITAL GOVERNMENT

#### **CHAPTER 1**

##### PUBLIC SERVICE DELIVERY

- 29 Disclosure of information to improve public service delivery
- 30 Disclosure of information to gas and electricity suppliers
- 31 Disclosure of information by gas and electricity suppliers
- 32 Further provisions about disclosures under section 29, 30 or 31
- 33 Confidentiality of personal information
- 34 Information disclosed by the Revenue and Customs
- 35 Code of practice
- 36 Regulations under this Chapter
- 37 Interpretation of this Chapter

#### **CHAPTER 2**

##### CIVIL REGISTRATION

- 38 Disclosure of information by civil registration officials
- 39 Consequential provision

#### **CHAPTER 3**

##### DEBT OWED TO THE PUBLIC SECTOR

- 40 Disclosure of information to reduce debt owed to the public sector
- 41 Further provisions about power in section 40
- 42 Confidentiality of personal information
- 43 Information disclosed by the Revenue and Customs
- 44 Code of practice

- 45 Duty to review operation of Chapter
- 46 Regulations under this Chapter
- 47 Interpretation of this Chapter

#### CHAPTER 4

##### FRAUD AGAINST THE PUBLIC SECTOR

- 48 Disclosure of information to combat fraud against the public sector
- 49 Further provisions about power in section 48
- 50 Confidentiality of personal information
- 51 Information disclosed by the Revenue and Customs
- 52 Code of practice
- 53 Duty to review operation of Chapter
- 54 Regulations under this Chapter
- 55 Interpretation of this Chapter

#### CHAPTER 5

##### SHARING FOR RESEARCH PURPOSES

- 56 Disclosure of information for research purposes
- 57 Provisions supplementary to section 56
- 58 Bar on further disclosure of personal information
- 59 Information disclosed by the Revenue and Customs
- 60 Code of practice
- 61 Accreditation for the purposes of this Chapter
- 62 Delegation of functions of Statistics Board
- 63 Interpretation of this Chapter

#### CHAPTER 6

##### HER MAJESTY'S REVENUE AND CUSTOMS

- 64 Disclosure of non-identifying information by HMRC

#### CHAPTER 7

##### STATISTICS

- 65 Disclosure of information by HMRC to the Statistics Board
- 66 Disclosure of information by public authorities to the Statistics Board
- 67 Access to information by Statistics Board
- 68 Disclosure by the Statistics Board to devolved administrations

#### PART 6

##### OFCOM AND OTHER REGULATION

###### *OFCOM: reports etc*

- 69 OFCOM reports on infrastructure etc
- 70 Comparative overviews of quality and prices

*OFCOM: information*

- 71 Conditions about allocation of telephone numbers
- 72 Provision of information to OFCOM
- 73 Information required from communications providers

*Appeals*

- 74 Appeals from decisions of OFCOM and others: standard of review

*Regulation and functions of BBC*

- 75 Functions of OFCOM in relation to the BBC
- 76 TV licence fee concessions by reference to age

*Direct marketing code*

- 77 Direct marketing code

*Miscellaneous*

- 78 OFCOM and Northern Ireland
- 79 Retention by OFCOM of amounts paid under Wireless Telegraphy Act 2006
- 80 International recognition of satellite frequency assignments: power of OFCOM to charge fees

**PART 7**

## GENERAL

- 81 Financial provisions
- 82 Commencement
- 83 Extent
- 84 Short title

- 
- Schedule 1 – The electronic communications code
  - Schedule 2 – The electronic communications code: transitional provision
  - Schedule 3 – The electronic communications code: consequential amendments

A  
**B I L L**

TO

Make provision about electronic communications infrastructure and services; to provide for restricting access to online pornography; to make provision about protection of intellectual property in connection with electronic communications; to make provision about data-sharing; to make provision about functions of OFCOM in relation to the BBC; to provide for determination by the BBC of age-related TV licence fee concessions; to make provision about the regulation of direct marketing; to make other provision about OFCOM and its functions; and for connected purposes.

**B**E IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

**PART 1**

ACCESS TO DIGITAL SERVICES

**1 Universal service broadband obligations**

- (1) The Communications Act 2003 is amended as follows.
- (2) Section 65 (obligations to be secured by universal service conditions) is amended as follows. 5
- (3) In subsection (1) omit “(“the universal service order”)”.
- (4) After subsection (2) insert—
  - “(2A) The provision made under subsection (1) is referred to as “the universal service order”. 10
  - (2B) The universal service order may in particular say that broadband connections and services must be provided to any extent.
  - (2C) The universal service order may contain—
    - (a) guidance about matters relating to the speed or other characteristics of broadband connections or services that it says 15

- must be provided (as well as or instead of setting out any of those characteristics); and
- (b) guidance about any other matters relating to those connections or services.”
- (5) In section 66 (designation of universal service provider) after subsection (9) insert – 5  
“(9A) In making any regulations under this section, OFCOM must have regard to any guidance that is contained in the universal service order.”
- (6) In section 67(8) (universal service conditions: duty to have regard to guidance) omit “about matters relating to pricing”. 10
- (7) After section 72 (before the heading “Access-related conditions”) insert –  
**“72A Review of universal service order**
- (1) The Secretary of State may direct OFCOM to review and report to the Secretary of State on any provision made, or that may be made, by the universal service order in relation to broadband connections or services. 15
- (2) The Secretary of State must consult OFCOM before giving a direction under this section.
- (3) The Secretary of State must publish a direction under this section.
- (4) OFCOM must publish the report made by them to the Secretary of State of a review under this section.” 20
- (8) In section 135(3)(f) (power of OFCOM to require information for purposes of reviews) for “or 70” substitute “, 70 or 72A”.
- 2 General conditions: switching communications provider**
- (1) Section 51(2) of the Communications Act 2003 (conditions which may be set for protecting interests of end-users) is amended as follows. 25
- (2) Omit “and” after paragraph (g).
- (3) After paragraph (h) insert –  
“(i) specify requirements in relation to arrangements that enable an end-user to change communications provider on request.” 30
- 3 Automatic compensation for failure to meet performance standards**
- In section 51(2) of the Communications Act 2003 (conditions which may be set for protecting interests of end-users), after paragraph (d) insert –
- “(da) require a communications provider to pay compensation to an end-user on failing to meet a specified standard or obligation;”. 35

## PART 2

### DIGITAL INFRASTRUCTURE

#### *Electronic communications code*

#### **4 The electronic communications code**

- (1) In the Telecommunications Act 1984 omit Schedule 2 (the telecommunications code). 5
- (2) Before Schedule 4 to the Communications Act 2003 insert Schedule 3A set out in Schedule 1 to this Act.
- (3) Section 106 of the Communications Act 2003 (application of the electronic communications code) is amended as follows. 10
- (4) In subsection (1) for “the code set out in Schedule 2 to the Telecommunications Act 1984 (c 12)” substitute “the code set out in Schedule 3A”.
- (5) Omit subsection (2).
- (6) In subsection (4)(b) for “conduits” substitute “infrastructure”.
- (7) In subsection (5)(c) for “conduit system” in each place substitute “system of infrastructure”. 15
- (8) In subsection (6) for “16(3)” substitute “81(7)”.
- (9) Omit subsection (7).
- (10) Schedules 2 (transitional provisions) and 3 (consequential amendments) have effect. 20

#### **5 Power to make transitional provision in connection with the code**

- (1) The Secretary of State may by regulations made by statutory instrument make transitional or transitory provision in connection with the coming into force of section 4 and Schedule 1.
- (2) Regulations under this section may amend Schedule 2. 25
- (3) A statutory instrument containing regulations under this section –
  - (a) if it includes provision made by virtue of subsection (2), may not be made unless a draft of the regulations has been laid before and approved by a resolution of each House of Parliament;
  - (b) otherwise, is subject to annulment in pursuance of a resolution of either House of Parliament. 30

#### **6 Power to make consequential provision etc in connection with the code**

- (1) The Secretary of State may by regulations make consequential provision in connection with any provision made by or under section 4 or this section or Schedule 1 or 3. 35
- (2) Regulations under subsection (1) may amend, repeal, revoke or otherwise modify the application of any enactment (but, in the case of primary

legislation, only if the primary legislation was passed or made before the end of the Session in which this Act is passed).

- (3) Regulations under this section –
- (a) are to be made by statutory instrument;
  - (b) may make different provision for different purposes; 5
  - (c) may include incidental, supplementary, consequential, transitional, transitory or saving provision.
- (4) A statutory instrument containing regulations under this section (whether alone or with other provisions) which amend, repeal or modify the application of primary legislation 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
- (5) Any other statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) In this section – 15
- “enactment” includes –
- (a) an enactment comprised in subordinate legislation within the meaning of the Interpretation Act 1978,
  - (b) an enactment comprised in, or in an instrument made under, a Measure or Act of the National Assembly for Wales, 20
  - (c) an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament, and
  - (d) an enactment comprised in, or in an instrument made under, Northern Ireland legislation;
- “primary legislation” means – 25
- (a) an Act of Parliament,
  - (b) a Measure or Act of the National Assembly for Wales,
  - (c) an Act of the Scottish Parliament, or
  - (d) Northern Ireland legislation.

## 7 **Application of the code: protection of the environment** 30

For section 109(2A) of the Communications Act 2003 (under which regulations that set restrictions and conditions to the application of the electronic communications code are deemed by subsection (2B) to comply with duties under National Parks and other legislation if they comply with the duty to have regard to the need to protect the environment, but only if they expire before 6 April 2018) substitute – 35

- “(2A) Subsection (2B) applies if the Secretary of State has complied with subsection (2)(b) in connection with any particular exercise of the power to make regulations under this section.”

*Dynamic spectrum access services*

**8 Regulation of dynamic spectrum access services**

- (1) After Part 2 of the Wireless Telegraphy Act 2006 insert –

**“PART 2A**

REGULATION OF DYNAMIC SPECTRUM ACCESS SERVICES

5

*Registration*

**53A Registration of providers of dynamic spectrum access services**

- (1) A person who provides, or proposes to provide, a dynamic spectrum access service may be registered under this section by OFCOM.
- (2) An application for registration under this section – 10
- (a) is to be made to OFCOM, and
  - (b) must contain such information as OFCOM may reasonably require.
- (3) OFCOM must, from time to time as they think fit, publish – 15
- (a) the criteria for determining applications under this section, and
  - (b) information relating to the restrictions and conditions to which registration under this section may be subject.
- (4) The criteria published under subsection (3)(a) may include different provision for different cases.
- (5) Registration under this section is to be for such period, and subject to such restrictions and conditions, as OFCOM think fit. 20
- (6) Any such restrictions and conditions are to be contained in a notice in writing given to the person registered under this section.
- (7) In this Act “dynamic spectrum access service” means a service that provides information about – 25
- (a) the availability for use by wireless telegraphy stations and wireless telegraphy apparatus of frequencies that fall within a frequency band specified in regulations made by OFCOM, and
  - (b) the places in which, the power at which, the times when and any conditions subject to which such stations and apparatus may use such frequencies. 30

**53B Revocation and variation of registration**

- (1) OFCOM may revoke a registration under section 53A, or vary the restrictions and conditions to which it is subject – 35
- (a) by notice in writing given to the person registered under that section, or
  - (b) by a general notice applicable to the class to which the person belongs, published in such way as appears to OFCOM to be appropriate.

- (2) Where OFCOM propose to revoke or vary a registration, they must give the person registered under section 53A a notification –
- (a) stating the reason for the proposed revocation or variation, and
  - (b) specifying the period during which the person notified has an opportunity to make representations about the proposal. 5
- (3) Nothing in subsection (2) applies to a proposal to revoke or vary a registration if the proposal is made at the request or with the consent of the person registered under section 53A.
- (4) Nothing in this section applies in relation to –
- (a) a notification given under section 53E, or 10
  - (b) a decision given under section 53G.
- 53C Register of providers of dynamic spectrum access services**
- (1) OFCOM must establish and maintain a register for the purposes of this Part.
- (2) The register is to contain – 15
- (a) the names of the persons registered under section 53A; and
  - (b) such other information relating to the registration of those persons as OFCOM consider appropriate.
- (3) OFCOM may make available to users or prospective users of dynamic spectrum access services such information contained in the register as they consider appropriate. 20

#### *Fees*

#### **53D Fees for registration etc**

- (1) *Regulations made by OFCOM may provide for OFCOM to charge fees –*
- (a) *for registering a person under section 53A;* 25
  - (b) *for the continuation in force of such a registration;*
  - (c) *for the variation or revocation of such a registration;*
  - (d) *for anything done by OFCOM in connection with facilitating the service provided by a person registered under section 53A.*
- (2) Subsection (1)(d) does not include anything for which OFCOM may charge under any other enactment. 30
- (3) The fees –
- (a) are to be determined by or in accordance with the regulations, and
  - (b) are to be payable by the person who is to be, is or has been registered under section 53A. 35
- (4) The regulations may –
- (a) confer exemptions in particular cases; and
  - (b) provide for sums paid to be refunded, in whole or in part, in such cases as may be specified in the regulations or in such cases as OFCOM think fit. 40
- (5) Where OFCOM register a person in circumstances in which sums will or may subsequently become payable under the regulations, OFCOM

may require such security to be given, by way of deposit or otherwise, for the payment of those sums as they think fit.

- (6) A sum which is required to be paid to OFCOM by virtue of the regulations must be paid to OFCOM as soon as it becomes payable in accordance with the regulations and, if it is not paid, is recoverable by them accordingly. 5

### *Enforcement*

#### **53E Notification of contravention of registration restrictions or conditions**

- (1) Where OFCOM determine that there are reasonable grounds for believing that a person registered under section 53A is contravening, or has contravened, the restrictions or conditions subject to which the person is registered they may give that person a notification under this section. 10
- (2) A notification under this section is one which –
- (a) sets out the determination made by OFCOM, 15
  - (b) specifies the restriction or condition and contravention in respect of which that determination has been made,
  - (c) specifies the period during which the person notified has an opportunity to make representations,
  - (d) specifies the steps that OFCOM think should be taken by the person in order to – 20
    - (i) comply with the restriction or condition;
    - (ii) remedy the consequences of the contravention;
  - (e) if OFCOM are minded to suspend or revoke the person’s registration, contains a statement to that effect, and 25
  - (f) specifies any penalty which OFCOM are minded to impose in accordance with section 53F.
- (3) A notification under this section –
- (a) may be given in respect of more than one contravention, and
  - (b) if it is given in respect of a continuing contravention, may be given in respect of any period during which the contravention has continued. 30
- (4) Where a notification under this section has been given to a person in respect of a contravention of a restriction or condition, OFCOM may give a further notification in respect of the same contravention of that restriction or condition if, and only if – 35
- (a) the contravention is one occurring after the time of the giving of the earlier notification,
  - (b) the contravention is a continuing contravention and the subsequent notification is in respect of so much of a period as falls after a period to which the earlier notification relates, or 40
  - (c) the earlier notification has been withdrawn without a penalty having been imposed, or other action taken, in respect of the notified contravention.

**53F Penalties under section 53E**

- (1) This section applies where a person is given a notification under section 53E that specifies a proposed penalty.
- (2) Where the notification relates to more than one contravention, a separate penalty may be specified in respect of each contravention. 5
- (3) Where the notification relates to a continuing contravention, no more than one penalty may be specified in respect of the period of contravention specified in the notification.
- (4) But, in relation to a continuing contravention, a penalty may be specified in respect of each day on which the contravention continues after – 10
- (a) the giving of a confirmation decision under section 53G which requires immediate action, or
- (b) the expiry of any period specified in the confirmation decision for complying with a requirement so specified. 15
- (5) *The amount of a penalty imposed under subsection (4) is to be such amount, not exceeding £20,000 per day, as OFCOM think –*
- (a) *appropriate, and*
- (b) *proportionate to the contravention in respect of which it is imposed.*

**53G Enforcement of notification under section 53E** 20

- (1) This section applies where –
- (a) a person has been given a notification under section 53E,
- (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. 25
- (2) OFCOM may –
- (a) give the person a decision (a “confirmation decision”) confirming the imposition of requirements on the person, or the suspension or revocation of the person’s registration, or both, in accordance with the notification under section 53E, or 30
- (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 restriction or condition specified in the notification under section 53E. 35
- (4) A confirmation decision –
- (a) must be given to the person without delay,
- (b) must include reasons for the decision, 40
- (c) may require immediate action by the person to comply with requirements of a kind mentioned in section 53E(2)(d), or may specify a period within which the person must comply with those requirements,
- (d) may require the person to pay – 45

- (i) the penalty specified in the notification under section 53E, 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 restriction or remedy the consequences of the contravention, and
  - (e) may specify the period within which any such penalty is to be paid.
- (5) It is the duty of the person to comply with any requirement imposed by a confirmation decision. 10
- (6) That duty is enforceable in civil proceedings by OFCOM—
- (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. 15
- (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.
- 53H Amount of penalty under section 53E** 20
- (1) *The amount of a penalty notified under section 53E is to be such amount, not exceeding 10% of the relevant amount of gross revenue, as OFCOM think –*
- (a) *appropriate, and*
  - (b) *proportionate to the contravention in respect of which it is imposed.*
- (2) The relevant amount of gross revenue for the purposes of this section, in relation to a penalty imposed on a person, is –
- (a) where the last accounting period of that person which falls before the contravention was a period of 12 months, the relevant part of the person’s gross revenue for that period, and
  - (b) in any other case, the amount which, by making any appropriate apportionments or other adjustments of the relevant part of the person’s gross revenue for the accounting period or periods mentioned in subsection (3), is computed to be the amount representing the annual rate for the relevant part of the person’s gross revenue. 30 35
- (3) The accounting period or periods referred to in subsection (2) are –
- (a) every accounting period of the person to end within the period of 12 months immediately preceding the contravention, and
  - (b) if there is no such accounting period, the accounting period of the person which is current at the time of the contravention. 40
- (4) A reference to the relevant part of a person’s gross revenue, in relation to a contravention of the restrictions or conditions subject to which the person is registered under section 53A, is a reference to so much of the person’s gross revenue as is attributable to the provision of the dynamic spectrum access service to which the contravention relates. 45
- (5) For the purposes of this section –
- (a) the gross revenue of a person for a period, and

- (b) the extent to which a part of a person’s gross revenue is attributable to the provision of any dynamic spectrum access service,  
is to be ascertained in accordance with such principles as may be set out in a statement made by OFCOM. 5
- (6) Such a statement may provide for the amount of a person’s gross revenue for an accounting period that is current when the amount falls to be calculated to be taken to be the amount estimated by OFCOM, in accordance with the principles set out in the statement, to be the amount that will be the person’s gross revenue for that period. 10
- (7) OFCOM may revise a statement made under subsection (5) from time to time.
- (8) A statement made or revised under this section may set out different principles for different cases.
- (9) Before making or revising a statement under this section, OFCOM must consult the Secretary of State and the Treasury. 15
- (10) OFCOM must –
- (a) publish the statement made under subsection (5) and every revision of it; and
  - (b) send a copy of the statement and of every such revision to the Secretary of State; 20
- and the Secretary of State must lay copies of the statement and of every such revision before each House of Parliament.
- (11) In this section –
- “accounting period”, in relation to a person, means a period in respect of which accounts of the undertaking carried on by the person are prepared or, if one such period is comprised in another, whichever of those periods is or is closest to a 12 month period; 25
- “gross revenue”, in relation to a person, means the gross revenue of an undertaking carried on by that person. 30
- 53I Requirement to provide information about gross revenue**
- (1) OFCOM may require a person to whom a notification has been given under section 53E to provide them with all such information as they may require for the purpose of ascertaining the person’s gross revenue. 35
- (2) A demand for information required under this section must be contained in a notice given to the person from whom the information is required.
- (3) A person required to give information under this section must provide it in such manner and within such reasonable period as may be specified by OFCOM. 40
- (4) Sections 53K to 53N apply for the purposes of a requirement imposed under this section as they apply for the purposes of a requirement imposed under section 53J.

*Information*

**53J Provision of information to persons registered under section 53A**

- (1) OFCOM may require a person falling within subsection (2) to provide a person registered under section 53A with all such information as OFCOM consider necessary and proportionate for the purpose of enabling the registered person to avoid undue interference with wireless telegraphy. 5
- (2) The persons falling within this subsection are –
  - (a) a person who is using, or has established or used, a wireless telegraphy station, and 10
  - (b) a person who is using, or has installed or used, wireless telegraphy apparatus.
- (3) A demand for information required under this section must be contained in a notice given to the person from whom the information is required. 15
- (4) The notice must –
  - (a) describe the required information,
  - (b) specify the manner and form in which it is to be provided,
  - (c) specify when and (if appropriate) how frequently it is to be provided, and 20
  - (d) specify to whom it is to be provided.

**53K Notification of contravention of information requirements**

- (1) Where OFCOM determine that there are reasonable grounds for believing that a person is contravening, or has contravened, a requirement imposed under section 53J, they may give the person a notification under this section. 25
- (2) A notification under this section is one which –
  - (a) sets out the determination made by OFCOM,
  - (b) specifies the requirement and contravention in respect of which the determination has been made, 30
  - (c) specifies the period during which the person notified has an opportunity to make representations, and
  - (d) specifies any penalty which OFCOM are minded to impose in accordance with section 53L.
- (3) A notification under this section – 35
  - (a) may be given in respect of more than one contravention; and
  - (b) if it is given in respect of a continuing contravention, may be given in respect of any period during which the contravention has continued.
- (4) Where a notification under this section has been given to a person in respect of a contravention of a requirement, OFCOM may give a further notification in respect of the same contravention if, and only if – 40
  - (a) the contravention is one occurring after the time of the giving of the earlier notification,

- (b) the contravention is a continuing contravention and the subsequent notification is in respect of so much of a period as falls after a period to which the earlier notification relates, or
- (c) the earlier notification has been withdrawn without a penalty having been imposed in respect of the notified contravention. 5

### 53L Penalties under section 53K

- (1) This section applies where a person is given a notification under section 53K that specifies a proposed penalty.
- (2) Where the notification relates to more than one contravention, a separate penalty may be specified in respect of each contravention. 10
- (3) Where the notification relates to a continuing contravention, no more than one penalty may be specified in respect of the period of contravention specified in the notification.
- (4) But, in relation to a continuing contravention, a penalty may be specified in respect of each day on which the contravention continues after –
  - (a) the giving of a confirmation decision under section 53M(4)(c) which requires immediate action, or
  - (b) the expiry of any period specified in the confirmation decision for complying with a requirement so specified. 15
- (5) *The amount of a penalty under subsection (4) is to be such amount not exceeding £20,000 per day as OFCOM determine to be –*
  - (a) *appropriate; and*
  - (b) *proportionate to the contravention in respect of which it is imposed.* 20
- (6) *The amount of any other penalty specified under this section is to be such amount not exceeding £2 million as OFCOM determine to be both –*
  - (a) *appropriate; and*
  - (b) *proportionate to the contravention in respect of which it is imposed.* 25

### 53M Enforcement of notification under section 53K

- (1) This section applies where –
    - (a) a person has been given a notification under section 53K,
    - (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. 30
  - (2) OFCOM may –
    - (a) give the person a decision (a “confirmation decision”) confirming the imposition of requirements in accordance with the notification under section 53K; or
    - (b) inform the person that they are satisfied with the person’s representations and that no further action will be taken. 35
  - (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 53K. 40
- 45

- (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 53K, or may specify a period within which the person must comply with the requirement, 5
  - (d) may require the person to pay –
    - (i) the penalty specified in the notification under section 53L, 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 requirement or remedy the consequences of the contravention, and 10
  - (e) may specify the period within which any such penalty is to be paid. 15
- (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,
  - (b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988, or 20
  - (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.” 25
- (2) In section 111(3) of that Act (exemptions from general restriction on disclosure), after paragraph (c) insert –
- “(ca) by OFCOM to a person registered under section 53A for the purpose of providing the dynamic spectrum access service in respect of which the person is registered;” 30
- (3) In section 115(1) of that Act (general interpretation), at the appropriate place insert –
- ““dynamic spectrum access service” has the meaning given by section 53A;” 35
- (4) In section 400(1) of the Communications Act 2003 (destination of fees and penalties) –
- (a) in paragraph (d), before “of that Act” insert “or Part 2A”, and
  - (b) after that paragraph insert –
    - “(da) an amount paid to OFCOM in respect of a fee charged under section 53D of that Act;” 40
- (5) In Schedule 8 to that Act (decisions not subject to appeal) –
- (a) in paragraph 40(a), after “45” insert “, 53A(7), 53D”,
  - (b) in paragraph 41, for “or 24” substitute “, 24 or 53D(6)”, and
  - (c) in paragraph 43, omit the “or” after paragraph (a) and at the end of paragraph (b) insert “, or 45
- “(c) section 53H.”

*Other regulation of spectrum***9 Statement of strategic priorities**

In Part 1 of the Wireless Telegraphy Act 2006, after section 7 insert –

*“Statement of strategic priorities*

- |           |  |    |
|-----------|--|----|
| <b>7A</b> | <b>Statement of strategic priorities</b>   | 5  |
| (1)       | The Secretary of State may designate a statement for the purposes of this section if the requirements set out in section 7C (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 relating to the management of the radio spectrum in the United Kingdom.   | 10 |
| (3)       | The statement may, in particular, set out –  |    |
|           | (a) particular outcomes identified with a view to achieving the strategic priorities, and  |    |
|           | (b) the roles and responsibilities of persons (whether the Secretary of State, OFCOM or other persons) who have functions to which the strategic priorities relate.  | 15 |
| (4)       | This section does not restrict the Secretary of State’s power under section 5 of this Act or section 5 of the Communications Act 2003.   |    |
| (5)       | A statement designated under subsection (1) may be amended (including by replacing the whole or part of the statement with new content) by a subsequent statement designated under that subsection, and this section and sections 7B and 7C apply in relation to any such subsequent statement as in relation to the original statement. | 20 |
| <b>7B</b> | <b>Duties of OFCOM in relation to statement</b>  | 25 |
| (1)       | This section applies where a statement has been designated under section 7A(1).  |    |
| (2)       | The Secretary of State must –  |    |
|           | (a) publish the statement in such manner as the Secretary of State considers appropriate, and  | 30 |
|           | (b) take such other steps as the Secretary of State considers appropriate for the purpose of bringing it to OFCOM’s attention.   |    |
| (3)       | OFCOM must have regard to the statement when carrying out their radio spectrum functions.  | 35 |
| (4)       | The duty imposed by subsection (3) does not affect the obligation of OFCOM to comply with any other duty or requirement (whether arising under this or any other Act or otherwise).  |    |
| (5)       | If required to do so by the Secretary of State OFCOM must, within such period as the Secretary of State may direct –   | 40 |
|           | (a) explain in writing to the Secretary of State how they propose to comply with the duty imposed by subsection (3), and   |    |

- (b) publish a copy of that explanation in such manner as OFCOM consider appropriate.
- (6) The Secretary of State must lay a copy of that explanation before Parliament.
- 7C Parliamentary procedure for designation of statement** 5
- (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 7A(1).
- (2) Before designating the statement the Secretary of State must lay a draft of the statement before Parliament. 10
- (3) 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.
- (4) “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). 15
- (5) 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.”
- 10 Penalties for contravention of wireless telegraphy licences** 20
- (1) The Wireless Telegraphy Act 2006 is amended as follows.
- (2) In section 42 (special procedure for contraventions by multiplex licence holders), in subsection (1) –
  - (a) in paragraph (a), for “general multiplex” substitute “wireless telegraphy”, and 25
  - (b) omit paragraph (b).
- (3) At the end of that section insert –
  - “(7) A contravention is a “relevant multiplex contravention” for the purposes of section 43 if –
    - (a) it is a contravention of terms, provisions or limitations of a general multiplex licence, and 30
    - (b) the contravention relates only to terms, provisions or limitations that fall within section 9(4)(b) or (c).”
- (4) In the heading of that section, for “multiplex licence holders” substitute “holders of wireless telegraphy licences”. 35
- (5) In section 43 (amount of penalty under section 42), in subsection (1), after “section 42” insert “for a relevant multiplex contravention (see subsection (7) of that section)”.
- (6) *In that section, after subsection (2) insert –*
  - “(2A) *The amount of a penalty imposed under section 42 for a contravention that is not a relevant multiplex contravention is to be such amount not exceeding 10 per cent of the relevant amount of gross revenue as OFCOM think –*
    - (a) *appropriate; and* 40

(b) *proportionate to the contravention in respect of which it is imposed.*”

- (7) In that section, in subsection (3), for “subsection (2)” substitute “this section”.
- (8) Omit section 43A.
- (9) In section 44 (relevant amount of gross revenue), in subsections (1) and (10), omit “or 43A”. 5
- (10) In section 400 of the Communications Act 2003 (destination of licence fees and penalties), in subsection (1)(d), omit “or 43A”.
- (11) Omit section 39 of the Digital Economy Act 2010.
- (12) The amendments and repeals made by this section do not apply in relation to— 10
- (a) any contravention which takes place before the day on which this section comes into force, or
- (b) any continuing contravention which began before that day.
- 11 Fixed penalties under Wireless Telegraphy Act 2006**
- (1) In paragraph 4(2)(a) of Schedule 4 to the Wireless Telegraphy Act 2006 (suspended enforcement period for purposes of fixed penalty notice) for “one month” substitute “28 days”. 15
- (2) The amendment made by this section does not apply in relation to a fixed penalty notice issued in respect of an offence committed before this section comes into force.
- 12 Search warrants under Wireless Telegraphy Act 2006** 20
- (1) In section 97(3) of the Wireless Telegraphy Act 2006 (period for entering premises under warrant) for “of three months beginning with the day after the date of the warrant” substitute “beginning with the grant of the warrant and ending three months after the end of the day on which the warrant is granted”.
- (2) The amendment made by this section does not apply in relation to a warrant granted in respect of an offence committed before this section comes into force. 25
- 13 Disposal of seized property under Wireless Telegraphy Act 2006**
- (1) In section 101 of the Wireless Telegraphy Act 2006 (detention and disposal of seized property), for subsection (5) substitute— 30
- “(5) OFCOM may dispose of the property in such manner as they think fit if it remains in their possession after the end of the six months immediately following—
- (a) the end of the period of detention authorised by subsection (2)(a), or
- (b) if subsection (2)(b) applies, the end of the day on which the proceedings referred to in that provision were concluded.” 35
- (2) The amendment made by this section does not apply where the relevant offence is one committed before this section comes into force.
- (3) The relevant offence—

- (a) where section 101(1)(a) of the Wireless Telegraphy Act 2006 applies, is the offence in relation to which the warrant is granted;
- (b) where section 101(1)(b) of that Act applies, is the offence referred to in section 99(3) of that Act.

**14 Time limits for prosecutions under Wireless Telegraphy Act 2006** 5

- (1) The Wireless Telegraphy Act 2006 is amended as follows.
- (2) In section 107 (proceedings and enforcement), after subsection (3) insert –
  - “(3A) For the time limit for bringing proceedings which are for a summary offence under section 35 and to which section 41 applies see section 41(7) and (8). 10
  - (3B) The time limit for bringing any other proceedings for a summary offence under section 35, 58 or 66 is –
    - (a) one year from the end of the day on which the prosecutor becomes aware of evidence which he or she considers sufficient to justify a prosecution for the offence, or 15
    - (b) if earlier, three years from the end of the day on which the offence was committed.
  - (3C) Subsections (3A) and (3B) have effect despite –
    - (a) section 127 of the Magistrates’ Courts Act 1980 (time limit for bringing proceedings for summary offences in England and Wales), 20
    - (b) Article 19 of the Magistrates’ Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26) (equivalent provision for Northern Ireland), and
    - (c) section 136 of the Criminal Procedure (Scotland) Act 1995 (equivalent provision for Scotland).” 25
- (3) In section 41 (procedure for prosecutions) –
  - (a) in subsection (3)(b) for “allowed under that section” substitute “specified under section 39(2)(c) for making representations”;
  - (b) in subsection (7) for the words from “allowed” to the end substitute “specified under section 39(2)(c).” 30
- (4) The amendments made by this section do not apply in relation to an offence committed before this section comes into force.

**PART 3**

**ONLINE PORNOGRAPHY** 35

**15 Internet pornography: requirement to prevent access by persons under the age of 18**

- (1) A person must not make pornographic material available on the internet on a commercial basis to persons in the United Kingdom except in a way that secures that, at any given time, the material is not normally accessible by persons under the age of 18. 40

- (2) For the purposes of this Part, making pornographic material available on the internet on a commercial basis includes making it available on the internet free of charge—
- (a) on or via an internet site which is operated on a commercial basis, or
  - (b) via any other means of accessing the internet which is operated or provided on a commercial basis. 5
- (3) The age-verification regulator (see section 17) must publish guidance about—
- (a) types of arrangements for making pornographic material available that the regulator will treat as complying with subsection (1);
  - (b) circumstances in which the regulator will treat an internet site or other means of accessing the internet as operated or provided on a commercial basis; and 10
  - (c) other circumstances in which the regulator will treat making pornographic material available on the internet as done on a commercial basis. 15
- (4) Regulations 17 to 20 and 22 of the Electronic Commerce (EC Directive) Regulations 2002 (S.I. 2002/2013) apply in relation to this Part, despite regulation 3(2) of those Regulations.
- (5) For the purposes of this Part—
- (a) making material available on the internet does not include making the content of an on-demand programme service available on the internet in the course of providing such a service; 20
  - (b) a means of accessing the internet does not include any device or other equipment for doing so.
- (6) In subsection (5), “on-demand programme service” has the meaning given by section 368A of the Communications Act 2003. 25

## 16 Meaning of “pornographic material”

- (1) In this Part “pornographic material” means any of the following—
- (a) a video work in respect of which the video works authority has issued an R18 certificate; 30
  - (b) material that was included in a video work to which paragraph (a) applies, if it is reasonable to assume from its nature that its inclusion was among the reasons why the certificate was an R18 certificate;
  - (c) any other material if it is reasonable to assume from its nature that any classification certificate issued in respect of a video work including it would be an R18 certificate; 35
  - (d) a video work in respect of which the video works authority has issued an 18 certificate, and that it is reasonable to assume from its nature was produced solely or principally for the purposes of sexual arousal;
  - (e) material that was included in a video work to which paragraph (d) applies, if it is reasonable to assume from the nature of the material— 40
    - (i) that it was produced solely or principally for the purposes of sexual arousal, and
    - (ii) that its inclusion was among the reasons why the certificate was an 18 certificate; 45
  - (f) any other material if it is reasonable to assume from its nature—
    - (i) that it was produced solely or principally for the purposes of sexual arousal, and

- (ii) that any classification certificate issued for a video work including it would be an 18 certificate.
- (2) In this section—
- “18 certificate” means a classification certificate which—
    - (a) contains, pursuant to section 7(2)(b) of the Video Recordings Act 1984, 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 5
    - (b) does not contain the statement mentioned in section 7(2)(c) of that Act that no video recording containing the video work is to be supplied other than in a licensed sex shop; 10
  - “classification certificate” has the same meaning as in the Video Recordings Act 1984 (see section 7 of that Act);
  - “material” means— 15
    - (a) a series of visual images shown as a moving picture, with or without sound;
    - (b) a still image or series of still images, with or without sound; or
    - (c) sound;
  - “R18 certificate” means a classification certificate which contains the statement mentioned in section 7(2)(c) of the Video Recordings Act 1984 that no video recording containing the video work is to be supplied other than in a licensed sex shop; 20
  - “the video works authority” means the person or persons designated under section 4(1) of the Video Recordings Act 1984 as the authority responsible for making arrangements in respect of video works other than video games; 25
  - “video work” means a video work within the meaning of the Video Recordings Act 1984, other than a video game within the meaning of that Act. 30

## 17 The age-verification regulator: designation and funding

- (1) The Secretary of State may by notice designate any person, or any two or more persons jointly, as the age-verification regulator for the purposes of this Part.
- (2) The Secretary of State may at any time by notice—
  - (a) revoke a designation under this section; 35
  - (b) designate one or more other persons in place of any person or persons designated under this section.
- (3) The Secretary of State’s power to designate a person under this section includes a power to designate the holder for the time being of any office or employment specified in the notice by which the designation is made. 40
- (4) The Secretary of State must not make a designation under this section unless satisfied that arrangements will be maintained by the age-verification regulator for appeals—
  - (a) by a person on whom a financial penalty has been imposed under section 20(1) or (10), against the imposition of that penalty; 45
  - (b) by a person to whom an enforcement notice has been given under section 20(2), against the giving of that notice; and

- (c) by a person identified as the non-complying person in a notice given under section 22, against the giving of that notice.
- (5) A notice under subsection (1) or (2) must be published in the London, Edinburgh and Belfast Gazettes.
- (6) *The Secretary of State may pay grants or make loans to the age-verification regulator to cover expenditure incurred in the carrying out of its functions.* 5
- (7) *Grants may be paid and loans made under subsection (6) subject to any conditions the Secretary of State thinks appropriate (including conditions as to repayment).*
- 18 Parliamentary procedure for designation of age-verification regulator**
- (1) The Secretary of State must lay particulars of any proposed designation under section 17 before both Houses of Parliament. 10
- (2) The Secretary of State must not make the proposed designation until after the end of the period of 40 days beginning with the day on which the particulars of it were laid.
- (3) If either House resolves within that period that the Secretary of State should not make the proposed designation, the Secretary of State must not make it. 15
- (4) But subsection (3) is without prejudice to the Secretary of State’s power to lay before Parliament particulars of further proposed designations in accordance with this section.
- (5) For the purposes of subsection (2) – 20
- (a) where particulars of a proposed designation are laid before the House of Commons and the House of Lords on different days, the later day is to be taken as the day on which the particulars were laid before both Houses;
- (b) in reckoning any period of 40 days, no account is to be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days. 25
- 19 Age-verification regulator’s power to require information**
- (1) The age-verification regulator may by notice require a relevant person to provide it with any information which it requires for the purpose of exercising, or deciding whether to exercise, any function under this Part. 30
- (2) The power in subsection (1) may only be exercised to require a relevant person to provide information which the age-verification regulator believes the relevant person has.
- (3) A “relevant person” is a person who the age-verification regulator believes to be involved, or to have been involved, in making pornographic material available on the internet on a commercial basis to persons in the United Kingdom. 35
- (4) A notice under subsection (1) must specify – 40
- (a) the form and manner in which the information must be provided; and
- (b) the time at which, or period within which, the information must be provided.

- (5) The power in subsection (1) is not exercisable in relation to information in respect of which a claim to legal professional privilege (or, in Scotland, confidentiality of communications) could be maintained in legal proceedings.

## 20 Enforcement of sections 15 and 19

- (1) The age-verification regulator may impose a financial penalty on a person where it determines that the person – 5
- (a) is contravening or has contravened section 15(1); or
  - (b) has failed to comply with a requirement to provide information under section 19.
- (2) The age-verification regulator may give a person an enforcement notice where it determines that the person is contravening section 15(1). 10
- (3) The age-verification regulator must not make a determination under subsection (1) or (2) in relation to a person unless it has allowed that person an opportunity to make representations about why that determination should not be made. 15
- (4) The age-verification regulator may –
- (a) impose a financial penalty under subsection (1) without also giving an enforcement notice under subsection (2);
  - (b) give an enforcement notice under subsection (2) without also imposing a financial penalty under subsection (1). 20
- (5) No financial penalty may be imposed under subsection (1) in respect of a contravention of section 15(1) if –
- (a) the contravention has ceased, and
  - (b) the limitation period in respect of the contravention has expired.
- (6) For the purposes of subsection (5) the limitation period in respect of a contravention expires – 25
- (a) at the end of the period of three years beginning with the day on which the contravention began; or
  - (b) if sooner, at the end of the period of one year beginning with the day on which the age-verification regulator became aware of the contravention. 30
- (7) An “enforcement notice” is a notice which –
- (a) specifies the determination made by the age-verification regulator under subsection (2); and
  - (b) requires the person to whom it is given to end the contravention of section 15(1). 35
- (8) An enforcement notice must –
- (a) include reasons for the age-verification regulator’s decision to give the notice; and
  - (b) fix a reasonable period for ending the contravention of section 15(1). 40
- (9) A person to whom an enforcement notice has been given must comply with it.
- (10) If a person contravenes subsection (9), the age-verification regulator may impose a financial penalty on that person.

- (11) The obligation under subsection (9) is also enforceable by the age-verification regulator in civil proceedings –
- (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.
- (12) The imposition of a financial penalty (“the first penalty”) on a person in respect of a contravention of section 15(1) or subsection (9) does not prevent the imposition of another financial penalty on that person under subsection (1) or (10) (as the case may be) in respect of any continuation of that contravention after the first penalty is imposed.
- (13) For further provision about financial penalties under this section, see section 21.

## 21 Financial penalties

- (1) The age-verification regulator may impose a financial penalty on a person under section 20(1) or (10) of such amount as the age-verification regulator considers appropriate and proportionate to the contravention, or failure to comply, in respect of which it is imposed.
- (2) But the amount must not exceed whichever of the following is greater –
- (a) £250,000;
  - (b) 5% of that person’s qualifying turnover (if any).
- (3) For the purposes of subsection (2), a person’s “qualifying turnover” is –
- (a) the amount of that person’s turnover for that person’s most recent complete accounting period; or
  - (b) where the age-verification regulator is deciding the amount of the penalty at a time when that person’s first accounting period has not yet ended, the amount that the age-verification regulator estimates to be that person’s likely turnover for that period.
- (4) For the purposes of subsection (3), the amount of a person’s turnover for an accounting period is, in the event of a disagreement between that person and the age-verification regulator, the amount determined by the age-verification regulator.
- (5) In deciding the amount of the financial penalty, the age-verification regulator must have regard to the guidelines or revised guidelines in force under this section.
- (6) A financial penalty under section 20(1) or (10) must be imposed by notice given to the person on whom the penalty is imposed.
- (7) The notice must –
- (a) fix a time by which the penalty must be paid by that person to the age-verification regulator; and
  - (b) in the case of a financial penalty under subsection (1) of section 20, specify the determination made by the age-verification regulator under that subsection.
- (8) *A financial penalty received by the age-verification regulator must be paid into the Consolidated Fund.*

- 
- (9) The age-verification regulator must publish the guidelines it proposes to follow in deciding the amount of a financial penalty under section 20(1) or (10).
- (10) The age-verification regulator may revise the guidelines from time to time and must publish any revised guidelines.
- (11) The guidelines and any revised guidelines must be published in whatever way the age-verification regulator considers appropriate for bringing them to the attention of the persons who, in its opinion, are likely to be affected by them. 5
- (12) Before publishing the guidelines or any revised guidelines, the age-verification regulator must consult –
- (a) the Secretary of State; and 10
  - (b) such other persons as it considers appropriate.
- (13) Before deciding how to publish the guidelines or any revised guidelines, the age-verification regulator must consult the Secretary of State.
- (14) In subsection (3) –
- “accounting period”, in relation to a person, means a period in respect of which accounts are prepared in relation to that person or, where that person is an individual, in respect of that person’s principal business; 15
  - “turnover”, in relation to a person, means the amounts derived from the provision of goods and services by that person, after deduction of trade discounts, value added tax and any other taxes based on the amounts so derived. 20
- 22 Age-verification regulator’s power to give notice of contravention to payment service providers and ancillary service providers**
- (1) Where the age-verification regulator considers that a person (“the non-complying person”) is – 25
- (a) contravening section 15(1); or
  - (b) making prohibited material available on the internet to persons in the United Kingdom,
- it may give notice of that fact to any payment-services provider or ancillary service provider. 30
- (2) A notice under subsection (1) must –
- (a) identify the non-complying person in such manner as the age-verification regulator considers appropriate;
  - (b) state which of paragraphs (a) and (b) of subsection (1) applies;
  - (c) provide such further particulars as the age-verification regulator considers appropriate. 35
- (3) When the age-verification regulator gives notice under this section, it must inform the non-complying person, by notice, that it has done so.
- (4) In this section “prohibited material” means either of the following – 40
- (a) the whole or part of a video work –
    - (i) if it is reasonable to assume from its nature that the video work was produced solely or principally for the purposes of sexual arousal, and

- (ii) if the video works authority has determined the video work not to be suitable for a classification certificate to be issued in respect of it;
  - (b) material whose nature is such that it is reasonable to assume –
    - (i) that it was produced solely or principally for the purposes of sexual arousal, and
    - (ii) that the video works authority would determine that a video work including it was not suitable for a classification certificate to be issued in respect of it.
- (5) In this section a “payment-services provider” means a person who appears to the age-verification regulator to provide services, in the course of a business, which enable funds to be transferred in connection with the payment by any person for access to pornographic material or prohibited material made available on the internet by the non-complying person. 10
- (6) In this section an “ancillary service provider” means a person, other than a payment-services provider, who appears to the age-verification regulator to – 15
  - (a) provide, in the course of a business, services which enable or facilitate the making available of pornographic material or prohibited material on the internet by the non-complying person; or
  - (b) advertise, on or via any internet site operated by the non-complying person or via any other means of accessing the internet operated or provided by that person, any goods or services provided in the course of a business. 20
- (7) The age-verification regulator may publish guidance for the purposes of subsections (1) and (6) about the circumstances in which it will treat services provided in the course of a business as enabling or facilitating the making available of pornographic material or prohibited material. 25
- (8) In this section the following have the same meaning as in section 16 –
  - (a) “classification certificate”;
  - (b) “material”;
  - (c) “video work”;
  - (d) “video works authority”.

### 23 Exercise of functions by the age-verification regulator

- (1) The age-verification regulator may, if it thinks fit, choose to exercise its powers under sections 20 and 22 principally in relation to persons who, in the age-verification regulator’s opinion – 35
  - (a) make pornographic material or prohibited material available on the internet on a commercial basis to a large number of persons, or a large number of persons under the age of 18, in the United Kingdom; or
  - (b) generate a large amount of turnover by doing so. 40
- (2) The age-verification regulator may –
  - (a) carry out such consultation with any person as it considers appropriate for the purposes of exercising, or considering whether to exercise, any function under this Part;
  - (b) carry out, commission or support (financially or otherwise) any research which it considers appropriate for the purposes of exercising, or considering whether to exercise, any function under this Part; 45

- (c) publish the results of that research.

## 24 Requirements for notices given by regulator under this Part

- (1) The age-verification regulator may give notice to a person under section 19, 20, 21 or 22 by sending the notice to that person –
  - (a) by post to that person’s proper address; or 5
  - (b) by email to that person’s email address.
- (2) In the case of a notice given under section 19 or 22(1), a person’s proper address for the purposes of subsection (1)(a), and section 7 of the Interpretation Act 1978 in its application to that subsection, is –
  - (a) where that person is a body corporate, the address of its registered office or principal office; 10
  - (b) where that person is a partnership or an unincorporated association or body, the address of its principal office;
  - (c) in any other case, that person’s last known address.
- (3) In the case of a notice given under section 20, 21 or 22(3), a person’s proper address for the purposes of subsection (1)(a), and section 7 of the Interpretation Act 1978 in its application to that subsection, is any address at which the age-verification regulator believes, on reasonable grounds, that the notice will come to the attention of that person or (where that person is a body corporate) any director or other officer of that body corporate. 15  
20
- (4) For the purposes of subsection (1)(b), a person’s email address is –
  - (a) any email address published for the time being by that person as an address for contacting that person; or
  - (b) if there is no such published address, any email address by means of which the age-verification regulator believes, on reasonable grounds, that the notice will come to the attention of that person or (where that person is a body corporate) any director or other officer of that body corporate. 25
- (5) A notice under section 19, 20, 21 or 22 sent to a person by email is to be taken to have been given to that person 48 hours after it is sent. 30
- (6) In the case of –
  - (a) a body corporate registered outside the United Kingdom;
  - (b) a partnership carrying on business outside the United Kingdom; or
  - (c) a unincorporated association or body with offices outside the United Kingdom, 35the references in subsection (2) to its principal office include references to its principal office in the United Kingdom (if any).
- (7) In this section –
  - “director” includes any person occupying the position of a director, by whatever name called; 40
  - “officer”, in relation to a body corporate, includes a director, a manager, a secretary or, where the affairs of the body corporate are managed by its members, a member.

## 25 Interpretation of this Part

- In this Part – 45

“the age-verification regulator” means the person or persons designated as the age-verification regulator under section 17;  
“turnover” has the meaning given in section 21(14).

#### PART 4

##### INTELLECTUAL PROPERTY

5

#### 26 Offences: infringing copyright and making available right

- (1) The Copyright, Designs and Patents Act 1988 is amended as follows.
- (2) In section 107 (criminal liability for making or dealing with infringing articles, etc), for subsection (2A) substitute –
 

“(2A) A person (“P”) who infringes copyright in a work by communicating the work to the public commits an offence if P –

  - (a) knows or has reason to believe that P is infringing copyright in the work, and
  - (b) either –
    - (i) intends to make a gain for P or another person, or
    - (ii) knows or has reason to believe that communicating the work to the public will cause loss to the owner of the copyright, or will expose the owner of the copyright to a risk of loss.

(2B) For the purposes of subsection (2A) –

  - (a) “gain” and “loss” –
    - (i) extend only to gain or loss in money, and
    - (ii) include any such gain or loss whether temporary or permanent, and
  - (b) “loss” includes a loss by not getting what one might get.”
- (3) In subsection (4A)(b) of that section, for “two” substitute “ten”.
- (4) In section 198 (criminal liability for making, dealing with or using illicit recordings), for subsection (1A) substitute –
 

“(1A) A person (“P”) who infringes a performer’s making available right in a recording commits an offence if P –

  - (a) knows or has reason to believe that P is infringing the right, and
  - (b) either –
    - (i) intends to make a gain for P or another person, or
    - (ii) knows or has reason to believe that infringing the right will cause loss to the owner of the right, or expose the owner of the right to a risk of loss.

(1B) For the purposes of subsection (1A) –

  - (a) “gain” and “loss” –
    - (i) extend only to gain or loss in money, and
    - (ii) include any such gain or loss whether temporary or permanent, and
  - (b) “loss” includes a loss by not getting what one might get.”
- (5) In subsection (5A)(b) of that section, for “two” substitute “ten”.

- (6) The amendments made by this section do not apply in relation to offences committed before this section comes into force.

**27 Registered designs: infringement: marking product with internet link**

- (1) Section 24B of the Registered Designs Act 1949 (exemption of innocent infringer from liability) is amended as follows. 5
- (2) In subsection (2) (defendant not deemed to have been aware etc that design was registered by reason of the marking of the product unless it includes the number of the design), after “the number of the design” insert “or a relevant internet link”.
- (3) After that subsection insert – 10
- “(2A) The reference in subsection (2) to a relevant internet link is a reference to an address of a posting on the internet –
- (a) which is accessible to the public free of charge, and
  - (b) which clearly associates the product with the number of the design.” 15

**28 Copyright etc where broadcast retransmitted by cable**

- (1) In the Copyright, Designs and Patents Act 1988 the following are repealed –
- (a) sections 73 and 73A (copyright not infringed where broadcast retransmitted by cable);
  - (b) paragraphs 19 and 19A of Schedule 2 (rights in relation to performance or recording not infringed where broadcast retransmitted by cable). 20
- (2) In consequence the following are repealed or revoked –
- (a) in the Copyright, Designs and Patents Act 1988 – 25
    - (i) in section 134, subsection (3A) and, in subsection (1), the words “Subject to subsection (3A)”;
    - (ii) section 149(za);
    - (iii) section 205B(1)(cc);
  - (b) in the Broadcasting Act 1996, section 138 and Schedule 9;
  - (c) in the Copyright and Related Rights Regulations 2003 (S.I. 2003/2498), regulation 22. 30
- (3) The Secretary of State may by regulations make transitional, transitory or saving provision in connection with the coming into force of this section.
- (4) The power to make regulations under subsection (3) is exercisable by statutory instrument.
- (5) A statutory instrument containing regulations under subsection (3) is subject to annulment in pursuance of a resolution of either House of Parliament. 35

**PART 5**

DIGITAL GOVERNMENT

**CHAPTER 1**

PUBLIC SERVICE DELIVERY

- |           |  |          |
|-----------|--|----------|
| <b>29</b> | <b>Disclosure of information to improve public service delivery</b>  | <b>5</b> |
| (1)       | A specified person may disclose information held by the person in connection with any of the person’s functions to another specified person for the purposes of a specified objective.   |          |
| (2)       | In this Chapter “specified person” means a person specified, or of a description specified, in regulations made by the appropriate national authority.   | 10       |
| (3)       | A person specified in regulations under subsection (2) must be –   |          |
|           | (a) a public authority, or   |          |
|           | (b) a person providing services to a public authority.   |          |
| (4)       | In the case of a person (“P”) who is a specified person merely because of providing services to a public authority, the reference in subsection (1) to the functions of a specified person is limited to the functions P exercises for that purpose.                                     | 15       |
| (5)       | In determining whether to make regulations under subsection (2) in relation to a person or description of person the appropriate national authority must have regard, in particular, to –  | 20       |
|           | (a) the systems and procedures for the secure handling of information by that person or persons of that description, and   |          |
|           | (b) in the case of regulations which amend or revoke previous regulations so that the person ceases to be a specified person, whether that person, or any person providing services to that person, has had regard to the code of practice under section 35 as required by that section. | 25       |
| (6)       | In this section “specified objective” means an objective specified in regulations made by the appropriate national authority.  |          |
| (7)       | An objective may be specified by regulations under subsection (6) only if it complies with the following conditions.   | 30       |
| (8)       | The first condition is that the objective has as its purpose –   |          |
|           | (a) the improvement or targeting of a public service provided to individuals or households, or   |          |
|           | (b) the facilitation of the provision of a benefit (whether or not financial) to individuals or households.  | 35       |
| (9)       | The second condition is that the objective has as its purpose the improvement of the well-being of individuals or households.  |          |
| (10)      | The reference in subsection (9) to the well-being of individuals or households includes –  |          |
|           | (a) their physical and mental health and emotional well-being,   | 40       |
|           | (b) the contribution made by them to society, and  |          |
|           | (c) their social and economic well-being.  |          |

### 30 Disclosure of information to gas and electricity suppliers

- (1) If the first and second conditions are met, a specified person may disclose information held by the person in connection with any of the person’s functions to –
  - (a) a licensed gas supplier, or 5
  - (b) a licensed electricity supplier.
- (2) The first condition is that the disclosure is for the purpose of assisting people living in fuel poverty by –
  - (a) reducing their energy costs,
  - (b) improving efficiency in their use of energy, or 10
  - (c) improving their health or financial well-being.
- (3) The second condition is that the information is disclosed with the intention that it will be used by the recipient of the information in connection with –
  - (a) a support scheme under Part 2 of the Energy Act 2010 (schemes for reducing fuel poverty), 15
  - (b) in the case of a disclosure to a licensed gas supplier, an obligation imposed by an order under section 33BC or 33BD of the Gas Act 1986 (powers to impose obligations on gas suppliers etc), or
  - (c) in the case of a disclosure to a licensed electricity supplier, an obligation imposed by an order under section 41A or 41B of the Electricity Act 1989 (powers to impose obligations on electricity suppliers etc). 20
- (4) The appropriate national authority may by regulations –
  - (a) amend subsection (1) so as to add or remove a person or description of persons to whom information may be disclosed;
  - (b) amend subsection (3). 25
- (5) In determining whether to make regulations under subsection (4)(a) in relation to a person or description of person the appropriate national authority must have regard, in particular, to –
  - (a) the systems and procedures for the secure handling of information by that person or persons of that description, and 30
  - (b) in the case of regulations which remove a person from subsection (1), whether that person, or any person providing services to that person, has had regard to the code of practice under section 35 as required by that section.
- (6) In the case of a person (“P”) who is a specified person merely because of providing services to a public authority, the reference in subsection (1) to the functions of a specified person is limited to the functions P exercises for that purpose. 35
- (7) For the purposes of this Chapter a person lives in fuel poverty if the person is a member of a household living on a lower income in a home which cannot be kept warm at a reasonable cost. 40
- (8) In this section –
  - “licensed gas supplier” means the holder of a licence under section 7A(1) of the Gas Act 1986;
  - “licensed electricity supplier” means the holder of a licence under section 6(1)(d) of the Electricity Act 1989. 45

### **31 Disclosure of information by gas and electricity suppliers**

- (1) If the condition in subsection (2) is met, a person to whom information may be disclosed under section 30 may disclose information held by that person to a specified person.
- (2) That condition is that the disclosure is for the purpose of assisting people living in fuel poverty in England and Wales or Scotland by – 5
- (a) reducing their energy costs,
  - (b) improving efficiency in their use of energy, or
  - (c) improving their health or financial well-being.

### **32 Further provisions about disclosures under section 29, 30 or 31** 10

- (1) Personal information disclosed under section 29, 30 or 31 may only be used by the person to whom it is disclosed for the purposes for which it was disclosed, subject to subsection (2).
- (2) Subsection (1) does not prevent the use of information by a person – 15
- (a) if the information has already lawfully been made available to the public,
  - (b) if the person to whom the information relates consents to its use for another purpose,
  - (c) for the purposes of a criminal investigation (whether or not in the United Kingdom), 20
  - (d) for the purposes of legal proceedings (whether civil or criminal and whether or not in the United Kingdom), or
  - (e) for the purposes of – 25
    - (i) preventing serious physical harm to a person,
    - (ii) preventing loss of human life,
    - (iii) safeguarding vulnerable adults or children,
    - (iv) responding to an emergency, or
    - (v) protecting national security.
- (3) Subsection (2) does not apply to information disclosed to a person under section 29 or 30 by the Revenue and Customs; but such information may be used by that person for purposes other than those for which it was disclosed with the consent of the Commissioners for Her Majesty’s Revenue and Customs (which may be general or specific). 30
- (4) For the purposes of this Chapter information is “personal information” if – 35
- (a) it relates to and identifies a particular person (including a body corporate), but
  - (b) it is not information about the internal administrative arrangements of a specified person or a person to whom information may be disclosed under section 30.
- (5) For the purposes of subsection (4) information identifies a particular person if the identity of that person – 40
- (a) is specified in the information,
  - (b) can be deduced from the information, or
  - (c) can be deduced from the information taken together with any other information. 45

- (6) A disclosure under section 29, 30 or 31 does not breach—
  - (a) any obligation of confidence owed by the person making the disclosure, or
  - (b) any other restriction on the disclosure of information (however imposed). 5
- (7) But nothing in section 29, 30 or 31 authorises the making of a disclosure which—
  - (a) contravenes the Data Protection Act 1998, or
  - (b) is prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000. 10
- (8) Section 29, 30 or 31 does not limit the circumstances in which information may be disclosed apart from that section.

### 33 Confidentiality of personal information

- (1) Personal information disclosed under section 29, 30 or 31 and received by a person (“P”) may not be disclosed— 15
  - (a) by P, or
  - (b) by any other person who has received it directly or indirectly from P.
- (2) Subsection (1) does not apply to a disclosure—
  - (a) which is required or permitted by any enactment (including section 29, 30 or 31), 20
  - (b) which is required by an EU obligation,
  - (c) which is made in pursuance of an order of the court,
  - (d) of information which has already lawfully been made available to the public,
  - (e) which is made for the purposes of a criminal investigation (whether or not in the United Kingdom), 25
  - (f) which is made for the purposes of legal proceedings (whether civil or criminal and whether or not in the United Kingdom),
  - (g) which is made with the consent of the person to whom it relates, or
  - (h) which is made for the purposes of— 30
    - (i) preventing serious physical harm to a person,
    - (ii) preventing loss of human life,
    - (iii) safeguarding vulnerable adults or children,
    - (iv) responding to an emergency, or
    - (v) protecting national security. 35
- (3) A person who contravenes subsection (1) is guilty of an offence.
- (4) It is a defence for a person charged with an offence under subsection (3) to prove that the person reasonably believed that the disclosure was lawful.
- (5) A person who is guilty of an offence under subsection (3) is liable on conviction on indictment to imprisonment for a term not exceeding two years, to a fine or to both. 40
- (6) A person who is guilty of an offence under subsection (3) is liable on summary conviction—
  - (a) in England and Wales, to imprisonment for a term not exceeding 12 months, to a fine or to both; 45

- 
- (b) in Scotland, to imprisonment for a term not exceeding 12 months, to a fine not exceeding the statutory maximum or to both;
- (c) in Northern Ireland, to imprisonment for a term not exceeding 6 months, to a fine not exceeding the statutory maximum or to both.
- (7) In the application of subsection (6)(a) to an offence committed before the coming into force of section 154(1) of the Criminal Justice Act 2003 the reference to 12 months is to be read as a reference to 6 months. 5
- (8) This section does not apply to personal information disclosed under section 29 or 30 by the Revenue and Customs.
- 34 Information disclosed by the Revenue and Customs** 10
- (1) Personal information disclosed by the Revenue and Customs under section 29 or 30 and received by a person (“P”) may not be disclosed –
- (a) by P, or
- (b) by any other person who has received it directly or indirectly from P.
- (2) Subsection (1) does not apply to a disclosure which is made with the consent of the Commissioners for Her Majesty’s Revenue and Customs (which may be general or specific). 15
- (3) A person who contravenes subsection (1) is guilty of an offence.
- (4) It is a defence for a person charged with an offence under subsection (3) to prove that the person reasonably believed – 20
- (a) that the disclosure was lawful, or
- (b) that the information had already and lawfully been made available to the public.
- (5) Subsections (4) to (7) of section 19 of the Commissioners for Revenue and Customs Act 2005 apply to an offence under subsection (3) as they apply to an offence under that section. 25
- 35 Code of practice**
- (1) The relevant Minister must issue a code of practice about –
- (a) the disclosure of information under section 29, 30 or 31, and
- (b) the use of information disclosed under any of those sections. 30
- (2) A person to whom the code applies must have regard to the code of practice –
- (a) in disclosing information under section 29, 30 or 31, and
- (b) in using information disclosed under any of those sections.
- (3) The relevant Minister may from time to time revise and re-issue the code of practice. 35
- (4) Before issuing or reissuing the code of practice the relevant Minister must consult –
- (a) the Information Commissioner,
- (b) the Commissioners for Her Majesty’s Revenue and Customs,
- (c) the Scottish Ministers,
- (d) the Welsh Ministers,
- (e) the Department of Finance in Northern Ireland, and 40

- (f) such other persons as the relevant Minister thinks appropriate.
- (5) The fact that this section was not in force when consultation of the kind mentioned in subsection (4) took place is to be disregarded in determining whether there has been compliance with that subsection.
- (6) As soon as is reasonably practicable after issuing or reissuing the code of practice the relevant Minister must lay, or arrange for the laying of, a copy of it before—
  - (a) Parliament,
  - (b) the Scottish Parliament,
  - (c) the National Assembly for Wales, and
  - (d) the Northern Ireland Assembly.

### 36 Regulations under this Chapter

- (1) Any power to make regulations under this Chapter is exercisable—
  - (a) in the case of regulations made by the relevant Minister or the Welsh Ministers, by statutory instrument, and
  - (b) in the case of regulations made by the Department of Finance in Northern Ireland, by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (SI 1979/1573 (NI 12)).
- (2) Regulations under this Chapter—
  - (a) may make different provision for different purposes;
  - (b) may contain consequential, supplementary, transitional or transitory provision or savings.
- (3) The provision that may be made by virtue of subsection (2)(b) includes—
  - (a) provision amending this Chapter or repealing or revoking any provision of this Chapter;
  - (b) provision amending, repealing or revoking an enactment passed or made before or in the same session as this Act.
- (4) In the case of regulations under section 29(2) which specify a person or description of person, this includes provision amending this Chapter so as to make provision in relation to information disclosed by that person or a person of that description which is similar to that made by section 34 in relation to information disclosed by the Revenue and Customs.
- (5) Before making regulations under this Chapter the appropriate national authority must consult—
  - (a) the Information Commissioner,
  - (b) the Commissioners for Her Majesty’s Revenue and Customs,
  - (c) each other person who is the appropriate national authority in relation to regulations under this Chapter,
  - (d) where the appropriate national authority is not the relevant Minister, the Minister for the Cabinet Office, and
  - (e) such other persons as the appropriate national authority thinks appropriate.
- (6) The fact that a power to make regulations under this Chapter was not in force when consultation of the kind mentioned in subsection (5) took place is to be disregarded in determining whether there has been compliance with that subsection.

- 
- (7) The appropriate national authority may only make regulations under section 29(6) or 30(4)(b) with the consent of the Treasury in a case where the regulations could affect the disclosure of information by the Revenue and Customs.
- (8) A statutory instrument containing regulations made under this Chapter by the relevant Minister may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament. 5
- (9) Regulations made under this Chapter by the Scottish Ministers are subject to the affirmative procedure.
- (10) A statutory instrument containing regulations made under this Chapter by the Welsh Ministers may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the National Assembly for Wales. 10
- (11) Regulations under this Chapter may not be made by the Department of Finance in Northern Ireland unless a draft of the regulations has been laid before, and approved by a resolution of, the Northern Ireland Assembly. 15
- (12) If a draft of a statutory instrument containing regulations under section 29(2) or 30(4)(a) would, apart from this subsection, be treated for the purposes of the standing orders of either House of Parliament as a hybrid instrument, it is to proceed in that House as if it were not such an instrument.
- 37 Interpretation of this Chapter** 20
- (1) In this Chapter –
- “the appropriate national authority” means the relevant Minister, subject to subsections (2) to (7);
- “enactment” includes –
- (a) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament; 25
- (b) an enactment contained in, or in an instrument made under, a Measure or Act of the National Assembly for Wales;
- (c) an enactment contained in, or in an instrument made under, Northern Ireland legislation; 30
- (d) an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978;
- “function” means function of a public nature;
- “personal information” has the meaning given by section 32(4);
- “public authority” means a person who exercises functions of a public nature, subject to subsection (8); 35
- “relevant Minister” means the Secretary of State or the Minister for the Cabinet Office;
- “the Revenue and Customs” has the meaning given by section 17(3) of the Commissioners for Revenue and Customs Act 2005; 40
- “specified person” has the meaning given by section 29(2).
- (2) The Scottish Ministers are the appropriate national authority in relation to –
- (a) regulations under section 29(2) which specify a person who is, or a description of persons each of whom is, a Scottish body,
- (b) regulations under section 30(4)(a) which add or remove a person who is, or a description of persons each of whom is, a Scottish body, and 45

- (c) regulations under section 29(6) or 30(4)(b) which have the effect only of enabling a Scottish body to disclose information for the purposes of an objective which does not relate to a reserved matter (within the meaning of the Scotland Act 1998).
- (3) In subsection (2) “Scottish body” means – 5
  - (a) a person who is a part of the Scottish Administration,
  - (b) a Scottish public authority with mixed functions or no reserved functions (within the meaning of the Scotland Act 1998), or
  - (c) a person providing services to a person within paragraph (a) or (b).
- (4) The Welsh Ministers are the appropriate national authority in relation to – 10
  - (a) regulations under section 29(2) which specify a person who is, or a description of persons each of whom is, a Welsh body,
  - (b) regulations under section 30(4)(a) which add or remove a person who is, or a description of persons each of whom is, a Welsh body, and
  - (c) regulations under section 29(6) or 30(4)(b) which have the effect only of enabling a Welsh body to disclose information for the purposes of an objective which relates to a matter within the legislative competence of the National Assembly for Wales. 15
- (5) In subsection (4) “Welsh body” means – 20
  - (a) a person who wholly or mainly exercises functions which could be conferred on the person by provision which falls within the legislative competence of the National Assembly for Wales, or
  - (b) a person providing services to a person within paragraph (a).
- (6) The Department of Finance in Northern Ireland is the appropriate national authority in relation to – 25
  - (a) regulations under section 29(2) which specify a person who is, or a description of persons each of whom is, a Northern Ireland body, and
  - (b) regulations under section 29(6) which have the effect only of enabling a Northern Ireland body to disclose information for the purposes of an objective which relates to a transferred matter (within the meaning of the Northern Ireland Act 1998). 30
- (7) In subsection (6) “Northern Ireland body” means – 35
  - (a) a Minister within the meaning of the Northern Ireland Act 1998,
  - (b) a Northern Ireland department,
  - (c) a Northern Ireland public authority within the meaning of the Statistics and Registration Service Act 2007, or
  - (d) a person providing services to a person within paragraph (a), (b) or (c).
- (8) A person is not a public authority for the purposes of this Chapter if, apart from this subsection, the person would be a public authority for those purposes merely because the person exercises functions on behalf of another public authority. 40
- (9) References in this Chapter to people living in fuel poverty are to be construed in accordance with section 30(7).

## CHAPTER 2

### CIVIL REGISTRATION

#### 38 Disclosure of information by civil registration officials

- (1) The Registration Service Act 1953 is amended as follows.
- (2) After section 19A insert – 5
- “19AA Disclosure of information**
- (1) A civil registration official may, subject to this section, disclose any information held in connection with any of the official’s functions to – 10
- (a) a specified public authority (see section 19AB), or
- (b) any other civil registration official.
- (2) A civil registration official may disclose information under this section only if the official is satisfied that the authority or civil registration official to whom it is disclosed (the “recipient”) requires the information to enable the recipient to exercise one or more of the recipient’s functions. 15
- (3) A disclosure under this section does not breach any obligation of confidence owed by the civil registration official making the disclosure.
- (4) The power to disclose information under this section is subject to any express restriction on disclosure imposed by another enactment (ignoring any restriction which allows disclosure if authorised by an enactment). 20
- (5) This section does not limit the circumstances in which information may be disclosed apart from this section.
- (6) “Civil registration official” means – 25
- (a) the Registrar General;
- (b) a superintendent registrar of births, deaths and marriages;
- (c) a registrar of births and deaths;
- (d) a registrar of marriages;
- (e) each of the following in its capacity as a registration authority within the meaning of Chapter 1 of Part 2 of the Civil Partnership Act 2004 (see section 28 of that Act) – 30
- (i) a county council in England;
- (ii) the council of any district in England comprised in an area for which there is no county council;
- (iii) a London borough council; 35
- (iv) the Common Council of the City of London;
- (v) the Council of the Isles of Scilly;
- (vi) a county council in Wales;
- (vii) a county borough council in Wales.

#### 19AB Specified public authorities 40

- (1) Each of the following public authorities is a “specified public authority” for the purposes of section 19AA –
- (a) a Minister of the Crown;

- (b) the Welsh Government;
  - (c) a department of the government of the United Kingdom;
  - (d) the Greater London Authority;
  - (e) a county council in England;
  - (f) a district council in England; 5
  - (g) a London borough council;
  - (h) the Common Council of the City of London in its capacity as a local authority;
  - (i) the Council of the Isles of Scilly;
  - (j) a county council in Wales; 10
  - (k) a county borough council in Wales;
  - (l) an NHS body within the meaning of the National Health Service Act 2006 (see section 275 of that Act).
- (2) The Minister may by regulations amend subsection (1) so as to add, modify or remove a reference to a public authority or description of public authority. 15
- (3) Regulations under this section must be made by statutory instrument.
- (4) Regulations under this section may –
- (a) make different provision for different purposes;
  - (b) contain consequential, incidental, supplemental, transitional or transitory provision or savings. 20
- (5) The provision that may be made by virtue of subsection (4)(b) includes provision amending, repealing or revoking any provision of any enactment.
- (6) 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. 25
- (7) In this section –
- “enactment” includes an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978; 30
  - “public authority” means a person who exercises functions of a public nature.

### **19AC Code of practice**

- (1) The Registrar General must issue a code of practice about the disclosure of information under section 19AA. 35
- (2) A civil registration official must have regard to the code of practice in disclosing information under section 19AA.
- (3) The Registrar General may from time to time revise and re-issue the code of practice.
- (4) Before issuing or revising the code of practice the Registrar General must consult – 40
- (a) the Minister,
  - (b) the Information Commissioner, and
  - (c) such other persons as the Registrar General thinks fit.

- (5) As soon as reasonably practicable after issuing or reissuing the code of practice the Registrar General must arrange for a copy of it to be laid before Parliament.”
- (3) In section 19B (fees in respect of provision of copies of records etc) –
- (a) after subsection (1) insert – 5
- “(1A) The Minister may by regulations provide for fees to be payable to a civil registration official in respect of the disclosure by the official of information under section 19AA.”,
- (b) in subsections (2) and (3), for “The regulations” substitute “Regulations under this section”, and 10
- (c) in the heading, omit “in respect of provision of copies of records etc”.
- (4) In section 21(1) (interpretation), after “respectively –” insert –  
 ““civil registration official” has the meaning given by section 19AA;”.
- 39 Consequential provision** 15
- (1) The Secretary of State may by regulations make the provision in subsection (2) in consequence of any provision made by section 38.
- (2) The provision mentioned in subsection (1) is provision amending, repealing or revoking any provision of any enactment passed or made before or in the same Session as this Act. 20
- (3) Regulations under this section must be made by statutory instrument.
- (4) Regulations under this section may –
- (a) make different provision for different purposes;
- (b) contain transitional or transitory provision or savings.
- (5) A statutory instrument containing regulations under this section which amend or repeal an Act may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament. 25
- (6) A statutory instrument containing any other regulations under this section is subject to annulment in pursuance of a resolution of either House of Parliament. 30
- (7) In this section “enactment” includes an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978.

### CHAPTER 3

#### DEBT OWED TO THE PUBLIC SECTOR

- 40 Disclosure of information to reduce debt owed to the public sector** 35
- (1) A specified person may disclose information held by the person in connection with any of the person’s functions to another specified person for the purposes of the taking of action in connection with debt owed to a specified person or to the Crown.
- (2) For the purposes of this section debt is owed to a specified person or to the Crown if – 40

- (a) a person is required to pay a sum of money to a specified person or to the Crown, and
  - (b) all or part of that sum remains unpaid after the date on which, or after the end of the period within which, it is required to be paid.
- (3) The reference in subsection (1) to taking action in connection with debt owed to a specified person or to the Crown includes –
  - (a) identifying debt of that kind;
  - (b) collecting debt of that kind;
  - (c) bringing civil proceedings as a result of debt of that kind;
  - (d) taking administrative action as a result of debt of that kind.
- (4) In this Chapter “specified person” means a person specified, or of a description specified, in regulations made by the appropriate national authority.
- (5) A person specified in regulations under subsection (4) must be –
  - (a) a public authority, or
  - (b) a person providing services to a public authority.
- (6) In the case of a person (“P”) who is a specified person merely because of providing services to a public authority, the reference in subsection (1) to the functions of a specified person is limited to the functions P exercises for that purpose.
- (7) In determining whether to make regulations under subsection (4) in relation to a person or description of person the appropriate national authority must have regard, in particular, to –
  - (a) the systems and procedures for the secure handling of information by that person or persons of that description, and
  - (b) in the case of regulations which amend or revoke previous regulations so that the person ceases to be a specified person, whether that person, or any person providing services to that person, has had regard to the code of practice under section 44 as required by that section.
- (8) Before making regulations under subsection (4) the appropriate national authority must consult –
  - (a) the Information Commissioner,
  - (b) the Commissioners for Her Majesty’s Revenue and Customs,
  - (c) each other person who is the appropriate national authority in relation to regulations under subsection (4),
  - (d) where the appropriate national authority is not the relevant Minister, the Minister for the Cabinet Office, and
  - (e) such other persons as the appropriate national authority thinks appropriate.
- (9) The fact that this section was not in force when consultation of the kind mentioned in subsection (8) took place is to be disregarded in determining whether there has been compliance with that subsection.

#### **41 Further provisions about power in section 40**

- (1) Personal information disclosed under section 40 may only be used by the person to whom it is disclosed for the purposes for which it was disclosed, subject to subsection (2).

- 
- (2) Subsection (1) does not prevent the use of information by a person –
- (a) if the information has already lawfully been made available to the public,
  - (b) if the person to whom the information relates consents to its use for another purpose, 5
  - (c) for the purposes of a criminal investigation (whether or not in the United Kingdom),
  - (d) for the purposes of legal proceedings (whether civil or criminal and whether or not in the United Kingdom),
  - (e) for the purposes of safeguarding vulnerable adults or children, or 10
  - (f) for the purposes of protecting national security.
- (3) Subsection (2) does not apply to information disclosed to a person under section 40 by the Revenue and Customs; but such information may be used by that person for purposes other than those for which it was disclosed with the consent of the Commissioners for Her Majesty’s Revenue and Customs (which may be general or specific). 15
- (4) For the purposes of this Chapter information is “personal information” if –
- (a) it relates to and identifies a particular person (including a body corporate), but
  - (b) it is not information about the internal administrative arrangements of a specified person. 20
- (5) For the purposes of subsection (4) information identifies a particular person if the identity of that person –
- (a) is specified in the information,
  - (b) can be deduced from the information, or 25
  - (c) can be deduced from the information taken together with any other information.
- (6) A disclosure under section 40 does not breach –
- (a) any obligation of confidence owed by the person making the disclosure, or 30
  - (b) any other restriction on the disclosure of information (however imposed).
- (7) But nothing in section 40 authorises the making of a disclosure which –
- (a) contravenes the Data Protection Act 1998, or
  - (b) is prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000. 35
- (8) Section 40 does not limit the circumstances in which information may be disclosed apart from that section.
- 42 Confidentiality of personal information**
- (1) Personal information received by a person (“P”) under section 40 may not be disclosed – 40
- (a) by P, or
  - (b) by any other person who has received it directly or indirectly from P.
- (2) Subsection (1) does not apply to a disclosure –
- (a) which is required or permitted by any enactment (including section 40), 45

- (b) which is required by an EU obligation,
  - (c) which is made in pursuance of an order of the court,
  - (d) of information which has already lawfully been made available to the public,
  - (e) which is made for the purposes of a criminal investigation (whether or not in the United Kingdom), 5
  - (f) which is made for the purposes of legal proceedings (whether civil or criminal and whether or not in the United Kingdom),
  - (g) which is made with the consent of the person to whom it relates,
  - (h) which is made for the purposes of safeguarding vulnerable adults or children, or 10
  - (i) which is made for the purposes of protecting national security.
- (3) A person who contravenes subsection (1) is guilty of an offence.
- (4) It is a defence for a person charged with an offence under subsection (3) to prove that the person reasonably believed that the disclosure was lawful. 15
- (5) A person who is guilty of an offence under subsection (3) is liable on conviction on indictment to imprisonment for a term not exceeding two years, to a fine or to both.
- (6) A person who is guilty of an offence under subsection (3) is liable on summary conviction – 20
- (a) in England and Wales, to imprisonment for a term not exceeding 12 months, to a fine or to both;
  - (b) in Scotland, to imprisonment for a term not exceeding 12 months, to a fine not exceeding the statutory maximum or to both;
  - (c) in Northern Ireland, to imprisonment for a term not exceeding 6 months, to a fine not exceeding the statutory maximum or to both. 25
- (7) In the application of subsection (6)(a) to an offence committed before the coming into force of section 154(1) of the Criminal Justice Act 2003 the reference to 12 months is to be read as a reference to 6 months.
- (8) This section does not apply to personal information disclosed under section 40 by the Revenue and Customs. 30

#### **43 Information disclosed by the Revenue and Customs**

- (1) Personal information disclosed by the Revenue and Customs under section 40 and received by a person (“P”) may not be disclosed – 35
- (a) by P, or
  - (b) by any other person who has received it directly or indirectly from P.
- (2) Subsection (1) does not apply to a disclosure which is made with the consent of the Commissioners for Her Majesty’s Revenue and Customs (which may be general or specific).
- (3) A person who contravenes subsection (1) is guilty of an offence. 40
- (4) It is a defence for a person charged with an offence under subsection (3) to prove that the person reasonably believed –
- (a) that the disclosure was lawful, or
  - (b) that the information had already and lawfully been made available to the public. 45

- (5) Subsections (4) to (7) of section 19 of the Commissioners for Revenue and Customs Act 2005 apply to an offence under subsection (3) as they apply to an offence under that section.

#### **44 Code of practice**

- (1) The relevant Minister must issue a code of practice about – 5  
 (a) the disclosure of information under section 40, and  
 (b) the use of information disclosed under that section.
- (2) A specified person must have regard to the code of practice in – 10  
 (a) disclosing information under section 40, and  
 (b) using information disclosed under that section.
- (3) The relevant Minister may from time to time revise and re-issue the code of practice.
- (4) Before issuing or reissuing the code of practice the relevant Minister must consult – 15  
 (a) the Information Commissioner,  
 (b) the Commissioners for Her Majesty’s Revenue and Customs,  
 (c) the Scottish Ministers,  
 (d) the Welsh Ministers,  
 (e) the Department of Finance in Northern Ireland, and  
 (f) such other persons as the relevant Minister thinks appropriate. 20
- (5) The fact that this section was not in force when consultation of the kind mentioned in subsection (4) took place is to be disregarded in determining whether there has been compliance with that subsection.
- (6) As soon as is reasonably practicable after issuing or reissuing the code of practice the relevant Minister must lay, or arrange for the laying of, a copy of it before – 25  
 (a) Parliament,  
 (b) the Scottish Parliament,  
 (c) the National Assembly for Wales, and  
 (d) the Northern Ireland Assembly. 30

#### **45 Duty to review operation of Chapter**

- (1) As soon as is reasonably practicable after the end of three years beginning with the day on which this Chapter comes into force, the relevant Minister must review its operation for the purposes of deciding whether it should be amended or repealed. 35
- (2) Before carrying out the review the relevant Minister must publish the criteria by reference to which that determination will be made.
- (3) In carrying out the review the relevant Minister must consult – 40  
 (a) the Information Commissioner,  
 (b) the Scottish Ministers,  
 (c) the Welsh Ministers,  
 (d) the Department of Finance in Northern Ireland, and  
 (e) such other persons as the relevant Minister thinks appropriate.

- (4) Once the review is completed the relevant Minister must –
  - (a) publish a report on its outcome, and
  - (b) lay, or arrange for the laying of, a copy of the report before –
    - (i) Parliament,
    - (ii) the Scottish Parliament, 5
    - (iii) the National Assembly for Wales, and
    - (iv) the Northern Ireland Assembly.
- (5) If as a result of the review the relevant Minister decides that this Chapter should be amended or repealed, the relevant Minister may by regulations amend or repeal it (as the case may be). 10
- (6) The relevant Minister may only make regulations under subsection (5) with the consent of the Treasury in a case where the regulations could affect the disclosure of information by the Revenue and Customs.
- (7) Anything required to be published by this section is to be published in such manner as the relevant Minister thinks fit. 15

#### **46 Regulations under this Chapter**

- (1) Any power to make regulations under this Chapter is exercisable –
  - (a) in the case of regulations made by the relevant Minister or the Welsh Ministers, by statutory instrument, and
  - (b) in the case of regulations made by the Department of Finance in Northern Ireland, by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (SI 1979/1573 (NI 12)). 20
- (2) Regulations under this Chapter –
  - (a) may make different provision for different purposes;
  - (b) may contain consequential, supplementary, transitional or transitory provision or savings. 25
- (3) The provision that may be made by virtue of subsection (2)(b) includes –
  - (a) provision amending this Chapter or repealing or revoking any provision of this Chapter;
  - (b) provision amending, repealing or revoking an enactment passed or made before or in the same session as this Act. 30
- (4) In the case of regulations under section 40(4) which specify a person or description of person, this includes provision amending this Chapter so as to make provision in relation to information disclosed by that person or a person of that description which is similar to that made by section 43 in relation to information disclosed by the Revenue and Customs. 35
- (5) A statutory instrument containing regulations made under this Chapter by the relevant Minister may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (6) Regulations made under section 40(4) by the Scottish Ministers are subject to the affirmative procedure. 40
- (7) A statutory instrument containing regulations made under section 40(4) by the Welsh Ministers may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the National Assembly for Wales.

- (8) Regulations under section 40(4) may not be made by the Department of Finance in Northern Ireland unless a draft of the regulations has been laid before, and approved by a resolution of, the Northern Ireland Assembly.
- (9) If a draft of a statutory instrument containing regulations under section 40(4) would, apart from this subsection, be treated for the purposes of the standing orders of either House of Parliament as a hybrid instrument, it is to proceed in that House as if it were not such an instrument. 5

#### 47 Interpretation of this Chapter

- (1) In this Chapter –
- “the appropriate national authority” means the relevant Minister, subject to subsections (2) to (7); 10
  - “enactment” includes –
    - (a) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament;
    - (b) an enactment contained in, or in an instrument made under, a Measure or Act of the National Assembly for Wales; 15
    - (c) an enactment contained in, or in an instrument made under, Northern Ireland legislation;
    - (d) an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978; 20
  - “functions” means functions of a public nature;
  - “personal information” has the meaning given by section 41(4);
  - “public authority” means –
    - (a) a person or body exercising functions of a public nature in the United Kingdom, 25
    - (b) a person or body entirely or substantially funded from public money,
    - (c) an office-holder appointed by a person or body falling within paragraph (a), or
    - (d) a body more than half of whose governing body or members are appointed by a person or body falling within paragraph (a); 30
  - “relevant Minister” means the Secretary of State or the Minister for the Cabinet Office;
  - “the Revenue and Customs” has the meaning given by section 17(3) of the Commissioners for Revenue and Customs Act 2005; 35
  - “specified person” has the meaning given by section 40(4).
- (2) The Scottish Ministers are the appropriate national authority in relation to regulations under section 40(4) which specify a person who is, or a description of persons each of whom is, a Scottish body.
- (3) In subsection (2) “Scottish body” means – 40
- (a) a person who is a part of the Scottish Administration,
  - (b) a Scottish public authority with mixed functions or no reserved functions (within the meaning of the Scotland Act 1998), or
  - (c) a person providing services to a person within paragraph (a) or (b).
- (4) The Welsh Ministers are the appropriate national authority in relation to regulations under section 40(4) which specify a person who is, or a description of persons each of whom is, a Welsh body. 45

- (5) In subsection (4) “Welsh body” means –
- (a) a person who wholly or mainly exercises functions which could be conferred on the person by provision which falls within the legislative competence of the National Assembly for Wales, or
  - (b) a person providing services to a person within paragraph (a). 5
- (6) The Department of Finance in Northern Ireland is the appropriate national authority in relation to regulations under section 40(4) which specify a person who is, or a description of persons each of whom is, a Northern Ireland body.
- (7) In subsection (6) “Northern Ireland body” means –
- (a) a Minister within the meaning of the Northern Ireland Act 1998, 10
  - (b) a Northern Ireland department,
  - (c) a Northern Ireland public authority within the meaning of the Statistics and Registration Service Act 2007, or
  - (d) a person providing services to a person within paragraph (a), (b) or (c).

## CHAPTER 4

15

### FRAUD AGAINST THE PUBLIC SECTOR

#### 48 Disclosure of information to combat fraud against the public sector

- (1) A specified person may disclose information held by the person in connection with any of the person’s functions to another specified person for the purposes of the taking of action in connection with fraud against a public authority. 20
- (2) In this section “fraud against a public authority” means a fraud offence which involves –
- (a) loss to a public authority, or
  - (b) the exposure of a public authority to a risk of loss.
- (3) In subsection (2) –
- (a) “fraud offence” means an offence under section 1 of the Fraud Act 2006 or, in relation to Scotland, an offence of fraud, and
  - (b) “loss”, as it applies in relation to an offence under section 1 of the Fraud Act 2006, has the meaning given by section 5 of that Act. 25
- (4) The reference in subsection (1) to taking action in connection with fraud against a public authority includes any of the following –
- (a) preventing fraud of that kind;
  - (b) detecting fraud of that kind;
  - (c) investigating fraud of that kind;
  - (d) prosecuting fraud of that kind; 35
  - (e) bringing civil proceedings as a result of fraud of that kind;
  - (f) taking administrative action as a result of fraud of that kind.
- (5) In this Chapter “specified person” means a person specified, or of a description specified, in regulations made by the appropriate national authority.
- (6) A person specified in regulations under subsection (5) must be –
- (a) a public authority, or
  - (b) a person providing services to a public authority. 40

- 
- (7) In the case of a person (“P”) who is a specified person merely because of providing services to a public authority, the reference in subsection (1) to the functions of a specified person is limited to the functions P exercises for that purpose.
- (8) In determining whether to make regulations under subsection (5) in relation to a person or description of person the appropriate national authority must have regard, in particular, to – 5
- (a) the systems and procedures for the secure handling of information by that person or persons of that description, and
  - (b) in the case of regulations which amend or revoke previous regulations so that the person ceases to be a specified person, whether that person, or any person providing services to that person, has had regard to the code of practice under section 52 as required by that section. 10
- (9) Before making regulations under subsection (5) the appropriate national authority must consult – 15
- (a) the Information Commissioner,
  - (b) the Commissioners for Her Majesty’s Revenue and Customs,
  - (c) each other person who is the appropriate national authority in relation to regulations under subsection (5),
  - (d) where the appropriate national authority is not the relevant Minister, the Minister for the Cabinet Office, and 20
  - (e) such other persons as the appropriate national authority thinks appropriate.
- (10) The fact this section was not in force when consultation of the kind mentioned in subsection (9) took place is to be disregarded in determining whether there has been compliance with that subsection. 25
- (11) In this Chapter “public authority” means –
- (a) a person or body exercising functions of a public nature in the United Kingdom,
  - (b) a person or body entirely or substantially funded from public money, 30
  - (c) an office-holder appointed by a person or body falling within paragraph (a), or
  - (d) a body more than half of whose governing body or members are appointed by a person or body falling within paragraph (a).
- 49 Further provisions about power in section 48** 35
- (1) Personal information disclosed under section 48 may only be used by the person to whom it is disclosed for the purposes for which it was disclosed, subject to subsection (2).
- (2) Subsection (1) does not prevent the use of information by a person –
- (a) if the information has already lawfully been made available to the public, 40
  - (b) if the person to whom the information relates consents to its use for another purpose,
  - (c) for the purposes of a criminal investigation (whether or not in the United Kingdom), 45
  - (d) for the purposes of legal proceedings (whether civil or criminal and whether or not in the United Kingdom), or

- (e) for the purposes of –
  - (i) preventing serious physical harm to a person,
  - (ii) preventing loss of human life,
  - (iii) safeguarding vulnerable adults or children,
  - (iv) responding to an emergency, or
  - (v) protecting national security.5
- (3) Subsection (2) does not apply to information disclosed to a person under section 48 by the Revenue and Customs; but such information may be used by that person for purposes other than those for which it was disclosed with the consent of the Commissioners for Her Majesty’s Revenue and Customs (which may be general or specific). 10
- (4) For the purposes of this Chapter information is “personal information” if –
  - (a) it relates to and identifies a particular person (including a body corporate), but
  - (b) it is not information about the internal administrative arrangements of a specified person.15
- (5) For the purposes of subsection (1) information identifies a particular person if the identity of that person –
  - (a) is specified in the information,
  - (b) can be deduced from the information, or
  - (c) can be deduced from the information taken together with any other information.20
- (6) A disclosure under section 48 does not breach –
  - (a) any obligation of confidence owed by the person making the disclosure, or
  - (b) any other restriction on the disclosure of information (however imposed).25
- (7) But nothing in section 48 authorises the making of a disclosure which –
  - (a) contravenes the Data Protection Act 1998, or
  - (b) is prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000.30
- (8) Section 48 does not limit the circumstances in which information may be disclosed apart from that section.

## 50 Confidentiality of personal information

- (1) Personal information received by a person (“P”) under section 48 may not be disclosed –
  - (a) by P, or
  - (b) by any other person who has received it directly or indirectly from P.35
- (2) Subsection (1) does not apply to a disclosure –
  - (a) which is required or permitted by any enactment (including section 48),
  - (b) which is required by an EU obligation,
  - (c) which is made in pursuance of an order of the court,
  - (d) of information which has already lawfully been made available to the public,40

- (e) which is made for the purposes of a criminal investigation (whether or not in the United Kingdom),
- (f) which is made for the purposes of legal proceedings (whether civil or criminal and whether or not in the United Kingdom),
- (g) which is made with the consent of the person to whom it relates, or 5
- (h) which is made for the purposes of –
  - (i) preventing serious physical harm to a person,
  - (ii) preventing loss of human life,
  - (iii) safeguarding vulnerable adults or children,
  - (iv) responding to an emergency, or 10
  - (v) protecting national security.
- (3) A person who contravenes subsection (1) is guilty of an offence.
- (4) It is a defence for a person charged with an offence under subsection (3) to prove that the person reasonably believed that the disclosure was lawful.
- (5) A person who is guilty of an offence under subsection (3) is liable on conviction on indictment to imprisonment for a term not exceeding two years, to a fine or to both. 15
- (6) A person who is guilty of an offence under subsection (3) is liable on summary conviction –
  - (a) in England and Wales, to imprisonment for a term not exceeding 12 months, to a fine or to both; 20
  - (b) in Scotland, to imprisonment for a term not exceeding 12 months, to a fine not exceeding the statutory maximum or to both;
  - (c) in Northern Ireland, to imprisonment for a term not exceeding 6 months, to a fine not exceeding the statutory maximum or to both. 25
- (7) In the application of subsection (6)(a) to an offence committed before the coming into force of section 154(1) of the Criminal Justice Act 2003 the reference to 12 months is to be read as a reference to 6 months.
- (8) This section does not apply to personal information disclosed under section 48 by the Revenue and Customs. 30

## **51 Information disclosed by the Revenue and Customs**

- (1) Personal information disclosed by the Revenue and Customs under section 48 and received by a person (“P”) may not be disclosed –
  - (a) by P, or
  - (b) by any other person who has received it directly or indirectly from P. 35
- (2) Subsection (1) does not apply to a disclosure which is made with the consent of the Commissioners for Her Majesty’s Revenue and Customs (which may be general or specific).
- (3) A person who contravenes subsection (1) is guilty of an offence.
- (4) It is a defence for a person charged with an offence under subsection (3) to prove that the person reasonably believed – 40
  - (a) that the disclosure was lawful, or
  - (b) that the information had already and lawfully been made available to the public.

- (5) Subsections (4) to (7) of section 19 of the Commissioners for Revenue and Customs Act 2005 apply to an offence under subsection (3) as they apply to an offence under that section.

## 52 Code of practice

- (1) The relevant Minister must issue a code of practice about – 5  
(a) the disclosure of information under section 48, and  
(b) the use of information disclosed under that section.
- (2) A specified person must have regard to the code of practice in –  
(a) disclosing information under section 48, and  
(b) using information disclosed under that section. 10
- (3) The relevant Minister may from time to time revise and re-issue the code of practice.
- (4) Before issuing or reissuing the code of practice the relevant Minister must consult –  
(a) the Information Commissioner, 15  
(b) the Commissioners for Her Majesty’s Revenue and Customs,  
(c) the Scottish Ministers,  
(d) the Welsh Ministers,  
(e) the Department of Finance in Northern Ireland, and  
(f) such other persons as the relevant Minister thinks appropriate. 20
- (5) The fact that this section was not in force when consultation of the kind mentioned in subsection (4) took place is to be disregarded in determining whether there has been compliance with that subsection.
- (6) As soon as is reasonably practicable after issuing or reissuing the code of practice the relevant Minister must lay, or arrange for the laying of, a copy of it before – 25  
(a) Parliament,  
(b) the Scottish Parliament,  
(c) the National Assembly for Wales, and  
(d) the Northern Ireland Assembly. 30

## 53 Duty to review operation of Chapter

- (1) As soon as is reasonably practicable after the end of three years beginning with the day on which this Chapter comes into force, the relevant Minister must review its operation for the purposes of deciding whether it should be amended or repealed. 35
- (2) Before carrying out the review the relevant Minister must publish the criteria by reference to which that determination will be made.
- (3) In carrying out the review the relevant Minister must consult –  
(a) the Information Commissioner,  
(b) the Scottish Ministers, 40  
(c) the Welsh Ministers,  
(d) the Department of Finance in Northern Ireland, and  
(e) such other persons as the relevant Minister thinks appropriate.

- 
- (4) Once the review is completed the relevant Minister must –
- (a) publish a report on its outcome, and
  - (b) lay, or arrange for the laying of, a copy of the report before –
    - (i) Parliament,
    - (ii) the Scottish Parliament, 5
    - (iii) the National Assembly for Wales, and
    - (iv) the Northern Ireland Assembly.
- (5) If as a result of the review the relevant Minister decides that this Chapter should be amended or repealed, the relevant Minister may by regulations amend or repeal it (as the case may be). 10
- (6) The relevant Minister may only make regulations under subsection (5) with the consent of the Treasury in a case where the regulations could affect the disclosure of information by the Revenue and Customs.
- (7) Anything required to be published by this section is to be published in such manner as the relevant Minister thinks fit. 15

#### **54 Regulations under this Chapter**

- (1) Any power to make regulations under this Chapter is exercisable –
- (a) in the case of regulations made by the relevant Minister or the Welsh Ministers, by statutory instrument, and
  - (b) in the case of regulations made by the Department of Finance in Northern Ireland, by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (SI 1979/1573 (NI 12)). 20
- (2) Regulations under this Chapter –
- (a) may make different provision for different purposes;
  - (b) may contain consequential, supplementary, transitional or transitory provision or savings. 25
- (3) The provision that may be made by virtue of subsection (2)(b) includes –
- (a) provision amending this Chapter or repealing or revoking any provision of this Chapter;
  - (b) provision amending, repealing or revoking an enactment passed or made before or in the same session as this Act. 30
- (4) In the case of regulations under section 48(5) which specify a person or description of person, this includes provision amending this Chapter so as to make provision in relation to information disclosed by that person or a person of that description which is similar to that made by section 51 in relation to information disclosed by the Revenue and Customs. 35
- (5) A statutory instrument containing regulations made under this Chapter by the relevant Minister may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (6) Regulations made under section 48(5) by the Scottish Ministers are subject to the affirmative procedure. 40
- (7) A statutory instrument containing regulations made under section 48(5) by the Welsh Ministers may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the National Assembly for Wales.

- (8) Regulations under section 48(5) may not be made by the Department of Finance in Northern Ireland unless a draft of the regulations has been laid before, and approved by a resolution of, the Northern Ireland Assembly.
- (9) If a draft of a statutory instrument containing regulations under section 48(5) would, apart from this subsection, be treated for the purposes of the standing orders of either House of Parliament as a hybrid instrument, it is to proceed in that House as if it were not such an instrument. 5

## 55 Interpretation of this Chapter

- (1) In this Chapter –
- “the appropriate national authority” means the relevant Minister, subject to subsections (2) to (7); 10
  - “enactment” includes –
    - (a) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament;
    - (b) an enactment contained in, or in an instrument made under, a Measure or Act of the National Assembly for Wales; 15
    - (c) an enactment contained in, or in an instrument made under, Northern Ireland legislation;
    - (d) an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978; 20
  - “functions” means functions of a public nature;
  - “personal information” has the meaning given by section 49(4);
  - “public authority” has the meaning given by section 48(11);
  - “relevant Minister” means the Secretary of State or the Minister for the Cabinet Office; 25
  - “the Revenue and Customs” has the meaning given by section 17(3) of the Commissioners for Revenue and Customs Act 2005;
  - “specified person” has the meaning given by section 48(5).
- (2) The Scottish Ministers are the appropriate national authority in relation to regulations under section 48(5) which specify a person who is, or a description of persons each of whom is, a Scottish body. 30
- (3) In subsection (2) “Scottish body” means –
- (a) a person who is a part of the Scottish Administration,
  - (b) a Scottish public authority with mixed functions or no reserved functions (within the meaning of the Scotland Act 1998), or 35
  - (c) a person providing services to a person within paragraph (a) or (b).
- (4) The Welsh Ministers are the appropriate national authority in relation to regulations under section 48(5) which specify a person who is, or a description of persons each of whom is, a Welsh body.
- (5) In subsection (4) “Welsh body” means – 40
- (a) a person who wholly or mainly exercises functions which could be conferred on the person by provision which falls within the legislative competence of the National Assembly for Wales, or
  - (b) a person providing services to a person within paragraph (a).

- (6) The Department of Finance in Northern Ireland is the appropriate national authority in relation to regulations under section 48(5) which specify a person who is, or a description of persons each of whom is, a Northern Ireland body.
- (7) In subsection (6) “Northern Ireland body” means –
- (a) a Minister within the meaning of the Northern Ireland Act 1998, 5
  - (b) a Northern Ireland department,
  - (c) a Northern Ireland public authority within the meaning of the Statistics and Registration Service Act 2007, or
  - (d) a person providing services to a person within paragraph (a), (b) or (c).

## CHAPTER 5 10

### SHARING FOR RESEARCH PURPOSES

#### 56 Disclosure of information for research purposes

- (1) Information held by a public authority in connection with the authority’s functions may be disclosed to another person for the purposes of research which is being or is to be carried out. 15
- (2) If the information is personal information it may not be disclosed under subsection (1) unless the following conditions are met.
- (3) The first condition is that, if the information identifies a particular person, it is processed before it is disclosed so that –
- (a) the person’s identity is not specified in the information, and 20
  - (b) it is not reasonably likely that the person’s identity will be deduced from the information (whether by itself or taken together with other information).
- (4) The second condition is that each person who is involved in processing the information for disclosure takes reasonable steps to – 25
- (a) minimise the risk of the accidental disclosure of information which identifies a particular person, and
  - (b) prevent the deliberate disclosure of such information (otherwise than in accordance with this Chapter).
- (5) The third condition is that the disclosure is made by the public authority or by a person who is involved in processing the information for disclosure under this section. 30
- (6) The fourth condition is that the research for the purposes of which the information is disclosed is accredited under section 61.
- (7) The fifth condition is that the following are accredited under section 61 – 35
- (a) any person other than the public authority who is involved in processing the information for disclosure under this section;
  - (b) any person to whom information is disclosed under this section;
  - (c) any person by whom such information is used for research purposes.
- (8) The sixth condition is that each person who discloses the information or is involved in processing it for disclosure under this section has regard to the code of practice under section 60 in doing so. 40

- (9) A public authority may disclose personal information to another person for the purposes of the processing of information for disclosure under this section.
- (10) For the purposes of this Chapter information is “personal information” if –  
(a) it relates to a particular person (including a body corporate), but  
(b) it is not information about the internal administrative arrangements of a public authority. 5
- (11) For the purposes of this Chapter information identifies a particular person if the identity of that person –  
(a) is specified in the information,  
(b) can be deduced from the information, or  
(c) can be deduced from the information taken together with any other information. 10
- (12) This section is subject to section 57.
- 57 Provisions supplementary to section 56**
- (1) A disclosure under section 56 does not breach – 15  
(a) any obligation of confidence owed by the person making the disclosure, or  
(b) any other restriction on the disclosure of information (however imposed).
- (2) But nothing in section 56 authorises information to be disclosed if to do so would – 20  
(a) contravene the Data Protection Act 1998, or  
(b) be prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000.
- (3) Section 56 does not limit the circumstances in which information may be disclosed apart from that section. 25
- (4) A person within subsection (5) may charge a person who requests information to be disclosed under section 56 a fee for work done in response to the request.
- (5) The persons mentioned in subsection (4) are –  
(a) the public authority to whom the request is made, and  
(b) a person who is involved in processing the information for disclosure. 30
- (6) A fee charged under subsection (4) by a public authority (including a person within subsection (5)(b) who is a public authority) must not exceed the cost to the person of doing the work for which the fee is charged.
- 58 Bar on further disclosure of personal information** 35
- (1) This section applies to personal information which –  
(a) identifies a particular person, and  
(b) is received by a person (“P”) under section 56(9) (disclosure for processing).
- (2) Personal information to which this section applies may not be disclosed – 40  
(a) by P, or  
(b) by any other person who has received it directly or indirectly from P.

- 
- (3) Subsection (2) does not apply to a disclosure –
- (a) which is required or permitted by any enactment,
  - (b) which is required by an EU obligation,
  - (c) which is made in pursuance of an order of the court,
  - (d) of information which has already lawfully been made available to the public, 5
  - (e) which is made for the purposes of a criminal investigation (whether or not in the United Kingdom),
  - (f) which is made for the purposes of legal proceedings (whether civil or criminal and whether or not in the United Kingdom), or 10
  - (g) which is made with the consent of the person to whom it relates.
- (4) In subsection (3)(a) “enactment” includes –
- (a) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament;
  - (b) an enactment contained in, or in an instrument made under, a Measure or Act of the National Assembly for Wales; 15
  - (c) an enactment contained in, or in an instrument made under, Northern Ireland legislation;
  - (d) an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978. 20
- (5) A person who contravenes subsection (2) is guilty of an offence.
- (6) It is a defence for a person charged with an offence under subsection (5) to prove that the person reasonably believed that the disclosure was lawful.
- (7) A person who is guilty of an offence under subsection (5) is liable on conviction on indictment to imprisonment for a term not exceeding two years, to a fine or to both. 25
- (8) A person who is guilty of an offence under subsection (5) is liable on summary conviction –
- (a) in England and Wales, to imprisonment for a term not exceeding 12 months, to a fine or to both; 30
  - (b) in Scotland, to imprisonment for a term not exceeding 12 months, to a fine not exceeding the statutory maximum or to both;
  - (c) in Northern Ireland, to imprisonment for a term not exceeding 6 months, to a fine not exceeding the statutory maximum or to both.
- (9) In the application of subsection (8)(a) to an offence committed before the coming into force of section 154(1) of the Criminal Justice Act 2003 the reference to 12 months is to be read as a reference to 6 months. 35
- (10) This section does not apply to personal information disclosed under section 56(9) by the Revenue and Customs.
- 59 Information disclosed by the Revenue and Customs 40**
- (1) This section applies to personal information which –
- (a) identifies a particular person, and
  - (b) is disclosed by the Revenue and Customs under section 56(9) (disclosure for processing) and received by a person (“P”).
- (2) Personal information to which this section applies may not be disclosed – 45

- (a) by P, or
    - (b) by any other person who has received it directly or indirectly from P.
  - (3) Subsection (2) does not apply to a disclosure which is made with the consent of the Commissioners for Her Majesty’s Revenue and Customs (which may be general or specific). 5
  - (4) A person who contravenes subsection (2) is guilty of an offence.
  - (5) It is a defence for a person charged with an offence under subsection (4) to prove that the person reasonably believed –
    - (a) that the disclosure was lawful, or
    - (b) that the information had already and lawfully been made available to the public. 10
  - (6) Subsections (4) to (7) of section 19 of the Commissioners for Revenue and Customs Act 2005 apply to an offence under subsection (4) as they apply to an offence under that section.
- 60 Code of practice 15**
- (1) The Statistics Board must issue a code of practice about –
    - (a) the disclosure of information under section 56,
    - (b) the processing of information under that section, and
    - (c) the holding or use of information disclosed under that section.
  - (2) A public authority must have regard to the code of practice in disclosing or participating in the processing of information under section 56. 20
  - (3) A person who is accredited under section 61(1)(a) must have regard to the code of practice in participating in the processing of information for disclosure under section 56.
  - (4) A person who is accredited under section 61(1)(b) or (c) must have regard to the code of practice in holding or using information disclosed under section 56. 25
  - (5) The Statistics Board may from time to time revise and re-issue the code of practice.
  - (6) Before issuing or reissuing the code of practice the Statistics Board must consult – 30
    - (a) the Minister for the Cabinet Office,
    - (b) the Information Commissioner,
    - (c) the Commissioners for Her Majesty’s Revenue and Customs,
    - (d) the Scottish Ministers,
    - (e) the Welsh Ministers, 35
    - (f) the Department of Finance in Northern Ireland, and
    - (g) such other persons as the Statistics Board thinks appropriate.
  - (7) The fact that this section was not in force when consultation of the kind mentioned in subsection (6) took place is to be disregarded in determining whether there has been compliance with that subsection. 40
  - (8) As soon as is reasonably practicable after issuing or reissuing the code of practice the Statistics Board must lay a copy of it before –
    - (a) Parliament,

- (b) the Scottish Parliament,
- (c) the National Assembly for Wales, and
- (d) the Northern Ireland Assembly.

## **61 Accreditation for the purposes of this Chapter**

- |   |    |
|---|----|
| (1) The Statistics Board –  | 5  |
| (a) may accredit a person as a person who may be involved in the processing of information for disclosure under section 56,   |    |
| (b) may accredit a person as a person to whom information may be disclosed under that section,  |    |
| (c) may accredit a person as a person by whom information disclosed under that section may be used for research purposes,   | 10 |
| (d) may accredit research for the purposes of that section, and   |    |
| (e) may withdraw accreditation given under any of paragraphs (a) to (d).  |    |
| (2) The Statistics Board –  |    |
| (a) must establish and publish conditions to be met by a person for accreditation under subsection (1)(a), (b) or (c),  | 15 |
| (b) must establish and publish conditions to be met by research for accreditation under subsection (1)(d), and  |    |
| (c) must establish and publish grounds for the withdrawal of accreditation under subsection (1)(e).   | 20 |
| (3) The conditions established and published under subsection (2)(a) must, in the case of a person seeking accreditation to be involved in the processing of information for disclosure under section 56, include a condition that the person is a fit and proper person to be involved in such processing. |    |
| (4) The conditions established and published under subsection (2)(b) must include a condition that the research is in the public interest.  | 25 |
| (5) The grounds established and published under subsection (2)(c) must, in the case of a person accredited under this section, include the ground that the person has failed to have regard to the code of practice under section 60.   |    |
| (6) Before publishing conditions under subsection (2)(a) or (b) or grounds under subsection (2)(c), the Statistics Board must consult –   | 30 |
| (a) the Minister for the Cabinet Office,  |    |
| (b) the Information Commissioner,   |    |
| (c) the Commissioners for Her Majesty’s Revenue and Customs,  |    |
| (d) the Scottish Ministers,   | 35 |
| (e) the Welsh Ministers,  |    |
| (f) the Department of Finance in Northern Ireland, and  |    |
| (g) such other persons as the Statistics Board thinks appropriate.  |    |
| (7) The Statistics Board must maintain and publish –  |    |
| (a) a register of persons who are accredited under subsection (1)(a),   | 40 |
| (b) a register of persons who are accredited under subsection (1)(b), and   |    |
| (c) a register of persons who are accredited under subsection (1)(c).   |    |
| (8) A register under any of the paragraphs of subsection (7) may be combined with a register under any of the other paragraph of that subsection.   |    |

- (9) Anything required by this section to be published must be published in such manner as the Statistics Board thinks appropriate for bringing it to the attention of persons likely to be affected by it.

## 62 Delegation of functions of Statistics Board

- (1) The Statistics Board may delegate any of its functions under section 61 to another person if the Board thinks that the person – 5
- (a) is a fit and proper person to exercise the function in question, and
  - (b) has expertise in statistical research and analysis.
- (2) Subsection (1) does not affect the operation of section 36 of the Statistics and Registration Service Act 2007 (delegation of Board’s functions). 10

## 63 Interpretation of this Chapter

- (1) In this Chapter –
- “personal information” has the meaning given by section 56(10);
  - “public authority” means a person with functions of a public nature, subject to subsection (2); 15
  - “the Revenue and Customs” has the meaning given by section 17(3) of the Commissioners for Revenue and Customs Act 2005.
- (2) Neither of the following is a public authority for the purposes of this Chapter –
- (a) a person providing health services;
  - (b) a person providing services for the purposes of adult social care. 20
- (3) In subsection (2)(a) “health services” means –
- (a) services which must or may be provided as part of the health service as defined by section 275(1) of the National Health Service Act 2006 or section 206(1) of the National Health Service (Wales) Act 2006,
  - (b) services which must or may be provided as part of the health service as defined by section 108(1) of the National Health Service (Scotland) Act 1978, or 25
  - (c) services designed to secure any of the objects of section 2(1)(a) of the Health and Social Care (Reform) Act (Northern Ireland) 2009.
- (4) In subsection (2)(b) “adult social care” includes all forms of personal care and other practical assistance provided for individuals aged 18 or over who, by reason of age, illness, disability, pregnancy, childbirth, dependence on alcohol or drugs, or any other similar circumstances, are in need of such care or assistance. 30
- (5) References in this Chapter to information which identifies a particular person are to be read in accordance with section 56(11). 35

## CHAPTER 6

### HER MAJESTY'S REVENUE AND CUSTOMS

#### 64 Disclosure of non-identifying information by HMRC

- |   |    |
|---|----|
| (1) A Revenue and Customs official may disclose to any person information held by the Revenue and Customs in connection with a function of the Revenue and Customs if – | 5  |
| (a) the information is non-identifying information, and   |    |
| (b) the official thinks that the disclosure would be in the public interest.  |    |
| (2) Information is non-identifying information for the purposes of this section if –  | 10 |
| (a) it is not, and has never been, identifying information, or  |    |
| (b) it has been created by combining identifying information, but is not itself identifying information.  |    |
| (3) Information is identifying information for the purposes of this section if it relates to a person whose identity –  | 15 |
| (a) is specified in the information,  |    |
| (b) can be deduced from the information, or   |    |
| (c) can be deduced from the information taken together with any other information.  |    |
| (4) In this section –   | 20 |
| (a) “Revenue and Customs official” has the meaning given by section 18(4)(a) of the Commissioners for Revenue and Customs Act 2005,                                     |    |
| (b) “the Revenue and Customs” has the meaning given by section 17(3) of that Act, and   |    |
| (c) “function of the Revenue and Customs” has the meaning given by section 18(4)(c) of that Act.  | 25 |

## CHAPTER 7

### STATISTICS

#### 65 Disclosure of information by HMRC to the Statistics Board

- |   |    |
|---|----|
| (1) Section 45 of the Statistics and Registration Service Act 2007 (disclosure of HMRC information to the Statistics Board) is amended as follows.                      | 30 |
| (2) In subsection (2) omit “, other than its function under section 22 (statistical services)”.   |    |
| (3) After subsection (2) insert –   |    |
| “(2A) In determining whether the condition in subsection (2) is met the Commissioners must have regard to any views of the Board which have been communicated to them.” | 35 |
| (4) In subsection (3) omit “, other than its function under section 22”.  |    |

- (5) After that subsection insert –
- “(3A) Information disclosed under subsection (1) may not be used by the Board for the purposes of its function under section 22 (statistical services) except with the consent of the Commissioners.”
- (6) Omit subsection (5) (which prevents the disclosure of personal information not relating to imports or exports). 5

## 66 Disclosure of information by public authorities to the Statistics Board

- (1) The Statistics and Registration Service Act 2007 is amended as follows.
- (2) After section 45 insert –
- “45A Information held by other public authorities 10**
- (1) A public authority to which this section applies may, subject to this section, disclose to the Board any information held by the authority in connection with its functions.
- (2) This section applies to a public authority other than –
- (a) the Commissioners for Her Majesty’s Revenue and Customs, or 15
- (b) an officer of Revenue and Customs.
- (3) A public authority may disclose information under subsection (1) only if it is satisfied that the Board requires the information to enable it to exercise one or more of its functions.
- (4) In determining whether the condition in subsection (3) is met the public authority must have regard to any views of the Board which have been communicated to the authority. 20
- (5) Information disclosed under subsection (1) may only be used by the Board for the purposes of any one or more of its functions.
- (6) Information disclosed under subsection (1) may not be used by the Board for the purposes of its function under section 22 (statistical services) except with the consent of the public authority which disclosed the information. 25
- (7) Where personal information is disclosed by a public authority to the Board under subsection (1), the Board may not disclose the information to an approved researcher under section 39(4)(i) except with the consent of the public authority. 30
- (8) A disclosure under subsection (1) does not breach –
- (a) any obligation of confidence owed by the public authority making the disclosure, or 35
- (b) any other restriction on the disclosure of information (however imposed).
- (9) But subsection (1) does not authorise the making of a disclosure which –
- (a) contravenes the Data Protection Act 1998, 40
- (b) is prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000, or

- 
- (c) contravenes directly applicable EU legislation or any enactment to the extent that it implements EU legislation.
- (10) This section does not limit the circumstances in which information may be disclosed apart from this section.”
- (3) Omit— 5
- (a) section 47 (power to authorise disclosure to the Board);
- (b) section 48 (power to authorise disclosure to the Board: Scotland);
- (c) section 49 (power to authorise disclosure to the Board: Northern Ireland).
- (4) In section 54 (Data Protection Act 1998 and Human Rights Act 1998) for “47” substitute “50”. 10
- (5) In section 65 (orders and regulations) —
- (a) in subsection (4) omit “47(11),”,
- (b) in subsection (5)(b) omit “47,”,
- (c) in subsection (6)(b) omit “48 or”, and 15
- (d) in subsection (9)(c) omit “49 or”.
- (6) In section 67 (general interpretation) for the definition of “enactment” substitute —
- ““enactment” includes —
- (a) an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978; 20
- (b) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament;
- (c) an enactment contained in, or in an instrument made under, a Measure or Act of the National Assembly for Wales; 25
- (d) an enactment contained in, or in an instrument made under, Northern Ireland legislation;”.
- 67 Access to information by Statistics Board**
- After section 45A of the Statistics and Registration Service Act 2007 (inserted by section 66) insert — 30
- “45B Access to information held by Crown bodies etc**
- (1) This section applies to —
- (a) a public authority which is an emanation of the Crown or a servant or agent of the Crown, 35
- (b) the Bank of England (including in the exercise of its functions as the Prudential Regulation Authority),
- (c) the Financial Conduct Authority, and
- (d) the Payment Systems Regulator established under section 40 of the Financial Services (Banking Reform) Act 2013. 40
- (2) Subject to this section and section 45E, the Board has a right of access to information which —
- (a) is held by a public authority to which this section applies in connection with its functions, and

- (b) is required by the Board to enable it to exercise one or more of its functions.
- (3) Subsection (2) does not apply to information if the disclosure of that information –
  - (a) would contravene the Data Protection Act 1998, 5
  - (b) would be prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000, or
  - (c) would contravene directly applicable EU legislation or any enactment to the extent that it implements EU legislation.
- (4) The right of access in subsection (2) is to be exercised in accordance with the following provisions of this section. 10
- (5) The Board may, by notice in writing to the public authority, request the authority to disclose the information to the Board.
- (6) A notice under subsection (5) must –
  - (a) set out the Board’s reasons for requesting the information to be disclosed, and 15
  - (b) specify the date by which or the period within which the public authority must respond to the request.
- (7) The public authority must, by that date or within that period, provide a response in writing to the Board which – 20
  - (a) indicates that it is willing to provide the information and gives the date by which it will be provided, or
  - (b) indicates that it is not willing to provide the information and gives reasons for not providing it.
- (8) Subsection (9) applies if – 25
  - (a) the public authority fails to respond to the request in accordance with subsection (7),
  - (b) the public authority indicates that it is not willing to provide the information requested, or
  - (c) the public authority has indicated that it is willing to provide the information requested, but the Board considers that the public authority is failing to take reasonable steps to comply with that request. 30
- (9) The Board may lay the request and any response by the public authority before the relevant legislature. 35
- (10) In subsection (9) “the relevant legislature” means Parliament, subject as follows.
- (11) The Scottish Parliament is the relevant legislature if –
  - (a) the public authority exercises functions only as regards Scotland, and 40
  - (b) its functions are wholly or mainly functions which do not relate to reserved matters (within the meaning of the Scotland Act 1998).
- (12) The National Assembly for Wales is the relevant legislature if –
  - (a) the public authority exercises functions only as regards Wales, and 45

- (b) its functions are wholly or mainly functions which could be conferred on the authority by provision which falls within the legislative competence of the National Assembly for Wales.
- (13) The Northern Ireland Assembly is the relevant legislature if – 5
- (a) the public authority exercises functions only as regards Northern Ireland, and
- (b) its functions are wholly or mainly functions which relate to transferred matters (within the meaning of the Northern Ireland Act 1998).
- (14) This section does not apply to – 10
- (a) Her Majesty in Her private capacity,
- (b) Her Majesty in right of the Duchy of Lancaster, or
- (c) the Duke of Cornwall.

#### **45C Power to require disclosures by other public authorities**

- (1) This section applies to a public authority to which section 45B does not apply (other than one within subsection (14) of that section). 15
- (2) Subject to this section and section 45E, the Board may, by notice in writing to a public authority to which this section applies, require the authority to disclose to the Board information which – 20
- (a) is held by the authority in connection with its functions, and
- (b) is specified, or is of a kind specified, in the notice.
- (3) A notice under subsection (2) may require information to be disclosed on more than one date specified in the notice within a period specified in the notice.
- (4) A notice under subsection (2) other than one within subsection (3) must specify the date by which or the period within which the information must be disclosed. 25
- (5) A notice under subsection (2) may specify the form or manner in which the information to which it relates must be disclosed.
- (6) A notice under subsection (2) may require the public authority to consult the Board before making changes to – 30
- (a) its processes for collecting, organising, storing or retrieving the information to which the notice relates, or
- (b) its processes for supplying such information to the Board.
- (7) The reference in subsection (6) to making changes to a process includes introducing or removing a process. 35
- (8) The Board may give a notice under subsection (2) only if the Board requires the information to which the notice relates to enable it to exercise one or more of its functions.
- (9) The Board must obtain the consent of the Scottish Ministers before giving a notice under subsection (2) to a public authority if – 40
- (a) the public authority exercises functions only as regards Scotland, and

- (b) its functions are wholly or mainly functions which do not relate to reserved matters (within the meaning of the Scotland Act 1998).
- (10) The Board must obtain the consent of the Welsh Ministers before giving a notice under subsection (2) to a public authority if—
  - (a) the public authority exercises functions only as regards Wales, and
  - (b) its functions are wholly or mainly functions which could be conferred on the authority by provision which falls within the legislative competence of the National Assembly for Wales.
- (11) The Board must obtain the consent of the Department of Finance in Northern Ireland before giving a notice under subsection (2) to a public authority if—
  - (a) the public authority exercises functions only as regards Northern Ireland, and
  - (b) its functions are wholly or mainly functions which relate to transferred matters (within the meaning of the Northern Ireland Act 1998).
- (12) A public authority to which a notice under subsection (2) is given must comply with it.
- (13) But the public authority need not comply with the notice if compliance—
  - (a) might prejudice national security,
  - (b) would contravene the Data Protection Act 1998,
  - (c) would be prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000, or
  - (d) would contravene directly applicable EU legislation or any enactment to the extent that it implements EU legislation.

#### **45D Power to require disclosure by undertakings**

- (1) Subject to this section and section 45E, the Board may, by notice in writing to an undertaking, require the undertaking to disclose to the Board information which—
  - (a) is held by the undertaking, and
  - (b) is specified, or is of a kind specified, in the notice.
- (2) A notice under subsection (1) may require information to be disclosed on more than one date specified in the notice within a period specified in the notice.
- (3) A notice under subsection (1) other than one within subsection (2) must specify the date by which or the period within which the information must be disclosed.
- (4) A notice under subsection (1) may specify the form or manner in which the information to which it relates must be disclosed.
- (5) A notice under subsection (1) may require the undertaking to consult the Board before making changes to—
  - (a) its processes for collecting, organising, storing or retrieving the information to which the notice relates, or

- (b) its processes for supplying such information to the Board.
- (6) The reference in subsection (5) to making changes to a process includes introducing or removing a process.
- (7) The Board may give a notice under subsection (1) only if the Board requires the information to which the notice relates to enable it to exercise one or more of its functions. 5
- (8) An undertaking to which a notice under subsection (1) is given must comply with it.
- (9) But the undertaking need not comply with the notice if compliance— 10
- (a) might prejudice national security,
  - (b) would contravene the Data Protection Act 1998, or
  - (c) would be prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000.
- (10) Subject to subsection (12), in this section “undertaking” means— 15
- (a) any person carrying on a trade or business, whether or not with a view to profit, or
  - (b) any charity.
- (11) In subsection (10) “charity” means a body, or the trustees of a trust, established for charitable purposes only.
- (12) The following are not undertakings for the purposes of this section— 20
- (a) a public authority;
  - (b) a micro business;
  - (c) a small business.
- (13) Section 33 of the Small Business, Enterprise and Employment Act 2015 (definitions of small and micro business) and regulations made under that section apply in relation to subsection (12) as they apply in relation to subordinate legislation within subsection (1) of that section. 25
- 45E Further provisions about powers in sections 45B, 45C and 45D**
- (1) Information disclosed under section 45B, 45C or 45D may only be used by the Board for the purposes of any one or more of its functions. 30
- (2) Information disclosed under section 45B, 45C or 45D may not be used by the Board for the purposes of its function under section 22 (statistical services) except with the consent of the person who disclosed the information.
- (3) Where personal information is disclosed under section 45B, 45C or 45D, the Board may not disclose the information to an approved researcher under section 39(4)(i) except with the consent of the person who disclosed the information. 35
- (4) A disclosure pursuant to section 45B, 45C or 45D does not breach— 40
- (a) any obligation of confidence owed by the person making the disclosure, or
  - (b) any other restriction on the disclosure of information (however imposed).
- (5) The Board must prepare and publish a statement of—

- (a) the principles to which it will have regard in exercising its functions under sections 45B, 45C and 45D, and
  - (b) the procedures which it will adopt in exercising those functions.
- (6) The Board may at any time revise the statement and, if it decides to do so, must publish the statement as revised. 5
- (7) In preparing or revising the statement the Board must consult –
  - (a) the Minister for the Cabinet Office,
  - (b) the Information Commissioner,
  - (c) the Scottish Ministers,
  - (d) the Welsh Ministers, 10
  - (e) the Department of Finance in Northern Ireland, and
  - (f) such other persons as the Board thinks fit.
- (8) The fact that this section was not in force when consultation of the kind mentioned in subsection (7) took place is to be disregarded in determining whether there has been compliance with that subsection. 15
- (9) After preparing or revising a statement the Board must lay the statement, or the statement as revised, before –
  - (a) Parliament,
  - (b) the Scottish Parliament,
  - (c) the National Assembly for Wales, and 20
  - (d) the Northern Ireland Assembly.

#### **45F Offences relating to notices under section 45C or 45D**

- (1) A person is guilty of an offence if –
  - (a) the person is given a notice under section 45C or 45D,
  - (b) the person is required to comply with the notice, 25
  - (c) the person fails to do so, and
  - (d) the person does not have a reasonable excuse for that failure.
- (2) A person is guilty of an offence if, in purporting to comply with a notice under section 45C or 45D, the person –
  - (a) provides information which is false in a material respect, and 30
  - (b) knows that the information is false in that respect or is reckless as to whether it is false in that respect.
- (3) A person who is guilty of an offence under subsection (1) or (2) is liable on summary conviction –
  - (a) in England and Wales, to a fine, and 35
  - (b) in Scotland or Northern Ireland, to a fine not exceeding level 5 on the standard scale.
- (4) If an offence under this section is committed by a body corporate with the consent or connivance of an officer of the body, the officer, as well as the body, is to be treated as having committed the offence. 40
- (5) In subsection (4) a reference to an officer of a body includes a reference to –
  - (a) a director, manager or secretary,
  - (b) a person purporting to act as a director, manager or secretary, 45

- (c) if the affairs of the body are managed by its members, a member.
- (6) Where an offence under this section is committed by a partnership (whether or not a limited partnership) subsection (4) has effect, but as if a reference to an officer of the body were a reference to – 5
  - (a) a partner, and
  - (b) a person purporting to act as a partner.

#### **45G Code of practice on changes to data systems**

- (1) The Board must prepare, adopt and publish a code of practice containing guidance on the matters to be taken into account by a public authority in making changes to – 10
  - (a) its processes for collecting, organising, storing or retrieving information, or
  - (b) its processes (if any) for supplying information to the Board.
- (2) A public authority must have regard to any code of practice under this section in making such changes. 15
- (3) The Board may at any time revise a code of practice under this section and, if it decides to do so, must publish the code as revised.
- (4) In preparing or revising a code of practice under this section, the Board must consult – 20
  - (a) the Minister for the Cabinet Office,
  - (b) the Scottish Ministers,
  - (c) the Welsh Ministers,
  - (d) the Department of Finance in Northern Ireland, and
  - (e) such other persons as the Board thinks fit. 25
- (5) The fact that this section was not in force when consultation of the kind mentioned in subsection (4) took place is to be disregarded in determining whether there has been compliance with that subsection.
- (6) After preparing or revising a code of practice under this section the Board must lay the code, or the code as revised, before – 30
  - (a) Parliament,
  - (b) the Scottish Parliament,
  - (c) the National Assembly for Wales, and
  - (d) the Northern Ireland Assembly.
- (7) The reference in subsection (1) to making changes to a process includes introducing or removing a process. 35
- (8) This section binds the Crown.
- (9) The reference to the Crown in subsection (8) does not include – 40
  - (a) Her Majesty in Her private capacity,
  - (b) Her Majesty in right of the Duchy of Lancaster, or
  - (c) the Duke of Cornwall.”

## 68 Disclosure by the Statistics Board to devolved administrations

After section 53 of the Statistics and Registration Service Act 2007 insert –

### “53A Disclosure by the Board to devolved administrations

- (1) Subject to this section, the Board may disclose information held by the Board in connection with the exercise of any of its functions to a devolved authority. 5
- (2) In this section “devolved authority” means –
  - (a) a person who is a part of the Scottish Administration,
  - (b) the Welsh Ministers, or
  - (c) the Department of Finance in Northern Ireland. 10
- (3) Information may only be disclosed under this section for the purposes of any or all of the statistical functions of a devolved authority.
- (4) Information may only be disclosed under this section in response to a request in writing by a devolved authority which specifies –
  - (a) the information which is sought, and 15
  - (b) the purposes for which it is sought.
- (5) A request under subsection (4) may request information to be disclosed on more than one date specified in the notice within a period specified in the notice.
- (6) Information may be disclosed under this section only if – 20
  - (a) the Board is satisfied that the information is required for the purposes of the statistical functions of the devolved authority which are specified in the request,
  - (b) the Board is satisfied that the information will not be used for any other purpose, and 25
  - (c) if the information was obtained by the Board from a public authority, the authority consents to the disclosure.
- (7) The Board may –
  - (a) disclose information under this section subject to conditions to be met by the devolved authority; 30
  - (b) from time to time modify conditions subject to which information has been disclosed;
  - (c) in the case of information which it is disclosing in response to a request to which subsection (5) applies, cease to disclose information in response to the request if any of the conditions are breached. 35
- (8) A devolved authority may only use information disclosed under this section for the purposes for which it was disclosed.
- (9) In the application of section 39 to personal information which has been disclosed to a devolved authority under this section, paragraphs (c) and (i) of subsection (4) of that section do not apply. 40
- (10) This section does not authorise the making of a disclosure which would –
  - (a) breach any obligation of confidence owed by the Board,
  - (b) contravene the Data Protection Act 1998, 45

- (c) be prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000, or
  - (d) breach any other restriction on the disclosure of information (however imposed).
- (11) Nothing in this section affects the scope of the powers in sections 51 to 53.” 5

## PART 6

### OFCOM AND OTHER REGULATION

#### *OFCOM: reports etc*

- 69 OFCOM reports on infrastructure etc** 10
- (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); 15
    - (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. 20
  - (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 25
    - (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** 30
- (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— 35
    - (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”.

## 70 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*

## 71 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); 5
  - (c) to inform OFCOM of any proposal by the provider to cease to provide an electronic communications network or electronic communications service; 10
  - (d) to inform OFCOM of any circumstances or events of a description specified in the condition.”
- 72 Provision of information to OFCOM**
- (1) Section 135 (information required for purposes of functions) is amended as follows. 15
  - (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 – 20
      - (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”. 25
- 73 Information required from communications providers**
- (1) The Communications Act 2003 is amended as follows.
  - (2) After section 137 insert –
    - “137A Information required from communications providers**
    - (1) OFCOM may require a communications provider – 30
      - (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. 35
    - (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, 40
      - (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
- (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”, 10  
 (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 15  
 (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”. 20
- (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”. 25

### *Appeals*

#### **74 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”. 30
- (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)** 35
- (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. 40
- (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. 5
- (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. 10
- (6) In this section “the decision-maker” means the person who made the decision appealed against.” 15
- (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).” 20
- (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). 25
- (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).” 30
- (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* 35

**75 Functions of OFCOM in relation to the BBC**

- (1) Section 198 of the Communications Act 2003 (functions of OFCOM in relation to the BBC) is amended as follows.
- (2) In subsection (1) for the words after paragraph (b) substitute –
  - “to regulate the BBC.” 40

- (3) 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
- (4) Omit subsection (9).
- (5) 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; 10
- (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”. 15
- (6) In this section “the BBC Charter and Agreement” has the meaning given by section 362(1) of the Communications Act 2003.

## 76 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. 20
- (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 (5) for “The reference to a concession in subsection (4)” substitute “A reference in this section to a concession”. 25
- (5) After subsection (5) insert –
- “(5A) Regulations under this section may not provide for a concession in favour of a person by reference to age.”
- (6) After section 365 insert – 30
- “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, on the satisfaction of specified requirements, to persons who are of or above a specified age at the relevant time. 35
- (2) In relation to any person the age specified may be 65 or higher, but may not be a lower age.
- (3) The relevant time is the end of the month in which the TV licence is issued.
- (4) A determination under this section may include provision for the means by which an entitlement to a concession must be established. 40

- (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 – 5
  - (a) must be in writing;
  - (b) must be published in whatever way the BBC considers appropriate.
- (7) The BBC – 10
  - (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.” 15

*Direct marketing code*

**77 Direct marketing code**

- (1) The Data Protection Act 1998 is amended as follows.
- (2) After section 52A insert –
  - “52AA Direct marketing code”** 20
    - (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 25
      - (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). 30
    - (3) Before a code is prepared under this section, the Commissioner must consult such of the following as the Commissioner considers appropriate – 35
      - (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).” 40
- (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”. 5
- (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”; 10
  - (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”. 15
- (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”; 20
  - (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”; 25
  - (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”.

*Miscellaneous*

- 78 OFCOM and Northern Ireland** 30
- (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;” 35
- (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)”. 40
- (5) At the end insert –
- “(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.”” 5
  - (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 – 10
      - “(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 – 15
      - “(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.” 20
  - (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 – 25
    - (a) the words after paragraph (b) in subsection (1);
    - (b) subsections (2), (3) and (5)(b).
- 79 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)”. 30
  - (3) In section 401 (retention of amounts by OFCOM), for subsection (1) substitute – 35
    - “(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; 40
        - (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 – 5
- “(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.” 10
- (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". 15
- (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".
- 80 International recognition of satellite frequency assignments: power of OFCOM to charge fees 20**
- (1) The Communications Act 2003 is amended as follows.
- (2) After section 28 (general power of OFCOM to charge for services), and before the cross-heading following that section, insert –
- “28A International recognition of satellite frequency assignments: power to charge fees 25**
- (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. 30
- (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. 35
- (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 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. 40

- (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.

## PART 7

### GENERAL

#### 81 *Financial provisions*

*The following are to be paid out of money provided by Parliament –*

- (a) *any expenditure incurred under or by virtue of this Act by a Minister of the Crown, a person holding office under Her Majesty or a government department, and*
- (b) *any increase attributable to this Act in the sums payable under any other Act out of money so provided.*

**82 Commencement**

- (1) The following come into force on the day on which this Act is passed –
- (a) section 75;
  - (b) sections 81, 83 and 84;
  - (c) this section. 5
- (2) The following come into force at the end of the period of two months beginning with the day on which this Act is passed –
- (a) section 1;
  - (b) section 2;
  - (c) section 3; 10
  - (d) section 7;
  - (e) sections 10 to 14;
  - (f) sections 69 to 73;
  - (g) section 77.
- (3) Section 76 comes into force on 1 June 2020. 15
- (4) Part 5, except sections 38 and 39, comes into force on whatever day the Secretary of State or the Minister for the Cabinet Office appoints by regulations made by statutory instrument.
- (5) The other provisions of this Act come into force on whatever day the Secretary of State appoints by regulations made by statutory instrument. 20
- (6) Different days may be appointed for different purposes.

**83 Extent**

- (1) This Act extends to England and Wales, Scotland and Northern Ireland, subject to the following provisions of this section.
- (2) Sections 30 and 31 extend to England and Wales and Scotland only. 25
- (3) In section 38 –
- (a) subsections (4) and (5) (and, so far as it relates to them, subsection (2)) of the new section 19AB inserted in the Registration Service Act 1953 extend to England and Wales, Scotland and Northern Ireland, but
  - (b) subject to that, the amendments and repeals made to that Act extend to England and Wales only. 30
- (4) Section 47 of the Registered Designs Act 1949 (application to Isle of Man) applies to section 27 as it applies to that Act.
- (5) An amendment of the following enactments made by this Act may be extended to any of the Channel Islands or the Isle of Man under the relevant extending power –
- (a) Part 1 of the Copyright, Designs and Patents Act 1988;
  - (b) the Broadcasting Act 1990;
  - (c) the Broadcasting Act 1996;
  - (d) the Communications Act 2003; 40
  - (e) the Wireless Telegraphy Act 2006.
- (6) “Relevant extending power” means –

- 
- (a) in relation to amendments of Part 1 of the Copyright, Designs and Patents Act 1988, section 157(2) of that Act;
  - (b) in relation to amendments of the Broadcasting Act 1990, section 204(6) of that Act;
  - (c) in relation to amendments of the Broadcasting Act 1996, section 150(4) of that Act; 5
  - (d) in relation to amendments of the Communications Act 2003, section 411(6) of that Act;
  - (e) in relation to amendments of the Wireless Telegraphy Act 2006, section 118(3) of that Act. 10
- (7) The power conferred by section 157(2)(c) of the Copyright, Designs and Patents Act 1988 (power to extend to British overseas territories) is exercisable in relation to any amendment made by this Act to Part 1 of that Act.
- (8) Her Majesty may by Order in Council extend sections 15 to 25, with such modifications as appear to Her Majesty in Council to be appropriate, to any of the Channel Islands or to the Isle of Man. 15
- (9) The power to make an Order in Council under subsection (8) includes power –
- (a) to make different provision for different cases (including different provision in respect of different areas);
  - (b) to make provision subject to such exemptions and exceptions as Her Majesty in Council thinks fit; and 20
  - (c) to make such incidental, supplemental, consequential and transitional provision as Her Majesty in Council thinks fit.
- 84 Short title**
- This Act may be cited as the Digital Economy Act 2016. 25

## SCHEDULES

## SCHEDULE 1

Section 4

## THE ELECTRONIC COMMUNICATIONS CODE

This is the Schedule to be inserted before Schedule 4 to the Communications Act 2003 –

5

## “SCHEDULE 3A

Section 106

## THE ELECTRONIC COMMUNICATIONS CODE

## PART 1

## KEY CONCEPTS

*Introductory*

10

- 1 (1) This Part defines some key concepts used in this code.
- (2) For definitions of other terms used in this code, see –
  - (a) paragraph 90 (meaning of “the court”).
  - (b) paragraph 101 (meaning of “occupier”),
  - (c) paragraph 104 (general interpretation),
  - (d) section 32 (meaning of electronic communications networks and services), and
  - (e) section 405 (general interpretation).

15

*The operator*

- 2 In this code “operator” means –
  - (a) where this code is applied in any person’s case by a direction under section 106, that person, and
  - (b) where this code applies by virtue of section 106(3)(b), the Secretary of State or (as the case may be) the Northern Ireland department in question.

20

25

*The code rights*

- 3 For the purposes of this code a “code right”, in relation to an operator and any land, is a right for the statutory purposes –
  - (a) to install and keep electronic communications apparatus on, under or over the land,
  - (b) to inspect, maintain, adjust, alter, repair, upgrade or operate electronic communications apparatus which is on, under or over the land,

30

- (c) to carry out any works on the land for or in connection with the installation, maintenance, adjustment, alteration, repair, upgrading or operation of electronic communications apparatus,
- (d) to enter the land to inspect, maintain, adjust, alter, repair, upgrade or operate any electronic communications apparatus which is on, under or over the land or elsewhere, 5
- (e) to connect to a power supply,
- (f) to interfere with or obstruct a means of access to or from the land (whether or not any electronic communications apparatus is on, under or over the land), or 10
- (g) to lop or cut back, or require another person to lop or cut back, any tree or other vegetation that interferes or will or may interfere with electronic communications apparatus. 15

*The statutory purposes*

- 4 In this code “the statutory purposes”, in relation to an operator, means –
  - (a) the purposes of providing the operator’s network, or
  - (b) the purposes of providing an infrastructure system. 20

*Electronic communications apparatus, lines and structures*

- 5 (1) In this code “electronic communications apparatus” means –
  - (a) apparatus designed or adapted for use in connection with the provision of an electronic communications network,
  - (b) apparatus designed or adapted for a use which consists of or includes the sending or receiving of communications or other signals that are transmitted by means of an electronic communications network, 25
  - (c) lines, and
  - (d) other structures or things designed or adapted for use in connection with the provision of an electronic communications network. 30
- (2) References to the installation of electronic communications apparatus are to be construed accordingly.
- (3) In this code – 35
  - “line” means any wire, cable, tube, pipe or similar thing (including its casing or coating) which is designed or adapted for use in connection with the provision of any electronic communications network or electronic communications service; 40
  - “structure” includes a building only if the sole purpose of that building is to enclose other electronic communications apparatus.

*The operator’s network*

- 6 In this code “network” in relation to an operator means – 45

- (a) if the operator falls within paragraph 2(a), so much of any electronic communications network or infrastructure system provided by the operator as is not excluded from the application of the code under section 106(5), and
- (b) if the operator falls within paragraph 2(b), the electronic communications network which the Secretary of State or the Northern Ireland department is providing or proposing to provide. 5

*Infrastructure system*

- 7 (1) In this code “infrastructure system” means a system of infrastructure provided so as to be available for use by providers of electronic communications networks for the purposes of the provision by them of their networks. 10
- (2) References in this code to provision of an infrastructure system include references to establishing or maintaining such a system. 15

## PART 2

## CONFERRAL OF CODE RIGHTS AND THEIR EXERCISE

*Introductory*

- 8 This Part of this code makes provision about –
  - (a) the conferral of code rights, 20
  - (b) the persons who are bound by code rights, and
  - (c) the exercise of code rights.

*Who may confer code rights?*

- 9 A code right in respect of land may only be conferred on an operator by an agreement between the occupier of the land and the operator. 25

*Who else is bound by code rights?*

- 10 (1) This paragraph applies if, in accordance with this Part, a code right is conferred on an operator in respect of land by a person (“O”) who is the occupier of the land when the code right is conferred. 30
- (2) If O has an interest in the land when the code right is conferred, the code right also binds –
  - (a) the successors in title to that interest,
  - (b) a person with an interest in the land that is created after the right is conferred and is derived (directly or indirectly) out of –
    - (i) O’s interest, or
    - (ii) the interest of a successor in title to O’s interest, and
  - (c) any other person at any time in occupation of the land whose right to occupation was granted by –
    - (i) O, at a time when O was bound by the code right, or

- (ii) a person within paragraph (a) or (b).
- (3) A successor in title who is bound by a code right by virtue of sub-paragraph (2)(a) is to be treated as a party to the agreement by which O conferred the right.
- (4) The code right also binds any other person with an interest in the land who has agreed to be bound by it. 5
- (5) If such a person (“P”) agrees to be bound by the code right, the code right also binds –
  - (a) the successors in title to P’s interest,
  - (b) a person with an interest in the land that is created after P agrees to be bound and is derived (directly or indirectly) out of – 10
    - (i) P’s interest, or
    - (ii) the interest of a successor in title to P’s interest, and
  - (c) any other person at any time in occupation of the land whose right to occupation was granted by – 15
    - (i) P, at a time when P was bound by the code right, or
    - (ii) a person within paragraph (a) or (b).
- (6) A successor in title who is bound by a code right by virtue of sub-paragraph (5)(a) is to be treated as a party to the agreement by which P agreed to be bound by the right. 20

*Requirements for agreements*

- 11 (1) An agreement under this Part –
  - (a) must be in writing,
  - (b) must be signed by or on behalf of the parties to it, 25
  - (c) must state for how long the code right is exercisable, and
  - (d) must state the period of notice (if any) required to terminate the agreement.
- (2) Sub-paragraph (1)(a) and (b) also applies to the variation of an agreement under this Part. 30
- (3) The agreement as varied must still comply with sub-paragraph (1)(c) and (d).

*Exercise of code rights*

- 12 (1) A code right is exercisable only in accordance with the terms subject to which it is conferred. 35
- (2) Anything done by an operator in the exercise of a code right conferred under this Part in relation to any land is to be treated as done in the exercise of a statutory power.
- (3) Sub-paragraph (2) does not apply against a person who –
  - (a) is the owner of the freehold estate in the land or the lessee of the land, and 40
  - (b) is not for the time being bound by the code right.

- (4) Sub-paragraph (2) does not apply against a person who has the benefit of a covenant or agreement entered into as respects the land, if—
- (a) the covenant or agreement was entered into under an enactment, and 5
  - (b) by virtue of the enactment, it binds or will bind persons who derive title or otherwise claim—
    - (i) under the covenantor, or
    - (ii) under a party to the agreement.
- (5) In the application of sub-paragraph (3) to Scotland the reference to a person who is the owner of the freehold estate in the land is to be read as a reference to a person who is the owner of the land. 10

*Access to land*

- 13 (1) This paragraph applies to an operator by whom any of the following rights is exercisable in relation to land— 15
- (a) a code right within paragraph (a) to (e) or (g) of paragraph 3;
  - (b) a right under Part 8 (street works rights);
  - (c) a right under Part 9 (tidal water rights);
  - (d) a right under paragraph 70 (power to fly lines). 20
- (2) The operator may not exercise the right so as to interfere with or obstruct any means of access to or from any other land unless, in accordance with this code, the occupier of the other land has conferred or is otherwise bound by a code right within paragraph (f) of paragraph 3. 25
- (3) The reference in sub-paragraph (2) to a means of access to or from land includes a means of access to or from land that is provided for use in emergencies.
- (4) This paragraph does not require a person to whom sub-paragraph (5) applies to agree to the exercise of any code right on land other than the land mentioned in that sub-paragraph. 30
- (5) This sub-paragraph applies to a person who is the occupier of, or owns an interest in, land which is—
- (a) a street in England and Wales or Northern Ireland,
  - (b) a road in Scotland, or 35
  - (c) tidal water or lands within the meaning of Part 9 of this code.

## PART 3

## ASSIGNMENT OF CODE RIGHTS, AND UPGRADING AND SHARING OF APPARATUS

*Introductory* 40

- 14 This Part of this code makes provision for—
- (a) operators to assign agreements under Part 2,
  - (b) operators to upgrade electronic communications apparatus to which such an agreement relates, and

- (c) operators to share the use of any such electronic communications apparatus.

*Assignment of code rights*

- 15 (1) Any agreement under Part 2 of this code is void to the extent that— 5
- (a) it prevents or limits assignment of the agreement to another operator, or
  - (b) it makes assignment of the agreement subject to conditions to be met by the operator (including a condition requiring the payment of money). 10
- (2) In its application to England and Wales or Northern Ireland sub-paragraph (1) does not apply to the following terms of an agreement under Part 2 of this code—
- (a) terms in a lease which require the operator to enter into an authorised guarantee agreement within the meaning of the Landlord and Tenant (Covenants) Act 1995 (see sections 16 and 28 of that Act) or (in Northern Ireland) a similar agreement; 15
  - (b) terms in an agreement other than a lease which have a similar effect to terms within paragraph (a). 20
- (3) If an operator (“the assignor”) assigns an agreement under Part 2 of this code to another operator (“the assignee”), the assignee is from the date of the assignment bound by the terms of the agreement.
- (4) The assignor is not liable for any breach of a term of the agreement that occurs after the assignment if (and only if), before the breach took place, the assignor or the assignee gave a notice in writing to the other party to the agreement which— 25
- (a) identified the assignee, and
  - (b) provided a contact address for the assignee. 30
- (5) Sub-paragraph (4) is subject to the terms of any authorised guarantee agreement or similar agreement entered into by the assignor as mentioned in sub-paragraph (2).
- (6) In the application of this paragraph to Scotland references to assignment of an agreement are to be read as references to assignment of an agreement. 35
- (7) Nothing in the Landlord and Tenant Amendment (Ireland) Act 1860 applies in relation to an agreement under Part 2 of this code so as to—
- (a) prevent or limit assignment of the agreement to another operator, or 40
  - (b) relieve the assignor from liability for any breach of a term of the agreement that occurs after the assignment.

*Power for operator to upgrade or share apparatus*

- 16 (1) An operator (“the main operator”) who has entered into an agreement under Part 2 of this code may, if the conditions in sub-paragraphs (2) and (3) are met –
- (a) upgrade the electronic communications apparatus to which the agreement relates, or 5
  - (b) share the use of such electronic communications apparatus with another operator.
- (2) The first condition is that any changes as a result of the upgrading or sharing to the electronic communications apparatus to which the agreement relates have no adverse impact, or no more than a minimal adverse impact, on its appearance. 10
- (3) The second condition is that the upgrading or sharing imposes no additional burden on the other party to the agreement.
- (4) For the purposes of sub-paragraph (3) an additional burden includes anything that – 15
- (a) has an additional adverse effect on the other party’s enjoyment of the land, or
  - (b) causes additional loss, damage or expense to that party.
- (5) Any agreement under Part 2 of this code is void to the extent that – 20
- (a) it prevents or limits the upgrading or sharing, in a case where the conditions in sub-paragraphs (2) and (3) are met, of the electronic communications apparatus to which the agreement relates, or 25
  - (b) it makes upgrading or sharing of such apparatus subject to conditions to be met by the operator (including a condition requiring the payment of money).
- (6) References in this paragraph to sharing electronic communications apparatus include carrying out works to the apparatus to enable such sharing to take place. 30

*Effect of agreements enabling sharing between operators and others*

- 17 (1) This paragraph applies where –
- (a) this code has been applied by a direction under section 106 in a person’s case, 35
  - (b) this code expressly or impliedly imposes a limitation on the use to which electronic communications apparatus installed by that person may be put or on the purposes for which it may be used, and
  - (c) that person is a party to a relevant agreement or becomes a party to an agreement which (after the person has become a party to it) is a relevant agreement. 40
- (2) The limitation does not preclude –
- (a) the doing of anything in relation to that apparatus, or
  - (b) its use for particular purposes, 45

- to the extent that the doing of that thing, or the use of the apparatus for those purposes, is in pursuance of the relevant agreement.
- (3) This paragraph is not to be construed, in relation to a person who is entitled or authorised by or under a relevant agreement to share the use of apparatus installed by another party to the agreement, as affecting any consent requirement imposed (whether by an agreement, an enactment or otherwise) on that person. 5
- (4) In this paragraph –
- “consent requirement”, in relation to a person, means a requirement for the person to obtain consent or permission to or in connection with – 10
- (a) the installation by the person of apparatus, or
- (b) the doing by the person of any other thing in relation to apparatus the use of which the person is entitled or authorised to share; 15
- “relevant agreement” means an agreement in relation to electronic communications apparatus which –
- (a) relates to the sharing by different parties to the agreement of the use of that apparatus, and 20
- (b) is an agreement that satisfies the requirements of sub-paragraph (5).
- (5) An agreement satisfies the requirements of this sub-paragraph if –
- (a) every party to the agreement is a person in whose case this code applies by virtue of a direction under section 106, or 25
- (b) one or more of the parties to the agreement is a person in whose case this code so applies and every other party to the agreement is a qualifying person.
- (6) A person is a qualifying person for the purposes of sub-paragraph (5) if the person is either – 30
- (a) a person who provides an electronic communications network without being a person in whose case this code applies, or
- (b) a designated provider of an electronic communications service consisting in the distribution of a programme service by means of an electronic communications network. 35
- (7) In sub-paragraph (6) –
- “designated” means designated by regulations made by the Secretary of State; 40
- “programme service” has the same meaning as in the Broadcasting Act 1990.

## PART 4

## POWER OF COURT TO IMPOSE AGREEMENT

*Introductory*

- 18 This Part of this code makes provision about –
- (a) the circumstances in which the court can impose an agreement on a person by which the person confers or is otherwise bound by a code right, 5
  - (b) the test to be applied by the court in deciding whether to impose such an agreement,
  - (c) the effect of such an agreement and its terms, 10
  - (d) the imposition of an agreement on a person on an interim or temporary basis.

*When can the court impose an agreement?*

- 19 (1) This paragraph applies where the operator requires a person (a “relevant person”) to agree – 15
- (a) to confer a code right on the operator, or
  - (b) to be otherwise bound by a code right which is exercisable by the operator.
- (2) The operator may give the relevant person a notice in writing – 20
- (a) setting out the code right, and all of the other terms of the agreement that the operator seeks, and
  - (b) stating that the operator seeks the person’s agreement to those terms.
- (3) The operator may apply to the court for an order under this paragraph if – 25
- (a) the relevant person does not, before the end of 28 days beginning with the day on which the notice is given, agree to confer or be otherwise bound by the code right, or
  - (b) at any time after the notice is given, the relevant person gives notice in writing to the operator that the person does not agree to confer or be otherwise bound by the code right. 30
- (4) An order under this paragraph is one which imposes on the operator and the relevant person an agreement between them which – 35
- (a) confers the code right on the operator, or
  - (b) provides for the code right to bind the relevant person.

*What is the test to be applied by the court?*

- 20 (1) Subject to sub-paragraph (5), the court may make an order under paragraph 19 if (and only if) the court thinks that both of the following conditions are met. 40

- (2) The first condition is that the prejudice caused to the relevant person by the order is capable of being adequately compensated by money.
- (3) The second condition is that the public benefit likely to result from the making of the order outweighs the prejudice to the relevant person. 5
- (4) In deciding whether the second condition is met, the court must have regard to the public interest in access to a choice of high quality electronic communications services.
- (5) The court may not make an order under paragraph 19 if it thinks that the relevant person intends to redevelop all or part of the land to which the code right would relate, or any neighbouring land, and could not reasonably do so if the order were made. 10

*What is the effect of an agreement imposed under paragraph 19?*

- 21 An agreement imposed by an order under paragraph 19 takes effect for all purposes of this code as an agreement under Part 2 of this code between the operator and the relevant person. 15

*What are the terms of an agreement imposed under paragraph 19?*

- 22 (1) An order under paragraph 19 may impose an agreement which gives effect to the code right sought by the operator with such modifications as the court thinks appropriate. 20
- (2) An order under paragraph 19 must require the agreement to contain such terms as the court thinks appropriate, subject to sub-paragraphs (3) to (8).
- (3) The terms of the agreement must include terms as to the payment of consideration by the operator to the relevant person for the relevant person's agreement to confer or be bound by the code right (as the case may be). 25
- (4) Paragraph 23 makes provision about the determination of consideration under sub-paragraph (3). 30
- (5) The terms of the agreement must include the terms the court thinks appropriate for ensuring that the least possible loss and damage is caused by the exercise of the code right to persons who –
  - (a) occupy the land in question, 35
  - (b) own interests in that land, or
  - (c) are from time to time on that land.
- (6) Sub-paragraph (5) applies in relation to a person regardless of whether the person is a party to the agreement.
- (7) The terms of the agreement must include terms specifying for how long the code right conferred by the agreement is exercisable. 40
- (8) The court must determine whether the terms of the agreement should include a term –

- (a) permitting termination of the agreement (and, if so, in what circumstances);
- (b) enabling the relevant person to require the operator to reposition or temporarily to remove the electronic communications equipment to which the agreement relates (and, if so, in what circumstances). 5

*How is consideration to be determined under paragraph 22?*

- 23 (1) The amount of consideration payable by an operator to a relevant person under an agreement imposed by an order under paragraph 19 must be an amount or amounts representing the market value of the relevant person's agreement to confer or be bound by the code right (as the case may be). 10
- (2) For this purpose the market value of a person's agreement to confer or be bound by a code right is the amount that, at the date the market value is assessed, a willing buyer would pay a willing seller for the agreement – 15
- (a) in a transaction at arm's length,
  - (b) on the basis that the buyer and seller were acting prudently and with full knowledge of the transaction, and
  - (c) as if the transaction were subject to the other provisions of the agreement imposed by the order under paragraph 19. 20
- (3) The market value –
- (a) must be assessed on the basis of the value of the right or agreement to the relevant person, and
  - (b) must not be assessed on the basis of the value to the operator of the right or agreement or having regard to the use which the operator intends to make of the land in question. 25
- (4) The market value must be assessed on the assumption that –
- (a) there is more than one site which the operator could use for the purpose for which the operator intends to use the land in question (whether or not that is actually the case), and
  - (b) paragraphs 15 and 16 (assignment of code rights and upgrading and sharing of apparatus) do not apply to the code right or any electronic communications apparatus to which the code right could apply. 30 35
- (5) The terms of the agreement may provide for consideration to be payable –
- (a) as a lump sum or periodically,
  - (b) on the occurrence of a specified event or events, or 40
  - (c) in such other form or at such other time or times as the court may direct.

*What rights to the payment of compensation are there?*

- 24 (1) If the court makes an order under paragraph 19 the court may also order the operator to pay compensation to the relevant person for any loss or damage that has been sustained or will be sustained by 45

that person as a result of the exercise of the code right to which the order relates.

- (2) An order under sub-paragraph (1) may be made –
  - (a) at the time the court makes an order under paragraph 19, or 5
  - (b) at any time afterwards, on the application of the relevant person.
- (3) An order under sub-paragraph (1) may –
  - (a) specify the amount of compensation to be paid by the operator, or 10
  - (b) give directions for the determination of any such amount.
- (4) Directions under sub-paragraph (3)(b) may provide –
  - (a) for the amount of compensation to be agreed between the operator and the relevant person;
  - (b) for any dispute about that amount to be determined by arbitration. 15
- (5) An order under this paragraph may provide for the operator –
  - (a) to make a lump sum payment,
  - (b) to make periodical payments,
  - (c) to make a payment or payments on the occurrence of an event or events, or 20
  - (d) to make a payment or payments in such other form or at such other time or times as the court may direct.
- (6) Paragraph 80 makes further provision about compensation in the case of an order under paragraph 19. 25

*Interim code rights*

- 25 (1) An operator may apply to the court for an order which imposes on the operator and a person, on an interim basis, an agreement between them which –
  - (a) confers a code right on the operator, or 30
  - (b) provides for a code right to bind that person.
- (2) An order under this paragraph imposes an agreement on the operator and a person on an interim basis if it provides for them to be bound by the agreement –
  - (a) for the period specified in the order, or 35
  - (b) until the occurrence of an event specified in the order.
- (3) The court may make an order under this paragraph if (and only if) the operator has given the person mentioned in sub-paragraph (1) a notice which complies with paragraph 19(2) stating that an agreement is sought on an interim basis and –
  - (a) the operator and that person have agreed to the making of the order and the terms of the agreement imposed by it, or
  - (b) the court thinks that there is a good arguable case that the test in paragraph 20 for the making of an order under paragraph 19 is met. 40 45

- (4) Subject to sub-paragraphs (5) and (6), the following provisions apply in relation to an order under this paragraph and an agreement imposed by it as they apply in relation to an order under paragraph 19 and an agreement imposed by it—
- (a) paragraph 19(3) (time at which operator may apply for agreement to be imposed); 5
  - (b) paragraph 21 (effect of agreement imposed under paragraph 19);
  - (c) paragraph 22 (terms of agreement imposed under paragraph 19); 10
  - (d) paragraph 23 (payment of consideration);
  - (e) paragraph 24 (payment of compensation);
  - (f) paragraph 80 (compensation where agreement imposed).
- (5) The court may make an order under this paragraph even though the period mentioned in paragraph 19(3)(a) has not elapsed (and paragraph 19(3)(b) does not apply) if the court thinks that the order should be made as a matter of urgency. 15
- (6) Paragraphs 22, 23 and 24 apply by virtue of sub-paragraph (4) as if—
- (a) references to the relevant person were to the person mentioned in sub-paragraph (1) of this paragraph, and 20
  - (b) the duty in paragraph 22 to include terms as to the payment of consideration to that person in an agreement were a power to do so.
- (7) Sub-paragraph (8) applies if— 25
- (a) an order has been made under this paragraph imposing an agreement relating to a code right on an operator and a person in respect of any land, and
  - (b) the period specified under sub-paragraph (2)(a) has expired or, as the case may be, the event specified under sub-paragraph (2)(b) has occurred without (in either case) an agreement relating to the code right having been imposed on the person by order under paragraph 19. 30
- (8) From the time when the period expires or the event occurs, that person has the right, subject to and in accordance with Part 6 of this code, to require the operator to remove any electronic communications apparatus placed on the land under the agreement imposed under this paragraph. 35

*Temporary code rights*

- 26 (1) This paragraph applies where— 40
- (a) an operator gives a notice under paragraph 19(2) to a person in respect of any land,
  - (b) the notice also requires that person's agreement on a temporary basis in respect of a right which is to be exercisable (in whole or in part) in relation to electronic communications apparatus which is already installed on, under or over the land, and 45

- (c) the person has the right to require the removal of the apparatus in accordance with paragraph 36 but the operator is not for the time being required to remove the apparatus.
- (2) The court may, on the application of the operator, impose on the operator and the person an agreement between them which confers on the operator, or provides for the person to be bound by, such temporary code rights as appear to the court reasonably necessary for securing the objective in sub-paragraph (3). 5
- (3) That objective is that, until the proceedings under paragraph 19 or any proceedings under paragraph 38 are determined, the service provided by the operator's network is maintained and the apparatus is properly adjusted and kept in repair. 10
- (4) Subject to sub-paragraphs (5) and (6), the following provisions apply in relation to an order under this paragraph and an agreement imposed by it as they apply in relation to an order under paragraph 19 and an agreement imposed by it— 15
- (a) paragraph 19(3) (time at which operator may apply for agreement to be imposed);
  - (b) paragraph 21 (effect of agreement imposed under paragraph 19); 20
  - (c) paragraph 22 (terms of agreement imposed under paragraph 19);
  - (d) paragraph 23 (payment of consideration);
  - (e) paragraph 24 (payment of compensation); 25
  - (f) paragraph 80 (compensation where agreement imposed).
- (5) The court may make an order under this paragraph even though the period mentioned in paragraph 19(3)(a) has not elapsed (and paragraph 19(3)(b) does not apply) if the court thinks that the order should be made as a matter of urgency. 30
- (6) Paragraphs 22, 23 and 24 apply by virtue of sub-paragraph (4) as if—
- (a) references to the relevant person were to the person mentioned in sub-paragraph (1) of this paragraph, and
  - (b) the duty in paragraph 22 to include terms as to the payment of consideration to that person in an agreement were a power to do so. 35
- (7) Sub-paragraph (8) applies where, in the course of the proceedings under paragraph 19, it is shown that a person with an interest in the land was entitled to require the removal of the apparatus immediately after it was installed. 40
- (8) The court must, in determining for the purposes of paragraph 19 whether the apparatus should continue to be kept on, under or over the land, disregard the fact that the apparatus has already been installed there. 45

## PART 5

## TERMINATION AND MODIFICATION OF AGREEMENTS

*Introductory*

- 27 This Part of this code makes provision about –
- (a) the continuation of code rights after the time at which they cease to be exercisable under an agreement, 5
  - (b) the procedure for bringing an agreement to an end,
  - (c) the procedure for changing an agreement relating to code rights, and
  - (d) the arrangements for the making of payments under an agreement whilst disputes under this Part are resolved. 10

*Application of this Part*

- 28 (1) This Part of this code applies to an agreement under Part 2 of this code, subject to sub-paragraphs (2) to (4).
- (2) This Part of this code does not apply to a lease of land in England and Wales if – 15
- (a) its primary purpose is not to grant code rights, and
  - (b) it is a lease to which Part 2 of the Landlord and Tenant Act 1954 (security of tenure for business, professional and other tenants) applies. 20
- (3) In determining whether a lease is one to which Part 2 of the Landlord and Tenant Act 1954 applies, any agreement under section 38A (agreements to exclude provisions of Part 2) of that Act is to be disregarded.
- (4) This Part of this code does not apply to a lease of land in Northern Ireland if – 25
- (a) its primary purpose is not to grant code rights, and
  - (b) it is a lease to which the Business Tenancies (Northern Ireland) Order 1996 (SI 1996/725 (NI 5)) applies.
- (5) An agreement to which this Part of this code applies is referred to in this code as a “code agreement”. 30

*Continuation of code rights*

- 29 (1) Sub-paragraph (2) applies if –
- (a) a code right is conferred by, or is otherwise binding on, a person (the “site provider”) as the result of a code agreement, and 35
  - (b) under the terms of the agreement –
    - (i) the right ceases to be exercisable or the site provider ceases to be bound by it, or
    - (ii) the site provider may bring the code agreement to an end so far as it relates to that right. 40
- (2) Where this sub-paragraph applies the code agreement continues so that –

- (a) the operator may continue to exercise that right, and
  - (b) the site provider continues to be bound by the right.
- (3) Sub-paragraph (2) does not apply to a code right which is conferred by, or is otherwise binding on, a person by virtue of an order under paragraph 25 (interim code rights) or 26 (temporary code rights). 5
- (4) Sub-paragraph (2) is subject to the following provisions of this Part of this code.

*How may a person bring a code agreement to an end?*

- 30 (1) A site provider who is a party to a code agreement may bring the agreement to an end by giving a notice in accordance with this paragraph to the operator who is a party to the agreement. 10
- (2) The notice must –
- (a) comply with paragraph 85 (notices given by persons other than operators), 15
  - (b) specify the date on which the site provider proposes the code agreement should come to an end, and
  - (c) state the ground on which the site provider proposes to bring the code agreement to an end.
- (3) The date specified under sub-paragraph (2)(b) must fall – 20
- (a) after the end of the period of 18 months beginning with the day on which the notice is given, and
  - (b) after the time at which, apart from paragraph 29, the code right to which the agreement relates would have ceased to be exercisable or to bind the site provider or at a time when, apart from that paragraph, the code agreement could have been brought to an end by the site provider. 25
- (4) The ground stated under sub-paragraph (2)(c) must be one of the following –
- (a) that the code agreement ought to come to an end as a result of substantial breaches by the operator of its obligations under the agreement; 30
  - (b) that the code agreement ought to come to an end because of persistent delays by the operator in making payments to the site provider under the agreement; 35
  - (c) that the site provider intends to redevelop all or part of the land to which the code agreement relates, or any neighbouring land, and could not reasonably do so unless the code agreement comes to an end;
  - (d) that the operator is not entitled to the code agreement because the test under paragraph 20 for the imposition of the agreement on the site provider is not met. 40

*What is the effect of a notice under paragraph 30?*

- 31 (1) Where a site provider gives a notice under paragraph 30, the code agreement to which it relates comes to an end in accordance with the notice unless – 45

- (a) within the period of three months beginning with the day on which the notice is given, the operator gives the site provider a counter-notice in accordance with sub-paragraph (3), and
- (b) within the period of three months beginning with the day on which the counter-notice is given, the operator applies to the court for an order under paragraph 33. 5
- (2) Sub-paragraph (1) does not apply if the operator and the site provider agree to the continuation of the code agreement.
- (3) The counter-notice must state – 10
- (a) that the operator does not want the existing code agreement to come to an end,
- (b) that the operator wants the site provider to agree to confer or be otherwise bound by the existing code right on new terms, or 15
- (c) that the operator wants the site provider to agree to confer or be otherwise bound by a new code right in place of the existing code right.
- (4) If, on an application under sub-paragraph (1)(b), the court decides that the site provider has established any of the grounds stated in the site provider’s notice under paragraph 30, the court must order that the code agreement comes to an end in accordance with the order. 20
- (5) Otherwise the court must make one of the orders specified in paragraph 33. 25

*How may a party to a code agreement require a change to the terms of an agreement which has expired?*

- 32 (1) An operator or site provider who is a party to a code agreement by which a code right is conferred by or otherwise binds the site provider may, by notice in accordance with this paragraph, require the other party to the agreement to agree that – 30
- (a) the code agreement should have effect with modified terms,
- (b) where under the code agreement more than one code right is conferred by or otherwise binds the site provider, that the agreement should no longer provide for an existing code right to be conferred by or otherwise bind the site provider, 35
- (c) the code agreement should –
- (i) confer an additional code right on the operator, or 40
- (ii) provide that the site provider is otherwise bound by an additional code right, or
- (d) the existing code agreement should be terminated and a new agreement should have effect between the parties which – 45
- (i) confers a code right on the operator, or
- (ii) provides for a code right to bind the site provider.
- (2) The notice must –

- (a) comply with paragraph 84 or 85, according to whether the notice is given by an operator or a site provider,
- (b) specify –
  - (i) the day from which it is proposed that the modified terms should have effect, 5
  - (ii) the day from which the agreement should no longer provide for the code right to be conferred by or otherwise bind the site provider,
  - (iii) the day from which it is proposed that the additional code right should be conferred by or otherwise bind the site provider, or 10
  - (iv) the day on which it is proposed the existing code agreement should be terminated and from which a new agreement should have effect,
- (as the case may be), and 15
- (c) set out details of –
  - (i) the proposed modified terms,
  - (ii) the code right it is proposed should no longer be conferred by or otherwise bind the site provider,
  - (iii) the proposed additional code right, or 20
  - (iv) the proposed terms of the new agreement,
- (as the case may be).
- (3) The day specified under sub-paragraph (2)(b) must fall –
  - (a) after the end of the period of 6 months beginning with the day on which the notice is given, and 25
  - (b) after the time at which, apart from paragraph 29, the code right to which the existing code agreement relates would have ceased to be exercisable or to bind the site provider or at a time when, apart from that paragraph, the code agreement could have been brought to an end by the site provider. 30
- (4) Sub-paragraph (5) applies if, after the end of the period of 6 months beginning with the day on which the notice is given, the operator and the site provider have not reached agreement on the proposals in the notice. 35
- (5) Where this paragraph applies, the operator or the site provider may apply to the court for the court to make an order under paragraph 33.

*What orders may a court make on an application under paragraph 31 or 32?*

- 33 (1) This paragraph sets out the orders that the court may make on an application under paragraph 31(1)(b) or 32(5). 40
- (2) The court may order that the operator may continue to exercise the existing code right in accordance with the existing code agreement for such period as may be specified in the order (so that the code agreement has effect accordingly). 45
- (3) The court may order the modification of the terms of the code agreement relating to the existing code right.

- 
- (4) Where under the code agreement more than one code right is conferred by or otherwise binds the site provider, the court may order the modification of the terms of the code agreement so that it no longer provides for an existing code right to be conferred by or otherwise bind the site provider. 5
- (5) The court may order the terms of the code agreement relating to the existing code right to be modified so that –
- (a) it confers an additional code right on the operator, or
  - (b) it provides that the site provider is otherwise bound by an additional code right. 10
- (6) The court may order the termination of the code agreement relating to the existing code right and order the operator and the site provider to enter into a new agreement which –
- (a) confers a code right on the operator, or
  - (b) provides for a code right to bind the site provider. 15
- (7) The existing code agreement continues until the new agreement takes effect.
- (8) This code applies to the new agreement as if it were an agreement under Part 2 of this code.
- (9) The terms conferring or providing for an additional code right under sub-paragraph (5), and the terms of a new agreement under sub-paragraph (6), are to be such as are agreed between the operator and the site provider. 20
- (10) If the operator and the site provider are unable to agree on the terms, the court must on an application by either party make an order specifying those terms. 25
- (11) Paragraphs 22(2) to (8), 23, 24 and 80 apply –
- (a) to an order under sub-paragraph (3), (4) or (5), so far as it modifies or specifies the terms of the agreement, and
  - (b) to an order under sub-paragraph (10) 30
- as they apply to an order under paragraph 19.
- (12) In the case of an order under sub-paragraph (10) the court must also have regard to the terms of the existing code agreement.
- (13) In determining which order to make under this paragraph, the court must have regard to all the circumstances of the case, and in particular to – 35
- (a) the operator’s business and technical needs,
  - (b) the use that the site provider is making of the land to which the existing code agreement relates,
  - (c) any duties imposed on the site provider by an enactment, 40
  - and
  - (d) the amount of consideration payable by the operator to the site provider under the existing code agreement.
- (14) Where the court makes an order under this paragraph, it may also order the operator to pay the site provider the amount (if any) by which A exceeds B, where – 45

- (a) A is the amount of consideration that would have been payable by the operator to the site provider for the relevant period if that amount had been assessed on the same basis as the consideration payable as the result of the order, and
  - (b) B is the amount of consideration payable by the operator to the site provider for the relevant period. 5
- (15) In sub-paragraph (14) the relevant period is the period (if any) that –
- (a) begins on the date on which, apart from the operation of paragraph 29, the code right to which the existing code agreement relates would have ceased to be exercisable or to bind the site provider or from which, apart from that paragraph, the code agreement could have been brought to an end by the site provider, and 10
  - (b) ends on the date on which the order is made. 15

*What arrangements for payment can be made pending determination of the application?*

- 34 (1) This paragraph applies where –
- (a) a code right continues to be exercisable under paragraph 29 after the time at which, apart from the operation of that paragraph, the code right would have ceased to be exercisable or to bind the site provider or from which, apart from that paragraph, the code agreement relating to the right could have been brought to an end by the site provider, and 20
  - (b) the operator or the site provider has applied to the court for an order under paragraph 31(1)(b) or 32(5). 25
- (2) The site provider may –
- (a) agree with the operator that, until the application has been finally determined, the site provider will continue to receive the payments of consideration from the operator to which the site provider is entitled under the agreement relating to the existing code right, 30
  - (b) agree with the operator that, until that time, the site provider will receive different payments of consideration under that agreement, or 35
  - (c) apply to the court for the court to determine the payments of consideration to be made by the operator to the site provider under that agreement until that time.
- (3) The court must determine the payments under sub-paragraph (2)(c) on the basis set out in paragraph 23 (calculation of consideration). 40

## PART 6

### RIGHTS TO REQUIRE REMOVAL OF ELECTRONIC COMMUNICATIONS APPARATUS

*Introductory* 45

- 35 This Part of this code makes provision about –

- (a) the cases in which a person with an interest in land has the right to require the removal of electronic communications apparatus,
- (b) the means by which a person can discover whether apparatus is on land pursuant to a code right, and 5
- (c) the means by which a right to require removal can be enforced.

*When does a person have the right to require removal of electronic communications apparatus?*

- 36 (1) A person with an interest in land (a “landowner”) has the right to require the removal of electronic communications apparatus on, under or over the land if (and only if) one or more of the following conditions are met. 10
- (2) The first condition is that the landowner has never been bound by a code right entitling an operator to keep the apparatus on, under or over the land. 15  
This is subject to sub-paragraph (4).
- (3) The second condition is that a code right entitling an operator to keep the apparatus on, under or over the land has come to an end or has ceased to bind the landowner – 20
- (a) as mentioned in paragraph 25(7) and (8);
  - (b) as the result of paragraph 31(1), or
  - (c) as the result of an order under paragraph 31(4) or 33(4) or (6).
- This is subject to sub-paragraph (4). 25
- (4) The landowner does not meet the first or second condition if –
- (a) the land is occupied by a person who –
    - (i) conferred a code right (which is in force) entitling an operator to keep the apparatus on, under or over the land, or 30
    - (ii) is otherwise bound by such a right, and
  - (b) that code right was not conferred in breach of a covenant enforceable by the landowner.
- (5) In the application of sub-paragraph (4)(b) to Scotland the reference to a covenant enforceable by the landowner is to be read as a reference to a contractual term which is so enforceable. 35
- (6) The third condition is that –
- (a) an operator has the benefit of a code right entitling the operator to keep the apparatus on, under or over the land, but 40
  - (b) the apparatus is not, or is no longer, used for the purposes of the operator’s network, and
  - (c) there is no reasonable likelihood that the apparatus will be used for that purpose.
- (7) The fourth condition is that – 45

- (a) this code has ceased to apply to a person so that the person is no longer entitled under this code to keep the apparatus on, under or over the land,
  - (b) the retention of the apparatus on, under or over the land is not authorised by a scheme contained in an order under section 117, and 5
  - (c) there is no other person with a right conferred by or under this code to keep the apparatus on, under or over the land.
- (8) The fifth condition is that –
- (a) the apparatus was kept on, under or over the land pursuant to – 10
    - (i) a transport land right (see Part 7), or
    - (ii) a street work right (see Part 8),
  - (b) that right has ceased to be exercisable in relation to the land by virtue of paragraph 49(9) or 55(8), and 15
  - (c) there is no other person with a right conferred by or under this code to keep the apparatus on, under or over the land.

*How does a person find out whether apparatus is on land pursuant to a code right?*

- 37 (1) A landowner may by notice require an operator to disclose whether – 20
- (a) the operator owns electronic communications apparatus on, under or over land in which the landowner has an interest or uses such apparatus for the purposes of the operator’s network, or
  - (b) the operator has the benefit of a code right entitling the operator to keep electronic communications apparatus on, under or over land in which the landowner has an interest. 25
- (2) The notice must comply with paragraph 85 (notices given by persons other than operators).
- (3) Sub-paragraph (4) applies if – 30
- (a) the operator does not, before the end of the period of three months beginning with the date on which the notice under sub-paragraph (1) was given, give a notice to the landowner that –
    - (i) complies with paragraph 84 (notices given by operators), and 35
    - (ii) discloses the information sought by the landowner,
  - (b) the landowner takes action under paragraph 38 to enforce the removal of the apparatus, and
  - (c) it is subsequently established that – 40
    - (i) the operator owns the apparatus or uses it for the purposes of the operator’s network, and
    - (ii) the operator has the benefit of a code right entitling the operator to keep the apparatus on, under or over the land. 45
- (4) The operator must nevertheless bear the costs of any action taken by the landowner under paragraph 38 to enforce the removal of the apparatus.

*How does a person enforce removal of apparatus?*

- 38 (1) A landowner who has the right to require the removal of electronic communications apparatus on, under or over land may, in accordance with this paragraph, require the operator whose apparatus it is – 5
- (a) to remove the apparatus, and
  - (b) to restore the land to its condition before the apparatus was placed on, under or over the land.
- (2) The landowner may give a notice to the operator requiring the operator – 10
- (a) to remove the apparatus, and
  - (b) to restore the land to its condition before the apparatus was placed on, under or over the land.
- (3) The notice must –
- (a) comply with paragraph 85 (notices given by persons other than operators), and 15
  - (b) specify the period within which the operator must complete the works.
- (4) The period specified under sub-paragraph (3) must be a reasonable one. 20
- (5) Sub-paragraph (6) applies if, within the period of 28 days beginning with the day on which the notice was given, the landowner and the operator do not reach agreement on any of the following matters –
- (a) that the operator will remove the apparatus; 25
  - (b) that the operator will restore the land to its condition before the apparatus was placed on, under or over the land;
  - (c) the time at which or period within which the apparatus will be removed; 30
  - (d) the time at which or period within which the land will be restored.
- (6) The landowner may make an application to the court for –
- (a) an order under paragraph 39(1) (order requiring operator to remove apparatus etc), or 35
  - (b) an order under paragraph 39(2) (order enabling landowner to sell apparatus etc).
- (7) If the court makes an order under paragraph 39(1), but the operator does not comply with the agreement imposed on the operator and the landowner by virtue of paragraph 39(5), the landowner may make an application to the court for an order under paragraph 39(2). 40

*What orders may the court make on an application under paragraph 38?*

- 39 (1) An order under this sub-paragraph is an order that the operator must, within the period specified in the order – 45
- (a) remove the electronic communications apparatus, and

- (b) restore the land to its condition before the apparatus was placed on, under or over the land.
- (2) An order under this sub-paragraph is an order that the landowner may do any of the following –
  - (a) remove or arrange the removal of the electronic communications apparatus; 5
  - (b) sell any apparatus so removed;
  - (c) recover the costs of any action under paragraph (a) or (b) from the operator;
  - (d) recover from the operator the costs of restoring the land to its condition before the apparatus was placed on, under or over the land; 10
  - (e) retain the proceeds of sale of the apparatus to the extent that these do not exceed the costs incurred by the landowner as mentioned in paragraph (c) or (d). 15
- (3) An order under this paragraph may require the operator to pay compensation to the landowner for any loss or damage suffered by the landowner as a result of the presence of the apparatus on the land during the period when the landowner had the right to require the removal of the apparatus from the land but was not able to exercise that right. 20
- (4) Paragraph 80 makes further provision about compensation under sub-paragraph (3).
- (5) An order under sub-paragraph (1) takes effect as an agreement between the operator and the landowner that – 25
  - (a) requires the operator to take the steps specified in the order, and
  - (b) otherwise contains such terms as the court may so specify.

## PART 7

### CONFERRAL OF TRANSPORT LAND RIGHTS AND THEIR EXERCISE 30

#### *Introductory*

- 40 This Part of this code makes provision about –
- (a) the conferral of transport land rights, and
  - (b) the exercise of transport land rights.

#### *Transport land and transport undertakers* 35

- 41 In this Part of this code –
- “transport land” means land which is used wholly or mainly –
- (a) as a railway, canal or tramway, or
  - (b) in connection with a railway, canal or tramway on the land; 40
- “transport undertaker”, in relation to transport land, means the person carrying on the railway, canal or tramway undertaking.

*Conferral of transport land rights*

- 42 (1) An operator may exercise a transport land right for the statutory purposes.
- (2) But that is subject to the following provisions of this Part of this code. 5

*The transport land rights*

- 43 (1) For the purposes of this code a “transport land right”, in relation to an operator, is –
- (a) a right to cross any transport land with a line;
  - (b) a right, for the purposes of crossing any transport land with a line –
    - (i) to install and keep the line and any other electronic communications apparatus on, under or over the transport land;
    - (ii) to inspect, maintain, adjust, alter, repair, upgrade or operate electronic communications apparatus on, under or over the transport land; 15
    - (iii) a right to carry out any works on the transport land for or in connection with the exercise of a right under sub-paragraph (i) or (ii); 20
    - (iv) a right to enter the transport land to inspect, maintain, adjust, alter, repair, upgrade or operate the line or other electronic communications apparatus.
- (2) A line installed in the exercise of a transport land right need not cross the transport land in question by a direct route or the shortest route from the point at which the line enters the transport land. 25
- (3) But the line must not cross the transport land by any route which, in the horizontal plane, exceeds that shortest route by more than 400 metres. 30
- (4) The transport land rights do not authorise an operator to install a line or other electronic communications apparatus in any position on transport land in which the line or other apparatus would interfere with traffic on the railway, canal or tramway. 35

*Non-emergency works: when can an operator exercise the transport land rights?*

- 44 (1) Before exercising a transport land right in order to carry out non-emergency works, the operator must give the transport undertaker notice of the intention to carry out the works (“notice of proposed works”). 40
- (2) Notice of proposed works must contain a plan and section of the works; but, if the transport undertaker agrees, the notice may instead contain a description of the works (whether or not in the form of a diagram).

- (3) The operator must not begin the proposed works until the notice period has ended.
- (4) But the operator’s power to carry out the proposed works is subject to paragraph 45.
- (5) In this paragraph – 5
  - “non-emergency works” means any works which are not emergency works under paragraph 46;
  - “notice period” means the period of 28 days beginning with the day on which notice of proposed works is given.

*What is the effect of the transport undertaker giving notice of objection to the operator?* 10

- 45
- (1) This paragraph applies if an operator gives a transport undertaker notice of proposed works under paragraph 44.
  - (2) The transport undertaker may, within the notice period, give the operator notice objecting to the proposed works (“notice of objection”). 15
  - (3) If notice of objection is given, the operator or the transport undertaker may, within the arbitration notice period, give the other notice that the objection is to be referred to arbitration under paragraph 47 (“arbitration notice”).
  - (4) In a case where notice of objection is given, the operator may exercise a transport land right in order to carry out the proposed works only if they are permitted under sub-paragraph (5) or (6). 20
  - (5) Works are permitted in a case where –
    - (a) the arbitration notice period has ended, and
    - (b) no arbitration notice has been given. 25
  - (6) In a case where arbitration notice has been given, works are permitted in accordance with an award made on the arbitration.
  - (7) In this paragraph –
    - (a) “arbitration notice period” means the period of 28 days beginning with the day on which objection notice is given; 30
    - (b) expressions defined in paragraph 44 have the same meanings as in that paragraph.

*Emergency works: when can an operator exercise the transport land rights?*

- 46
- (1) An operator may exercise a transport land right in order to carry out emergency works. 35
  - (2) If the operator exercises a transport land right to carry out emergency works, the operator must give the transport undertaker an emergency works notice as soon as reasonably practicable after starting the works.
  - (3) An “emergency works notice” is a notice which – 40
    - (a) identifies the emergency works;
    - (b) contains a statement of the reason why the works are emergency works; and

- (c) contains either –
- (i) the matters which would be included in a notice of proposed works (if one were given in relation to the works), or
  - (ii) a reference to a notice of proposed works which relates to the works that are emergency works (if one has been given). 5
- (4) A transport undertaker may, within the compensation notice period, give the operator notice which requires the operator to pay compensation for loss or damage sustained in consequence of the carrying out of emergency works (“compensation notice”). 10
- (5) The operator must pay the transport undertaker any compensation which is required by a compensation notice (if given within the compensation notice period).
- (6) The amount of compensation payable under sub-paragraph (5) is to be agreed between the operator and the transport undertaker. 15
- (7) But if –
- (a) the compensation agreement period has ended, and
  - (b) the operator and the transport undertaker have not agreed the amount of compensation payable under sub-paragraph (6), 20
- the operator or the transport undertaker may give the other notice that the disagreement is to be referred to arbitration under paragraph 47.
- (8) A reference in this paragraph to emergency works includes a reference to any works which are included in a notice of proposed works but become emergency works before the operator is authorised by paragraph 45 or 46 to carry them out. 25
- (9) In this paragraph –
- “compensation agreement period” means the period of 28 days beginning with the day on which a compensation notice is given; 30
  - “compensation notice period” means the period of 28 days beginning with the day on which an emergency works notice is given; 35
  - “emergency works” means works carried out in order to stop anything already occurring, or to prevent anything imminent from occurring, which is likely to cause –
    - (a) danger to persons or property,
    - (b) the interruption of any service provided by the operator’s network, or 40
    - (c) substantial loss to the operator, and any other works which it is reasonable (in all the circumstances) to carry out with those works;
  - “notice of proposed works” means such notice given under paragraph 44. 45

*What happens if a dispute about the transport land rights is referred to arbitration?*

- 47 (1) This paragraph applies if notice is given under paragraph 45(3) or 46(7) that the following matter (the “matter in dispute”) is to be referred to arbitration –
- (a) an objection to proposed works; 5
  - (b) a disagreement about an amount of compensation.
- (2) The matter in dispute is to be referred to the arbitration of a single arbitrator appointed –
- (a) by agreement between the parties, or
  - (b) in the absence of such agreement, by the President of the Institution of Civil Engineers. 10
- (3) If the matter in dispute is an objection to proposed works, the arbitrator has the following powers –
- (a) power to require the operator to give the arbitrator a plan and section in such form as the arbitrator thinks appropriate; 15
  - (b) power to require the transport undertaker to give the arbitrator any observations on such a plan or section in such form as the arbitrator thinks appropriate;
  - (c) power to impose on either party any other requirements which the arbitrator thinks appropriate (including a requirement to provide information in such form as the arbitrator thinks appropriate); 20
  - (d) power to make an award –
    - (i) requiring modifications to the proposed works, and 25
    - (ii) specifying the terms on which, and the conditions subject to which, the proposed works may be carried out;
  - (e) power to award one or both of the following, payable to the transport undertaker – 30
    - (i) compensation for loss or damage sustained by that person in consequence of the carrying out of the works;
    - (ii) consideration for the right to carry out the works. 35
- (4) If the matter in dispute is a disagreement about an amount of compensation, the arbitrator has the following powers –
- (a) power to impose on either party any requirements which the arbitrator thinks appropriate (including a requirement to provide information in such form as the arbitrator thinks appropriate); 40
  - (b) power to award compensation, payable to the transport undertaker, for loss or damage sustained by that person in consequence of the carrying out of the emergency works.
- (5) The arbitrator may make an award conditional upon a party complying with a requirement imposed under sub-paragraph (3)(a), (b) or (c) or (4)(a). 45

- (6) In determining what award to make, the matters to which the arbitrator must have regard include the public interest in there being access to a choice of high quality electronic communications services.
- (7) The arbitrator’s power under sub-paragraph (3) or (4) to award compensation for loss includes power to award compensation for any increase in the expenses incurred by the transport undertaker in carrying on its railway, canal or tramway undertaking. 5
- (8) An award of consideration under sub-paragraph (3)(e)(ii) must be determined on the basis of what would have been fair and reasonable if the transport undertaker had willingly given authority for the works to be carried out on the same terms, and subject to the same conditions (if any), as are contained in the award. 10
- (9) In this paragraph “party” means – 15
- (a) the operator, or
  - (b) the transport undertaker.

*When can a transport undertaker require an operator to alter communications apparatus?*

- 48 (1) A transport undertaker may give an operator notice which requires the operator to alter a line or other electronic communications apparatus specified in the notice (“notice requiring alterations”) on the ground that keeping the apparatus on, under or over transport land interferes with, or is likely to interfere with – 20
- (a) the carrying on of the transport undertaker’s railway, canal or tramway undertaking, or
  - (b) anything done or to be done for the purposes of its railway, canal or tramway undertaking. 25
- (2) The operator may, within the notice period, give the transport undertaker notice (“counter-notice”) specifying the respects in which the operator is not prepared to comply with the notice requiring alterations. 30
- (3) The operator must comply with the notice requiring alterations, within a reasonable time and to the reasonable satisfaction of the transport undertaker, if – 35
- (a) the notice period has ended, and
  - (b) no counter-notice has been given.
- (4) If counter-notice has been given (within the notice period), the transport undertaker may apply to the court for an order requiring the operator to alter any of the specified apparatus. 40
- (5) The court must not make an order unless it is satisfied that the order is necessary on one of the grounds mentioned in sub-paragraph (1).
- (6) In determining whether to make an order, the matters to which the court must also have regard include the public interest in there 45

being access to a choice of high quality electronic communications services.

(7) An order under this paragraph may take such form and be on such terms as the court thinks fit.

(8) In particular, the order – 5

- (a) may impose such conditions, and
- (b) may contain such directions to the operator or the transport undertaker,

as the court thinks necessary for resolving any difference between the operator and the transport undertaker and for protecting their respective interests. 10

(9) In this paragraph –

“notice period” means the period of 28 days beginning with the day on which notice requiring alterations is given;

“specified apparatus” means the line or other electronic communications apparatus specified in notice requiring alterations. 15

*What happens to the transport land rights if land ceases to be transport land?*

49 (1) This paragraph applies if an operator is exercising a transport land right in relation to land immediately before a time when it ceases to be transport land. 20

(2) After that time, this Part of this code – except for paragraph 48 – continues to apply to the land as if it were still transport land (and, accordingly, the operator may continue to exercise any transport land right in relation to the land as if it were still transport land). 25

(3) But sub-paragraph (2) is subject to sub-paragraphs (4) to (9).

(4) In the application of this Part of this code to land in accordance with sub-paragraph (2), references to the transport undertaker have effect as references to the occupier of the land.

(5) The application of this Part of this code to land in accordance with sub-paragraph (2) does not authorise the operator – 30

(a) to cross the land with any line that is not in place at the time when the land ceases to be transport land, or

(b) to install and keep any line or other electronic communications apparatus that is not in place at the time when the land ceases to be transport land. 35

(6) But sub-paragraph (5) does not affect the power of the operator to replace an existing line or other apparatus (whether in place at the time when the land ceased to be transport land or a replacement itself authorised by this sub-paragraph) with a new line or apparatus which – 40

(a) is not substantially different from the existing line or apparatus, and

(b) is not in a significantly different position.

(7) The occupier of the land may, at any time after the land ceases to be transport land, give the operator notice specifying a date on 45

which this Part of this code is to cease to apply to the land in accordance with this paragraph (“notice of termination”).

- (8) That date specified in the notice of termination must fall after the end of the period of 12 months beginning with the day on which the notice of termination is given. 5
- (9) On the date specified in notice of termination in accordance with sub-paragraph (8), the transport land rights cease to be exercisable in relation to the land in accordance with this paragraph.

*Offence: operators who do not comply with this Part of this code*

- 50 (1) An operator is guilty of an offence if the operator starts any works in contravention of any provision of paragraph 44, paragraph 45 or paragraph 46. 10
- (2) An operator guilty of an offence under this paragraph is liable on summary conviction to a fine not exceeding level 3 on the standard scale. 15
- (3) In a case where this Part of this code applies in accordance with paragraph 49, the reference in this paragraph to paragraph 44, paragraph 45 or paragraph 46 is a reference to that paragraph as it applies in accordance with paragraph 49.

PART 8 20

CONFERRAL OF STREET WORK RIGHTS AND THEIR EXERCISE

*Introductory*

- 51 This Part of this code makes provision about – 25
- (a) the conferral of street work rights, and
- (b) the exercise of street work rights.

*Streets and roads*

- 52 In this Part of this code – 30
- “road” means –
- (a) a road in Scotland which is a public road;
- (b) a road in Northern Ireland;
- “street” means a street in England and Wales which is a maintainable highway (within the meaning of Part 3 of New Roads and Street Works Act 1991), other than one which is a footpath, bridleway or restricted byway that crosses, and forms part of, any agricultural land or any land which is being brought into use for agriculture. 35

*Conferral of street work rights*

- 53 (1) An operator may exercise a street work right for the statutory purposes. 40
- (2) But that is subject to the following provisions of this Part of this code.

*The street work rights*

- 54 (1) For the purposes of this code a “street work right”, in relation to an operator, is –
- (a) a right to install and keep electronic communications apparatus in, on, under, over, along or across a street or a road; 5
  - (b) a right to inspect, maintain, adjust, alter, repair, upgrade or operate electronic communications apparatus which is installed or kept by the exercise of the right under paragraph (a); 10
  - (c) a right to carry out any works in, on, under, over, along or across a street or road for or in connection with the exercise of a right under paragraph (a) or (b);
  - (d) a right to enter any street or road to inspect, maintain, adjust, alter, repair, upgrade or operate electronic communications apparatus which is installed or kept by the exercise of the right under paragraph (a). 15
- (2) The works that may be carried out under sub-paragraph (1)(c) include –
- (a) breaking up or opening a street or a road; 20
  - (b) tunnelling or boring under a street or a road;
  - (c) breaking up or opening a sewer, drain or tunnel.

*What happens to the street work rights if land ceases to be a street or road?*

- 55 (1) This paragraph applies if an operator is exercising a street work right in relation to land immediately before a time when the land ceases to be a street or road. 25
- (2) After that time, this Part of this code continues to apply to the land as if it were still a street or road (and, accordingly, the operator may continue to exercise any street work right in relation to the land as if it were still a street or road). 30
- (3) But sub-paragraph (2) is subject to sub-paragraphs (4) to (8).
- (4) The application of this Part of this code to land in accordance with sub-paragraph (2) does not authorise the operator to install or keep any electronic communications apparatus that is not in place at the time when the land ceases to be a street or road. 35
- (5) But sub-paragraph (4) does not affect the power of the operator to replace existing apparatus (whether in place at the time when the land ceased to be a street or road or a replacement itself authorised by this sub-paragraph) with new apparatus which –
- (a) is not substantially different from the existing apparatus, and 40
  - (b) is not in a significantly different position.
- (6) The occupier of land may, at any time after the land ceases to be a street or road, give the operator notice specifying a date on which this Part of this code is to cease to apply to the land in accordance with this paragraph (“notice of termination”). 45

- (7) That date specified in the notice of termination must fall after the end of the period of 12 months beginning with the day on which the notice of termination is given.
- (8) On the date specified in notice of termination in accordance with sub-paragraph (7), the street work rights cease to be exercisable in relation to the land in accordance with this paragraph. 5

## PART 9

## CONFERRAL OF TIDAL WATER RIGHTS AND THEIR EXERCISE

*Introductory*

- 56 This Part of this code makes provision about – 10
- (a) the conferral of tidal water rights, and
  - (b) the exercise of tidal water rights.

*Tidal water or lands*

- 57 In this Part of this code “tidal water or lands” includes – 15
- (a) any estuary or branch of the sea,
  - (b) the shore below mean high water springs, and
  - (c) the bed of any tidal water.

*Conferral of tidal water rights*

- 58 (1) An operator may exercise a tidal water right for the statutory purposes. 20
- (2) But that is subject to the following provisions of this Part of this code.

*The tidal water rights*

- 59 (1) For the purposes of this code a “tidal water right”, in relation to an operator, is – 25
- (a) a right to install and keep electronic communications apparatus on, under or over tidal water or lands;
  - (b) a right to inspect, maintain, adjust, alter, repair, upgrade or operate electronic communications apparatus on, under or over the tidal water or lands; 30
  - (c) a right to carry out any works on, under or over any tidal water or lands for or in connection with the exercise of a right under paragraph (a) or (b);
  - (d) a right to enter any tidal water or lands to inspect, maintain, adjust, alter, repair, upgrade or operate electronic communications apparatus which is installed or kept by the exercise of the right under paragraph (a). 35
- (2) The works that may be carried out under sub-paragraph (1)(c) include placing a buoy or seamount.

*Exercise of tidal water right: Crown land*

- 60 (1) An operator may not exercise a tidal water right in relation to land in which a Crown interest subsists unless agreement has been given to the exercise of the right in relation to the land, in accordance with paragraph 100, in respect of that interest. 5
- (2) If, under a term of such an agreement (the “relevant term”), the amount of consideration payable in respect of a tidal water right exceeds the market value of the right, the relevant term may only be enforced so as to require payment of an amount of consideration which is equal to that market value. 10
- (3) For this purpose the market value of a tidal water right is the amount that, at the date when the relevant term was agreed, a willing buyer would have paid a willing seller for the agreement –
- (a) in a transaction at arm’s length, and 15
  - (b) on the basis that the buyer and seller were acting prudently and with full knowledge of the transaction.
- (4) The market value –
- (a) must be assessed on the basis of the value of the tidal water right to the holder of the Crown interest, and 20
  - (b) must not be assessed on the basis of the value to the operator of the tidal water right or having regard to the use which the operator intends to make of the tidal waters or land in exercising that right.
- (5) The market value must be assessed on the assumption that there is more than one site which the operator could use for the purpose for which the operator intends to use the tidal waters or land in question (whether or not that is actually the case). 25

PART 10

UNDERTAKER’S WORKS AFFECTING ELECTRONIC COMMUNICATIONS APPARATUS 30

*Introductory*

- 61 This Part of this code makes provision about the carrying out of undertaker’s works by undertakers or operators.

*Key definitions*

- 62 (1) In this Part of this code – 35
- “undertaker” means a person (including a local authority) of a description set out in any of the entries in the first column of the following table;
  - “undertaker’s works”, in relation to an undertaker of a description set out in a particular entry in the first column of the table, means works of the description set out in the corresponding entry in the second column of the table. 40



“non-emergency undertaker’s works” means any undertaker’s works which are not emergency works under paragraph 67;

“notice period” means the period of 10 days beginning with the day on which notice of proposed works is given.

5

*What is the effect of the operator giving counter-notice to the undertaker?*

64 (1) This paragraph applies if an undertaker gives an operator notice of proposed works under paragraph 63.

(2) The operator may, within the notice period, give the undertaker notice (“counter-notice”) stating either –

10

(a) that the operator requires the undertaker to make any alteration of the electronic communications apparatus that is necessary or expedient because of the proposed undertaker’s works –

(i) under the supervision of the operator, and

15

(ii) to the satisfaction of the operator; or

(b) that the operator intends to make any alteration of the electronic communications apparatus that is necessary or expedient because of the proposed undertaker’s works.

(3) In a case where counter-notice contains a statement under subparagraph (2)(a), the undertaker must act in accordance with the counter-notice when altering electronic communications apparatus (in carrying out the proposed undertaker’s works).

20

(4) But, if the operator unreasonably fails to provide the required supervision, the undertaker must act in accordance with the counter-notice only insofar as it requires alterations to be made to the satisfaction of the operator.

25

(5) In a case where counter-notice contains a statement under subparagraph (2)(b) (operator intends to make alteration), the undertaker must not alter electronic communications apparatus (in carrying out the proposed undertaker’s works).

30

(6) But that does not prevent the undertaker from making any alteration of electronic communications apparatus which the operator fails to make within a reasonable time.

(7) Expressions defined in paragraph 63 have the same meanings in this paragraph.

35

*What expenses must the undertaker pay?*

65 (1) This paragraph applies if an undertaker carries out any non-emergency undertaker’s works in accordance with paragraph 63 (including in a case where counter-notice is given under paragraph 64).

40

(2) The undertaker must pay the operator the amount of any loss or damage sustained by the operator in consequence of any alteration being made to electronic communications apparatus (in carrying out the works).

45

- (3) The undertaker must pay the operator any expenses incurred by the operator in, or in connection with, supervising the undertaker when altering electronic communications apparatus (in carrying out the works).
- (4) Any amount which is not paid in accordance with this paragraph is to be recoverable by the operator from the undertaker in any court of competent jurisdiction. 5

*When can the operator alter apparatus in connection with non-emergency undertaker's works?*

- 66 (1) An operator may make an alteration of electronic communications apparatus if – 10
- (a) notice of proposed works has been given,
  - (b) the notice period has ended, and
  - (c) counter-notice has been given which states (in accordance with paragraph 64(2)(b)) that the operator intends to make the alteration. 15
- (2) If the operator makes any alteration in accordance with this paragraph, the undertaker must pay the operator – 20
- (a) any expenses incurred by the operator in, or in connection with, making the alteration; and
  - (b) the amount of any loss or damage sustained by the operator in consequence of the alteration being made.
- (3) Any amount which is not paid in accordance with sub-paragraph (2) is to be recoverable by the operator from the undertaker in any court of competent jurisdiction. 25
- (4) Expressions defined in paragraph 63 have the same meanings in this paragraph.

*When can an undertaker carry out emergency undertaker's works?*

- 67 (1) An undertaker may, in carrying out emergency undertaker's works, make an alteration of any electronic communications apparatus kept on, under or over any land for the purposes of an operator's network. 30
- (2) The undertaker must give the operator notice of the emergency undertaker's works as soon as practicable after beginning them.
- (3) This paragraph does not authorise the undertaker to make an alteration of apparatus after any failure by the undertaker to give notice in accordance with sub-paragraph (2). 35
- (4) The undertaker must make the alteration to the satisfaction of the operator.
- (5) If the undertaker makes any alteration in accordance with this paragraph, the undertaker must pay the operator – 40
- (a) any expenses incurred by the operator in, or in connection with, supervising the undertaker when making the alteration; and

- (b) the amount of any loss or damage sustained by the operator in consequence of the alteration being made.
- (6) Any amount which is not paid in accordance with sub-paragraph (5) is to be recoverable by the operator from the undertaker in any court of competent jurisdiction. 5
- (7) In this paragraph “emergency undertaker’s works” means undertaker’s works carried out in order to stop anything already occurring, or to prevent anything imminent from occurring, which is likely to cause –
  - (a) danger to persons or property, 10
  - (b) interference with the exercise of any functions conferred or imposed on the undertaker by or under any enactment, or
  - (c) substantial loss to the undertaker,and any other works which it is reasonable (in all the circumstances) to carry out with those works. 15

*Offence: undertakers who do not comply with this Part of this code*

- 68 (1) An undertaker, or an agent of an undertaker, is guilty of an offence if that person –
  - (a) makes an alteration of electronic communications apparatus in carrying out non-emergency undertaker’s works, and 20
  - (b) does so –
    - (i) without notice of proposed works having been given in accordance with paragraph 63, or
    - (ii) (in a case where such notice is given) before the end of the notice period under paragraph 63. 25
- (2) An undertaker, or an agent of an undertaker, is guilty of an offence if that person –
  - (a) makes an alteration of electronic communications apparatus in carrying out non-emergency undertaker’s works, and 30
  - (b) unreasonably fails to comply with any reasonable requirement of the operator under this Part of this code when doing so.
- (3) An undertaker, or an agent of an undertaker, is guilty of an offence if that person – 35
  - (a) makes an alteration of electronic communications apparatus in carrying out emergency undertaker’s works, and
  - (b) does so without notice of emergency undertaker’s works having been given in accordance with paragraph 67. 40
- (4) A person guilty of an offence under this paragraph is liable on summary conviction to –
  - (a) a fine not exceeding level 4 on the standard scale, if the service provided by the operator’s network is interrupted by the works or failure, or 45

- (b) a fine not exceeding level 3 on the standard scale, if that service is not interrupted.
- (5) This paragraph does not apply to a Northern Ireland department.

## PART 11

## OVERHEAD APPARATUS

5

*Introductory*

- 69 This Part of this code –
- (a) confers a power on operators to install and keep certain overhead apparatus, and
- (b) imposes a duty on operators to affix notices to certain overhead apparatus. 10

*Power to fly lines*

- 70 (1) This paragraph applies where any electronic communications apparatus is kept on or over any land for the purposes of an operator's network. 15
- (2) The operator has the right, for the statutory purposes, to install and keep lines which –
- (a) pass over other land adjacent to, or in the vicinity of, the land on or over which the apparatus is kept,
- (b) are connected to that apparatus, and 20
- (c) are not, at any point where they pass over the other land, less than three metres above the ground or within two metres of any building over which they pass.
- (3) Sub-paragraph (2) does not authorise the installation or keeping on or over any land of – 25
- (a) any electronic communications apparatus used to support, carry or suspend a line installed under sub-paragraph (2), or
- (b) any line which, as a result of its position, interferes with the carrying on of any business carried on on that land. 30
- (4) In this paragraph “business” includes a trade, profession or employment and includes any activity carried on by a body of persons (whether corporate or unincorporate).

*Duty to attach notices to overhead apparatus*

- 71 (1) This paragraph applies where – 35
- (a) an operator has, for the purposes of the operator's network, installed any electronic communications apparatus, and
- (b) the whole or part of the apparatus is at a height of three metres or more above the ground. 40

- (2) The operator must, before the end of the period of three days beginning with the day after that on which the installation is completed, in a secure and durable manner attach a notice –
- (a) to every major item of apparatus installed, or
  - (b) if no major item of apparatus is installed, to the nearest major item of electronic communications apparatus to which the apparatus that is installed is directly or indirectly connected. 5
- (3) A notice attached under sub-paragraph (1) above –
- (a) must be attached in a position where it is reasonably legible, and 10
  - (b) must give the name of the operator and an address in the United Kingdom at which any notice of objection may be given under paragraph 73(5) in respect of the apparatus in question. 15
- (4) Any person giving such a notice at that address in respect of that apparatus is to be treated as having given that address for the purposes of paragraph 87(2).
- (5) An operator who breaches the requirements of this paragraph is guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale. 20
- (6) In any proceedings for an offence under this paragraph it is a defence for the person charged to prove that the person took all reasonable steps and exercised all due diligence to avoid committing the offence. 25

## PART 12

### RIGHTS TO OBJECT TO CERTAIN APPARATUS

#### *Introductory*

- 72 This Part of this code makes provision conferring rights to object to certain kinds of apparatus, and makes provision about – 30
- (a) the cases in which and persons by whom a right can be exercised, and
  - (b) the power and procedures of the court if an objection is made.

#### *When and by whom can a right to object be exercised?* 35

- 73 (1) A right to object under this Part of this code is available where, pursuant to the right in paragraph 58, an operator keeps electronic communications apparatus installed on, under or over tidal water or lands within the meaning of Part 9 of this code.
- (2) In that case a person has a right to object under this Part of this code if the person – 40
- (a) is an occupier of, or has an interest in, the tidal water or lands,

- (b) is not bound by a code right enabling the operator to keep the apparatus installed on, under or over the tidal water or lands, and
- (c) is not a person with the benefit of a Crown interest in the tidal water or lands. 5
- (3) A right to object under this Part of this code is available where an operator keeps a line installed over land pursuant to the right in paragraph 70.
- (4) In that case a person has a right to object under this Part of this code if the person – 10
- (a) is an occupier of, or has an interest in, the land, and
- (b) is not bound by a code right enabling the operator to keep the apparatus installed over the land.
- (5) A right to object under this Part of this code is available where – 15
- (a) electronic communications apparatus is kept on or over land for the purposes of an operator’s network, and
- (b) the whole or any part of that apparatus is at a height of three metres or more above the ground.
- (6) In that case a person has a right to object under this Part of this code if – 20
- (a) the person is an occupier of, or has an interest in, any neighbouring land, and
- (b) because of the nearness of the neighbouring land to the land on or over which the apparatus is kept – 25
- (i) the enjoyment of the neighbouring land is capable of being prejudiced by the apparatus, or
- (ii) any interest in that land is capable of being prejudiced by the apparatus.
- (7) There is no right to object under this Part of this code in respect of electronic communications apparatus if the apparatus – 30
- (a) replaces any electronic communications apparatus which is not substantially different from the new apparatus, and
- (b) is not in a significantly different position.

*How may a right to object be exercised?*

- 74 (1) A person with a right to object under this Part (“the objector”) may exercise the right by giving a notice to the operator. 35
- (2) The right to object that the person has, and the procedure that applies to that right, depends on whether –
- (a) the notice is given before the end of the period of 12 months beginning with the date on which installation of the apparatus was completed (see paragraph 75), or 40
- (b) the notice is given after the end of that period (see paragraph 76).

*What is the procedure if the objection is made within 12 months of installation?*

- 75 (1) This paragraph applies if the notice is given before the end of the period of 12 months beginning with the date on which installation of the apparatus was completed.
- (2) At any time after the end of the period of two months beginning with the date on which the notice is given, but before the end of the period of four months beginning with that date, the objector may apply to the court to have the objection upheld. 5
- (3) The court must uphold the objection if the following conditions are met. 10
- (4) The first condition is that the apparatus appears materially to prejudice the objector’s enjoyment of, or interest in, the land by reference to which the objection is made.
- (5) The second condition is that the court is not satisfied that the only possible alterations of the apparatus will – 15
- (a) substantially increase the cost or diminish the quality of the service provided by the operator’s network to persons who have, or may in future have, access to it,
- (b) involve the operator in substantial additional expenditure (disregarding any expenditure caused solely by the fact that any proposed alteration was not adopted originally or, as the case may be, that the apparatus has been unnecessarily installed), or 20
- (c) give to any person a case at least as good as the objector has to have an objection under this paragraph upheld. 25
- (6) If the court upholds an objection under this paragraph it may by order do any of the following –
- (a) direct the alteration of the apparatus to which the objection relates;
- (b) authorise the installation (instead of the apparatus to which the objection relates), in a manner and position specified in the order, of any apparatus specified in the order; 30
- (c) direct that no objection may be made under this paragraph in respect of any apparatus the installation of which is authorised by the court. 35
- (7) Where an objector has both given a notice under paragraph 74 and applied for compensation under any of the other provisions of this code –
- (a) the court may give such directions as it thinks fit for ensuring that no compensation is paid until any proceedings under this paragraph have been disposed of, and 40
- (b) if the court makes an order under this paragraph, it may provide in that order for some or all of the compensation otherwise payable under this code to the objector not to be so payable, or, if the case so requires, for some or all of any compensation paid under this code to the objector to be repaid to the operator. 45

(8) For the purposes of sub-paragraph (5)(c), the court has the power on an application under this paragraph to give the objector directions for bringing the application to the notice of such other interested persons as it thinks fit.

(9) This paragraph is subject to paragraph 77. 5

*What is the procedure if the objection is made later than 12 months after installation?*

76 (1) This paragraph applies if the notice is given after the end of the period of 12 months beginning with the date on which installation of the apparatus was completed.

(2) At any time after the end of the period of two months beginning with the date on which the notice is given, but before the end of the period of four months beginning with that date, the objector may apply to the court to have the objection upheld. 10

(3) The court may uphold the objection only if it is satisfied that – 15  
 (a) the alteration is necessary to enable the objector to carry out a proposed improvement of the land by reference to which the objection is made, and  
 (b) the alteration will not substantially interfere with any service which is or is likely to be provided using the operator’s network. 20

(4) If the court upholds an objection under this paragraph it may by order direct the alteration of the apparatus to which the objection relates.

(5) An order under this paragraph may provide for the alteration to be carried out with such modifications, on such terms and subject to such conditions as the court thinks fit. 25

(6) But the court must not include any such modifications, terms or conditions in its order without the consent of the objector, and if such consent is not given may refuse to make an order under this paragraph. 30

(7) An order made under this paragraph must, unless the court otherwise thinks fit, require the objector to reimburse the operator in respect of any expenses which the operator incurs in or in connection with the execution of any works in compliance with the order. 35

(8) This paragraph is subject to paragraph 77.

(9) In this paragraph “improvement” includes development and change of use.

*What limitations are there on the court’s powers under paragraph 75 or 76?*

77 (1) This paragraph applies where the court is considering making – 40  
 (a) an order under paragraph 75 directing the alteration of any apparatus or authorising the installation of any apparatus, or

- (b) an order under paragraph 76 directing the alteration of any apparatus.
- (2) The court must not make the order unless it is satisfied—
  - (a) that the operator has all such rights as it appears to the court appropriate that the operator should have for the purpose of making the alteration or, as the case may be, installing the apparatus, or
  - (b) that—
    - (i) the operator would have all those rights if the court, on an application under paragraph 19, imposed an agreement on the operator and another person, and
    - (ii) it would be appropriate for the court, on such an application, to impose such an agreement.
- (3) For the purposes of avoiding the need for the agreement of any person to the alteration or installation of any apparatus, the court has the same powers as it would have if an application had been duly made under paragraph 19 above for an order imposing such an agreement.
- (4) For the purposes of this paragraph, the court has the power on an application under paragraph 75 or 76 to give the objector directions for bringing the application to the notice of such other interested persons as it thinks fit.

#### PART 13

#### RIGHTS TO LOP TREES

##### *Rights to lop trees*

- 78 (1) This paragraph applies where—
  - (a) a tree or other vegetation overhangs a street in England and Wales or Northern Ireland or a road in Scotland, and
  - (b) the tree or vegetation—
    - (i) obstructs, or will or may obstruct, relevant electronic communications apparatus, or
    - (ii) interferes with, or will or may interfere with, such apparatus.
- (2) In sub-paragraph (1) “relevant electronic communications apparatus” means electronic communications apparatus which—
  - (a) is installed, or about to be installed, on land, and
  - (b) is used, or to be used, for the purposes of an operator’s network.
- (3) The operator may, by notice to the occupier of the land on which the tree or vegetation is growing, require the tree to be lopped or the vegetation to be cut back to prevent the obstruction or interference.
- (4) If, within the period of 28 days beginning with the day on which the notice is given, the occupier of the land on which the tree is

- growing gives the operator a counter-notice objecting to the lopping of the tree or cutting back of the vegetation, the notice has effect only if confirmed by an order of the court.
- (5) Sub-paragraph (6) applies if at any time a notice under sub-paragraph (3) has not been complied with and – 5
- (a) the period of 28 days beginning with the day on which the notice was given has expired without a counter-notice having been given, or
- (b) an order of the court confirming the notice has come into force. 10
- (6) The operator may cause the tree to be lopped or the vegetation to be cut back.
- (7) Where the operator lops a tree or cuts back vegetation in exercise of the power in sub-paragraph (6) the operator must do so in a husband-like manner and in such a way as to cause the minimum damage to the tree or vegetation. 15
- (8) Sub-paragraph (9) applies where –
- (a) a notice under sub-paragraph (3) is complied with (either without a counter-notice having been given or after the notice has been confirmed), or 20
- (b) the operator exercises the power in sub-paragraph (6).
- (9) The court must, on an application made by a person who has sustained loss or damage in consequence of the lopping of the tree or cutting back of the vegetation or who has incurred expenses in complying with the notice, order the operator to pay that person such compensation in respect of the loss or damage as it thinks fit. 25

## PART 14

## COMPENSATION UNDER THE CODE

*Introductory*

- 79 This Part of this code makes provision about compensation under this code. 30

*Compensation where agreement imposed or apparatus removed*

- 80 (1) This paragraph applies to the following powers of the court to order an operator to pay compensation to a person – 35
- (a) the power in paragraph 24(1) (compensation where order made imposing agreement on person);
- (b) the power in paragraph 39(3) (compensation in relation to removal of the apparatus from the land).
- (2) Depending on the circumstances, the power of the court to order the payment of compensation for loss or damage includes power to order payment for – 40
- (a) expenses (including reasonable legal and valuation expenses, subject to the provisions of any enactment about the powers of the court by whom the order for

- compensation is made to award costs or, in Scotland, expenses),
- (b) diminution in the value of the land, and
  - (c) costs of reinstatement.
- (3) For the purposes of assessing such compensation for diminution in the value of land, the following provisions apply with any necessary modifications as they apply for the purposes of assessing compensation for the compulsory purchase of any interest in land – 5
- (a) in relation to England and Wales, rules (2) to (4) set out in section 5 of the Land Compensation Act 1961; 10
  - (b) in relation to Scotland, rules (2) to (4) set out in section 12 of the Land Compensation (Scotland) Act 1963;
  - (c) in relation to Northern Ireland, rules (2) to (4) set out in Article 6(1) of the Land Compensation (Northern Ireland) Order 1982 (SI 1982/712 (NI 9)). 15
- (4) In the application of this paragraph to England and Wales, section 10(1) to (3) of the Land Compensation Act 1973 (compensation in respect of mortgages, trusts of land and settled land) applies in relation to such compensation for diminution in the value of land as it applies in relation to compensation under Part 1 of that Act. 20
- (5) In the application of this paragraph to Scotland, section 10(1) and (2) of the Land Compensation (Scotland) Act 1973 (compensation in respect of restricted interests in land) applies in relation to such compensation for diminution in the value of land as it applies in relation to compensation under Part 1 of that Act. 25
- (6) In the application of this paragraph to Northern Ireland, Article 13(1) to (3) of the Land Acquisition and Compensation (Northern Ireland) Order 1973 (SI 1973/1896 (NI 21)) (compensation in respect of mortgages, trusts for sale and settlements) applies in relation to such compensation for diminution in the value of land as it applies in relation to compensation under Part II of that Order. 30
- (7) Where a person has a claim for compensation to which this paragraph applies and a claim for compensation under any other provision of this code in respect of the same loss, the compensation payable to that person must not exceed the amount of that person’s loss. 35

*Compensation for injurious affection to neighbouring land etc*

- 81 (1) This paragraph applies where a right conferred by or in accordance with any provision of Parts 2 to 9 of this code is exercised by an operator. 40
- (2) In the application of this paragraph to England and Wales, compensation is payable by the operator under section 10 of the Compulsory Purchase Act 1965 (compensation for injurious affection to neighbouring land) as if that section applied in relation to injury caused by the exercise of such a right as it applies in 45

relation to injury caused by the execution of works on land that has been compulsorily acquired.

- (3) In the application of this paragraph to Scotland, compensation is payable by the operator under section 6 of the Railway Clauses Consolidation (Scotland) Act 1845 as if that section applied in relation to injury caused by the exercise of such a right as it applies in relation to injury caused by the execution of works on land that has been taken or used for the purpose of a railway. 5
- (4) Any question as to a person’s entitlement to compensation by virtue of sub-paragraph (3), or as to the amount of that compensation, is, in default of agreement, to be determined by the Lands Tribunal for Scotland. 10
- (5) In the application of this paragraph to Northern Ireland, compensation is payable by the operator under Article 18 of the Land Compensation (Northern Ireland) Order 1982 (SI 1982/712 (NI 9)) as if that section applied in relation to injury caused by the execution of works on land that has been compulsorily acquired. 15
- (6) Any question as to a person’s entitlement to compensation by virtue of sub-paragraph (5), or as to the amount of that compensation, is, in default of agreement, to be determined by the Lands Tribunal for Northern Ireland. 20
- (7) Compensation is payable on a claim for compensation under this paragraph only if the amount of the compensation exceeds £50. 25
- (8) Compensation is payable to a person under this paragraph irrespective of whether the person claiming the compensation has any interest in the land in relation to which the right referred to in sub-paragraph (1) is exercised.
- (9) Compensation under this paragraph may include reasonable legal and valuation expenses, subject to the provisions of any enactment about the powers of the court or tribunal by whom an order for compensation is made to award costs or, in Scotland, expenses. 30

*No other compensation available*

- 82 Except as provided by any provision of Parts 2 to 13 of this code or this Part, an operator is not liable to compensate any person for, and is not subject to any other liability in respect of, any loss or damage caused by the lawful exercise of any right conferred by or in accordance with any provision of those Parts. 35

PART 15 40

#### NOTICES UNDER THE CODE

*Introductory*

- 83 This Part makes provision –

- (a) about requirements for the form of notices given under this code by operators,
- (b) about requirements for the form of notices given under this code by persons other than operators, and
- (c) about procedures for giving notices. 5

*Notices given by operators*

- 84 (1) A notice given under this code by an operator must—
- (a) explain the effect of the notice,
  - (b) explain which provisions of this code are relevant to the notice, and 10
  - (c) explain the steps that may be taken by the recipient in respect of the notice.
- (2) If OFCOM have prescribed the form of a notice which may or must be given by an operator under a provision of this code, a notice given by an operator under that provision must be in that form. 15
- (3) A notice which does not comply with this paragraph is not a valid notice for the purposes of this code.
- (4) Sub-paragraph (3) does not prevent the person to whom the notice is given from relying on the notice if the person chooses to do so.
- (5) In any proceedings under this code a certificate issued by OFCOM stating that a particular form of notice has been prescribed by them as mentioned in this paragraph is conclusive evidence of that fact. 20

*Notices given by others*

- 85 (1) Sub-paragraph (2) applies to a notice given under paragraph 30(1), 32(1), 37(1) or 38(2) by a person other than an operator. 25
- (2) If OFCOM have prescribed the form of a notice given under the provision in question by a person other than an operator, the notice must be in that form.
- (3) A notice which does not comply with sub-paragraph (2) is not a valid notice for the purposes of this code. 30
- (4) Sub-paragraph (3) does not prevent the operator to whom the notice is given from relying on the notice if the operator chooses to do so.
- (5) Sub-paragraph (6) applies to a notice given under any other provision of this code by a person other than an operator if— 35
- (a) OFCOM have prescribed the form of a notice given under that provision by a person other than an operator,
  - (b) the notice is given in response to a notice given by an operator, and 40
  - (c) the operator has, in giving the notice, drawn the person's attention to the form prescribed by OFCOM.

- (6) The notice is a valid notice for the purposes of this code, but the person giving the notice must bear any costs incurred by the operator as a result of the notice not being in that form.
- (7) In any proceedings under this code a certificate issued by OFCOM stating that a particular form of notice has been prescribed by them as mentioned in this paragraph is conclusive evidence of that fact. 5

*Prescription of notices by OFCOM*

- 86 (1) OFCOM must prescribe the form of a notice to be given under each provision of this code that requires a notice to be given. 10
- (2) OFCOM may from time to time amend or replace a form prescribed under sub-paragraph (1).
- (3) Before prescribing a form for the purposes of this code, OFCOM must consult operators and such other persons as OFCOM think appropriate. 15
- (4) Sub-paragraph (3) does not apply to the amendment or replacement of a form prescribed under sub-paragraph (1).

*Procedures for giving notice*

- 87 (1) A notice given under this code must not be sent by post unless it is sent by a registered post service or by recorded delivery. 20
- (2) For the purposes, in the case of a notice under this code, of section 394 of this Act (service of notifications and other documents) and section 7 of the Interpretation Act 1978 (references to service by post), the proper address of a person (“P”) is –
- (a) if P has given the person giving the notice an address for service under this code, that address, and 25
- (b) otherwise, the address given by section 394.
- (3) Sub-paragraph (4) applies if it is not practicable, for the purposes of giving a notice under this code, to find out after reasonable enquiries the name and address of a person who is the occupier of land for the purposes of this code. 30
- (4) A notice may be given under this code to the occupier –
- (a) by addressing it to a person by the description of “occupier” of the land (and describing the land), and
- (b) by delivering it to a person who is on the land or, if there is no person on the land to whom it can be delivered, by affixing it, or a copy of it, to a conspicuous object on the land. 35
- (5) Sub-paragraph (6) applies if it is not practicable, for the purposes of giving a notice under this code, to find out after reasonable enquiries the name and address of the owner of an interest in land. 40
- (6) A notice may be given under this code to the owner –

- (a) by addressing it to a person by the description of “owner” of the interest (and describing the interest and the land), and
- (b) by delivering it to a person who is on the land or, if there is no person on the land to whom it can be delivered, by affixing it, or a copy of it, to a conspicuous object on the land. 5

## PART 16

### ENFORCEMENT AND DISPUTE RESOLUTION

#### *Introductory* 10

- 88 This Part of this code makes provision about –
- (a) the court or tribunal by which agreements and rights under this code may be enforced,
  - (b) the meaning of references to “the court” in this code, and
  - (c) the power of the Secretary of State by regulations to confer jurisdiction under this code on other tribunals. 15

#### *Enforcement of agreements and rights*

- 89 An agreement under this code, and any right conferred by this code, may be enforced –
- (a) in the case of an agreement imposed by a court or tribunal, by the court or tribunal which imposed the agreement, 20
  - (b) in the case of any agreement or right, by any court or tribunal which for the time being has the power to impose an agreement under this code, or
  - (c) in the case of any agreement or right, by any court of competent jurisdiction. 25

#### *Meaning of “the court”*

- 90 (1) In this code “the court” means –
- (a) in relation to England and Wales, the county court,
  - (b) in relation to Scotland, the sheriff court, and 30
  - (c) in relation to Northern Ireland, a county court.
- (2) Sub-paragraph (1) is subject to provision made by regulations under paragraph 91.

#### *Power to confer jurisdiction on other tribunals*

- 91 (1) The Secretary of State may by regulations provide for a function conferred by this code on the court to be exercisable by any of the following –
- (a) in relation to England and Wales, the First-tier Tribunal;
  - (b) in relation to England and Wales, the Upper Tribunal;
  - (c) in relation to Scotland, the Lands Tribunal for Scotland; 40
  - (d) in relation to Northern Ireland, the Lands Tribunal for Northern Ireland.

- (2) Regulations under sub-paragraph (1) may make provision for the function to be exercisable by a tribunal to which the regulations apply –
- (a) instead of by the court, or
  - (b) as well as by the court. 5
- (3) The Secretary of State may by regulations make provision –
- (a) requiring proceedings to which regulations under sub-paragraph (1) apply to be commenced in the court or in a tribunal to which the regulations apply;
  - (b) enabling the court or such a tribunal to transfer such proceedings to a tribunal which has jurisdiction in relation to them by virtue of such regulations or to the court. 10
- (4) The power in section 402(3)(c) for regulations under sub-paragraph (1) or (3) to make consequential provision includes power to make provision which amends, repeals or revokes or otherwise modifies the application of any enactment. 15
- (5) Before making regulations under sub-paragraph (1) or (3) the Secretary of State must –
- (a) so far as the regulations relate to Scotland, consult the Scottish Ministers; 20
  - (b) so far as the regulations relate to Northern Ireland, consult the Department of Justice in Northern Ireland.

*Award of costs by tribunal*

- 92 (1) Where in any proceedings a tribunal exercises functions by virtue of regulations under paragraph 91(1), it may make such order as it thinks fit as to costs, or, in Scotland, expenses. 25
- (2) The matters a tribunal must have regard to in making such an order include in particular the extent to which any party is successful in the proceedings.

*Applications to the court*

- 93 Regulation 3 of the Electronic Communications and Wireless Telegraphy Regulations 2011 (SI 2011/1210) makes provision about the time within which certain applications to the court under this code must be determined. 30

*Appeals in Northern Ireland*

- 94 Article 60 of the County Courts (Northern Ireland) Order 1980 (ordinary appeals from the county court in civil cases) is to apply in relation to any determination of the court in Northern Ireland under this code in the same manner as it applies in relation to any decree of the court made in the exercise of the jurisdiction conferred by Part 3 of that Order. 40

PART 17

SUPPLEMENTARY PROVISIONS

*Relationship between this code and existing law*

- 95 (1) This code does not authorise the contravention of any provision of an enactment passed or made before the coming into force of this code. 5
- (2) Sub-paragraph (1) does not apply if and to the extent that an enactment makes provision to the contrary.

*Relationship between this code and agreements with operators*

- 96 (1) This code does not affect any rights or liabilities arising under an agreement to which an operator is a party. 10
- (2) Sub-paragraph (1) does not apply in relation to paragraph 60(2) to (5), paragraph 95 or Parts 3 to 6 of this code.

*Ownership of property*

- 97 The ownership of property does not change merely because the property is installed on or under, or affixed to, any land by any person in exercise of a right conferred by or in accordance with this code. 15

*Conduits*

- 98 (1) This code does not authorise an operator to do anything inside a relevant conduit without the agreement of the authority with control of the conduit. 20
- (2) The agreement of the authority with control of a public sewer is sufficient in all cases to authorise an operator to exercise any of the rights under this code in order to do anything wholly inside that sewer. 25
- (3) In this paragraph the following expressions have the same meanings as in section 98 of the Telecommunications Act 1984—
- (a) “public sewer” and “relevant conduit”;
  - (b) references to the authority with control of a relevant conduit. 30

*Duties for OFCOM to prepare codes of practice*

- 99 (1) OFCOM must prepare and publish a code of practice dealing with—
- (a) the provision of information for the purposes of this code by operators to persons who occupy or have an interest in land; 35
  - (b) the conduct of negotiations for the purposes of this code between operators and such persons;

- (c) the conduct of operators in relation to persons who occupy or have an interest in land adjoining land on, under or over which electronic communications apparatus is installed;
  - (d) such other matters relating to the operation of this code as OFCOM think appropriate. 5
- (2) OFCOM must prepare and publish standard terms which may (but need not) be used in agreements under this code.
- (3) OFCOM may from time to time –
  - (a) amend or replace a code of practice or standard terms published under this paragraph; 10
  - (b) publish the code or terms as amended or (as the case may be) the replacement code or terms.
- (4) Before publishing a code of practice or standard terms under this paragraph, OFCOM must consult operators and such other persons as OFCOM think appropriate. 15
- (5) Sub-paragraph (4) does not apply to –
  - (a) the publication of amendments to a code of practice or standard terms, or
  - (b) the publication of a replacement code or replacement terms. 20

*Application of this code to the Crown*

- 100 (1) This code applies in relation to land in which there subsists, or at any material time subsisted, a Crown interest as it applies in relation to land in which no such interest subsists.
- (2) In this code “Crown interest” means – 25
  - (a) an interest which belongs to Her Majesty in right of the Crown,
  - (b) an interest which belongs to Her Majesty in right of the Duchy of Lancaster,
  - (c) an interest which belongs to the Duchy of Cornwall, 30
  - (d) an interest which belongs to a government department or which is held in trust for Her Majesty for the purposes of a government department, or
  - (e) an interest which belongs to an office-holder in the Scottish Administration or which is held in trust for Her Majesty for the purposes of the Scottish Administration by such an office-holder. 35
- (3) This includes, in particular –
  - (a) an interest which belongs to Her Majesty in right of Her Majesty’s Government in Northern Ireland, and 40
  - (b) an interest which belongs to a Northern Ireland department or which is held in trust for Her Majesty for the purposes of a Northern Ireland department.
- (4) Where an agreement is required by this code to be given in respect of any Crown interest subsisting in any land, the agreement must be given by the appropriate authority. 45

- (5) Where a notice under this code is required to be given in relation to land in which a Crown interest subsists, the notice must be given by or to the appropriate authority (as the case may require).
- (6) In this paragraph “the appropriate authority” means –
- (a) in the case of land belonging to Her Majesty in right of the Crown, the Crown Estate Commissioners or, as the case may be, the government department or office-holder in the Scottish Administration having the management of the land in question; 5
  - (b) in the case of land belonging to Her Majesty in right of the Duchy of Lancaster, the Chancellor of the Duchy of Lancaster; 10
  - (c) in the case of land belonging to the Duchy of Cornwall, such person as the Duke of Cornwall, or the possessor for the time being of the Duchy of Cornwall, appoints; 15
  - (d) in the case of land belonging to an office-holder in the Scottish Administration or held in trust for Her Majesty by such an office-holder for the purposes of the Scottish Administration, the office-holder;
  - (e) in the case of land belonging to Her Majesty in right of Her Majesty’s Government in Northern Ireland, the Northern Ireland department having the management of the land in question; 20
  - (f) in the case of land belonging to a government department or a Northern Ireland department or held in trust for Her Majesty for the purposes of a government department or a Northern Ireland department, that department. 25
- (7) Any question as to the authority that is the appropriate authority in relation to any land is to be referred to the Treasury, whose decision is final. 30
- (8) Paragraphs 50 (offence in relation to transport land rights) and 71(5) (offence in relation to notices on overhead apparatus) do not apply where this code applies in the case of the Secretary of State or a Northern Ireland department by virtue of section 106(3)(b).
- (9) References in this paragraph to an office-holder in the Scottish Administration are to be construed in accordance with section 126(7) of the Scotland Act 1998. 35

*Meaning of “occupier”*

- 101 (1) References in this code to an occupier of land are to the occupier of the land for the time being. 40
- (2) References in this code to an occupier of land, in relation to a footpath or bridleway that crosses and forms part of agricultural land, are to the occupier of that agricultural land.
- (3) Sub-paragraph (4) applies in relation to land which is –
- (a) a street in England and Wales or Northern Ireland, other than a footpath or bridleway within sub-paragraph (2), or 45
  - (b) a road in Scotland, other than such a footpath or bridleway.

- (4) References in this code to an occupier of land –
- (a) in relation to such a street in England and Wales, are to the street managers within the meaning of Part 3 of the New Roads and Street Works Act 1991,
  - (b) in relation to such a street in Northern Ireland, are to the street managers within the meaning of the Street Works (Northern Ireland) Order 1995 (SI 1995/3210 (NI 19)), and 5
  - (c) in relation to such a road in Scotland, are to the road managers within the meaning of Part 4 of the New Roads and Street Works Act 1991. 10
- (5) Sub-paragraph (6) applies in relation to land which –
- (a) is unoccupied, and
  - (b) is not a street in England and Wales or Northern Ireland or a road in Scotland.
- (6) References in this code to an occupier of land, in relation to land within sub-paragraph (5), are to – 15
- (a) the person (if any) who for the time being exercises powers of management or control over the land, or
  - (b) if there is no person within paragraph (a), to every person whose interest in the land would be prejudicially affected 20 by the exercise of a code right in relation to the land.
- (7) In this paragraph –
- (a) “agricultural land” includes land which is being brought into use for agriculture, and
  - (b) references in relation to England and Wales to a footpath or bridleway include a restricted byway. 25

*Lands Tribunal for Scotland procedure rules*

- 102 The power to make rules under section 3(6) of the Lands Tribunal Act 1949 (Lands Tribunal for Scotland procedure rules) for the purposes of this code or regulations made under it is exercisable by the Scottish Ministers instead of by the Secretary of State (and any reference there to the approval of the Treasury does not apply). 30

*Arbitrations in Scotland*

- 103 Until the Arbitration (Scotland) Act 2010 is in force in relation to any arbitrations carried out under or by virtue of this code, that Act applies as if it were in force in relation to those arbitrations. 35

*General interpretation*

- 104 (1) In this code –
- “agriculture” and “agricultural” – 40
- (a) in relation to England and Wales, have the same meanings as in the Highways Act 1980,
  - (b) in relation to Scotland, have the same meanings as in the Town and Country Planning (Scotland) Act 1997, and 45

- (c) in relation to Northern Ireland, have the same meanings as in the Agriculture Act (Northern Ireland) 1949;
- “bridleway” and “footpath” –
- (a) in relation to England and Wales, have the same meanings as in the Highways Act 1980, 5
- (b) in relation to Scotland, have the same meanings as Part 3 of the Countryside (Scotland) Act 1967, and
- (c) in relation to Northern Ireland, mean a way over which the public have, by virtue of the Access to the Countryside (Northern Ireland) Order 1983 (SI 1983/1895 (NI 18)), a right of way (respectively) on horseback and on foot; 10
- “code agreement” has the meaning given by paragraph 28(5);
- “Crown interest” has the meaning given by paragraph 100(2) and (3); 15
- “enactment” includes –
- (a) an enactment comprised in subordinate legislation within the meaning of the Interpretation Act 1978,
- (b) an enactment comprised in, or in an instrument made under, a Measure or Act of the National Assembly for Wales, 20
- (c) an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament, and
- (d) an enactment comprised in, or in an instrument made under, Northern Ireland legislation; 25
- “land” does not include electronic communications apparatus;
- “landowner” has the meaning given by paragraph 36(1);
- “lease” includes – 30
- (a) in relation to England and Wales and Northern Ireland, any leasehold tenancy (whether in the nature of a head lease, sub-lease or underlease) and any agreement to grant such a tenancy but not a mortgage by demise or sub-demise, and 35
- (b) in relation to Scotland, any sub-lease and any agreement to grant a sub-lease,
- and “lessee” is to be construed accordingly;
- “relevant person” has the meaning given by paragraph 19(1);
- “restricted byway” has the same meaning as in Part 2 of the Countryside and Rights of Way Act 2000; 40
- “road” –
- (a) in relation to Scotland, has the same meaning as in Part 4 of the New Roads and Street Works Act 1991;
- (b) in relation to Northern Ireland, has the same meaning as in the Roads (Northern Ireland) Order 1993 (SI 1993/3160 (NI 15)); 45
- “site provider” has the meaning given by paragraph 29(1);
- “street” –

- (a) in relation to England and Wales, has the same meaning as in Part 3 of the New Roads and Street Works Act 1991, and
  - (b) in relation to Northern Ireland, has the same meaning as in the Street Works (Northern Ireland) Order 1995 (SI 1995/3210 (NI 19)).
- (2) In this code, references to the alteration of any apparatus include references to the moving, removal or replacement of the apparatus.”

## SCHEDULE 2

Section 4

10

## THE ELECTRONIC COMMUNICATIONS CODE: TRANSITIONAL PROVISION

*Interpretation*

- 1 (1) This paragraph has effect for the purposes of this Schedule.
- (2) The “existing code” means Schedule 2 to the Telecommunications Act 1984.
- (3) The “new code” means Schedule 3A to the Communications Act 2003. 15
- (4) A “subsisting agreement” means –
- (a) an agreement under paragraph 2(1) of the existing Code, or
  - (b) an order under paragraph 5 of the existing code,
- which is in force, as between an operator and any person, at the time the new Code comes into force (and whose terms do not provide for it to cease to have effect at that time). 20
- (5) Expressions used in this Schedule and in the new code have the same meaning as in the new code, subject to any modification made by this Schedule.

*Effect of subsisting agreement*

25

- 2 A subsisting agreement has effect after the new code comes into force as an agreement under Part 2 of the new code between the same parties, subject to the modifications made by this Schedule.

*Limitation of code rights*

- 3 In relation to a subsisting agreement, references in the new code to a code right are, in relation to the operator and the land to which the agreement relates, references to a right for the statutory purposes to do the things listed in paragraph 2(1)(a) to (c) of the existing code. 30

*Limitation of persons bound*

- 4 (1) A person bound by a code right by virtue only of paragraph 2(3) of the existing code continues to be bound by it so long as they would be bound if paragraph 2(3) of the existing code continued to have effect. 35

- (2) In relation to such a person, paragraph 4(4) to (12) of the existing code continue to have effect, but as if in paragraph 4(4)(b) the reference to paragraph 21 of the existing Code were a reference to Part 5 of the new code.

*Exclusion of assignment, upgrading and sharing provisions*

- 5 (1) Part 3 of the new code (assignment of code rights, and upgrading and sharing of apparatus) does not apply in relation to a subsisting agreement. 5
- (2) Part 3 of the new code does not apply in relation to a code right conferred under the new code if, at the time when it is conferred, the exercise of the right depends on a right that has effect under a subsisting agreement.

*Termination and modification of agreements* 10

- 6 (1) Part 5 of the new code (termination and modification of agreements) applies in relation to a subsisting agreement subject to the following modifications.
- (2) The “site provider” (see paragraph 29 of the new code) does not include a person who was under the existing code bound by the agreement only by virtue of paragraph 2(2)(c) of that code. 15
- (3) Where the unexpired term of the subsisting agreement at the coming into force of the new code is less than 18 months, paragraph 30 applies (with necessary modification) as if for the period of 18 months referred to in sub-paragraph (3)(a) there were substituted a period equal to the unexpired term or 3 months, whichever is greater. 20
- (4) Paragraph 33 applies with the omission of sub-paragraph (13)(d).

*Apparatus, works etc*

- 7 (1) Paragraphs 9 to 12 of the existing code (rights in relation to street works, flying lines, tidal waters, linear obstacles) continue to apply in relation to anything in the process of being done when the new code comes into force. 25
- (2) Apparatus lawfully installed under any of those provisions (before or after the time when the new code comes into force) is to be treated as installed under the corresponding provision of the new code if it could have been installed under that provision if the provision had been in force or applied to its installation. 30
- (3) The corresponding provisions are—
- (a) Part 7 (transport land rights), in relation to paragraph 12 of the existing code;
- (b) Part 8 (street work rights), in relation to paragraph 9 of the existing code; 35
- (c) Part 9 (tidal water rights), in relation to paragraph 11 of the existing code;
- (d) paragraph 70 (power to fly lines), in relation to paragraph 10 of the existing code.
- 8 Any agreement given in accordance with paragraph 26(3) of the existing code for the purposes of paragraph 11(2) of that code has effect for the purposes of paragraph 60 of the new code as if given in accordance with paragraph 100 of that code 40

- 9 Any agreement that has effect under paragraph 15 of the existing code and that would be sufficient for the purpose of doing anything wholly inside a sewer if that paragraph continued in force is sufficient for that purpose under paragraph 98(2) of the new code.

*Court applications for required rights etc* 5

- 10 (1) This paragraph applies where –
- (a) before the time when the new code comes into force, a notice has been given under paragraph 5(1) of the existing code, and
  - (b) at that time no application has been made to the court in relation to the notice. 10
- (2) The notice has effect as if given under paragraph 19(2) of the new code.
- 11 (1) This paragraph applies where before the time when the new code comes into force –
- (a) a notice has been given under paragraph 5(1) of the existing code, and 15
  - (b) an application has been made to the court in relation to the notice.
- (2) Subject to the following provisions of this paragraph, the existing code continues to apply in relation to the application.
- (3) An order made under the existing code by virtue of sub-paragraph (2) has effect as an order under paragraph 19 of the new code. 20
- (4) If the operator gives a notice in accordance with sub-paragraph (5), from the time when the notice takes effect –
- (a) sub-paragraph (2) does not apply, and
  - (b) the application mentioned in sub-paragraph (1)(b) has effect as if made under paragraph 19(3) of the new code; 25
- but this is subject to sub-paragraph (6).
- (5) A notice under sub-paragraph (4) –
- (a) must be given to the person, or each person, on whom the notice mentioned in sub-paragraph (1)(a) was served;
  - (b) must be given not later than the end of the period of 28 days beginning with the day on which the new code comes into force. 30
- (6) A notice under sub-paragraph (4) –
- (a) takes effect at the end of the period of 28 days beginning with the day on which the notice is given; but
  - (b) does not have effect if before the end of that period the court or any person to whom the notice was given gives a notice under this sub-paragraph. 35
- (7) A notice under sub-paragraph (6) may be given by the court only if it appears to the court on its own motion that it would be unreasonable in all the circumstances for the application to have effect as if made under paragraph 19(3) of the new code. 40
- (8) For the purposes of sub-paragraph (7), any difference between the amount of any payment that would fall to be made under an order under paragraph 5 of the existing code and under an order under paragraph 19 of the new code is to be disregarded. 45

- (9) Nothing in this paragraph prevents the operator from—
- (a) withdrawing an application falling within sub-paragraph (1)(b), or
  - (b) giving a notice or making an application to the court under paragraph 19 of the new code in respect of the same right.
- (10) The operator must bear any costs arising from the service of a notice under sub-paragraph (4) or any action taken by the operator within sub-paragraph (9). 5

*Temporary code rights*

- 12 (1) The coming into force of the new code does not affect any order made under paragraph 6 of the existing code. 10
- (2) An application under that paragraph that is pending in relation to proceedings under paragraph 5 of that code when a notice under paragraph 11(4) takes effect in relation to the proceedings has effect as an application under paragraph 26 of the new code.

*Compensation* 15

- 13 The repeal of the existing code does not affect paragraph 16 of that code, or any other right to compensation, as it applies in relation to the exercise of a right before the new code comes into force.

*Objections in relation to apparatus*

- 14 The repeal of the existing code does not affect paragraphs 17 and 18 of that code as they apply in relation to anything whose installation was completed before the repeal comes into force. 20
- 15 (1) Subject to the following provisions of this paragraph, the repeal of the existing code does not affect paragraph 20 of that code as it applies in relation to anything whose installation was completed before the repeal comes into force. 25
- (2) A right under paragraph 20 is not by virtue of sub-paragraph (1) exercisable in relation to any apparatus by a person who is a party to, or is bound by, an agreement under the new code in relation to the apparatus.
- (3) A subsisting agreement is not an agreement under the new code for the purposes of sub-paragraph (2). 30
- 16 Part 12 of the new code does not apply in relation to apparatus whose installation was completed before the new code came into force.

*Tree lopping*

- 17 (1) This paragraph applies where— 35
- (a) before the time when the new code comes into force, a notice has been given under paragraph 19 of the existing code, and
  - (b) at that time no application has been made to the court in relation to the notice.
- (2) The notice and any counter-notice under that paragraph have effect as if given under paragraph 78 of the new code. 40

- 18 (1) This paragraph applies where before the time when the new code comes into force—
- (a) a notice has been given under paragraph 19 of the existing code, and
  - (b) an application has been made to the Court in relation to the notice.
- (2) The existing code continues to apply in relation to the application. 5

*Right to require removal of apparatus*

- 19 The repeal of the existing code does not affect the operation of paragraph 21 of that code in relation to an entitlement under sub-paragraph (3) of that paragraph arising before the repeal comes into force.
- 20 (1) This paragraph applies if— 10
- (a) a person has given notice under sub-paragraph (2) of paragraph 21 of the existing code before the time when the repeal of that code comes into force,
  - (b) the 28 day period mentioned in sub-paragraph (3) of that paragraph ends after that time, and 15
  - (c) no counter-notice is given under that paragraph within that period.
- (2) Paragraphs 38(6) and (7) and 39 of the new code apply in relation to that person as they apply in relation to the landowner mentioned in paragraph 38(6).
- 21 (1) This paragraph applies if— 20
- (a) a person has given notice under sub-paragraph (2) of paragraph 21 of the existing code before the time when the repeal of that code comes into force,
  - (b) a counter-notice has been given under sub-paragraph (3) of that paragraph before or after that time, and 25
  - (c) no application has been made to the court under that paragraph by the operator.
- (2) The counter-notice has effect as a notice under paragraph 19(2) of the new code.
- (3) On an application under paragraph 19 of the new code as it applies by virtue of sub-paragraph (2), the court may not make an order under that paragraph (in addition to the circumstances provided for in sub-paragraph (5) of that paragraph) if it appears to the court, in relation to any relevant agreement— 30
- (a) that there were substantial breaches by the operator of its obligations under the agreement, or 35
  - (b) that there were persistent delays by the operator in making payments to the site provider under the agreement.
- (4) In sub-paragraph (3) “relevant agreement” means any agreement between the operator and the landowner that was in force before the right to require removal arose under paragraph 21 of the existing code. 40
- 22 (1) This paragraph applies if, before the repeal of the existing code comes into force—
- (a) an application has been made to the court under paragraph 21 of that code, and
  - (b) the matter has not been determined by the court. 45

- (2) The repeal of the existing code does not affect the operation of paragraph 21 of that code in relation to the application.
- (3) But any party to the proceedings may apply to the court for an order that the application be treated as an application to the court under paragraph 19 of the new code. 5
- (4) The court must grant an application under sub-paragraph (3) unless it thinks it would be unreasonable in all the circumstances to do so.

*Undertaker's works*

- 23 The repeal of the existing code does not affect the operation of paragraph 23 of that code in relation to works – 10
- (a) in relation to which a notice has been given under that paragraph before the time when that repeal comes into force, or
- (b) which have otherwise been commenced before that time.

*Supplementary*

- 24 Any agreement which, immediately before the repeal of the existing code, is a relevant agreement for the purposes of paragraph 29 of that code is to be treated in relation to times after the coming into force of that repeal as a relevant agreement for the purposes of paragraph 17 of the new code. 15
- 25 Part 15 of the new code applies in relation to notices under this Schedule as it applies in relation to notices under that code. 20
- 26 Paragraphs 24 to 27 of the existing code continue to have effect in relation to any provision of that code so far as the provision has effect by virtue of this Schedule.
- 27 A person entitled to compensation by virtue of this Schedule is not entitled to compensation in respect of the same matter under any provision of the new code. 25

SCHEDULE 3

Section 4

THE ELECTRONIC COMMUNICATIONS CODE: CONSEQUENTIAL AMENDMENTS

*Landlord and Tenant Act 1954 (c. 56)*

- 1 In section 23 of the Landlord and Tenant Act 1954 (tenancies to which provisions on security of tenure for business etc tenants apply) after subsection (4) insert – 30
- “(5) This Part does not apply to a tenancy the primary purpose of which is to grant code rights within the meaning of Schedule 3A to the Communications Act 2003 (the electronic communications code).” 35

*Landlord and Tenant Act 1987 (c. 31)*

- 2 In section 4(2) of the Landlord and Tenant Act 1987 (disposals which are not relevant disposals for purposes of tenants' right of first refusal) after

	paragraph (da) insert –	
	“(da) the conferral of a code right under Schedule 3A to the Communications Act 2003 (the electronic communications code);”.	
	<i>Landlord and Tenant (Covenants) Act 1995 (c. 30)</i>	5
3	In section 5 of the Landlord and Tenant (Covenants) Act 1995 (tenant released from covenants on assignment of tenancy), after subsection (4) insert –	
	“(5) This section is subject to paragraph 15(4) of Schedule 3A to the Communications Act 2003 (which places conditions on the release of an operator from liability under an agreement granting code rights under the electronic communications code).”	10
	<i>Business Tenancies (Northern Ireland) Order 1996 (SI 1996/725 (NI 5))</i>	
4	In Article 4(1) of the Business Tenancies (Northern Ireland) Order 1996 (tenancies to which the Order does not apply) after paragraph (k) insert –	15
	“(l) a tenancy the primary purpose of which is to grant code rights within the meaning of Schedule 3A to the Communications Act 2003 (the electronic communications code).”	
	<i>Communications Act 2003 (c. 21)</i>	20
5	The Communications Act 2003 is amended as follows.	
6	(1) Section 394 (service of notifications and other documents) is amended as follows.	
	(2) In subsection (2) omit paragraph (d).	
	(3) After subsection (10) insert –	25
	“(11) In its application to Schedule 3A this section is subject to paragraph 87 of that Schedule.”	
7	(1) Section 402 (power of Secretary of State to make orders and regulations) is amended as follows.	
	(2) In subsection (2) after paragraph (a) insert –	30
	“(aa) regulations under paragraph 91 of that Schedule which amend, repeal or modify the application of primary legislation.”	
	(3) After subsection (2) insert –	
	“(2A) A statutory instrument containing (whether alone or with other provisions) regulations under paragraph 91 of Schedule 3A which amend, repeal or modify the application of primary legislation, may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.”	35
	(4) After subsection (3) insert –	40
	“(4) In this section “primary legislation” means –	

- (a) an Act of Parliament,
- (b) a Measure or Act of the National Assembly for Wales,
- (c) an Act of the Scottish Parliament, or
- (d) Northern Ireland legislation.”

*Consequential repeal*

5

- 8 In consequence of the amendments made by section 4 and this Schedule, Schedule 3 to the Communications Act 2003 is repealed.

# Digital Economy Bill

---

---

A

## B I L L

To make provision about electronic communications infrastructure and services; to provide for restricting access to online pornography; to make provision about protection of intellectual property in connection with electronic communications; to make provision about data-sharing; to make provision about functions of OFCOM in relation to the BBC; to provide for determination by the BBC of age-related TV licence fee concessions; to make provision about the regulation of direct marketing; to make other provision about OFCOM and its functions; and for connected purposes.

*Presented by Secretary John Whittingdale  
supported by  
the Prime Minister,  
Secretary Sajid Javid, Secretary Stephen Crabb,  
Secretary Greg Clark, Secretary Nicky Morgan,  
Secretary Amber Rudd, Secretary Elizabeth Truss,  
Matthew Hancock, Mr David Gauke  
and Mr Edward Vaizey.*

---

*Ordered, by The House of Commons,  
to be Printed, 5 July 2016.*

---

© Parliamentary copyright House of Commons 2016

*This publication may be reproduced under the terms of the Open Parliament Licence, which is published at  
[www.parliament.uk/site-information/copyright](http://www.parliament.uk/site-information/copyright)*

PUBLISHED BY AUTHORITY OF THE HOUSE OF COMMONS  
LONDON – THE STATIONERY OFFICE LIMITED  
Printed in the United Kingdom by The Stationery Office Limited  
£x.xx