#### STATUTORY INSTRUMENTS

## 2016 No. 607

# The Open Internet Access (EU Regulation) Regulations 2016

#### PART 5

#### ENFORCEMENT AND PENALTIES

### **Enforcement of notification under regulation 19**

- **22.**—(1) This regulation applies where—
  - (a) a person has been given a notification under regulation 19;
  - (b) OFCOM have allowed the notified person an opportunity to make representations about the matters notified; and
  - (c) the period allowed for the making of representations has expired.
- (2) OFCOM may—
  - (a) give the notified person a decision (a "confirmation decision") confirming the matters referred to in regulation 19(2); or
  - (b) inform the notified 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 notified person unless, after considering any representations, they are satisfied that the person has, in one or more of the respects notified, been in breach of an obligation specified in the notification under regulation 19.
  - (4) A confirmation decision—
    - (a) must be given to the notified person without delay;
    - (b) must include reasons for the decision;
    - (c) may require immediate action by the notified person to comply with the obligations specified in the notification under regulation 19, or may specify a period within which the person must comply with those obligations;
    - (d) may require the notified person to pay—
      - (i) the penalty specified in the notification under regulation 19; or
      - (ii) such lesser penalty as OFCOM consider appropriate in the light of the notified person's representations or steps taken by the notified person to comply with the obligation or remedy the consequences of the breach; and
    - (e) may specify the period within which the penalty is to be paid.
  - (5) It is the duty of the notified person to comply with 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

- (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.