

SCHEDULES

SCHEDULE 1

Amendments to Communications Act 2003 and related amendments

Communications Act 2003

25. After section 49 insert—

“Domestic consultation for directions, approvals and consents

49A.—(1) This section applies where the responsible person is proposing to give, modify or withdraw a direction, approval or consent for the purposes of—

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

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

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

(3) The responsible person must publish a notification—

- (a) stating that there is a proposal to give, modify or withdraw the direction, approval or consent;
- (b) identifying the responsible person;
- (c) setting out the direction, approval or consent to which the proposal relates;
- (d) setting out the effect of the direction, approval or consent or of its proposed modification or withdrawal;
- (e) giving reasons for the making of the proposal; and
- (f) specifying the period within which representations may be made about the proposal to the responsible person.

(4) That period must be one ending not less than one month after the day of the publication of the notification.

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

(6) The responsible person must—

- (a) consider every representation about the proposal made to that person during the period specified in the notification; and

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(b) have regard to every international obligation of the United Kingdom (if any) which has been notified to OFCOM for the purposes of this paragraph by the Secretary of State.

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

(8) The publication of a notification under this section must be in such manner as appears to the responsible person to be appropriate for bringing the contents of the notification to the attention of such persons as that person considers appropriate.

EU consultation for directions, approvals and consents

49B.—(1) This section applies where, after complying with section 49A(6) in relation to a proposal of EU significance, the responsible person wishes to proceed with it.

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

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

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

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

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

(5) Subsections (6) to (10) apply where such a notification is given by the Commission to the responsible person during that period.

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

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

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

(8) In a case in which the responsible person is a person other than OFCOM and the Commission has recommended that the proposal be amended or withdrawn, the responsible person may give effect to the proposal only with the agreement of OFCOM.

(9) In a case in which the responsible person gives effect to the proposal despite a recommendation of the Commission to amend or withdraw it, the responsible person must

send to the Commission a copy of the responsible person's reasoned justification for the decision.

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

Delivery of copies of notifications etc. in respect of directions, approvals and consents

- 49C.**—(1) The responsible person must send to the Secretary of State—
- (a) a copy of every notification published under section 49A(3);
 - (b) a copy of every direction, approval or consent given for the purposes of a condition set under section 45; and
 - (c) a copy of every instrument modifying or withdrawing such a direction, approval or consent.
- (2) The responsible person must send to the European Commission—
- (a) a copy of every direction, approval or consent given for the purposes of a universal service condition, an access-related condition falling within section 73(2) or an SMP services condition; and
 - (b) a copy of every instrument modifying or withdrawing such a direction, approval or consent.
- (3) The responsible person must send to BEREC—
- (a) a copy of every direction, approval or consent given for the purposes of a condition set under section 45 where the proposal to give the direction, approval or consent was a proposal of EU significance;
 - (b) a copy of every instrument modifying or withdrawing a direction, approval or consent given for the purposes of a condition set under section 45 where the proposal to modify or withdraw the direction, approval or consent was a proposal of EU significance.
- (4) In a case in which the responsible person is a person other than OFCOM, the responsible person must send to OFCOM—
- (a) a copy of every notification published under section 49A(3);
 - (b) a copy of every direction, approval or consent given for the purposes of a condition set under section 45;
 - (c) a copy of every instrument modifying or withdrawing such a direction, approval or consent;
 - (d) a copy of every proposal and statement to which section 49B(2) applies;
 - (e) a copy of any comments about such a proposal made by the Commission, BEREC or any regulatory authority in any other member State;
 - (f) a copy of every notification given to the responsible person by the Commission under Article 7a(1) of the Framework Directive;
 - (g) a copy of every recommendation made in respect of the proposal by the Commission under Article 7a(5)(a) of the Framework Directive.
- (5) Where because of subsection (2) of section 49A, that section did not apply in relation to a proposal to give a direction, approval or consent for the purposes of a condition, or to modify or withdraw such a direction, approval or consent, the responsible person must

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send a copy of a statement setting out the reasons for the proposal and for the urgent need to act to—

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

(6) In a case in which the responsible person is a person other than OFCOM, references to OFCOM in section 395(4), (5) and (6A) are to be read as references to the responsible person in relation to copies of directions, approvals, consents, instruments and statements to which subsections (2), (3) and (5) of this section apply.”