



# Digital Economy Act 2017

## 2017 CHAPTER 30

An Act 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 in connection with section 68 of the Telecommunications Act 1984; 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; to make provision about internet filters; to make provision about preventing or restricting the use of communication devices in connection with drug dealing offences; to confer power to create an offence of breaching limits on ticket sales; to make provision about the payment of charges to the Information Commissioner; to make provision about payment systems and securities settlement systems; to make provision about qualifications in information technology; and for connected purposes. [27th April 2017]

BE 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.

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- (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”.
- (2B) The universal service order may in particular say that broadband connections and services must be provided to any extent, but may not do so unless—
- (a) it specifies the minimum download speed that must be provided by those connections and services, and
  - (b) the speed so specified is at least 10 megabits per second.
- (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 must be provided (as well as or, except in the case of the minimum download speed, 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—
- “(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”.
- (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.
- (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.

**72B Broadband download speeds: duty to give direction under section 72A**

- (1) The Secretary of State must give OFCOM a direction under section 72A if—
  - (a) the universal service order specifies a minimum download speed for broadband connections and services and the speed so specified is less than 30 megabits per second, and
  - (b) it appears to the Secretary of State, on the basis of information published by OFCOM, that broadband connections or services that

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provide a minimum download speed of at least 30 megabits per second are subscribed to for use in at least 75% of premises in the United Kingdom.

(2) The direction—

- (a) must require OFCOM to review and report to the Secretary of State on whether it would be appropriate for the universal service order to specify a higher minimum download speed, and
- (b) may also require OFCOM to review and report to the Secretary of State on any other matter falling within section 72A(1).”

(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.

(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.”

## **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;”.

# **PART 2**

## **DIGITAL INFRASTRUCTURE**

### *Electronic communications code*

VALID FROM 31/07/2017

## **4 The electronic communications code**

(1) In the Telecommunications Act 1984 omit Schedule 2 (the telecommunications code).

(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.

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- (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 ”.
- (8) In subsection (6) for “16(3)” substitute “ 85(7) ”.
- (9) Omit subsection (7).
- (10) Schedules 2 (transitional provisions) and 3 (consequential amendments) have effect.

VALID FROM 31/07/2017

## **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, transitory or saving provision in connection with the coming into force of section 4 and Schedule 1.
- (2) Regulations under this section may amend Schedule 2.
- (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 instrument 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.

VALID FROM 31/07/2017

## **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.
- (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;
  - (c) may include incidental, supplementary, consequential, transitional, transitory or saving provision.

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- (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.
- (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—
- “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,
  - (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—
- (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

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—

“(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.”

VALID FROM 31/07/2017

### *Dynamic spectrum access services*

## 8 Regulation of dynamic spectrum access services

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

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## “PART 2A

### REGULATION OF DYNAMIC SPECTRUM ACCESS SERVICES

#### *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—
  - (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—
  - (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.
- (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—
  - (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.

#### **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—
  - (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

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(b) specifying the period during which the person notified has an opportunity to make representations about the proposal.

(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

(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—

(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.

### *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;

(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.

(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.

(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.

(5) Where OFCOM register a person in circumstances in which sums will or may subsequently become payable under the regulations, OFCOM may

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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.

### *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.
- (2) A notification under this section is one which—
- (a) sets out the determination made by OFCOM,
  - (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—
    - (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
  - (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.
- (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—
- (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, or other action taken, in respect of the notified contravention.



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### **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.
- (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 53G which requires immediate action, or
  - (b) the expiry of any period specified in the confirmation decision for complying with a requirement so specified.
- (5) The amount of a penalty specified 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.
- (6) The amount of any other penalty specified under this section 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.

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

- (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.
- (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
  - (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.
- (4) A confirmation decision—

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- (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 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—
    - (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.
- (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.

#### **53H Meaning of “relevant amount of gross revenue”**

- (1) The relevant amount of gross revenue for the purposes of section 53F, 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 (2), is computed to be the amount representing the annual rate for the relevant part of the person's gross revenue.
- (2) The accounting period or periods referred to in subsection (1) 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.
- (3) 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

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revenue as is attributable to the provision of the dynamic spectrum access service to which the contravention relates.

- (4) 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) 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.
- (6) OFCOM may revise a statement made under subsection (4) from time to time.
- (7) A statement made or revised under this section may set out different principles for different cases.
- (8) Before making or revising a statement under this section, OFCOM must consult the Secretary of State and the Treasury.
- (9) OFCOM must—
- (a) publish the statement made under subsection (4) and every revision of it, and
  - (b) send a copy of the statement and of every such revision to the Secretary of State,
- and the Secretary of State must lay copies of the statement and of every such revision before each House of Parliament.
- (10) 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;
- “gross revenue”, in relation to a person, means the gross revenue of an undertaking carried on by that person.

### 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.
- (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.

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- (4) Sections 53K to 53M 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.
- (2) The persons falling within this subsection are—
- (a) a person who is using, or has established or used, a wireless telegraphy station, and
  - (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.
- (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
  - (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.
- (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,
  - (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—
- (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.

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- (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—
  - (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.

#### **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.
- (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.
- (5) The amount of a penalty specified 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.
- (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.

#### **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.
- (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

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- (b) inform the person that they are satisfied with the person's representations and that no further action will be taken.
- (3) OFCOM may not give a confirmation decision to a person unless, after considering any representations, they are satisfied that the person has, in one or more of the respects notified, been in contravention of a requirement notified under section 53K.
- (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,
  - (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
  - (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.
- (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.”
- (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;”.
- (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;”.
- (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—

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“(da) an amount paid to OFCOM in respect of a fee charged under section 53D of that Act;”.

(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  
(c) section 53H.”

### *Other regulation of spectrum*

## **9 Penalties for contravention of wireless telegraphy licences**

- (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
  - (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
  - (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 ”.
- (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
  - (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”.
- (10) In section 400 of the Communications Act 2003 (destination of licence fees and penalties), in subsection (1)(d), omit “or 43A”.



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- (11) In Schedule 8 to that Act (decisions not subject to appeal), at the end of paragraph 44 insert “ for a relevant multiplex contravention ”.
- (12) Omit section 39 of the Digital Economy Act 2010.
- (13) The amendments and repeals made by this section do not apply in relation to—
  - (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.

## **10 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 ”.
- (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.

## **11 Search warrants under Wireless Telegraphy Act 2006**

- (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.

## **12 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—
  - “(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.”
- (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.

## **13 Time limits for prosecutions under Wireless Telegraphy Act 2006**

- (1) The Wireless Telegraphy Act 2006 is amended as follows.



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- (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).
- (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
- (b) if earlier, three years from the end of the day on which the offence was committed.
- (3C) Section 41(7) and subsection (3B) above have effect despite—
- (a) section 127 of the Magistrates' Courts Act 1980 (time limit for bringing proceedings for summary offences in England and Wales),
- (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).
- (3D) In relation to proceedings in Scotland, subsection (3) of section 136 of the Criminal Procedure (Scotland) Act 1995 (date when proceedings deemed to be commenced for the purposes of that section) applies also for the purposes of section 41(7) and subsection (3B) above.”
- (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). ”;
- (c) for subsection (8) substitute—
- “(8) For further provision about prosecutions see section 107.”
- (4) The amendments made by this section do not apply in relation to an offence committed before this section comes into force.

VALID FROM 31/07/2017

## PART 3

### ONLINE PORNOGRAPHY

#### **14 Internet pornography: requirement to prevent access by persons under 18**

- (1) A person contravenes this subsection if the person makes pornographic material available on the internet to persons in the United Kingdom on a commercial basis other than in a way that secures that, at any given time, the material is not normally accessible by persons under the age of 18.

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- (2) The Secretary of State may make regulations specifying, for the purposes of this Part, circumstances in which material is or is not to be regarded as made available on a commercial basis.
- (3) The regulations may, among other things, prescribe circumstances in which material made available free of charge is or is not to be regarded as made available on a commercial basis.
- (4) Regulations under subsection (2) may provide for circumstances to be treated as existing where it is reasonable to assume that they exist.
- (5) 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.
- (6) For the purposes of this Part, 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.
- (7) In subsection (6), “on-demand programme service” has the meaning given by section 368A of the Communications Act 2003.
- (8) Regulations under subsection (2) may make different provision for different purposes.
- (9) Regulations under subsection (2) are to be made by statutory instrument.
- (10) A statutory instrument containing regulations under subsection (2) is subject to annulment in pursuance of a resolution of either House of Parliament.
- (11) But a statutory instrument containing the first regulations under that subsection may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

## **15 Meaning of “pornographic material”**

- (1) In this Part “pornographic material” (except in the expression “extreme pornographic material”) means any of the following—
  - (a) a video work in respect of which the video works authority has issued an R18 certificate;
  - (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;
  - (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—
    - (i) that it was produced solely or principally for the purposes of sexual arousal, and

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- (ii) that its inclusion was among the reasons why the certificate was an 18 certificate;
  - (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 in respect of a video work including it would be an 18 certificate;
  - (g) a video work that the video works authority has determined not to be suitable for a classification certificate to be issued in respect of it, if—
    - (i) it includes material (other than extreme pornographic material) that it is reasonable to assume from its nature was produced solely or principally for the purposes of sexual arousal, and
    - (ii) it is reasonable to assume from the nature of that material that its inclusion was among the reasons why the video works authority made that determination;
  - (h) material (other than extreme pornographic material) that was included in a video work that the video works authority has determined not to be suitable for a classification certificate to be issued in respect of it, if it is reasonable to assume from the nature of the material—
    - (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 video works authority made that determination;
  - (i) any other material (other than extreme pornographic material) if it is reasonable to assume from the nature of the material—
    - (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.
- (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
    - (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;
  - “classification certificate” has the same meaning as in the Video Recordings Act 1984 (see section 7 of that Act);
  - “material” means—
    - (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;

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“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;

“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;

“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.

## **16 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—
  - (a) all of the functions of the age-verification regulator under this Part, or
  - (b) any of those functions specified in the notice by which the designation is made.
- (2) Different persons may be designated for the purposes of different functions.
- (3) The Secretary of State may at any time by notice—
  - (a) revoke a designation under this section;
  - (b) designate one or more other persons in place of any person or persons designated under this section.
- (4) 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.
- (5) The Secretary of State must not make a designation under this section unless satisfied that—
  - (a) arrangements will be maintained by the age-verification regulator for appeals to which subsection (6) applies, and
  - (b) any person hearing an appeal under those arrangements will be sufficiently independent of the age-verification regulator.
- (6) This subsection applies to appeals—
  - (a) by a person on whom a financial penalty has been imposed under section 19(1) or (10), against the imposition of that penalty;
  - (b) by a person to whom an enforcement notice has been given under section 19(2), against the giving of that notice;
  - (c) by a person identified as the non-complying person in a notice given under section 21, against the giving of that notice;
  - (d) by an internet service provider to whom a notice has been given under section 23(1), against the giving of that notice;
  - (e) by a person identified as the non-complying person in a notice given to an internet service provider under section 23(1), against the giving of that notice.
- (7) A notice under subsection (1) or (3) must be published in the London, Edinburgh and Belfast Gazettes.

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- (8) 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.
- (9) Grants may be paid and loans made under subsection (8) subject to any conditions the Secretary of State thinks appropriate (including conditions as to repayment).

#### **17 Parliamentary procedure for designation of age-verification regulator**

- (1) Where the Secretary of State proposes to make a designation under section 16, the Secretary of State must lay before both Houses of Parliament—
  - (a) particulars of that proposed designation, and
  - (b) a statement of the reasons why the Secretary of State is satisfied about the matters mentioned in section 16(5).
- (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.
- (4) But subsection (5) applies, instead of subsections (2) and (3), where the proposed designation would be—
  - (a) the first to be made under section 16, or
  - (b) the first to be made under that section for the purposes of a particular function.
- (5) The Secretary of State may not make the designation unless it has been approved by a resolution of each House of Parliament.
- (6) But subsections (3) and (5) are without prejudice to the Secretary of State's power to lay before Parliament particulars of further proposed designations in accordance with this section.
- (7) For the purposes of subsection (2)—
  - (a) where particulars of a proposed designation are laid before each House of Parliament on different days, the later day is to be taken as the day on which the particulars were laid before both Houses, and
  - (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.

PROSPECTIVE

**No**      **Regulator's power to require information**  
**commentary**  
**item**      .....

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**reference**

**key-47c01bc08d56d286b5d0bcbc60b343da18**

PROSPECTIVE

**No Enforcement by regulator of sections 14 and 18**

**commentary**

**item** .....

**could**

**be**

**found**

**for**

**this**

**reference**

**key-47c01bc08d56d286b5d0bcbc60b343da19**

PROSPECTIVE

**No Financial penalties imposed by regulator**

**commentary**

**item** .....

**could**

**be**

**found**

**for**

**this**

**reference**

**key-47c01bc08d56d286b5d0bcbc60b343da20**

**21 Notice by regulator to payment-services providers and ancillary service providers**

(1) Where the age-verification regulator considers that a person (“the non-complying person”) is—

- (a) contravening section 14(1); or
- (b) making extreme pornographic 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.

(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 whether it is subsection (1)(a) that applies or subsection (1)(b) or both;
- (c) provide such further particulars as the age-verification regulator considers appropriate.

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- (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 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 extreme pornographic material made available on the internet by the non-complying person.
- (5) In this section an “ancillary service provider” means a person, other than a payment-services provider, who appears to the age-verification regulator to—
  - (a) provide, in the course of a business, services which enable or facilitate the making available of pornographic material or extreme pornographic 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.
- (6) For the purposes of subsection (5)(b), a means of accessing the internet does not include a device or other equipment for doing so.

## **22 Meaning of “extreme pornographic material”**

- (1) In this Part “extreme pornographic material” means (subject to subsection (3)) material—
  - (a) whose nature is such that it is reasonable to assume that it was produced solely or principally for the purposes of sexual arousal, and
  - (b) which is extreme.
- (2) For the purposes of subsection (1)(b), material is extreme if—
  - (a) its content is as described in section 63(7) or (7A) of the Criminal Justice and Immigration Act 2008, and
  - (b) it is grossly offensive, disgusting or otherwise of an obscene character.
- (3) Material to which paragraphs (a) and (b) of subsection (1) apply is not “extreme pornographic material” if it is or was included in a classified video work, unless it is material to which subsection (4) applies.
- (4) This subsection applies to material—
  - (a) which has been extracted from a classified video work, and
  - (b) whose nature is such that it is reasonable to assume that it was extracted (with or without other material) solely or principally for the purposes of sexual arousal.
- (5) In this section—
  - (a) “classified video work” means a video work in respect of which a video works authority has issued a classification certificate;
  - (b) “video work” means a video work within the meaning of the Video Recordings Act 1984;
  - (c) “video works authority” means a person designated under section 4(1) of the Video Recordings Act 1984;



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- (d) “classification certificate” has the same meaning as in the Video Recordings Act 1984 (see section 7 of that Act);
- (e) “material” means—
  - (i) a still image or series of still images, with or without sound; or
  - (ii) a series of visual images shown as a moving picture, with or without sound.

PROSPECTIVE

**No** **Regulator's power to require internet service providers to block access to**  
**commentary material**  
**item**  
**could** .....  
**be**  
**found**  
**for**  
**this**  
**reference**  
**key-47c01bc08d56d286b5d0bcbc60b343da23**

PROSPECTIVE

**No** **No power to give notice under section 23(1) where detrimental to national**  
**commentary security etc**  
**item**  
**could** .....  
**be**  
**found**  
**for**  
**this**  
**reference**  
**key-47c01bc08d56d286b5d0bcbc60b343da24**

**25 Guidance to be published by regulator**

- (1) Subject to the following provisions of this section, the age-verification regulator must publish, and revise from time to time—
  - (a) guidance about the types of arrangements for making pornographic material available that the regulator will treat as complying with section 14(1); and
  - (b) guidance for the purposes of section 21(1) and (5) 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 extreme pornographic material.
- (2) Once the regulator has prepared a draft of guidance it proposes to publish under subsection (1)(a), it must submit the draft to the Secretary of State.



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- (3) When draft guidance is submitted to the Secretary of State under subsection (2), the Secretary of State must lay that draft guidance before both Houses of Parliament.
- (4) Once the regulator has prepared a draft of guidance it proposes to publish under subsection (1)(b), it must submit the draft to the Secretary of State for approval.
- (5) When draft guidance is submitted to the Secretary of State under subsection (4), the Secretary of State may approve it either without modification or with such modifications as the Secretary of State decides should be made to it.
- (6) Once the Secretary of State has approved draft guidance under subsection (5), the Secretary of State must lay the following before both Houses of Parliament—
  - (a) the draft guidance, incorporating any modifications the Secretary of State has decided should be made to it under that subsection, and
  - (b) if the draft incorporates such modifications, a statement of the Secretary of State's reasons for deciding that those modifications should be made.
- (7) If, within the period of 40 days beginning with the day on which draft guidance is laid before Parliament under subsection (3) or (6), either House resolves not to approve that draft guidance, the age-verification regulator must not publish guidance in the form of that draft.
- (8) If no such resolution is made within that period, the age-verification regulator must publish the guidance in the form of the draft laid before Parliament.
- (9) But subsection (11) applies, instead of subsections (7) and (8), in a case falling within subsection (10).
- (10) The cases falling within this subsection are—
  - (a) the case where draft guidance is laid before Parliament under subsection (3) and no previous guidance has been published under subsection (1)(a) by the age-verification regulator; and
  - (b) the case where draft guidance is laid before Parliament under subsection (6) and no previous guidance has been published under subsection (1)(b) by the age-verification regulator.
- (11) The regulator must not publish guidance in the form of the draft laid before Parliament unless the draft has been approved by a resolution of each House of Parliament.
- (12) Subsections (7) and (11) do not prevent new draft guidance from being laid before Parliament.
- (13) For the purposes of subsection (7)—
  - (a) where draft guidance is laid before each House of Parliament on different days, the later day is to be taken as the day on which it was laid before both Houses, and
  - (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.
- (14) References in this section to guidance and draft guidance include references to revised guidance and draft revised guidance.

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## 26 Exercise of functions by regulator

- (1) The age-verification regulator may, if it thinks fit, choose to exercise its powers under sections 19, 21 and 23 principally in relation to persons who, in the age-verification regulator's opinion—
  - (a) make pornographic material or extreme pornographic 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.
- (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;
  - (c) publish the results of that research.

## 27 Guidance by Secretary of State to regulator

- (1) The Secretary of State may issue guidance to the age-verification regulator in relation to the exercise of the regulator's functions, and may from time to time revise that guidance.
- (2) The guidance may cover (among other things) the following matters—
  - (a) considerations to be applied in determining—
    - (i) whether arrangements for making pornographic material available comply with section 14(1);
    - (ii) whether a person is an ancillary service provider, for the purposes of section 21;
  - (b) the approach to be taken by the regulator to the exercise of its powers to give notices under sections 19, 21 and 23;
  - (c) the preparation and publication of guidance and reports by the regulator and the content of such guidance and reports;
  - (d) the maintenance by the regulator of arrangements meeting the requirements of section 16(5)(a) and (b).
- (3) The regulator must have regard to the guidance.
- (4) The Secretary of State must lay before both Houses of Parliament the guidance, and any revised guidance, issued under this section.

PROSPECTIVE

**No** Requirements for notices given by regulator under this Part  
**commentary**  
**item** .....  
**could**  
**be**  
**found**

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**for  
this  
reference  
key-47c01bc08d56d286b5d0bcbc60b343da28**

PROSPECTIVE

**No      Report on this Part  
commentary  
item      .....  
could  
be  
found  
for  
this  
reference  
key-47c01bc08d56d286b5d0bcbc60b343da29**

### **30      Interpretation and general provisions relating to this Part**

(1) In this Part—

“the age-verification regulator” means the person or persons designated as the age-verification regulator under section 16;

“extreme pornographic material” has the meaning given in section 22;

“internet service provider” means a provider of an internet access service within the meaning given in Article 2 of [Regulation \(EU\) 2015/2120](#) of the European Parliament and of the Council of 25 November 2015;

“pornographic material” has the meaning given in section 15;

“turnover” has the meaning given in section 20(15).

(2) Section 22(3) of the Video Recordings Act 1984 (effect of alterations) applies for the purposes of this Part as it applies for the purposes of that Act.

(3) Nothing in this Part affects any prohibition or restriction in relation to pornographic material or extreme pornographic material, or powers in relation to such material, under another enactment or a rule of law.

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*Changes to legislation: There are currently no known outstanding effects for the Digital Economy Act 2017. (See end of Document for details)*

VALID FROM 31/07/2017

## PART 4

### INTELLECTUAL PROPERTY

VALID FROM 30/06/2018

#### 31 Lending of e-books by public libraries

- (1) In section 5(2) of the Public Lending Right Act 1979 (interpretation) for the definition of “lent out” substitute—

““lent out” means made available to a member of the public for use away from library premises for a limited time (including by being communicated by means of electronic transmission to a place other than library premises) and “loan” and “borrowed” are to be read accordingly;”.

- (2) Section 40A of the Copyright, Designs and Patents Act 1988 (lending of copies by libraries or archives) is amended as follows.

- (3) After subsection (1) insert—

“(1ZA) Subsection (1) applies to an e-book or an e-audio-book only if—

- (a) the book has been lawfully acquired by the library, and
- (b) the lending is in compliance with any purchase or licensing terms to which the book is subject.”

- (4) In subsection (1A)—

- (a) for “subsection (1)” substitute “ subsections (1) and (1ZA) ”;
- (b) after paragraph (a) insert—
  - “(aa) “e-audio-book” means an audio-book (as defined in paragraph (a)) in a form enabling lending of the book by electronic transmission,”.

VALID FROM 01/10/2017

#### 32 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—

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*Changes to legislation:* There are currently no known outstanding effects for the Digital Economy Act 2017. (See end of Document for details)

- (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.

VALID FROM 01/10/2017

### 33 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.

(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—

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“(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.”

#### **34 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).
- (2) In consequence the following are repealed or revoked—
- (a) in the Copyright, Designs and Patents Act 1988—
    - (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.

VALID FROM 31/07/2017

## **PART 5**

### DIGITAL GOVERNMENT

VALID FROM 01/10/2017

## **CHAPTER 1**

### PUBLIC SERVICE DELIVERY

#### **35 Disclosure of information to improve public service delivery**

- (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 an objective which is a specified objective in relation to each of those persons.
- (2) In this section “specified person” means a person specified, or of a description specified, in Schedule 4.

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- (3) The appropriate national authority may by regulations amend Schedule 4 so as to add, remove or modify an entry relating to a person or description of person.
- (4) Regulations under subsection (3) may add an entry relating to a person or a description of person to Schedule 4 only if—
  - (a) the person is a public authority or (as the case may be) each person of that description is a public authority, or
  - (b) the person provides services to a public authority or (as the case may be) each person of that description provides services to a public authority.
- (5) 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.
- (6) In determining whether to make regulations under subsection (3) 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 remove a person from Schedule 4 whether that person, or any person providing services to that person, has had regard to the code of practice under section 43 as required by that section.
- (7) In this section “specified objective”, in relation to a specified person, means an objective specified in relation to that specified person in regulations made by the appropriate national authority.
- (8) An objective may be specified by regulations under subsection (7) only if it complies with the following conditions.
- (9) 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.
- (10) The second condition is that the objective has as its purpose the improvement of the well-being of individuals or households.
- (11) The reference in subsection (10) to the well-being of individuals or households includes—
  - (a) their physical and mental health and emotional well-being,
  - (b) the contribution made by them to society, and
  - (c) their social and economic well-being.
- (12) The third condition is that the objective has as its purpose the supporting of—
  - (a) the delivery of a specified person's functions, or
  - (b) the administration, monitoring or enforcement of a specified person's functions.



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### **36 Disclosure of information to gas and electricity suppliers etc**

- (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
  - (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
  - (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),
  - (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),
  - (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), or
  - (d) the making of grants (by any person) under section 15 of the Social Security Act 1990 in accordance with regulations under that section made by the Scottish Ministers or the Welsh Ministers.
- (4) In this section and section 37 “specified person” means a person specified, or of a description specified, in Schedule 5.
- (5) The appropriate national authority may by regulations—
  - (a) amend Schedule 5 so as to add, remove or modify an entry relating to a person or description of person;
  - (b) amend subsection (1) so as to add or remove a person or description of person to whom information may be disclosed;
  - (c) amend subsection (3) so as to add, modify or remove a reference to a fuel poverty measure.
- (6) Regulations under subsection (5)(a) may add an entry relating to a person or a description of person to Schedule 5 only if—
  - (a) the person is a public authority or (as the case may be) each person of that description is a public authority, or
  - (b) the person provides services to a public authority or (as the case may be) each person of that description provides services to a public authority.
- (7) Regulations under subsection (5)(b) may add a person or a description of person to subsection (1) only if the person or (as the case may be) each person of that description—
  - (a) provides assistance of a kind mentioned in subsection (2) to people living in fuel poverty,
  - (b) monitors or enforces the provision of such assistance to such people,
  - (c) administers a fuel poverty measure, or



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- (d) provides services to a person within paragraph (a), (b) or (c).
- (8) In determining whether to make regulations under subsection (5)(a) or (b) 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 remove a person from Schedule 5 or subsection (1), whether that person, or any person providing services to that person, has had regard to the code of practice under section 43 as required by that section.
- (9) 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.
- (10) 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.
- (11) In this section—
- “fuel poverty measure” means—
    - (a) a scheme, arrangement or set of arrangements, or
    - (b) a function or set of functions,which has as its purpose (or one of its purposes) the provision of assistance of a kind mentioned in subsection (2) to people living in fuel poverty;
  - “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.

VALID FROM 01/05/2018

### **37 Disclosure of information by gas and electricity suppliers etc**

- (1) If the condition in subsection (2) is met, a person to whom information may be disclosed under section 36 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—
- (a) reducing their energy costs,
  - (b) improving efficiency in their use of energy, or
  - (c) improving their health or financial well-being.

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*Changes to legislation: There are currently no known outstanding effects  
for the Digital Economy Act 2017. (See end of Document for details)*

VALID FROM 09/03/2018

### **38 Disclosure of information to water and sewerage undertakers etc**

- (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 water or sewerage undertaker for an area which is wholly or mainly in England, or
  - (b) a water or sewerage undertaker for an area which is wholly or mainly in Wales.
- (2) The first condition is that the disclosure is for the purpose of assisting people living in water poverty by—
  - (a) reducing their water or sewerage costs,
  - (b) improving efficiency in their use of water, or
  - (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 undertaker in connection with provision in the undertaker's charges scheme under section 143 of the Water Industry Act 1991 which is included in that scheme—
  - (a) in compliance with regulations under section 143A of that Act which impose requirements within subsection (2)(d) of that section (power for regulations to require charges schemes to make special provision for particular classes of individual), or
  - (b) by virtue of section 44 of the Flood and Water Management Act 2010 (social tariffs).
- (4) In this section and section 39 “specified person” means a person specified, or of a description specified, in Schedule 6.
- (5) The appropriate national authority may by regulations—
  - (a) amend Schedule 6 so as to add, remove or modify an entry relating to a person or description of person;
  - (b) amend subsection (1) so as to add or remove a person or description of person to whom information may be disclosed;
  - (c) amend subsection (3) so as to add, modify or remove a reference to a water poverty measure.
- (6) Regulations under subsection (5)(a) may add an entry relating to a person or a description of person to Schedule 6 only if—
  - (a) the person is a public authority or (as the case may be) each person of that description is a public authority, or
  - (b) the person provides services to a public authority or (as the case may be) each person of that description provides services to a public authority.
- (7) Regulations under subsection (5)(b) may add a person or a description of person to subsection (1) only if the person or (as the case may be) each person of that description—

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- (a) provides assistance of a kind mentioned in subsection (2) to people living in water poverty,
  - (b) monitors or enforces the provision of such assistance to such people,
  - (c) administers a water poverty measure, or
  - (d) provides services to a person within paragraph (a), (b) or (c).
- (8) In determining whether to make regulations under subsection (5)(a) or (b) 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 remove a person from Schedule 6 or subsection (1), whether that person, or any person providing services to that person, has had regard to the code of practice under section 43 as required by that section.
- (9) 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.
- (10) For the purposes of this Chapter a person lives in water poverty if the person is a member of a household living on a lower income in a home which—
- (a) cannot be supplied with water at a reasonable cost, or
  - (b) cannot be supplied with sewerage services at a reasonable cost.
- (11) In this section “water poverty measure” means—
- (a) a scheme, arrangement or set of arrangements, or
  - (b) a function or set of functions,
- which has as its purpose (or one of its purposes) the provision of assistance of a kind mentioned in subsection (2) to people living in water poverty.

VALID FROM 01/04/2018

### **39 Disclosure of information by water and sewerage undertakers etc**

- (1) If the condition in subsection (2) is met, a person to whom information may be disclosed under section 38 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 water poverty in England and Wales by—
- (a) reducing their water or sewerage costs,
  - (b) improving efficiency in their use of water, or
  - (c) improving their health or financial well-being.

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VALID FROM 01/04/2018

#### 40 Further provisions about disclosures under any of sections 35 to 39

- (1) Personal information disclosed under any of sections 35 to 39 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,
  - (c) for the prevention or detection of crime or the prevention of anti-social behaviour,
  - (d) for the purposes of a criminal investigation,
  - (e) for the purposes of legal proceedings (whether civil or criminal), or
  - (f) 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.
- (3) In subsection (2)(c) “anti-social behaviour” means conduct that—
  - (a) is likely to cause harassment, alarm or distress to any person, or
  - (b) is capable of causing nuisance or annoyance to a person in relation to that person's occupation of residential premises.
- (4) Subsection (2) does not apply to information disclosed to a person under section 35, 36 or 38 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).
- (5) 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 or a person to whom information may be disclosed under section 36 or 38.
- (6) For the purposes of subsection (5) 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.
- (7) A disclosure under any of sections 35 to 39 does not breach—

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- (a) any obligation of confidence owed by the person making the disclosure, or
  - (b) any other restriction on the disclosure of information (however imposed).
- (8) But nothing in sections 35 to 39 authorises the making of a disclosure which—
- (a) contravenes the Data Protection Act 1998, or
  - (b) is prohibited by any of Parts 1 to 7 or Chapter 1 of Part 9 of the Investigatory Powers Act 2016.
- (9) Until the repeal of Part 1 of the Regulation of Investigatory Powers Act 2000 by paragraphs 45 and 54 of Schedule 10 to the Investigatory Powers Act 2016 is fully in force, subsection (8)(b) has effect as if it included a reference to that Part.
- (10) Sections 35 to 39 do not limit the circumstances in which information may be disclosed apart from those sections.

VALID FROM 01/04/2018

#### **41 Confidentiality of personal information**

- (1) Personal information disclosed under any of sections 35 to 39 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—
- (a) which is required or permitted by any enactment (including any of sections 35 to 39),
  - (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 prevention or detection of crime or the prevention of anti-social behaviour,
  - (f) which is made for the purposes of a criminal investigation,
  - (g) which is made for the purposes of legal proceedings (whether civil or criminal),
  - (h) which is a protected disclosure for any of the purposes of the Employment Rights Act 1996 or the Employment Rights (Northern Ireland) Order 1996 (SI 1996/1919 (NI 16)),
  - (i) consisting of the publication of information for the purposes of journalism, where the publication of the information is in the public interest,
  - (j) which is made with the consent of the person to whom it relates, or
  - (k) 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

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(v) protecting national security.

- (3) In subsection (2)(e) “anti-social behaviour” means conduct that—
- (a) is likely to cause harassment, alarm or distress to any person, or
  - (b) is capable of causing nuisance or annoyance to a person in relation to that person's occupation of residential premises.
- (4) A person commits an offence if—
- (a) the person discloses personal information in contravention of subsection (1), and
  - (b) at the time that the person makes the disclosure, the person knows that the disclosure contravenes that subsection or is reckless as to whether the disclosure does so.
- (5) A person who is guilty of an offence under subsection (4) 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 (4) 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;
  - (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.
- (8) This section does not apply to personal information disclosed under section 35, 36 or 38 by the Revenue and Customs.

VALID FROM 01/04/2018

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

- (1) Personal information disclosed by the Revenue and Customs under section 35, 36 or 38 and received by a person may not be disclosed by that person.
- (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—
  - (a) that the disclosure was lawful, or
  - (b) that the information had already and lawfully been made available to the public.

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- (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.

### **43 Code of practice**

- (1) The relevant Minister must issue a code of practice about—
  - (a) the disclosure of information under any of sections 35 to 39, and
  - (b) the use of information disclosed under any of those sections.
- (2) The code of practice must be consistent with the code of practice issued under section 52B (data-sharing code) of the Data Protection Act 1998 (as altered or replaced from time to time).
- (3) A person to whom the code applies must have regard to the code of practice—
  - (a) in disclosing information under any of sections 35 to 39, and
  - (b) in using information disclosed under any of those sections.
- (4) The relevant Minister may from time to time revise and re-issue the code of practice.
- (5) 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
  - (f) such other persons as the relevant Minister thinks appropriate.
- (6) The fact that this section 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 relevant Minister may not issue the code of practice unless a draft of the code has been laid before, and approved by a resolution of, each House of Parliament.
- (8) Before reissuing the code the relevant Minister must lay a draft of the code as proposed to be reissued before Parliament.
- (9) The relevant Minister may not reissue the code if, within the 40-day period, either House of Parliament resolves not to approve it.
- (10) In subsection (9) “the 40 day period” means—
  - (a) the period of 40 days beginning with the day on which the draft is laid before Parliament, or
  - (b) if the draft is not laid before each House on the same day, the period of 40 days beginning with the later of the days on which it is laid before Parliament.
- (11) For the purposes of subsection (10) no account is to be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.



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- (12) 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) the Scottish Parliament,
  - (b) the National Assembly for Wales, and
  - (c) the Northern Ireland Assembly.
- (13) In disclosing information under any of sections 35 to 39, a person must have regard to the following codes of practice issued by the Information Commissioner under section 51(3) of the Data Protection Act 1998, so far as they apply to the information in question—
- (a) any code which makes provision about the identification and reduction of the risks to privacy of a proposal to disclose information;
  - (b) any code which makes provision about the information to be provided to data subjects (within the meaning of that Act) about the use to be made of information collected from them.
- (14) The duty in subsection (13) does not affect any other requirement for the person to have regard to a code of practice in disclosing the information.

#### **44 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) In the case of—
- (a) regulations under section 35(3) which amend Schedule 4 so as to add an entry relating to a person or description of person,
  - (b) regulations under section 36(5)(a) which amend Schedule 5 so as to add an entry relating to a person or description of person, or
  - (c) regulations under section 38(5)(a) which amend Schedule 6 so as to add an entry relating to a person or description of person,
- this includes power 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 42 in relation to information disclosed by the Revenue and Customs.
- (4) 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,



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- (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.
- (5) The fact that a power to make regulations under this Chapter 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) The appropriate national authority may only make regulations under section 35(7), 36(5)(c) or 38(5)(c) with the consent of the Treasury in a case where the regulations could affect the disclosure of information by the Revenue and Customs.
- (7) 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.
- (8) Regulations made under this Chapter by the Scottish Ministers are subject to the affirmative procedure.
- (9) 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) 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.
- (11) If a draft of a statutory instrument containing regulations under section 35(3), 36(5)(a) or (b) or 38(5)(a) or (b) 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.

VALID FROM 01/04/2018

## 45 Interpretation of this Chapter etc

(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;
- (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;
- (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 40(5);

“public authority” means a person who exercises functions of a public nature, subject to subsection (8);

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“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.

- (2) The Scottish Ministers are the appropriate national authority in relation to—
- (a) regulations under section 35(3) or 36(5)(a) which add, modify or remove an entry relating to a person who is, or a description of persons each of whom is, a Scottish body,
  - (b) regulations under section 36(5)(b) which add or remove a person who is, or a description of persons each of whom is, a Scottish body, and
  - (c) regulations under section 35(7) or 36(5)(c) 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—
- (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—
- (a) regulations under section 35(3), 36(5)(a) or 38(5)(a) which add, modify or remove an entry relating to a person who is, or a description of persons each of whom is, a Welsh body,
  - (b) regulations under section 36(5)(b) or 38(5)(b) 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 35(7), 36(5)(c) or 38(5)(c) which have the effect only of enabling a Welsh body to disclose information for the purposes of an objective which could be specified by provision falling within the legislative competence of the National Assembly for Wales.
- (5) In subsection (4) “Welsh body” means—
- (a) a devolved Welsh authority as defined by section 157A of the Government of Wales Act 2006, or
  - (b) a person providing services to a devolved Welsh authority as defined by that section.
- (6) The Department of Finance in Northern Ireland is the appropriate national authority in relation to—
- (a) regulations under section 35(3) which add, modify or remove an entry relating to a person who is, or a description of persons each of whom is, a Northern Ireland body, and
  - (b) regulations under section 35(7) 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).
- (7) In subsection (6) “Northern Ireland body” means—
- (a) a Minister within the meaning of the Northern Ireland Act 1998,

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- (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.
- (9) References in this Chapter to people living in fuel poverty are to be construed in accordance with section 36(10).
- (10) References in this Chapter to people living in water poverty are to be construed in accordance with section 38(10).
- (11) The power of the Secretary of State in section 69(2) of the Wales Act 2017 to amend an enactment contained in primary legislation in consequence of any provision of that Act includes power to amend this Chapter, and section 118 so far as relating to this Chapter, in consequence of section 48 (water and sewerage) of that Act.

## CHAPTER 2

### CIVIL REGISTRATION

#### **46 Disclosure of information by civil registration officials**

- (1) The Registration Service Act 1953 is amended as follows.
- (2) After section 19A insert—

##### **“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—
  - (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.
- (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).
- (5) This section does not limit the circumstances in which information may be disclosed apart from this section.

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- (6) “Civil registration official” means—
- (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)—
    - (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;
    - (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**

- (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;
  - (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;
  - (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.
- (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.
- (5) The provision that may be made by virtue of subsection (4)(b) includes provision amending, repealing or revoking any provision of any enactment.

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(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.

(7) In this section—

“enactment” includes an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978;

“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.

(2) The code of practice must be consistent with the code of practice issued under section 52B (data-sharing code) of the Data Protection Act 1998 (as altered or replaced from time to time).

(3) A civil registration official must have regard to the code of practice in disclosing information under section 19AA.

(4) The Registrar General may from time to time revise and re-issue the code of practice.

(5) Before issuing or revising the code of practice the Registrar General must consult—

(a) the Minister,

(b) the Information Commissioner, and

(c) such other persons as the Registrar General thinks fit.

(6) The Registrar General may not issue the code of practice unless a draft of the code has been laid before, and approved by a resolution of, each House of Parliament.

(7) Before reissuing the code the Registrar General must lay a draft of the code as proposed to be reissued before Parliament.

(8) The Registrar General may not reissue the code if, within the 40-day period, either House of Parliament resolves not to approve it.

(9) In subsection (8) “the 40 day period” means—

(a) the period of 40 days beginning with the day on which the draft is laid before Parliament, or

(b) if the draft is not laid before each House on the same day, the period of 40 days beginning with the later of the days on which it is laid before Parliament.

(10) For the purposes of subsection (9) no account is to be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.

(11) In disclosing information under section 19AA, a civil registration official must have regard to the following codes of practice issued by the Information

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Commissioner under section 51(3) of the Data Protection Act 1998, so far as they apply to the information in question—

- (a) any code which makes provision about the identification and reduction of the risks to privacy of a proposal to disclose information;
- (b) any code which makes provision about the information to be provided to data subjects (within the meaning of that Act) about the use to be made of information collected from them.

(12) The duty in subsection (11) does not affect any other requirement for the civil registration official to have regard to a code of practice in disclosing the information.”

(3) In section 19B (fees in respect of provision of copies of records etc)—

(a) after subsection (1) insert—

“(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

(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;”.

#### **47 Consequential provision**

(1) The Secretary of State may by regulations make the provision in subsection (2) in consequence of any provision made by section 46.

(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.

(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.

(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.

(7) In this section “enactment” includes an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978.



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VALID FROM 01/10/2017

## CHAPTER 3

### DEBT OWED TO THE PUBLIC SECTOR

#### 48 Disclosure of information to reduce debt owed to 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 debt owed to a public authority or to the Crown.
- (2) For the purposes of this section and Schedule 7 debt is owed to a public authority or to the Crown if—
  - (a) a person is required to pay a sum of money to a public authority 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) For the purposes of this section and Schedule 7 taking action in connection with debt owed to a public authority 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 Schedule 7.
- (5) The appropriate national authority may by regulations amend Schedule 7 so as to add, remove or modify an entry relating to a person or description of person.
- (6) Regulations under subsection (5) may add an entry relating to a person or a description of person to Schedule 7 only if the following conditions are satisfied.
- (7) The first condition is that—
  - (a) the person is a public authority or (as the case may be) each person of that description is a public authority, or
  - (b) the person provides services to a public authority or (as the case may be) each person of that description provides services to a public authority.
- (8) The second condition is that the person or (as the case may be) a person of that description (“P” in either case)—
  - (a) requires information from a public authority or a person providing services to a public authority to improve P's ability to identify, manage or recover debt owed to a public authority or to the Crown,
  - (b) has information which, if shared with a public authority or a person providing services to a public authority, has the potential to improve that authority's or that person's ability to identify, manage or recover such debt,  
or



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- (c) has functions relating to the management or recovery of such debt the exercise of which may be improved by the disclosure of information by or to P.
- (9) 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.
- (10) 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—
- (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 remove a person from Schedule 7, 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.
- (11) Before making regulations under subsection (5) 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 (5),
  - (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.
- (12) The fact that this section was not in force when consultation of the kind mentioned in subsection (11) took place is to be disregarded in determining whether there has been compliance with that subsection.

VALID FROM 01/05/2018

#### **49 Further provisions about power in section 48**

- (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,
  - (b) if the person to whom the information relates consents to its use for another purpose,
  - (c) for the prevention or detection of crime or the prevention of anti-social behaviour,
  - (d) for the purposes of a criminal investigation,
  - (e) for the purposes of legal proceedings (whether civil or criminal),
  - (f) for the purposes of safeguarding vulnerable adults or children, or
  - (g) for the purposes of protecting national security.
- (3) In subsection (2)(c) “anti-social behaviour” means conduct that—

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- (a) is likely to cause harassment, alarm or distress to any person, or
  - (b) is capable of causing nuisance or annoyance to a person in relation to that person's occupation of residential premises.
- (4) 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).
- (5) 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.
- (6) For the purposes of subsection (5) 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.
- (7) 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).
- (8) But nothing in section 48 authorises the making of a disclosure which—
- (a) contravenes the Data Protection Act 1998, or
  - (b) is prohibited by any of Parts 1 to 7 or Chapter 1 of Part 9 of the Investigatory Powers Act 2016.
- (9) Until the repeal of Part 1 of the Regulation of Investigatory Powers Act 2000 by paragraphs 45 and 54 of Schedule 10 to the Investigatory Powers Act 2016 is fully in force, subsection (8)(b) has effect as if it included a reference to that Part.
- (10) Section 48 does not limit the circumstances in which information may be disclosed apart from that section.

VALID FROM 01/05/2018

## 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.
- (2) Subsection (1) does not apply to a disclosure—
- (a) which is required or permitted by any enactment (including section 48),

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- (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 prevention or detection of crime or the prevention of anti-social behaviour,
  - (f) which is made for the purposes of a criminal investigation,
  - (g) which is made for the purposes of legal proceedings (whether civil or criminal),
  - (h) which is a protected disclosure for any of the purposes of the Employment Rights Act 1996 or the Employment Rights (Northern Ireland) Order 1996 (SI 1996/1919 (NI 16)),
  - (i) consisting of the publication of information for the purposes of journalism, where the publication of the information is in the public interest,
  - (j) which is made with the consent of the person to whom it relates,
  - (k) which is made for the purposes of safeguarding vulnerable adults or children, or
  - (l) which is made for the purposes of protecting national security.
- (3) In subsection (2)(e) “anti-social behaviour” means conduct that—
- (a) is likely to cause harassment, alarm or distress to any person, or
  - (b) is capable of causing nuisance or annoyance to a person in relation to that person's occupation of residential premises.
- (4) A person commits an offence if—
- (a) the person discloses personal information in contravention of subsection (1), and
  - (b) at the time that the person makes the disclosure, the person knows that the disclosure contravenes that subsection or is reckless as to whether the disclosure does so.
- (5) A person who is guilty of an offence under subsection (4) 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 (4) 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;
  - (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.
- (8) This section does not apply to personal information disclosed under section 48 by the Revenue and Customs.

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VALID FROM 01/05/2018

## **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 may not be disclosed by that person.
- (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—
  - (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—
  - (a) the disclosure of information under section 48, and
  - (b) the use of information disclosed under that section.
- (2) The code of practice must be consistent with the code of practice issued under section 52B (data-sharing code) of the Data Protection Act 1998 (as altered or replaced from time to time).
- (3) 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.
- (4) The relevant Minister may from time to time revise and re-issue the code of practice.
- (5) 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
  - (f) such other persons as the relevant Minister thinks appropriate.
- (6) The fact that this section 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.

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- (7) The relevant Minister may not issue the code of practice unless a draft of the code has been laid before, and approved by a resolution of, each House of Parliament.
- (8) Before reissuing the code the relevant Minister must lay a draft of the code as proposed to be reissued before Parliament.
- (9) The relevant Minister may not reissue the code if, within the 40-day period, either House of Parliament resolves not to approve it.
- (10) In subsection (9) “the 40 day period” means—
  - (a) the period of 40 days beginning with the day on which the draft is laid before Parliament, or
  - (b) if the draft is not laid before each House on the same day, the period of 40 days beginning with the later of the days on which it is laid before Parliament.
- (11) For the purposes of subsection (10) no account is to be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.
- (12) 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) the Scottish Parliament,
  - (b) the National Assembly for Wales, and
  - (c) the Northern Ireland Assembly.
- (13) In disclosing information under section 48, a person must have regard to the following codes of practice issued by the Information Commissioner under section 51(3) of the Data Protection Act 1998, so far as they apply to the information in question—
  - (a) any code which makes provision about the identification and reduction of the risks to privacy of a proposal to disclose information;
  - (b) any code which makes provision about the information to be provided to data subjects (within the meaning of that Act) about the use to be made of information collected from them.
- (14) The duty in subsection (13) does not affect any other requirement for the person to have regard to a code of practice in disclosing the information.

VALID FROM 01/05/2018

### **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.
- (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,

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**Changes to legislation:** There are currently no known outstanding effects for the Digital Economy Act 2017. (See end of Document for details)

- (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,
    - (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).
- (6) The power in subsection (5) to amend this Chapter—
- (a) may be exercised for the purposes only of improving the effectiveness of the operation of the power in section 48(1), and
  - (b) may not be used to remove any of the safeguards relating to the use or disclosure of information in section 49, 50 or 51.
- (7) The relevant Minister may only make regulations under subsection (5) with the consent of the Scottish Ministers if the regulations—
- (a) repeal this Chapter,
  - (b) amend or remove the power of the Scottish Ministers to make regulations under section 48(5),
  - (c) affect the disclosure of information under section 48 by a Scottish body to another such body,
  - (d) affect the use by a Scottish body of information disclosed under that section by such a body, or
  - (e) affect the further disclosure to a Scottish body by such a body, or by a member, officer or employee of such a body, of information disclosed under this Chapter by a Scottish body.
- (8) The relevant Minister may only make regulations under subsection (5) with the consent of the Welsh Ministers if the regulations—
- (a) repeal this Chapter,
  - (b) amend or remove the power of the Welsh Ministers to make regulations under section 48(5),
  - (c) affect the disclosure of information under section 48 by a Welsh body to another such body,
  - (d) affect the use by a Welsh body of information disclosed under that section by such a body, or
  - (e) affect the further disclosure to a Welsh body by such a body, or by a member, officer or employee of such a body, of information disclosed under this Chapter by a Welsh body.
- (9) The relevant Minister may only make regulations under subsection (5) with the consent of the Department of Finance in Northern Ireland if the regulations—



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- (a) repeal this Chapter,
  - (b) amend or remove the power of the Department to make regulations under section 48(5),
  - (c) affect the disclosure of information under section 48 by a Northern Ireland body to another such body,
  - (d) affect the use by a Northern Ireland body of information disclosed under that section by such a body, or
  - (e) affect the further disclosure to a Northern Ireland body by such a body, or by a member, officer or employee of such a body, of information disclosed under this Chapter by a Northern Ireland body.
- (10) 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.
- (11) Anything required to be published by this section is to be published in such manner as the relevant Minister thinks fit.

#### **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)).
- (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) In the case of regulations under section 48(5) which amend Schedule 7 so as to add an entry relating to a person or description of person, this includes power 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.
- (4) 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) Regulations made under section 48(5) by the Scottish Ministers are subject to the affirmative procedure.
- (6) 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.
- (7) 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.



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- (8) 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.

VALID FROM 01/05/2018

## 55 Interpretation of this Chapter

- (1) In this Chapter—

“the appropriate national authority” means the relevant Minister, subject to subsections (2) to (4);

“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;
- (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;

“functions” means functions of a public nature;

“Northern Ireland body” means—

- (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);

“personal information” has the meaning given by section 49(5);

“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,
- (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);

“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;

“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

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- (c) a person providing services to a person within paragraph (a) or (b);  
“specified person” has the meaning given by section 48(4);  
“Welsh body” means—
  - (a) a devolved Welsh authority as defined by section 157A of the Government of Wales Act 2006, or
  - (b) a person providing services to a devolved Welsh authority as defined by that section.
- (2) The Scottish Ministers are the appropriate national authority in relation to regulations under section 48(5) which add, modify or remove an entry relating to a person who is, or a description of persons each of whom is, a Scottish body.
- (3) The Welsh Ministers are the appropriate national authority in relation to regulations under section 48(5) which add, modify or remove an entry relating to a person who is, or a description of persons each of whom is, a Welsh body.
- (4) The Department of Finance in Northern Ireland is the appropriate national authority in relation to regulations under section 48(5) which add, modify or remove an entry relating to a person who is, or a description of persons each of whom is, a Northern Ireland body.

VALID FROM 01/10/2017

## CHAPTER 4

### FRAUD AGAINST THE PUBLIC SECTOR

#### **56 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.
- (2) In this section and in Schedule 8 “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.
- (4) For the purposes of this section and Schedule 8 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;

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- (d) prosecuting fraud of that kind;
  - (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 Schedule 8.
- (6) The appropriate national authority may by regulations amend Schedule 8 so as to add, remove or modify an entry relating to a person or description of person.
- (7) Regulations under subsection (6) may add an entry relating to a person or a description of person to Schedule 8 only if the following conditions are satisfied.
- (8) The first condition is that—
- (a) the person is a public authority or (as the case may be) each person of that description is a public authority, or
  - (b) the person provides services to a public authority or (as the case may be) each person of that description provides services to a public authority.
- (9) The second condition is that the person or (as the case may be) a person of that description (“P” in either case)—
- (a) requires information from a public authority or a person providing services to a public authority to improve P’s ability to identify or reduce the risk of fraud against P or a public authority to which P provides services,
  - (b) has information which, if shared with a public authority or a person providing services to a public authority, has the potential to improve that authority’s or that person’s ability to identify or reduce the risk of fraud against that authority, or
  - (c) has functions of taking action in connection with fraud against a public authority, the exercise of which may be improved by the disclosure of information by or to P.
- (10) 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.
- (11) In determining whether to make regulations under subsection (6) 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 remove a person from Schedule 8, whether that person, or any person providing services to that person, has had regard to the code of practice under section 60 as required by that section.
- (12) Before making regulations under subsection (6) 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 (6),
  - (d) where the appropriate national authority is not the relevant Minister, the Minister for the Cabinet Office, and

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- (e) such other persons as the appropriate national authority thinks appropriate.
- (13) The fact this section was not in force when consultation of the kind mentioned in subsection (12) took place is to be disregarded in determining whether there has been compliance with that subsection.
- (14) 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,
  - (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).

VALID FROM 01/05/2018

#### **57 Further provisions about power in section 56**

- (1) Personal information disclosed under section 56 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,
  - (c) for the prevention or detection of crime or the prevention of anti-social behaviour,
  - (d) for the purposes of a criminal investigation,
  - (e) for the purposes of legal proceedings (whether civil or criminal), or
  - (f) 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.
- (3) In subsection (2)(c) “anti-social behaviour” means conduct that—
- (a) is likely to cause harassment, alarm or distress to any person, or
  - (b) is capable of causing nuisance or annoyance to a person in relation to that person's occupation of residential premises.
- (4) Subsection (2) does not apply to information disclosed to a person under section 56 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).
- (5) For the purposes of this Chapter information is “personal information” if—

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- (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.
- (6) 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.
- (7) A disclosure under section 56 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).
- (8) But nothing in section 56 authorises the making of a disclosure which—
- (a) contravenes the Data Protection Act 1998, or
  - (b) is prohibited by any of Parts 1 to 7 or Chapter 1 of Part 9 of the Investigatory Powers Act 2016.
- (9) Until the repeal of Part 1 of the Regulation of Investigatory Powers Act 2000 by paragraphs 45 and 54 of Schedule 10 to the Investigatory Powers Act 2016 is fully in force, subsection (8)(b) has effect as if it included a reference to that Part.
- (10) Section 56 does not limit the circumstances in which information may be disclosed apart from that section.

VALID FROM 01/05/2018

## **58 Confidentiality of personal information**

- (1) Personal information received by a person (“P”) under section 56 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—
- (a) which is required or permitted by any enactment (including section 56),
  - (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 prevention or detection of crime or the prevention of anti-social behaviour,
  - (f) which is made for the purposes of a criminal investigation,
  - (g) which is made for the purposes of legal proceedings (whether civil or criminal),

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- (h) which is a protected disclosure for any of the purposes of the Employment Rights Act 1996 or the Employment Rights (Northern Ireland) Order 1996 (SI 1996/1919 (NI 16)),
  - (i) consisting of the publication of information for the purposes of journalism, where the publication of the information is in the public interest,
  - (j) which is made with the consent of the person to whom it relates, or
  - (k) 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
    - (v) protecting national security.
- (3) In subsection (2)(e) “anti-social behaviour” means conduct that—
- (a) is likely to cause harassment, alarm or distress to any person, or
  - (b) is capable of causing nuisance or annoyance to a person in relation to that person's occupation of residential premises.
- (4) A person commits an offence if—
- (a) the person discloses personal information in contravention of subsection (1), and
  - (b) at the time that the person makes the disclosure, the person knows that the disclosure contravenes that subsection or is reckless as to whether the disclosure does so.
- (5) A person who is guilty of an offence under subsection (4) 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 (4) 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;
  - (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.
- (8) This section does not apply to personal information disclosed under section 56 by the Revenue and Customs.

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

- (1) Personal information disclosed by the Revenue and Customs under section 56 and received by a person may not be disclosed by that person.
- (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—
  - (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.

## **60 Code of practice**

- (1) The relevant Minister must issue a code of practice about—
  - (a) the disclosure of information under section 56, and
  - (b) the use of information disclosed under that section.
- (2) The code of practice must be consistent with the code of practice issued under section 52B (data-sharing code) of the Data Protection Act 1998 (as altered or replaced from time to time).
- (3) A specified person must have regard to the code of practice in—
  - (a) disclosing information under section 56, and
  - (b) using information disclosed under that section.
- (4) The relevant Minister may from time to time revise and re-issue the code of practice.
- (5) 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
  - (f) such other persons as the relevant Minister thinks appropriate.
- (6) The fact that this section 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.



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- (7) The relevant Minister may not issue the code of practice unless a draft of the code has been laid before, and approved by a resolution of, each House of Parliament.
- (8) Before reissuing the code the relevant Minister must lay a draft of the code as proposed to be reissued before Parliament.
- (9) The relevant Minister may not reissue the code if, within the 40-day period, either House of Parliament resolves not to approve it.
- (10) In subsection (9) “the 40 day period” means—
  - (a) the period of 40 days beginning with the day on which the draft is laid before Parliament, or
  - (b) if the draft is not laid before each House on the same day, the period of 40 days beginning with the later of the days on which it is laid before Parliament.
- (11) For the purposes of subsection (10) no account is to be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.
- (12) 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) the Scottish Parliament,
  - (b) the National Assembly for Wales, and
  - (c) the Northern Ireland Assembly.
- (13) In disclosing information under section 56, a person must have regard to the following codes of practice issued by the Information Commissioner under section 51(3) of the Data Protection Act 1998, so far as they apply to the information in question—
  - (a) any code which makes provision about the identification and reduction of the risks to privacy of a proposal to disclose information;
  - (b) any code which makes provision about the information to be provided to data subjects (within the meaning of that Act) about the use to be made of information collected from them.
- (14) The duty in subsection (13) does not affect any other requirement for the person to have regard to a code of practice in disclosing the information.

VALID FROM 01/05/2018

## **61 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.
- (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,

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- (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,
    - (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).
- (6) The power in subsection (5) to amend this Chapter—
- (a) may be exercised for the purposes only of improving the effectiveness of the operation of the power in section 56(1), and
  - (b) may not be used to remove any of the safeguards relating to the use or disclosure of information in section 57, 58 or 59.
- (7) The relevant Minister may only make regulations under subsection (5) with the consent of the Scottish Ministers if the regulations—
- (a) repeal this Chapter,
  - (b) amend or remove the power of the Scottish Ministers to make regulations under section 56(6),
  - (c) affect the disclosure of information under section 56 by a Scottish body to another such body,
  - (d) affect the use by a Scottish body of information disclosed under that section by such a body, or
  - (e) affect the further disclosure to a Scottish body by such a body, or by a member, officer or employee of such a body, of information disclosed under this Chapter by a Scottish body.
- (8) The relevant Minister may only make regulations under subsection (5) with the consent of the Welsh Ministers if the regulations—
- (a) repeal this Chapter,
  - (b) amend or remove the power of the Welsh Ministers to make regulations under section 56(6),
  - (c) affect the disclosure of information under section 56 by a Welsh body to another such body,
  - (d) affect the use by a Welsh body of information disclosed under that section by such a body, or
  - (e) affect the further disclosure to a Welsh body by such a body, or by a member, officer or employee of such a body, of information disclosed under this Chapter by a Welsh body.
- (9) The relevant Minister may only make regulations under subsection (5) with the consent of the Department of Finance in Northern Ireland if the regulations—

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- (a) repeal this Chapter,
  - (b) amend or remove the power of the Department to make regulations under section 56(6),
  - (c) affect the disclosure of information under section 56 by a Northern Ireland body to another such body,
  - (d) affect the use by a Northern Ireland body of information disclosed under that section by such a body, or
  - (e) affect the further disclosure to a Northern Ireland body by such a body, or by a member, officer or employee of such a body, of information disclosed under this Chapter by a Northern Ireland body.
- (10) 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.
- (11) Anything required to be published by this section is to be published in such manner as the relevant Minister thinks fit.

## **62 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) In the case of regulations under section 56(6) which amend Schedule 8 so as to add an entry relating to a person or description of person, this includes power 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 59 in relation to information disclosed by the Revenue and Customs.
- (4) 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) Regulations made under section 56(6) by the Scottish Ministers are subject to the affirmative procedure.
- (6) A statutory instrument containing regulations made under section 56(6) 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.
- (7) Regulations under section 56(6) 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.

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- (8) If a draft of a statutory instrument containing regulations under section 56(6) 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.

VALID FROM 01/05/2018

### 63 Interpretation of this Chapter

- (1) In this Chapter—

“the appropriate national authority” means the relevant Minister, subject to subsections (2) to (4);

“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;
- (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;

“functions” means functions of a public nature;

“Northern Ireland body” means—

- (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);

“personal information” has the meaning given by section 57(5);

“public authority” has the meaning given by section 56(14);

“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;

“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
- (c) a person providing services to a person within paragraph (a) or (b);

“specified person” has the meaning given by section 56(5);

“Welsh body” means—

- (a) a devolved Welsh authority as defined by section 157A of the Government of Wales Act 2006, or
- (b) a person providing services to a devolved Welsh authority as defined by that section.

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- (2) The Scottish Ministers are the appropriate national authority in relation to regulations under section 56(6) which add, modify or remove an entry relating to a person who is, or a description of persons each of whom is, a Scottish body.
- (3) The Welsh Ministers are the appropriate national authority in relation to regulations under section 56(6) which add, modify or remove an entry relating to a person who is, or a description of persons each of whom is, a Welsh body.
- (4) The Department of Finance in Northern Ireland is the appropriate national authority in relation to regulations under section 56(6) which add, modify or remove an entry relating to a person who is, or a description of persons each of whom is, a Northern Ireland body.

VALID FROM 01/10/2017

## CHAPTER 5

### SHARING FOR RESEARCH PURPOSES

VALID FROM 01/04/2018

#### **64 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.
- (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
  - (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) For the purposes of the first condition the information may be processed by—
  - (a) the public authority,
  - (b) a person other than the public authority, or
  - (c) both the public authority and a person other than the public authority, (subject to the following provisions of this Chapter).
- (5) Personal information may be disclosed for the purpose of processing it for disclosure under subsection (1)—
  - (a) by a public authority to a person involved in processing the information for that purpose;

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- (b) subject to sections 67(5), 68(5) and 69(5) (information disclosed by revenue authorities), by one such person to another such person.
- (6) The second condition is that each person who is involved in processing the information for disclosure takes reasonable steps to—
  - (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).
- (7) The third condition is that the disclosure is made by the public authority or by a person, other than the public authority, who is involved in processing the information for disclosure under subsection (1).
- (8) The fourth condition is that the research for the purposes of which the information is disclosed is accredited under section 71.
- (9) The fifth condition is that the following are accredited under section 71—
  - (a) any person (including the public authority) who is involved in processing the information for disclosure under subsection (1);
  - (b) any person to whom information is disclosed under subsection (1);
  - (c) any person by whom such information is used for research purposes.
- (10) The sixth condition is that each person who discloses the information or is involved in processing it for disclosure under subsection (1) has regard to the code of practice under section 70 in doing so.
- (11) 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.
- (12) 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.
- (13) This section is subject to section 65.

VALID FROM 01/04/2018

## **65 Provisions supplementary to section 64**

- (1) A disclosure under section 64 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).
- (2) But nothing in section 64 authorises information to be disclosed if to do so would—



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- (a) contravene the Data Protection Act 1998, or
  - (b) be prohibited by any of Parts 1 to 7 or Chapter 1 of Part 9 of the Investigatory Powers Act 2016.
- (3) Until the repeal of Part 1 of the Regulation of Investigatory Powers Act 2000 by paragraphs 45 and 54 of Schedule 10 to the Investigatory Powers Act 2016 is fully in force, subsection (2)(b) has effect as if it included a reference to that Part.
- (4) In its application to a public authority with functions relating to the provision of health services or adult social care, section 64 does not authorise the disclosure of information held by the authority in connection with such functions.
- (5) Section 64 does not limit the circumstances in which information may be disclosed apart from that section.
- (6) A person within subsection (7) may charge a person who requests information to be disclosed under section 64(1) a fee for work done in response to the request.
- (7) The persons mentioned in subsection (6) are—
- (a) the public authority to whom the request is made, and
  - (b) a person who is involved in processing the information for disclosure.
- (8) A fee charged under subsection (6) by a public authority (including a person within subsection (7)(b) who is a public authority) must not exceed the cost to the person of doing the work for which the fee is charged.

VALID FROM 01/04/2018

## **66 Bar on further disclosure of personal information**

- (1) Subsection (2) applies to personal information—
- (a) in which the identity of a particular person is specified or from which the identity of a particular person can be deduced, whether from the information itself or from that information taken together with any other published information, and
  - (b) which is received by a person (“P”) under section 64(1) (disclosure for research purposes).
- (2) Personal information to which this subsection applies may not be disclosed—
- (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) to a person by whom the research referred to in section 64(1) is being or is to be carried out, or
  - (b) for the purposes of enabling anything that is to be published as a result of the research to be reviewed before publication, where the disclosure is made to a person who is accredited under section 71 as a person to whom such information may be disclosed for that purpose.
- (4) Subsection (5) applies to personal information which—
- (a) identifies a particular person, and



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- (b) is received by a person (“P”) under section 64(5) (disclosure for processing).
- (5) Personal information to which this subsection applies may not be disclosed—
  - (a) by P, or
  - (b) by any other person who has received it directly or indirectly from P.
- (6) Subsection (5) does not apply to a disclosure—
  - (a) under section 64(1) or (5), or
  - (b) of information previously disclosed under section 64(1), where the disclosure is made by—
    - (i) the person to whom the information was disclosed under that provision, or
    - (ii) any person who has received the information directly or indirectly from the person mentioned in sub-paragraph (i),  
(but subsection (2) may apply to such a disclosure).
- (7) Subsection (2) or (5) 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,
  - (e) which is made for the prevention or detection of crime or the prevention of anti-social behaviour,
  - (f) which is made for the purposes of a criminal investigation,
  - (g) which is made for the purposes of legal proceedings (whether civil or criminal),
  - (h) which is a protected disclosure for any of the purposes of the Employment Rights Act 1996 or the Employment Rights (Northern Ireland) Order 1996 (SI 1996/1919 (NI 16)),
  - (i) consisting of the publication of information for the purposes of journalism, where the publication of the information is in the public interest, or
  - (j) which is made with the consent of the person to whom it relates.
- (8) In subsection (7)(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;
  - (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.
- (9) In subsection (7)(e) “anti-social behaviour” means conduct that—
  - (a) is likely to cause harassment, alarm or distress to any person, or
  - (b) is capable of causing nuisance or annoyance to a person in relation to that person's occupation of residential premises.

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- (10) A person commits an offence if—
- (a) the person discloses personal information in contravention of subsection (2) or (5), and
  - (b) at the time that the person makes the disclosure, the person knows that the disclosure contravenes that subsection or is reckless as to whether the disclosure does so.
- (11) A person who is guilty of an offence under subsection (10) is liable on conviction on indictment to imprisonment for a term not exceeding two years, to a fine or to both.
- (12) A person who is guilty of an offence under subsection (10) 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;
  - (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.
- (13) In the application of subsection (12)(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.
- (14) This section does not apply to personal information disclosed under section 64(1) or (5) by the Revenue and Customs, the Welsh Revenue Authority or Revenue Scotland.

VALID FROM 01/04/2018

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

- (1) Subsection (2) applies to personal information—
- (a) in which the identity of a particular person is specified or from which the identity of a particular person can be deduced, whether from the information itself or from that information taken together with any other published information, and
  - (b) which—
    - (i) is disclosed under section 64(1) (disclosure for research purposes) by the Revenue and Customs, or
    - (ii) is disclosed under section 64(1) by a person other than the Revenue and Customs and is derived from information disclosed under section 64(5) by the Revenue and Customs,
 and is received by a person (“P”) under section 64(1).
- (2) Personal information to which this subsection applies may not be disclosed—
- (a) by P, or
  - (b) by a person to whom the information is disclosed by virtue of subsection (3).

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- (3) Subsection (2) does not apply to a disclosure—
  - (a) to a person by whom the research referred to in section 64(1) is being or is to be carried out, or
  - (b) for the purposes of enabling anything that is to be published as a result of the research to be reviewed before publication, where the disclosure is made to a person who is accredited under section 71 as a person to whom such information may be disclosed for that purpose.
- (4) Subsection (5) applies to personal information which—
  - (a) identifies a particular person, and
  - (b) is disclosed by the Revenue and Customs under section 64(5) (disclosure for processing) and received by a person (“P”).
- (5) Personal information to which this subsection applies may not be disclosed—
  - (a) by P, or
  - (b) by any other person who has received it under section 64(5).
- (6) Subsection (5) does not apply to a disclosure under section 64(1).
- (7) Subsection (2) or (5) 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).
- (8) A person who contravenes subsection (2) or (5) is guilty of an offence.
- (9) It is a defence for a person charged with an offence under subsection (8) 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) Subsections (4) to (7) of section 19 of the Commissioners for Revenue and Customs Act 2005 apply to an offence under subsection (8) as they apply to an offence under that section.

VALID FROM 01/04/2018

## **68 Information disclosed by the Welsh Revenue Authority**

- (1) Subsection (2) applies to personal information—
  - (a) in which the identity of a particular person is specified or from which the identity of a particular person can be deduced, whether from the information itself or from that information taken together with any other published information, and
  - (b) which—
    - (i) is disclosed under section 64(1) (disclosure for research purposes) by the Welsh Revenue Authority, or
    - (ii) is disclosed under section 64(1) by a person other than the Welsh Revenue Authority and is derived from information disclosed under section 64(5) by the Welsh Revenue Authority,

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and is received by a person (“P”) under section 64(1).

- (2) Personal information to which this subsection applies may not be disclosed—
  - (a) by P, or
  - (b) by a person to whom the information is disclosed by virtue of subsection (3).
- (3) Subsection (2) does not apply to a disclosure—
  - (a) to a person by whom the research referred to in section 64(1) is being or is to be carried out, or
  - (b) for the purposes of enabling anything that is to be published as a result of the research to be reviewed before publication, where the disclosure is made to a person who is accredited under section 71 as a person to whom such information may be disclosed for that purpose.
- (4) Subsection (5) applies to personal information which—
  - (a) identifies a particular person, and
  - (b) is disclosed by the Welsh Revenue Authority under section 64(5) (disclosure for processing) and received by a person (“P”).
- (5) Personal information to which this subsection applies may not be disclosed—
  - (a) by P, or
  - (b) by any other person who has received it under section 64(5).
- (6) Subsection (5) does not apply to a disclosure under section 64(1).
- (7) Subsection (2) or (5) does not apply to a disclosure which is made with the consent of the Welsh Revenue Authority (which may be general or specific).
- (8) A person who contravenes subsection (2) or (5) is guilty of an offence.
- (9) It is a defence for a person charged with an offence under subsection (8) 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) A person who is guilty of an offence under subsection (8) is liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding 12 months, to a fine, or to both;
  - (b) on conviction on indictment to imprisonment for a term not exceeding two years, to a fine or to both.
- (11) In the application of subsection (10)(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.

VALID FROM 01/04/2018

## **69 Information disclosed by Revenue Scotland**

- (1) Subsection (2) applies to personal information—

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- (a) in which the identity of a particular person is specified or from which the identity of a particular person can be deduced, whether from the information itself or from that information taken together with any other published information, and
- (b) which—
  - (i) is disclosed under section 64(1) (disclosure for research purposes) by Revenue Scotland, or
  - (ii) is disclosed under section 64(1) by a person other than Revenue Scotland and is derived from information disclosed under section 64(5) by Revenue Scotland, and is received by a person (“P”) under section 64(1).
- (2) Personal information to which this subsection applies may not be disclosed—
  - (a) by P, or
  - (b) by a person to whom the information is disclosed by virtue of subsection (3).
- (3) Subsection (2) does not apply to a disclosure—
  - (a) to a person by whom the research referred to in section 64(1) is being or is to be carried out, or
  - (b) for the purposes of enabling anything that is to be published as a result of the research to be reviewed before publication, where the disclosure is made to a person who is accredited under section 71 as a person to whom such information may be disclosed for that purpose.
- (4) Subsection (5) applies to personal information which—
  - (a) identifies a particular person, and
  - (b) is disclosed by Revenue Scotland under section 64(5) (disclosure for processing) and received by a person (“P”).
- (5) Personal information to which this subsection applies may not be disclosed—
  - (a) by P, or
  - (b) by any other person who has received it under section 64(5).
- (6) Subsection (5) does not apply to a disclosure under section 64(1).
- (7) Subsection (2) or (5) does not apply to a disclosure which is made with the consent of Revenue Scotland (which may be general or specific).
- (8) A person who contravenes subsection (2) or (5) is guilty of an offence.
- (9) It is a defence for a person charged with an offence under subsection (8) 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) A person who is guilty of an offence under subsection (8) is liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding 12 months, to a fine not exceeding the statutory maximum or to both;
  - (b) on conviction on indictment to imprisonment for a term not exceeding two years, to a fine or to both.

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## 70 Code of practice

- (1) The Statistics Board must issue a code of practice about—
  - (a) the disclosure of personal information under section 64,
  - (b) the processing of information under that section, and
  - (c) the holding or use of personal information disclosed under that section.
- (2) The code of practice must be consistent with the code of practice issued under section 52B (data-sharing code) of the Data Protection Act 1998 (as altered or replaced from time to time).
- (3) A public authority must have regard to the code of practice in disclosing personal information or participating in the processing of information under section 64.
- (4) A person who is accredited under section 71(1)(a) must have regard to the code of practice in participating in the processing of information for disclosure under section 64(1).
- (5) A person who is accredited under section 71(1)(b), (c) or (d) must have regard to the code of practice in holding or using personal information disclosed under section 64.
- (6) The Statistics Board may from time to time revise and re-issue the code of practice.
- (7) Before issuing or reissuing the code of practice the Statistics Board must consult—
  - (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,
  - (f) the Department of Finance in Northern Ireland, and
  - (g) such other persons as the Statistics Board thinks appropriate.
- (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.
- (9) The Statistics Board may not issue the code of practice unless a draft of the code has been laid before, and approved by a resolution of, each House of Parliament.
- (10) Before reissuing the code the Statistics Board must lay a draft of the code as proposed to be reissued before Parliament.
- (11) The Statistics Board may not reissue the code if, within the 40-day period, either House of Parliament resolves not to approve it.
- (12) In subsection (11) “the 40 day period” means—
  - (a) the period of 40 days beginning with the day on which the draft is laid before Parliament, or
  - (b) if the draft is not laid before each House on the same day, the period of 40 days beginning with the later of the days on which it is laid before Parliament.



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- (13) For the purposes of subsection (12) no account is to be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.
- (14) 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) the Scottish Parliament,
  - (b) the National Assembly for Wales, and
  - (c) the Northern Ireland Assembly.
- (15) In disclosing information under section 64, a person must have regard to the following codes of practice issued by the Information Commissioner under section 51(3) of the Data Protection Act 1998, so far as they apply to the information in question—
- (a) any code which makes provision about the identification and reduction of the risks to privacy of a proposal to disclose information;
  - (b) any code which makes provision about the information to be provided to data subjects (within the meaning of that Act) about the use to be made of information collected from them.
- (16) The duty in subsection (15) does not affect any other requirement for the person to have regard to a code of practice in disclosing the information.

VALID FROM 01/04/2018

## 71 Accreditation for the purposes of this Chapter

- (1) The Statistics Board—
- (a) may accredit a person as a person who may be involved in the processing of information for disclosure under subsection (1) of section 64,
  - (b) may accredit a person as a person to whom information may be disclosed under that subsection,
  - (c) may accredit a person as a person by whom information disclosed under that subsection may be used for research purposes,
  - (d) may accredit a person as a person to whom such information may be disclosed for the purposes of a review of the kind mentioned in section 66(3)(b), 67(3)(b), 68(3)(b) or 69(3)(b),
  - (e) may accredit research for the purposes of section 64, and
  - (f) may withdraw accreditation given under any of paragraphs (a) to (e).
- (2) The Statistics Board—
- (a) must establish and publish conditions to be met by a person for accreditation under subsection (1)(a), (b), (c) or (d),
  - (b) must establish and publish conditions to be met by research for accreditation under subsection (1)(e), and
  - (c) must establish and publish grounds for the withdrawal of accreditation under subsection (1)(f).
- (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



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for disclosure under section 64(1), 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.
- (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 70.
- (6) Before publishing conditions under subsection (2)(a) or (b) or grounds under subsection (2)(c), the Statistics Board must consult—
  - (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,
  - (f) the Department of Finance in Northern Ireland, and
  - (g) such other persons as the Statistics Board thinks appropriate.
- (7) The Statistics Board—
  - (a) may from time to time revise conditions or grounds published under this section, and
  - (b) if it does so, must publish the conditions or grounds as revised.
- (8) Subsection (6) applies in relation to the publication of conditions or grounds under subsection (7) as it applies in relation to the publication of conditions or grounds under subsection (2).
- (9) The Statistics Board must maintain and publish—
  - (a) a register of persons who are accredited under subsection (1)(a),
  - (b) a register of persons who are accredited under subsection (1)(b),
  - (c) a register of persons who are accredited under subsection (1)(c), and
  - (d) a register of persons who are accredited under subsection (1)(d).
- (10) A register under any of the paragraphs of subsection (9) may be combined with a register under any of the other paragraphs of that subsection.
- (11) 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.

VALID FROM 01/04/2018

## **72 Delegation of functions of the Statistics Board**

- (1) The Statistics Board may delegate any of its functions under section 71 to another person if the Board thinks that the person—
  - (a) is a fit and proper person to exercise the function in question, and
  - (b) has expertise in statistical research and analysis.

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- (2) Subsection (1) does not affect the operation of section 36 of the Statistics and Registration Service Act 2007 (delegation of Board's functions).

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### **73 Interpretation of this Chapter**

- (1) In this Chapter—
- “personal information” has the meaning given by section 64(11);
  - “public authority” means a person with functions of a public nature, subject to subsection (2);
  - “the Revenue and Customs” has the meaning given by section 17(3) of the Commissioners for Revenue and Customs Act 2005.
- (2) A person is not a public authority for the purposes of this Chapter if the person—
- (a) only has functions relating to the provision of health services,
  - (b) only has functions relating to the provision of adult social care, or
  - (c) only has functions within paragraph (a) and paragraph (b).
- (3) The following are to be disregarded in determining whether subsection (2) applies to a person—
- (a) any power (however expressed) to do things which are incidental to the carrying out of another function of that person;
  - (b) any function which the person exercises or may exercise on behalf of another person.
- (4) In this Chapter “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
  - (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.
- (5) In this Chapter “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.
- (6) References in this Chapter to information which identifies a particular person are to be read in accordance with section 64(12).

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*Changes to legislation: There are currently no known outstanding effects  
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## CHAPTER 6

### DISCLOSURE BY REVENUE AUTHORITIES

#### **74 Disclosure of non-identifying information by the Revenue and Customs**

- (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—
  - (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—
  - (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—
  - (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—
  - (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.

VALID FROM 01/04/2018

#### **75 Disclosure of non-identifying information by the Welsh Revenue Authority**

- (1) A relevant official of the Welsh Revenue Authority may disclose relevant information to any person if—
  - (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—
  - (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—
  - (a) is specified in the information,
  - (b) can be deduced from the information, or

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(c) can be deduced from the information taken together with any other information.

(4) In this section—

- (a) “relevant official of the Welsh Revenue Authority” means a person within any of paragraphs (a) to (d) of section 17(2) of the Tax Collection and Management (Wales) Act 2016, and
- (b) “relevant information” means information which—
- (i) is held by the Welsh Revenue Authority in connection with its functions, or
  - (ii) is held by a person to whom any of the functions of the Welsh Revenue Authority have been delegated in connection with those functions.

## **76 Disclosure of non-identifying information by Revenue Scotland**

- (1) A relevant official of Revenue Scotland may disclose to any person information held by a relevant person in connection with a relevant function if—
- (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—
- (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—
- (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—
- (a) “relevant official of Revenue Scotland” means a relevant official as defined by section 15(2) of the Revenue Scotland and Tax Powers Act 2014,
  - (b) “relevant person” has the meaning given by section 13(2) of that Act, and
  - (c) “relevant function” means a function mentioned in section 13(3)(a), (b)(i) or (c)(i) of that Act.

## **77 Disclosure of employer reference information by the Revenue and Customs**

- (1) A Revenue and Customs official may disclose employer reference information held by the Revenue and Customs to the Employers' Liability Tracing Office for use by it for the permitted purpose.
- (2) The Employers' Liability Tracing Office is the company registered in England and Wales with the company registration number 06964651.
- (3) The permitted purpose is the purpose of providing assistance in connection with—

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- (a) claims against an employer, or an employer's insurer, arising from personal injury or death that occurred, or is alleged to have occurred, in the course of a person's employment by that employer, or
  - (b) applications for a payment under the Diffuse Mesothelioma Payment Scheme established under the Mesothelioma Act 2014.
- (4) “Employer reference information” means any of the following information relating to an employer—
- (a) the employer's name and address;
  - (b) any combination of numbers, letters or characters that is uniquely associated with the employer and used by the Revenue and Customs to identify or refer to the employer, whether generally or for particular purposes.
- (5) References in this section to an employer include references to a person who has at any time been an employer.
- (6) In this section—
- “employer” and “employment” have the same meaning as in the employment income Parts of the Income Tax (Earnings and Pensions) Act 2003;
  - “Revenue and Customs official” has the meaning given by section 18(4) (a) of the Commissioners for Revenue and Customs Act 2005;
  - “the Revenue and Customs” has the meaning given by section 17(3) of that Act.

## CHAPTER 7

### STATISTICS

#### **78 Disclosure of information by the Revenue and Customs 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.
- (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.”
- (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) After subsection (4) insert—

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“(4A) In disclosing information under subsection (1), the Commissioners or an officer of Revenue and Customs must have regard to the following codes of practice issued by the Information Commissioner under section 51(3) of the Data Protection Act 1998, so far as they apply to the information in question—

- (a) any code which makes provision about the identification and reduction of the risks to privacy of a proposal to disclose information;
- (b) any code which makes provision about the information to be provided to data subjects (within the meaning of that Act) about the use to be made of information collected from them.

(4B) The duty in subsection (4A) to have regard to a code of practice does not affect any other requirement for the Commissioners or an officer of Revenue and Customs to have regard to a code of practice under the Data Protection Act 1998 in disclosing the information.

(4C) In determining how to comply with the duty in subsection (4A) the Commissioners or the officer of Revenue and Customs must have regard to any views of the Board which are communicated to the Commissioners or the officer.”

(7) Omit subsection (5) (which prevents the disclosure of personal information not relating to imports or exports).

## **79 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**

- (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
  - (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.
- (5) Information disclosed under subsection (1) may only be used by the Board for the purposes of any one or more of its functions.

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- (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.
- (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.
- (8) In disclosing information under subsection (1), a public authority must have regard to the following codes of practice issued by the Information Commissioner under section 51(3) of the Data Protection Act 1998, so far as they apply to the information in question—
- (a) any code which makes provision about the identification and reduction of the risks to privacy of a proposal to disclose information;
  - (b) any code which makes provision about the information to be provided to data subjects (within the meaning of that Act) about the use to be made of information collected from them.
- (9) The duty in subsection (8) to have regard to a code of practice does not affect any other requirement for the public authority to have regard to a code of practice under the Data Protection Act 1998 in disclosing the information.
- (10) In determining how to comply with the duty in subsection (8) the public authority must have regard to any views of the Board which are communicated to the authority.
- (11) A disclosure under subsection (1) does not breach—
- (a) any obligation of confidence owed by the public authority making the disclosure, or
  - (b) any other restriction on the disclosure of information (however imposed).
- (12) But subsection (1) does not authorise the making of a disclosure which—
- (a) contravenes the Data Protection Act 1998,
  - (b) is prohibited by any of Parts 1 to 7 or Chapter 1 of Part 9 of the Investigatory Powers Act 2016, or
  - (c) contravenes directly applicable EU legislation or any enactment to the extent that it implements EU legislation.
- (13) Until the repeal of Part 1 of the Regulation of Investigatory Powers Act 2000 by paragraphs 45 and 54 of Schedule 10 to the Investigatory Powers Act 2016 is fully in force, subsection (12)(b) has effect as if it included a reference to that Part.
- (14) This section does not limit the circumstances in which information may be disclosed apart from this section.”
- (3) Omit—
- (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).



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- (4) In section 54 (Data Protection Act 1998 and Human Rights Act 1998) for “47” substitute “ 50 ”.
- (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
  - (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;
  - (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;
  - (d) an enactment contained in, or in an instrument made under, Northern Ireland legislation;”.

VALID FROM 01/10/2017

## 80 Access to information by the Statistics Board

After section 45A of the Statistics and Registration Service Act 2007 (inserted by section 79) insert—

### “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,
  - (b) the Bank of England (including in the exercise of its functions as the Prudential Regulation Authority),
  - (c) a subsidiary undertaking of the Bank of England within the meaning of the Companies Acts (see sections 1161 and 1162 of the Companies Act 2006),
  - (d) the Financial Conduct Authority, and
  - (e) the Payment Systems Regulator established under section 40 of the Financial Services (Banking Reform) Act 2013.
- (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.

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- (3) Subsection (2) does not apply to information if the disclosure of that information—
  - (a) would contravene the Data Protection Act 1998,
  - (b) would be prohibited by any of Parts 1 to 7 or Chapter 1 of Part 9 of the Investigatory Powers Act 2016, or
  - (c) would contravene directly applicable EU legislation or any enactment to the extent that it implements EU legislation.
- (4) Until the repeal of Part 1 of the Regulation of Investigatory Powers Act 2000 by paragraphs 45 and 54 of Schedule 10 to the Investigatory Powers Act 2016 is fully in force, subsection (3)(b) has effect as if it included a reference to that Part.
- (5) The right of access in subsection (2) is to be exercised in accordance with the following provisions of this section.
- (6) The Board may, by notice in writing to the public authority, request the authority to disclose the information to the Board.
- (7) A notice under subsection (6) must—
  - (a) set out the Board's reasons for requesting the information to be disclosed, and
  - (b) specify the date by which or the period within which the public authority must respond to the request.
- (8) The public authority must, by that date or within that period, provide a response in writing to the Board which—
  - (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.
- (9) Subsection (10) applies if—
  - (a) the public authority fails to respond to the request in accordance with subsection (8),
  - (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.
- (10) The Board may lay the request and any response by the public authority before the relevant legislature.
- (11) In subsection (10) “the relevant legislature” means Parliament, subject as follows.
- (12) The Scottish Parliament is the relevant legislature if the public authority—
  - (a) is a part of the Scottish Administration, or
  - (b) is a Scottish public authority with mixed functions or no reserved functions (within the meaning of the Scotland Act 1998).

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- (13) The National Assembly for Wales is the relevant legislature if the public authority is a devolved Welsh authority as defined by section 157A of the Government of Wales Act 2006.
- (14) The Northern Ireland Assembly is the relevant legislature 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).
- (15) This section does not apply to—
  - (a) Her Majesty in Her private capacity,
  - (b) Her Majesty in right of the Duchy of Lancaster, or
  - (c) the Duke of Cornwall.
- (16) Until the coming into force of section 12 of the Bank of England and Financial Services Act 2016 subsection (1)(b) has effect as if the words in brackets were omitted.

#### **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 (15) of that section).
- (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—
  - (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.
- (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—
  - (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.
- (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.

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- (9) The Board must obtain the consent of the Scottish Ministers before giving a notice under subsection (2) to a public authority which is a Scottish public authority with mixed functions or no reserved functions (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 which is a devolved Welsh authority as defined by section 157A of the Government of Wales Act 2006.
- (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 any of Parts 1 to 7 or Chapter 1 of Part 9 of the Investigatory Powers Act 2016, or
  - (d) would contravene directly applicable EU legislation or any enactment to the extent that it implements EU legislation.
- (14) Until the repeal of Part 1 of the Regulation of Investigatory Powers Act 2000 by paragraphs 45 and 54 of Schedule 10 to the Investigatory Powers Act 2016 is fully in force, subsection (13)(c) has effect as if it included a reference to that Part.

#### **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.

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- (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.
- (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—
  - (a) might prejudice national security,
  - (b) would contravene the Data Protection Act 1998, or
  - (c) would be prohibited by any of Parts 1 to 7 or Chapter 1 of Part 9 of the Investigatory Powers Act 2016.
- (10) Until the repeal of Part 1 of the Regulation of Investigatory Powers Act 2000 by paragraphs 45 and 54 of Schedule 10 to the Investigatory Powers Act 2016 is fully in force, subsection (9)(c) has effect as if it included a reference to that Part.
- (11) Subject to subsection (13), in this section “undertaking” means—
  - (a) any person carrying on a trade or business, whether or not with a view to profit, or
  - (b) any charity.
- (12) In subsection (11) “charity” means a body, or the trustees of a trust, established for charitable purposes only.
- (13) The following are not undertakings for the purposes of this section—
  - (a) a public authority;
  - (b) a micro business;
  - (c) a small business.
- (14) 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 (13) as they apply in relation to subordinate legislation within subsection (1) of that section.

#### **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.
- (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.

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- (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.
- (4) A disclosure pursuant to section 45B, 45C or 45D 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) 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 statement must be consistent with the code of practice issued under section 52B (data-sharing code) of the Data Protection Act 1998 (as altered or replaced from time to time).
- (7) The Board may at any time revise the statement and, if it decides to do so, must publish the statement as revised.
- (8) 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,
  - (e) the Department of Finance in Northern Ireland, and
  - (f) such other persons as the Board thinks fit.
- (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.
- (10) The Board may not publish the original statement under this section unless a draft of the statement has been laid before, and approved by a resolution of, each House of Parliament.
- (11) Before publishing a revised statement under this section the Board must lay a draft of the statement as proposed to be published before Parliament.
- (12) The Board may not publish the revised statement if, within the 40-day period, either House of Parliament resolves not to approve it.
- (13) In subsection (12) “the 40 day period” means—
  - (a) the period of 40 days beginning with the day on which the draft is laid before Parliament, or
  - (b) if the draft is not laid before each House on the same day, the period of 40 days beginning with the later of the days on which it is laid before Parliament.

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- (14) For the purposes of subsection (13) no account is to be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.
- (15) After preparing or revising a statement the Board must lay the statement, or the statement as revised, before—
  - (a) the Scottish Parliament,
  - (b) the National Assembly for Wales, and
  - (c) the Northern Ireland Assembly.
- (16) In exercising any of its functions under section 45B, 45C or 45D to require the disclosure of information, the Board must have regard to any code of practice issued by the Information Commissioner under section 51(3) of the Data Protection Act 1998 which makes provision about the identification and reduction of the risks to privacy of a proposal to disclose information, so far as the code applies to the information in question.
- (17) The duty in subsection (16) to have regard to a code of practice does not affect any other requirement for the Board to have regard to a code of practice under the Data Protection Act 1998 in exercising the function.

#### **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,
  - (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
  - (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
  - (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.
- (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, and
  - (c) if the affairs of the body are managed by its members, a member.



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- (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—
- (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—
  - (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.
- (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—
  - (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.
- (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) The Board may not publish the original code of practice under this section unless a draft of the code has been laid before, and approved by a resolution of, each House of Parliament
- (7) Before publishing a revised code of practice under this section the Board must lay a draft of the code as proposed to be published before Parliament.
- (8) The Board may not publish the revised code of practice if, within the 40-day period, either House of Parliament resolves not to approve it.
- (9) In subsection (8) “the 40 day period” means—
  - (a) the period of 40 days beginning with the day on which the draft is laid before Parliament, or
  - (b) if the draft is not laid before each House on the same day, the period of 40 days beginning with the later of the days on which it is laid before Parliament.

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- (10) For the purposes of subsection (9) no account is to be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.
- (11) After preparing or revising a code of practice under this section the Board must lay the code, or the code as revised, before—
  - (a) the Scottish Parliament,
  - (b) the National Assembly for Wales, and
  - (c) the Northern Ireland Assembly.
- (12) The reference in subsection (1) to making changes to a process includes introducing or removing a process.
- (13) This section binds the Crown.
- (14) The reference to the Crown in subsection (13) does not include—
  - (a) Her Majesty in Her private capacity,
  - (b) Her Majesty in right of the Duchy of Lancaster, or
  - (c) the Duke of Cornwall.”

## 81 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.
- (2) In this section “devolved authority” means—
  - (a) a person who is a part of the Scottish Administration,
  - (b) the Welsh Ministers,
  - (c) the Department of Finance in Northern Ireland, or
  - (d) the Registrar General for Northern Ireland.
- (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
  - (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—
  - (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,

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- (b) the Board is satisfied that the information will not be used for any other purpose, and
  - (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;
  - (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.
- (8) A devolved authority may only use information disclosed under this section for the purposes for which it was disclosed.
- (9) In disclosing information under subsection (1), the Board must have regard to the following codes of practice issued by the Information Commissioner under section 51(3) of the Data Protection Act 1998, so far as they apply to the information in question—
- (a) any code which makes provision about the identification and reduction of the risks to privacy of a proposal to disclose information;
  - (b) any code which makes provision about the information to be provided to data subjects (within the meaning of that Act) about the use to be made of information collected from them.
- (10) The duty in subsection (9) to have regard to a code of practice does not affect any other requirement for the Board to have regard to a code of practice under the Data Protection Act 1998 in disclosing the information.
- (11) 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.
- (12) 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,
  - (c) be prohibited by any of Parts 1 to 7 or Chapter 1 of Part 9 of the Investigatory Powers Act 2016, or
  - (d) breach any other restriction on the disclosure of information (however imposed).
- (13) Until the repeal of Part 1 of the Regulation of Investigatory Powers Act 2000 by paragraphs 45 and 54 of Schedule 10 to the Investigatory Powers Act 2016 is fully in force, subsection (12)(c) has effect as if it included a reference to that Part.
- (14) Nothing in this section affects the scope of the powers in sections 51 to 53.”

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## PART 6

### MISCELLANEOUS

#### *OFCOM: reports etc*

#### **82 OFCOM reports on infrastructure etc**

- (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);
  - (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.
- (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
  - (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**

- (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—
    - (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

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(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 ”.

### **83 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*

### **84 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);

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- (c) to inform OFCOM of any proposal by the provider to cease to provide an electronic communications network or electronic communications service;
- (d) to inform OFCOM of any circumstances or events of a description specified in the condition.”

## **85 Provision of information to OFCOM**

- (1) Section 135 of the Communications Act 2003 (information required for purposes of functions) is amended as follows.
- (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—
    - (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 ”.

## **86 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—
    - (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.
  - (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,
    - (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

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- (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) In section 144 (offences in connection with information requirements)—



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- (a) in subsection (1), after “or 136” insert “, or who contravenes a requirement imposed under section 137A,”,
  - (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
  - (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”.
- (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 ”.

VALID FROM 31/07/2017

### *Appeals*

#### **87 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”.
- (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)**

- (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.
- (3) The Tribunal may—
  - (a) dismiss the appeal or quash the whole or part of the decision to which it relates; and

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- (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.
- (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.
- (6) In this section “the decision-maker” means the person who made the decision appealed against.”
- (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).”
- (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).
- (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).”
- (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*

#### **88 Functions of OFCOM in relation to the BBC**

- (1) The Communications Act is amended as follows.
- (2) Section 198 (functions of OFCOM in relation to the BBC) is amended as follows.
- (3) In subsection (1) for the words after paragraph (b) substitute—
- “to regulate the BBC.”
- (4) After subsection (2) insert—

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“(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) Omit subsection (9).
- (6) After section 198 insert—

**“198ZA Penalties for failure to provide information**

- (1) This section applies if—
    - (a) under a power conferred by virtue of section 198(2A), OFCOM require a person other than the BBC to provide information, and
    - (b) OFCOM determine that there are reasonable grounds to believe the person has not provided the information.
  - (2) OFCOM may give the person a notice which sets out the determination and specifies—
    - (a) what information the person must provide,
    - (b) the time within which the person must provide it,
    - (c) a penalty that OFCOM may impose if the person does not provide it, and
    - (d) a period in which the person may make representations.
  - (3) OFCOM may impose a penalty on the person if they fail without reasonable excuse to provide the information in accordance with the notice.
  - (4) The penalty may include an amount for each day the person fails to provide the information after the time required by the notice.
  - (5) The penalty in respect of any notice—
    - (a) must not be more than OFCOM determine to be proportionate,
    - (b) must not be more than the penalty specified in the notice, and
    - (c) must not be more than £250,000.
  - (6) OFCOM may withdraw a notice without imposing a penalty, and that does not affect the power to issue a further notice in relation to the same information.
  - (7) OFCOM must publish and keep up to date a statement of their proposed approach to issuing notices and imposing and recovering penalties under this section (subject to the guidelines published under section 392).”
- (7) 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);
  - (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”.

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VALID FROM 01/06/2020

## **89 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.
- (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 (4)(a) after “concession” insert “ provided for by the regulations ”.
- (5) In subsection (5) for “The reference to a concession in subsection (4)” substitute “ A reference in this section or section 365A to a concession ”.
- (6) After subsection (5) insert—
  - “(5A) Regulations under this section may not provide for a concession that requires the person to whom the TV licence is issued, or another person, to be of or above a specified age, unless—
    - (a) the age specified is below 65, and
    - (b) the requirement is not satisfied if the person concerned is 65 or over at the end of the month in which the licence is issued.
  - (5B) Subsection (5A) does not apply to—
    - (a) the concession provided for by regulation 3(d) of and Schedule 4 to the Communications (Television Licensing) Regulations 2004 (S.I. 2004/692) (accommodation for residential care), or
    - (b) a concession in substantially the same form.”
- (7) After section 365 insert—

### **“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.
- (2) Any concession under this section must include a requirement that the person to whom the TV licence is issued, or another person, is of or above a specified age, which must be 65 or higher, at or before the end of the month in which the licence is issued.
- (3) A determination under this section—
  - (a) may in particular provide for a concession to apply, subject to subsection (2), in circumstances where a concession has ceased to have effect by virtue of section 365(5A), but
  - (b) may not provide for a concession to apply in the same circumstances as a concession within section 365(5B).

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- (4) A determination under this section may include provision for the means by which an entitlement to a concession must be established.
- (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—
  - (a) must be in writing;
  - (b) must be published in whatever way the BBC considers appropriate.
- (7) The BBC—
  - (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.”

*Provision of children's programmes*

**90 Provision of children's programmes**

After section 289 of the Communications Act 2003 insert—

*“Provision of children's programmes*

**289A Provision of children's programmes**

- (1) OFCOM may, if they think fit, publish criteria to be applied in accordance with this section to the provision of children's programmes.
- (2) Where criteria are published by OFCOM, the regulatory regime for every licensed public service channel includes the conditions that OFCOM consider appropriate for securing that the provision of children's programmes meets the criteria.
- (3) Any condition imposed by virtue of this section—
  - (a) must relate only to the provision of children's programmes on the licensed public service channel concerned;
  - (b) must take into account OFCOM's assessment of the provision of children's programmes on all related services.
- (4) “Related services” in relation to a Channel 3 service means—
  - (a) that service,
  - (b) all other Channel 3 services, and
  - (c) all services within subsection (6) that appear to OFCOM to have a sufficient connection with any Channel 3 service.

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- (5) “Related services” in relation to any other licensed public service channel means—
- (a) that channel, and
  - (b) all services within subsection (6) that appear to OFCOM to have a sufficient connection with that channel.
- (6) A service is within this subsection if—
- (a) it is available for reception in the United Kingdom, and
  - (b) it is provided without any consideration being required for its reception, disregarding any requirement to pay sums in accordance with regulations under section 365.
- (7) For the purposes of an assessment under subsection (3)(b) no account is to be taken of whether a programme is provided on a licensed public service channel or on another service.
- (8) Any condition imposed by virtue of this section must be the same for all regional Channel 3 services.
- (9) Any criteria published under this section must be published by OFCOM in a statement setting out the criteria and how they propose to apply them.
- (10) OFCOM may from time to time review and revise or withdraw the criteria by publishing a further statement.
- (11) Where OFCOM revise or withdraw criteria, they must take any steps they consider necessary in consequence in relation to conditions imposed by virtue of this section.
- (12) OFCOM must—
- (a) carry out a public consultation for the purposes of any review under subsection (10);
  - (b) where there are no published criteria for the time being, carry out a public consultation before publishing criteria under this section.
- (13) In this section “children's programme” means a programme made—
- (a) for a television programme service or for an on-demand programme service, and
  - (b) for viewing primarily by persons under the age of sixteen.”

*OFCOM powers relating to criminal content etc*

**91 Suspension of radio licences for inciting crime or disorder**

- (1) In Chapter 2 of Part 3 of the Broadcasting Act 1990 (sound broadcasting services), for section 111B (power to suspend licence to provide satellite service) substitute—

**“111B Suspension of licences for inciting crime or disorder**

- (1) OFCOM must serve a notice under subsection (2) on the holder of a licence granted under this Chapter if they are satisfied that—

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- (a) the licence holder has included in the licensed service one or more programmes containing material likely to encourage or incite the commission of crime or to lead to disorder,
  - (b) in doing so the licence holder has failed to comply with a condition included in the licence in compliance with section 263 of the Communications Act 2003, and
  - (c) the failure would justify the revocation of the licence.
- (2) A notice under this subsection must—
- (a) state that OFCOM are satisfied as mentioned in subsection (1),
  - (b) specify the respects in which, in their opinion, the licence holder has failed to comply with the condition mentioned there,
  - (c) state that OFCOM may revoke the licence after the end of the period of 21 days beginning with the day on which the notice is served on the licence holder, and
  - (d) inform the licence holder of the right to make representations to OFCOM in that period about the matters that appear to OFCOM to provide grounds for revoking the licence.
- (3) The effect of a notice under subsection (2) is to suspend the licence from the time when the notice is served on the licence holder until either—
- (a) the revocation of the licence takes effect, or
  - (b) OFCOM decide not to revoke the licence.
- (4) If, after considering any representations made to them by the licence holder in the 21 day period mentioned in subsection (2)(c), OFCOM are satisfied that it is necessary in the public interest to revoke the licence, they must serve on the licence holder a notice revoking the licence.
- (5) The revocation of a licence by a notice under subsection (4) takes effect from whatever time is specified in the notice.
- (6) That time must not be earlier than the end of the period of 28 days beginning with the day on which the notice under subsection (4) is served on the licence holder.
- (7) Section 111 does not apply to the revocation of a licence under this section.”
- (2) In section 62(10) of the Broadcasting Act 1996 (application of sections 109 and 111 of the 1990 Act to digital sound programme services) for the words from “section 109” to “1990 Act” substitute “ sections 109, 111 and 111B of the 1990 Act (enforcement) ”.
- (3) In section 250(3) of the Communications Act 2003 (application of sections 109 to 111A of the 1990 Act to radio licensable content services) for “111A” substitute “ 111B ”.

VALID FROM 31/07/2017

**92 Digital additional services: seriously harmful extrinsic material**

After section 24 of the Broadcasting Act 1996 (digital additional services) insert—



**Status:** Point in time view as at 27/06/2017. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** There are currently no known outstanding effects for the Digital Economy Act 2017. (See end of Document for details)

#### **“24A Duty to prevent access to seriously harmful extrinsic material**

- (1) In carrying out their functions, OFCOM must do all that they consider appropriate to prevent digital additional services from enabling members of the public to access seriously harmful extrinsic material.
- (2) “Seriously harmful extrinsic material”, in relation to a digital additional service, means material that—
  - (a) is not included in the service, and
  - (b) appears to OFCOM—
    - (i) to have the potential to cause serious harm, or
    - (ii) to be likely to encourage or incite the commission of crime or lead to disorder.”

VALID FROM 31/07/2017

#### *On-demand programme services*

### **93 On-demand programme services: accessibility for people with disabilities**

- (1) The Communications Act 2003 is amended as follows.
- (2) After section 368BB insert—

#### *“Accessibility*

#### **368BC Accessibility for people with disabilities**

- (1) The Secretary of State may by regulations impose requirements on providers of on-demand programme services for the purpose of ensuring that their services are accessible to people with disabilities affecting their sight or hearing or both.
- (2) The requirements that may be imposed include—
  - (a) requirements for programmes included in the services to be accompanied by subtitling;
  - (b) requirements for such programmes to be accompanied by audio-description for the blind;
  - (c) requirements for such programmes to be presented in, or translated into, sign language.
- (3) The steps set out in subsections (4) to (6) must be taken before regulations are made under this section.
- (4) The Secretary of State must ask the appropriate regulatory authority to consult such persons as appear to the authority likely to be affected by regulations under this section, including—
  - (a) providers of on-demand programme services, and

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- (b) representatives of people with disabilities affecting their sight or hearing or both.
- (5) The appropriate regulatory authority must inform the Secretary of State of—
  - (a) the outcome of the consultation, and
  - (b) any other matters that they think should be taken into account by the Secretary of State for the purposes of the regulations.
- (6) Where OFCOM are not the appropriate regulatory authority, the Secretary of State must consult OFCOM.
- (7) 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.

### **368BD Enforcement of regulations under section 368BC**

- (1) Where the appropriate regulatory authority determine that a provider of an on-demand programme service is contravening or has contravened regulations under section 368BC, they may do one or both of the following—
  - (a) give the provider an enforcement notification under this section;
  - (b) impose a penalty on the provider in accordance with section 368J.
- (2) The appropriate regulatory authority must not make a determination as mentioned in subsection (1) unless there are reasonable grounds for believing that a contravention of the regulations is occurring or has occurred and they have allowed the provider an opportunity to make representations about that apparent contravention.
- (3) An enforcement notification under this section is a notification which specifies the determination made as mentioned in subsection (1) and imposes a requirement on the provider to take all such steps for complying with the regulations and for remedying the consequences of the contravention of the regulations as may be specified in the notification.
- (4) An enforcement notification must—
  - (a) include reasons for the appropriate regulatory authority's decision to give the enforcement notification, and
  - (b) fix a reasonable period for taking the steps required by the notification.
- (5) It is the duty of a provider to whom an enforcement notification is given to comply with it.
- (6) That duty is enforceable in civil proceedings by the appropriate regulatory authority—
  - (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) If a provider to whom an enforcement notification has been given does not comply with it within the period fixed by the appropriate regulatory authority

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in that enforcement notification the appropriate regulatory authority may impose a financial penalty on the provider in accordance with section 368J.”

(3) In section 368C (duties of the appropriate regulatory authority), omit subsection (2).

(4) After that section insert—

**“368CA Code on accessibility for people with disabilities**

(1) It is the duty of the appropriate regulatory authority to draw up, and from time to time review and revise, a code giving guidance as to—

- (a) the steps to be taken by providers of on-demand programme services so as to meet the requirements of regulations under section 368BC, and
- (b) other steps to be taken by providers who are subject to requirements under the regulations to ensure that their services are made progressively more accessible to people with disabilities affecting their sight or hearing or both.

(2) The appropriate regulatory authority must publish the code drawn up under this section, and every revision of it, in such manner as, having regard to the need to make the code or revision accessible to—

- (a) persons who are deaf or hard of hearing,
  - (b) persons who are blind or partially sighted, and
  - (c) persons with a dual sensory impairment,
- they consider appropriate.”

(5) In section 368J(1) (financial penalties), after “368BB” insert “, 368BD ”.

(6) In section 368K(1) (suspension or restriction of service for contraventions)—

- (a) in paragraph (a), after “368D” insert “, or of regulations under section 368BC ”,
- (b) in paragraph (b)—
  - (i) after “368D” insert “ or the regulations ”, and
  - (ii) for “or 368I” substitute “, 368I or 368BC ”.

(7) In section 368O(2)(a) (power to demand information), after “368D” insert “, or of regulations under section 368CA, ”.

(8) In section 402(2)(a) (procedure for statutory instruments) after “411” insert “ or regulations under section 368BC ”.

PROSPECTIVE

**94 On-demand programme services: specially restricted material**

(1) Section 368E of the Communications Act 2003 (restrictions on harmful material contained in on-demand programme services) is amended as follows.

(2) In subsection (5), after paragraph (b) omit “or”.

(3) In that subsection, after paragraph (c) insert—

“(d) a video work—

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- (i) in respect of which the video works authority has issued an 18 certificate, and
- (ii) whose nature is such that it is reasonable to assume that its principal purpose is to cause sexual arousal, or
- (e) material whose nature is such that it is reasonable—
  - (i) to assume that its principal purpose is to cause sexual arousal, and
  - (ii) to expect that, if the material were contained in a video work submitted to the video works authority for a classification certificate, the video works authority would issue an 18 certificate.”

(4) In subsection (6), after “(5)(b)” insert “ or (e) ”.

(5) In subsection (7), after the definition of “the 1984 Act”, insert—

““18 certificate” means a classification certificate which—

- (a) contains, pursuant to section 7(2)(b) of the 1984 Act, 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
- (b) does not contain the statement mentioned in section 7(2)(c) of the 1984 Act that no video recording containing the video work is to be supplied other than in a licensed sex shop;”.

VALID FROM 31/07/2017

### *Electronic Programme Guides*

#### **95 Electronic programme guides and public service channels**

(1) After section 311 of the Communications Act 2003 insert—

##### **“311A Report on electronic programme guides and public service channels**

- (1) It is the duty of OFCOM from time to time to prepare and publish a report dealing with—
  - (a) the provision by electronic programme guides of information about programmes—
    - (i) included in public service channels, or
    - (ii) provided by means of on-demand programme services by persons who also provide public service channels, and
  - (b) the facilities provided by such guides for the selection of, and access to, such programmes.
- (2) When preparing the report OFCOM must consult such persons as appear to them appropriate.

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- (3) In this section “electronic programme guide” and “public service channel” have the same meanings as in section 310.”
- (2) After publishing the first report under section 311A of the Communications Act 2003 OFCOM must review and revise the code drawn up by them under section 310 of that Act (code of practice for electronic programme guides).
- (3) The revision of the code must be completed before 1 December 2020.
- (4) Subsections (2) and (3) do not affect OFCOM's duty under section 310 of that Act to review and revise the code from time to time.
- (5) In this section “OFCOM” means the Office of Communications.

### *Direct marketing code*

## 96 **Direct marketing code**

- (1) The Data Protection Act 1998 is amended as follows.
- (2) After section 52A insert—

### **“52AA Direct marketing code**

- (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
  - (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).
- (3) Before a code is prepared under this section, the Commissioner must consult such of the following as the Commissioner considers appropriate—
  - (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).”
- (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)—

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- (a) in subsection (1) after “52A” insert “ or 52AA ”;
  - (b) in subsection (6) omit “under section 52A”.
- (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 ”;
  - (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 ”.
- (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 ”;
  - (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 ”;
  - (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 ”.

#### *Televising events of national interest*

### **97 Televising events of national interest: power to amend qualifying conditions**

In section 98 of the Broadcasting Act 1996 (categories of service), after subsection (5) insert—

- “(5A) The Secretary of State may, by regulations made by statutory instrument, amend the percentage figure specified for the time being in subsection (2)(b).
- (5B) An amendment made by regulations under this section does not affect—
- (a) the validity of any contract entered into before the regulations came into force, or
  - (b) the exercise of any rights acquired under such a contract.
- (5C) Regulations under subsection (5A) may make transitional, transitory or saving provision.
- (5D) A statutory instrument containing regulations under subsection (5A) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.”

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VALID FROM 31/07/2017

*Other provisions relating to OFCOM*

**98 Strategic priorities and provision of information**

(1) After section 2 of the Communications Act 2003 insert—

*“Strategic priorities*

**2A Statement of strategic priorities**

- (1) The Secretary of State may designate a statement for the purposes of this section if the requirements set out in section 2C (consultation and 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 in the United Kingdom relating to—
  - (a) telecommunications,
  - (b) the management of the radio spectrum, and
  - (c) postal services.
- (3) The statement may, among other things, set out particular outcomes identified with a view to achieving the strategic priorities.
- (4) This section does not restrict the Secretary of State's powers under any other provision of this Act or any other enactment.
- (5) A statement designated under subsection (1) must be published in such manner as the Secretary of State considers appropriate.
- (6) A statement designated under subsection (1) may be amended (including by replacing the whole or a part of the statement with new content) by a subsequent statement designated under that subsection, and this section and sections 2B and 2C apply in relation to any such subsequent statement as in relation to the original statement.
- (7) Except as provided by subsection (8), no amendment may be made under subsection (6) within the period of 5 years beginning with the day on which a statement was most recently designated under subsection (1).
- (8) An earlier amendment may be made under subsection (6) if—
  - (a) since that day—
    - (i) a Parliamentary general election has taken place, or
    - (ii) there has been a significant change in the policy of Her Majesty's government affecting any matter mentioned in subsection (2)(a), (b) or (c), or
  - (b) the Secretary of State considers that the statement, or any part of it, conflicts with any of OFCOM's general duties (within the meaning of section 3).



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## **2B Duties of OFCOM in relation to strategic priorities**

- (1) This section applies where a statement has been designated under section 2A(1).
- (2) OFCOM must have regard to the statement when carrying out—
  - (a) their functions relating to telecommunications,
  - (b) their functions under the enactments relating to the management of the radio spectrum, and
  - (c) their functions relating to postal services.
- (3) OFCOM must within the period of 40 days beginning with the day on which the statement is designated, or such longer period as the Secretary of State may allow—
  - (a) explain in writing what they propose to do in consequence of the statement, and
  - (b) publish a copy of that explanation in such manner as OFCOM consider appropriate.
- (4) OFCOM must, as soon as practicable after the end of—
  - (a) the period of 12 months beginning with the day on which the first statement is designated under section 2A(1), and
  - (b) every subsequent period of 12 months,publish a review of what they have done during the period in question in consequence of the statement.

## **2C Consultation and parliamentary procedure**

- (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 2A.
- (2) The Secretary of State must consult the following on a draft of the statement—
  - (a) OFCOM, and
  - (b) such other persons as the Secretary of State considers appropriate.
- (3) The Secretary of State must allow OFCOM a period of at least 40 days to respond to any consultation under subsection (2)(a).
- (4) After that period has ended the Secretary of State—
  - (a) must make any changes to the draft that appear to the Secretary of State to be necessary in view of responses to the consultation, and
  - (b) must then lay the draft before Parliament.
- (5) 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.
- (6) “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).

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*Changes to legislation: There are currently no known outstanding effects for the Digital Economy Act 2017. (See end of Document for details)*

(7) 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.”

(2) After section 24 of that Act insert—

**“24A Provision of information before publication**

(1) OFCOM must provide the Secretary of State, at least 24 hours before publication, with any information that they propose to publish.

(2) If exceptional circumstances make it impracticable to provide the information to the Secretary of State 24 hours before publication it must instead be provided to the Secretary of State as long before publication as is practicable.

(3) Subsections (1) and (2) have effect in any particular case subject to any agreement made between the Secretary of State and OFCOM in that case.

(4) The Secretary of State may by regulations specify descriptions of information in relation to which the duty under subsection (1) does not apply.

(5) Before making regulations under subsection (4), the Secretary of State must consult OFCOM.

(6) Information provided to the Secretary of State under this section may not be disclosed by the Secretary of State during the protected period, except to another Minister of the Crown.

(7) A Minister of the Crown to whom the information is disclosed under subsection (6) may not disclose the information during the protected period to any other person.

(8) A Minister of the Crown may not make any representations to OFCOM during the protected period that specify or describe changes that the Minister considers should be made to information that has been provided under this section when it is published.

(9) In this section—

“the protected period”, in relation to information provided to the Secretary of State under this section, means the period beginning with the provision of the information and ending when either of the following occurs—

(a) OFCOM publish the information;

(b) OFCOM inform the Secretary of State that they consent to the disclosure of the information;

“Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975.

**24B Provision of information to assist in formulation of policy**

(1) OFCOM may provide the Secretary of State with any information that they consider may assist the Secretary of State in the formulation of policy.

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- (2) Information with respect to a particular business that has been obtained in the exercise of a power conferred by—
- (a) this Act,
  - (b) the 1990 Act,
  - (c) the 1996 Act,
  - (d) the Wireless Telegraphy Act 2006, or
  - (e) Part 3 of the Postal Services Act 2011,
- is not, so long as the business continues to be carried on, to be provided to the Secretary of State under this section without the consent of the person for the time being carrying on that business.”
- (3) The duty under subsection (1) of section 24A of that Act does not have effect until the day on which regulations made under subsection (4) of that section first come into force.
- (4) In section 393(6) of that Act (general restrictions on disclosure of information), after paragraph (a) insert—
- “(aza) prevents the disclosure of information under section 24A or 24B;”.
- (5) In section 111(7) of the Wireless Telegraphy Act 2006 (general restrictions on disclosure of information), after paragraph (a) insert—
- “(aa) prevents the disclosure of information under section 24A or 24B of that Act;”.
- (6) In section 56 of the Postal Services Act 2011 (general restrictions on disclosure of information), after subsection (6) insert—
- “(6A) Nothing in this section prevents the disclosure of information under section 24A or 24B of the Communications Act 2003.”

VALID FROM 29/10/2021

## 99 OFCOM and Northern Ireland

- (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;”.
- (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)”.
- (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—

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(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.”””

(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—

“(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—

“(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.”

(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—

(a) the words after paragraph (b) in subsection (1);

(b) subsections (2), (3) and (5)(b).

## **100 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) ”.

(3) In section 401 (retention of amounts by OFCOM), for subsection (1) substitute—

“(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;

(ii) in respect of fees charged under section 53D of that Act, and

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- (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—
  - “(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.”
- (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”.
- (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 ”.

**101 International recognition of satellite frequency assignments: power of OFCOM to charge fees**

- (1) The Communications Act 2003 is amended as follows.
- (2) After section 28 (general power of OFCOM to charge for services), and before the italic heading following that section, insert—

**“28A International recognition of satellite frequency assignments: power to charge fees**

- (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.
- (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.
- (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

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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.

(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.

VALID FROM 01/10/2018

### *Billing limits for mobile phones*

## **102 Billing limits for mobile phones**

In Chapter 1 of Part 2 of the Communications Act 2003 (electronic communications networks and services) after section 124R insert—

*Status:* Point in time view as at 27/06/2017. This version of this Act contains provisions that are not valid for this point in time.  
*Changes to legislation:* There are currently no known outstanding effects for the Digital Economy Act 2017. (See end of Document for details)

*“Billing limits for mobile phones*

**124S Mobile phone providers' duty to enable billing limits to be applied**

- (1) The provider of a mobile phone service must not enter into a contract to provide the service unless the customer has been given an opportunity to specify a billing limit in the contract.
- (2) In relation to a contract to provide a mobile phone service—
  - (a) a billing limit is a limit on the amount the customer may be charged for provision of the service in respect of each billing period, and
  - (b) a billing period is one of successive periods specified in the contract and together making up the period for which the contract remains in force.
- (3) A contract to provide a mobile phone service must provide for the customer on reasonable notice at any time—
  - (a) to specify a billing limit if none is specified for the time being,
  - (b) to amend or remove a limit in respect of all billing periods or a specified billing period.
- (4) In any billing period the provider must—
  - (a) so far as practicable, notify the customer in reasonable time if a limit is likely to be reached before the end of the period, and
  - (b) notify the customer as soon as practicable if a limit is reached before the end of the period.
- (5) A limit may be exceeded in relation to a billing period only if the customer agrees after a notification under subsection (4)(a) or (b).
- (6) If the provider continues to provide the service after a limit is reached, the customer's use of the service does not constitute agreement to the limit being exceeded.
- (7) The provider must give the customer confirmation in writing of—
  - (a) the decision made by the customer in accordance with subsection (1),
  - (b) any decision of the customer under provision made in accordance with subsection (3), and
  - (c) any agreement by the customer in accordance with subsection (5).
- (8) This section applies to agreeing to extend a contract as it applies to entering into a contract, and in that case the reference in subsection (2)(b) to the period for which the contract remains in force is a reference to the period of the extension.
- (9) Nothing in this section affects a provider's duty to comply with requirements to enable calls to emergency services.
- (10) In this section—

“customer” does not include a person who is a customer as a communications provider;



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“mobile phone service” means an electronic communications service which is provided in the course of a business wholly or mainly so as to be available to members of the public for the purpose of communicating with others, or accessing data, by mobile phone.

#### **124T Enforcement of duty to enable billing limits to be applied**

- (1) Sections 96A to 96C apply in relation to a contravention of a requirement under section 124S as they apply in relation to a contravention of a condition set under section 45, with the following modifications.
- (2) Section 96A(2)(f) and (g) (OFCOM directions) do not apply.
- (3) Section 96A(5) to (7) (action under the Competition Act 1998) do not apply.
- (4) The amount of a penalty imposed under sections 96A to 96C, as applied by this section, other than a penalty falling within section 96B(4), is to be such amount not exceeding £2 million as OFCOM determine to be—
  - (a) appropriate; and
  - (b) proportionate to the contravention in respect of which it is imposed.”

### *Online social media platforms*

#### **103 Code of practice for providers of online social media platforms**

- (1) The Secretary of State must issue a code of practice giving guidance to persons who provide online social media platforms for use by persons in the United Kingdom (“social media providers”).
- (2) The guidance to be given is guidance about action it may be appropriate for providers to take against the use of the platforms they provide for conduct to which subsection (3) applies.
- (3) This subsection applies to conduct which—
  - (a) is engaged in by a person online,
  - (b) is directed at an individual, and
  - (c) involves bullying or insulting the individual, or other behaviour likely to intimidate or humiliate the individual.
- (4) But guidance under this section is not to affect how unlawful conduct is dealt with.
- (5) A code of practice under this section must (subject to subsection (4)) include guidance to social media providers about the following action—
  - (a) maintaining arrangements to enable individuals to notify providers of the use of their platforms for conduct to which subsection (3) applies;
  - (b) maintaining processes for dealing with notifications;
  - (c) including provision on matters within paragraphs (a) and (b) in terms and conditions for using platforms;
  - (d) giving information to the public about action providers take against the use of their platforms for conduct to which subsection (3) applies.

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- (6) Before issuing a code of practice under this section, the Secretary of State must consult—
  - (a) those social media providers to whom the code is intended to give guidance, and
  - (b) such other persons as the Secretary of State considers it appropriate to consult.
- (7) The Secretary of State must publish any code of practice issued under this section.
- (8) A code of practice issued under this section may be revised from time to time by the Secretary of State, and references in this section to a code of practice include such a revised code.

VALID FROM 31/07/2017

### *Internet filters*

#### **104 Internet filters**

- (1) A provider of an internet access service to an end-user may prevent or restrict access on the service to information, content, applications or services, for child protection or other purposes, if the action is in accordance with the terms on which the end-user uses the service.
- (2) This section does not affect whether a provider of an internet access service may prevent or restrict access to anything on the service in other circumstances.
- (3) In this section—
  - “end-user” means an end-user of a public electronic communications service, within the meaning given by section 151(1) of the Communications Act 2003;
  - “internet access service” has the meaning given by Article 2(2) of [Regulation \(EU\) 2015/2120](#) of the European Parliament and of the Council of 25th November 2015 laying down measures concerning open internet access and amending Directive [2002/22/EC](#) on universal service and users' rights relating to electronic communications networks and services and [Regulation \(EU\) No 531/2012](#) on roaming on public mobile communications networks within the Union.

**Status:** Point in time view as at 27/06/2017. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** There are currently no known outstanding effects for the Digital Economy Act 2017. (See end of Document for details)

VALID FROM 31/07/2017

*Ticket sales*

VALID FROM 06/04/2018

**105 Secondary ticketing: duty to provide information about tickets**

In section 90 of the Consumer Rights Act 2015 (duty to provide information about tickets), in subsection (4) omit “and” at the end of paragraph (c), and at the end of paragraph (d) insert “, and

- (e) any unique ticket number that may help the buyer to identify the seat or standing area or its location.”

**106 Power to create offence of breaching limits on internet and other ticket sales**

- (1) The Secretary of State may make regulations providing that it is an offence for a person in circumstances within subsection (2) to do an act within subsection (3).
- (2) Circumstances are within this subsection if each of the following applies—
- (a) tickets for a recreational, sporting or cultural event in the United Kingdom are offered for sale,
  - (b) a purchase may be made wholly or partly by a process that the purchaser completes using an electronic communications network or an electronic communications service, and
  - (c) the offer is subject to conditions that limit the number of tickets a purchaser may buy.
- (3) An act is within this subsection if it consists in using anything that enables or facilitates completion of any part of a process within subsection (2)(b) with intent to obtain tickets in excess of a limit imposed by conditions within subsection (2)(c).
- (4) The regulations may apply whether the offer is made, or anything is done to obtain tickets, in or outside the United Kingdom.
- (5) The regulations—
- (a) may be limited to particular circumstances within subsection (2), and to particular acts within subsection (3);
  - (b) may provide for an offence to be subject to an exception or defence;
  - (c) may make different provision for different areas.
- (6) The regulations must provide in England and Wales and Scotland for an offence to be triable only summarily.
- (7) The regulations may not provide for an offence to be punishable—
- (a) with imprisonment,
  - (b) in Scotland, with a fine exceeding £50,000, or
  - (c) in Northern Ireland, if tried summarily, with a fine exceeding the statutory maximum.

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- (8) The power to make regulations under this section is exercisable by statutory instrument.
- (9) 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.
- (10) In this section “electronic communications network” and “electronic communications service” have the meaning given by section 32 of the Communications Act 2003.

### *Communication devices used for drug dealing*

## **107 Prevention or restriction of use of communication devices for drug dealing**

After section 80 of the Serious Crime Act 2015 insert—

### **“80A Prevention or restriction of use of communication devices for drug dealing**

- (1) Regulations may make provision conferring power on a court to make a drug dealing telecommunications restriction order.
- (2) “Drug dealing telecommunications restriction order” means an order requiring a communications provider to take whatever action the order specifies for the purpose of preventing or restricting the use of communication devices in connection with drug dealing offences.
- (3) Without limiting the action that may be specified, it includes—
  - (a) action that relates to a specified device;
  - (b) action that relates to a specified phone number or something else that may be used with a device.
- (4) In this section “drug dealing offence” means an offence under section 4(3) of the Misuse of Drugs Act 1971 or section 5 of the Psychoactive Substances Act 2016; and a communication device is used in connection with a drug dealing offence if it is used by a person (“the user”) in the course of—
  - (a) the user committing a drug dealing offence,
  - (b) the user facilitating the commission by the user or another person of a drug dealing offence, or
  - (c) conduct of the user that is likely to facilitate the commission by the user or another person of a drug dealing offence (whether or not an offence is committed).
- (5) Regulations under this section must provide for drug dealing telecommunications restriction orders to be made only on the application of—
  - (a) the Director General or Deputy Director General of the National Crime Agency, or
  - (b) a police officer of the rank of superintendent or above.
- (6) Regulations under this section must—

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- (a) specify the matters about which the court must be satisfied if it is to make an order;
  - (b) make provision about the duration of orders (which may include provision for orders of indefinite duration);
  - (c) make provision about the giving (by a communications provider or any other person) of notice of the making of an order;
  - (d) make provision about variation (including extension) and discharge of orders;
  - (e) make provision about appeals.
- (7) Regulations under this section must provide—
- (a) for applications for drug dealing telecommunications restriction orders to be made and heard without notice of the application or hearing having been given to persons affected (or their legal representatives), subject to subsection (9)(a);
  - (b) for applications to be heard and determined in the absence of persons affected (and their legal representatives), subject to subsection (9)(b);
  - (c) for applications to be heard and determined in private.
- (8) Regulations under this section must provide for a court hearing an application or an appeal to have power to restrict disclosure of information submitted in connection with the application or appeal if satisfied that it is necessary to do so in the public interest.
- (9) Regulations under this section may—
- (a) make provision for a communications provider affected by an application to be given notice of the application or hearing;
  - (b) make provision for a communications provider affected by an application to be present or represented at the hearing and determination of the application;
  - (c) in connection with any provision under paragraph (b), make provision for a communications provider to have a right to make representations;
  - (d) make provision for a drug dealing telecommunications restriction order to specify that a requirement of the order is not to apply in particular circumstances;
  - (e) make provision authorising a court to include in an order a requirement for the person applying for the order to pay any or all of the costs of complying with it;
  - (f) make provision about time limits for complying with orders;
  - (g) make provision about enforcement of orders (which may include provision creating offences);
  - (h) make provision about costs (or, in Scotland, expenses) in respect of legal proceedings;
  - (i) make provision about compensation;
  - (j) make different provision for different purposes or areas;
  - (k) make incidental, consequential, supplementary or transitional provision, including provision applying any enactment (with or without modifications).
- (10) The power to make regulations under this section is exercisable by statutory instrument made by the Secretary of State.

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- (11) A statutory instrument containing regulations under this section is not to be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (12) In this section—
- “communication device” means an item specified in section 1(3) of the Prisons (Interference with Wireless Telegraphy) Act 2012 (mobile telephones etc);
  - “communications provider” means a person providing a telecommunications service;
  - “court” means—
    - (a) in relation to England and Wales, the county court;
    - (b) in relation to Scotland, the sheriff;
    - (c) in relation to Northern Ireland, a county court;
  - “enactment” includes—
    - (a) an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978;
    - (b) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament;
    - (c) Northern Ireland legislation;
  - “telecommunications service” has the meaning given by section 261 of the Investigatory Powers Act 2016.”

VALID FROM 31/07/2017

*Charges payable to the Information Commissioner*

**108 Regulations about charges payable to the Information Commissioner**

- (1) The Secretary of State may by regulations require data controllers to pay charges of an amount specified in the regulations to the Information Commissioner.
- (2) Regulations under subsection (1) may require a data controller to pay a charge regardless of whether the Information Commissioner has provided, or proposes to provide, a service to the data controller.
- (3) Regulations under subsection (1) may make provision about the time or times at which, or period or periods within which, a charge must be paid.
- (4) Regulations under subsection (1) may make provision—
  - (a) for different charges to be payable in different cases;
  - (b) for cases in which a discounted charge is payable;
  - (c) for cases in which no charge is payable;
  - (d) for cases in which a charge which has been paid is to be refunded.
- (5) The Secretary of State may by regulations make provision—
  - (a) requiring a data controller to provide information to the Information Commissioner, or

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- (b) enabling the Commissioner to require a data controller to provide information to the Commissioner,  
for either or both of the purposes mentioned in subsection (6).
- (6) Those purposes are—
- (a) determining whether a charge is payable by the data controller under regulations under subsection (1);
  - (b) determining the amount of a charge payable by the data controller.
- (7) The provision that may be made under subsection (5)(a) includes, in particular, provision requiring a data controller to notify the Information Commissioner of a change in the data controller's circumstances of a kind specified in the regulations.
- (8) In this section “data controller” means a person who, alone or jointly with others, determines the purposes and means of the processing of personal data.
- (9) In subsection (8) “personal data” means any information relating to an identified or identifiable individual.
- (10) For this purpose an individual is “identifiable” if the individual can be identified, directly or indirectly, in particular by reference to—
- (a) an identifier such as a name, an identification number, location data or an online identifier, or
  - (b) one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.
- (11) Where the purposes and means of the processing of personal data are determined by or on behalf of the House of Commons or House of Lords, other than where they are determined by or on behalf of the Intelligence and Security Committee of Parliament, the data controller in respect of those data for the purposes of this section is the Corporate Officer of that House.

## **109 Functions relating to regulations under section 108**

- (1) Before making regulations under section 108(1) or (5) the Secretary of State must consult—
- (a) the Information Commissioner,
  - (b) such representatives of persons likely to be affected by the regulations as the Secretary of State thinks appropriate, and
  - (c) such other persons as the Secretary of State thinks appropriate.
- (2) In making regulations under section 108(1), the Secretary of State must have regard to the desirability of securing that the charges payable to the Information Commissioner under such regulations are sufficient to offset—
- (a) expenses incurred by the Commissioner in discharging the Commissioner's functions—
    - (i) under the Data Protection Act 1998,
    - (ii) under or by virtue of the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426),
    - (iii) under the General Data Protection Regulation,
    - (iv) under regulations which implement the General Data Protection Regulation or the Criminal Data Directive,



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- (v) by virtue of section 108, and
  - (vi) under this section,
  - (b) any expenses of the Secretary of State in respect of the Commissioner so far as attributable to those functions,
  - (c) to the extent that the Secretary of State considers appropriate, any deficit previously incurred (whether before or after the passing of this Act) in respect of the expenses mentioned in paragraph (a), and
  - (d) to the extent that the Secretary of State considers appropriate, expenses incurred by the Secretary of State in respect of the inclusion of any officers or staff of the Commissioner in any scheme under section 1 of the Superannuation Act 1972.
- (3) In subsection (2)—
- “the Criminal Data Directive” means [Directive \(EU\) 2016/680](#) of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA;
- “the General Data Protection Regulation” means [Regulation \(EU\) 2016/679](#) of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).
- (4) The Secretary of State may from time to time require the Information Commissioner to provide information about the expenses referred to in subsection (2)(a).
  - (5) The Information Commissioner must keep under review the working of regulations under section 108(1) or (5) and may from time to time submit proposals to the Secretary of State for amendments to be made to the regulations.
  - (6) The Secretary of State must review the working of regulations under section 108(1) or (5)—
    - (a) at the end of the period of five years beginning with the making of the first set of regulations under that section, and
    - (b) at the end of each subsequent five year period.

#### **110 Supplementary provision relating to section 108**

- (1) Regulations under section 108(1) or (5) are to be made by statutory instrument.
- (2) A statutory instrument containing regulations under section 108(1) or (5) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (3) Subsection (2) does not apply to a statutory instrument containing regulations which—
  - (a) only make provision increasing a charge for which provision is made by previous regulations under section 108(1), and
  - (b) do so to take account of an increase in the retail prices index since the previous regulations were made.

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- (4) Such a statutory instrument is subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) In subsection (3) “the retail prices index” means—
  - (a) the general index of retail prices (for all items) published by the Statistics Board, or
  - (b) where that index is not published for a month, any substituted index or figures published by the Board.
- (6) Regulations under section 108(1) or (5)—
  - (a) may make different provision for different purposes;
  - (b) may make transitional, transitory or saving provision;
  - (c) may make incidental, supplemental or consequential provision.
- (7) Regulations under section 108(1) or (5) may bind the Crown.
- (8) But regulations under section 108(1) or (5) may not apply to—
  - (a) Her Majesty in Her private capacity,
  - (b) Her Majesty in right of the Duchy of Lancaster, or
  - (c) the Duke of Cornwall.
- (9) For the purposes of section 108 each government department is to be treated as a person separate from any other government department.
- (10) In subsection (9) “government department” includes—
  - (a) any part of the Scottish Administration;
  - (b) a Northern Ireland department;
  - (c) the Welsh Government;
  - (d) any body or authority exercising statutory functions on behalf of the Crown.

VALID FROM 25/05/2018

### **111 Amendments relating to section 108**

- (1) The Data Protection Act 1998 is amended in accordance with subsections (2) to (7).
- (2) Omit Part 3 (notification by data controllers).
- (3) In section 33A(1) (manual data held by public authorities) omit paragraph (e) (but not the “and” following that paragraph).
- (4) In section 71 (index of defined expressions) omit the entries relating to “address”, “fees regulations”, “notification requirements”, “prescribed” and “registrable particulars”.
- (5) In Part 2 of Schedule 1 (interpretation of the data protection principles) in paragraph 5 omit paragraph (b) and the “or” preceding that paragraph.
- (6) In Part 1 of Schedule 5 (the Information Commissioner) in paragraph 9(1) (destination of fees etc) after “the Freedom of Information Act 2000” insert “ and all charges received by the Commissioner under regulations under section 108(1) of the Digital Economy Act 2017 ”.

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- (7) In Schedule 14 (transitional provisions and savings) omit paragraph 2 (registration under Part 2 of the Data Protection Act 1984).
- (8) In regulation 5(3)(b) of the High Court Enforcement Officers Regulations 2004 (SI 2004/400) (application procedure) omit paragraph (iii).
- (9) In consequence of the repeal in subsection (2) the following are repealed or revoked—
- (a) section 71 of the Freedom of Information Act 2000;
  - (b) in paragraph 6 of Schedule 2 to the Transfer of Functions (Miscellaneous) Order 2001 (SI 2001/3500)—
    - (i) in sub-paragraph (1), paragraphs (h) to (m), and
    - (ii) sub-paragraph (2);
  - (c) in paragraph 9(1)(a) of Schedule 2 to the Secretary of State for Constitutional Affairs Order 2003 (SI 2003/1887), the words “16, 17, 22, 23, 25, 26,”;
  - (d) Part 1 of Schedule 20 to the Coroners and Justice Act 2009;
  - (e) paragraph 26 of Schedule 2 to the Transfer of Tribunal Functions Order 2010 (SI 2010/22).

### *Payment and securities settlement systems*

## **112 Power to apply settlement finality regime to payment institutions**

In Part 24 of the Financial Services and Markets Act 2000 (insolvency) after section 379 insert—

### *“Settlement finality*

#### **379A Power to apply settlement finality regime to payment institutions**

- (1) The Treasury may by regulations made by statutory instrument provide for the application to payment institutions, as participants in payment or securities settlement systems, of provision in subordinate legislation—
  - (a) modifying the law of insolvency or related law in relation to such systems, or
  - (b) relating to the securing of rights and obligations.
- (2) “Payment institution” means—
  - (a) an authorised payment institution or small payment institution within the meaning of the Payment Services Regulations 2009 (S.I. 2009/209), or
  - (b) a person whose head office, registered office or place of residence, as the case may be, is outside the United Kingdom and whose functions correspond to those of an institution within paragraph (a).
- (3) “Payment or securities settlement system” means arrangements between a number of participants for or in connection with the clearing or execution of instructions by participants relating to any of the following—

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- (a) the placing of money at the disposal of a recipient;
  - (b) the assumption or discharge of a payment obligation;
  - (c) the transfer of the title to, or an interest in, securities.
- (4) “Subordinate legislation” has the same meaning as in the Interpretation Act 1978.
- (5) Regulations under this section may—
- (a) make consequential, supplemental or transitional provision;
  - (b) amend subordinate legislation.
- (6) A statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of either House of Parliament.”

### 113 Bank of England oversight of payment systems

Schedule 9 extends Part 5 of the Banking Act 2009 (Bank of England oversight of inter-bank payment systems) to other payment systems; and makes consequential provision.

VALID FROM 01/08/2020

#### *Qualifications in information technology*

### 114 Qualifications in information technology: payment of tuition fees

- (1) The Apprenticeships, Skills, Children and Learning Act 2009 is amended as follows.
- (2) In section 88(1) (qualifications for persons aged 19 or over: payment of tuition fees), for “1(a) or (b)” substitute “ 1(a), (b) or (ba) ”.
- (3) In paragraph 1 of Schedule 5 (qualifications for persons aged 19 or over), after paragraph (b) insert—
  - “(ba) a specified qualification in making use of information technology;”.
- (4) After paragraph 5 of that Schedule insert—

#### **“Power to specify qualification in information technology**

- 5A The level of attainment demonstrated by a specified qualification in making use of information technology must be the level which, in the opinion of the Secretary of State, is the minimum required in that respect by persons aged 19 or over in order to be able to operate effectively in day-to-day life.”

#### *Guarantee of pension liabilities under Telecommunications Act 1984*

### 115 Guarantee of pension liabilities under Telecommunications Act 1984

- (1) The Secretary of State may make regulations modifying or supplementing section 68 of the Telecommunications Act 1984 (liability of Secretary of State in respect of

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British Telecommunications public limited company's liabilities as successor for payment of pensions) in accordance with subsection (4).

- (2) Subsection (4) applies in relation to relevant employees of British Telecommunications public limited company (“BTplc”) becoming employees of another company (a “transferee”) in connection with any part of the undertaking of BTplc being transferred or outsourced (whether or not to the transferee).
- (3) Employees are relevant if the liability of BTplc for the payment of pensions which vested in it by virtue of section 60 of the Telecommunications Act 1984 included, immediately before the employees ceased to be employees of BTplc, liability for the payment of pensions to or in respect of those employees.
- (4) The regulations may provide for the Secretary of State (in addition to any liability apart from the regulations) to become liable—
  - (a) on the winding up of BTplc, to discharge any outstanding liability of BTplc for the payment of pensions to or in respect of relevant employees of the transferee or a successor;
  - (b) on the winding up of the transferee or a successor, to discharge any outstanding liability of the transferee or successor for the payment of pensions to or in respect of relevant employees.
- (5) The regulations may provide for any liability that the Secretary of State is liable to discharge under the regulations not to include liability arising by virtue of a person's employment on or after a specified date, or by virtue of anything else occurring on or after a specified date.
- (6) The specified date must be not earlier than the date on which the regulations come into force.
- (7) The power to make regulations under this section is exercisable so as to—
  - (a) make provision in relation to all cases or circumstances to which the power extends or in relation to specified cases or circumstances;
  - (b) in particular, make provision in relation to all employees to whom the power extends or in relation to employees of a specified description;
  - (c) make different provision for different purposes.
- (8) The regulations may—
  - (a) amend section 68 of the Telecommunications Act 1984;
  - (b) re-enact any provision of that section with or without modifications.
- (9) In this section references to the winding up of a company are references to—
  - (a) the passing of a resolution, in accordance with the Insolvency Act 1986, for the voluntary winding up of the company, or
  - (b) the making of an order for the winding up of the company by the court under that Act.
- (10) In this section—

“specified” means specified in regulations under this section;

“successor” means—

  - (a) where relevant employees of a transferee become employees of another person, that person, and
  - (b) where relevant employees of a successor within paragraph (a) or this paragraph become employees of another person, that person;

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“undertaking” includes anything that may be the subject of a transfer or service provision change, whether or not the Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246) apply.

## 116 Regulations under section 115

- (1) The power to make regulations under section 115 is exercisable by statutory instrument.
- (2) That power is exercisable by the Secretary of State only with the consent of the Treasury.
- (3) A statutory instrument containing regulations under that 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.
- (4) Before making regulations under that section the Secretary of State must consult—
  - (a) the Pensions Regulator;
  - (b) BT plc;
  - (c) the trustees of the BT Pensions Scheme;
  - (d) any transferee or successor to which the regulations apply;
  - (e) any other persons the Secretary of State considers it appropriate to consult.

## PART 7

### GENERAL

## 117 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.

## 118 Commencement

- (1) The following come into force on the day on which this Act is passed—
  - (a) section 88;
  - (b) section 112;
  - (c) sections 115 and 116;
  - (d) sections 117, 119 and 120;
  - (e) this section.
- (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;

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- (d) section 7;
  - (e) sections 9 to 13;
  - (f) sections 82 to 86;
  - (g) section 90;
  - (h) sections 91 and 96;
  - (i) section 97;
  - (j) section 103;
  - (k) section 107;
  - (l) section 113 and Schedule 9.
- (3) Section 89 comes into force on 1 June 2020.
- (4) Part 5, except—
- (a) Chapter 1, so far as that Chapter relates to the disclosure of information to or by a water or sewerage undertaker for an area which is wholly or mainly in Wales,
  - (b) Chapter 2, and
  - (c) Chapters 5 and 6, so far as those Chapters relate to the disclosure of information by the Welsh Revenue Authority,
- 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 provisions mentioned in subsection (4)(a) and (c) come into force on whatever day the Welsh Ministers appoint by regulations made by statutory instrument.
- (6) The other provisions of this Act come into force on whatever day the Secretary of State appoints by regulations made by statutory instrument.
- (7) Different days may be appointed for different purposes or different areas.
- (8) The appropriate authority may by regulations made by statutory instrument make transitional, transitory or saving provision in connection with the coming into force of any provision of this Act.
- (9) Subsection (8) does not apply to section 4 or Schedule 1 (for which see section 5).
- (10) The appropriate authority, subject to subsection (11), is the Secretary of State.
- (11) The appropriate authority in relation to Part 5 is—
- (a) the Secretary of State, in relation to Chapter 2;
  - (b) the Welsh Ministers, in relation to—
    - (i) Chapter 1 so far as relating to the disclosure of information to or by a water or sewerage undertaker for an area which is wholly or mainly in Wales, and
    - (ii) Chapters 5 and 6 so far as relating to the disclosure of information by the Welsh Revenue Authority;
  - (c) otherwise, the Secretary of State or the Minister for the Cabinet Office.

## 119 Extent

- (1) This Act extends to England and Wales, Scotland and Northern Ireland, subject to the following provisions of this section.



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- (2) Sections 36 and 37 extend to England and Wales and Scotland only.
- (3) Sections 38 and 39 extend to England and Wales only.
- (4) In section 46—
  - (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.
- (5) Section 114 extends to England and Wales only.
- (6) Section 47 of the Registered Designs Act 1949 (application to Isle of Man) applies to section 33 as it applies to that Act.
- (7) 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;
  - (e) the Wireless Telegraphy Act 2006.
- (8) “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;
  - (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.
- (9) 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.
- (10) Her Majesty may by Order in Council extend sections 14 to 30, 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.
- (11) The power to make an Order in Council under subsection (10) 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
  - (c) to make such incidental, supplemental, consequential and transitional provision as Her Majesty in Council thinks fit.

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## 120 Short title

This Act may be cited as the Digital Economy Act 2017.

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## SCHEDULES

VALID FROM 31/07/2017

### SCHEDULE 1

Section 4

THE ELECTRONIC COMMUNICATIONS CODE  
.....

VALID FROM 28/12/2017

### SCHEDULE 2

Section 4

THE ELECTRONIC COMMUNICATIONS CODE: TRANSITIONAL PROVISION  
.....

VALID FROM 31/07/2017

### SCHEDULE 3

Section 4

ELECTRONIC COMMUNICATIONS CODE: CONSEQUENTIAL AMENDMENTS  
.....

VALID FROM 01/04/2018

### SCHEDULE 4

Section 35

PUBLIC SERVICE DELIVERY: SPECIFIED PERSONS FOR THE PURPOSES OF SECTION 35  
.....

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VALID FROM 26/04/2018

SCHEDULE 5

Section 36

PUBLIC SERVICE DELIVERY: SPECIFIED PERSONS  
FOR THE PURPOSES OF SECTIONS 36 AND 37

.....

VALID FROM 01/04/2018

SCHEDULE 6

Section 38

PUBLIC SERVICE DELIVERY: SPECIFIED PERSONS  
FOR THE PURPOSES OF SECTIONS 38 AND 39

.....

VALID FROM 26/04/2018

SCHEDULE 7

Section 48

SPECIFIED PERSONS FOR THE PURPOSES OF THE DEBT PROVISIONS

.....

VALID FROM 26/04/2018

SCHEDULE 8

Section 56

SPECIFIED PERSONS FOR THE PURPOSES OF THE FRAUD PROVISIONS

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## SCHEDULE 9

Section 113

### BANK OF ENGLAND OVERSIGHT OF PAYMENT SYSTEMS

#### PART 1

##### EXTENSION OF BANK OF ENGLAND OVERSIGHT OF PAYMENT SYSTEMS

- 1       The Banking Act 2009 is amended as follows.
- 2       In the heading to Part 5 (inter-bank payment systems) omit “Inter-bank”.
- 3       In section 181 (overview) for “payments between financial institutions” substitute  
“transferring money”.
- 4       (1) Section 182 (interpretation: “inter-bank payment system”) is amended as follows.
  - (2) In subsection (1)—
    - (a) omit “inter-bank”;
    - (b) omit the words from “between financial institutions” to the end.
  - (3) After subsection (1) insert—

“(1A) But “payment system” does not include any arrangements for the physical  
movement of cash.”
  - (4) Omit subsections (2) and (3).
  - (5) In subsection (5) for “an inter-bank” substitute “ a ”.
  - (6) In the heading omit “inter-bank”.
- 5       In section 183 (interpretation: other expressions), in paragraph (a) for “an inter-  
bank” substitute “ a ”.
- 6       (1) Section 184 (recognition order) is amended as follows.
  - (2) In subsection (1) for “an inter-bank” substitute “ a ”.
  - (3) In subsection (2) omit “inter-bank”.
  - (4) In subsection (3) for “an inter-bank” substitute “ a payment ”.
- 7       In section 185 (recognition criteria), in subsection (1) for “an inter-bank” substitute  
“ a ”.
- 8       In section 186A (amendment of recognition order), in subsections (2)(b) and (4),  
omit “inter-bank”.
- 9       In section 187 (de-recognition), in subsections (2), (3)(b) and (5), omit “inter-bank”.
- 10      In section 188 (principles), in subsection (1) omit “inter-bank”.
- 11      In section 189 (codes of practice) omit “inter-bank”.
- 12      In section 190 (system rules), in subsection (1) omit “inter-bank”.
- 13      In section 191 (directions), in subsection (1) omit “inter-bank”.
- 14      In section 192 (role of FCA and PRA), in subsections (2)(a) and (b) and (3), omit  
“inter-bank”.

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- 15 In section 193 (inspection), in subsections (1) and (2), omit “inter-bank”.
- 16 In section 194 (inspection: warrant), in subsection (1)(a) omit “inter-bank”.
- 17 In section 195 (independent report), in subsection (1) omit “inter-bank”.
- 18 In section 196 (compliance failure) omit “inter-bank”.
- 19 In section 197 (publication), in subsection (1) omit “inter-bank”.
- 20 In section 198 (penalty), in subsection (1) omit “inter-bank”.
- 21 In section 199 (closure), in subsection (2) omit “inter-bank”.
- 22 In section 200 (management disqualification), in subsections (1) and (2), omit “inter-bank”.
- 23 In section 201 (warning), in subsection (1) for “an inter-bank” substitute “ a ”.
- 24 In section 202A (injunctions), in subsections (2)(a) and (3)(a), omit “inter-bank”.
- 25 In section 203 (fees), in subsection (1) omit “inter-bank”.
- 26 In section 204 (information), in subsections (1A), (2) and (4)(c), omit “inter-bank”.
- 27 In section 205 (pretending to be recognised), in subsection (1) omit “inter-bank”.
- 28 In section 206A (services forming part of recognised inter-bank payment system), in subsections (1), (2) and (7)(a) and in the heading, omit “inter-bank”.
- 29 In section 259 (statutory instruments), in the Table in subsection (3)—  
(a) in the heading for the entries in Part 5, omit “Inter-bank”;  
(b) in the entry for section 206A, in the second column omit “inter-bank”.
- 30 In section 261 (index of defined terms), in the Table—  
(a) omit the entry for “Inter-bank payment system”;  
(b) at the appropriate place insert—
- 
- |                 |       |
|-----------------|-------|
| “Payment system | 182”. |
|-----------------|-------|
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## PART 2

### CONSEQUENTIAL AMENDMENTS

#### *Financial Services Act 2012*

- 31 The Financial Services Act 2012 is amended as follows.
- 32 (1) Section 68 (cases in which Treasury may arrange independent enquiries) is amended as follows.
- (2) In subsection (3), in paragraphs (a) and (b)(ii), omit “inter-bank”.
- (3) In subsection (5), in the definition of “recognised inter-bank payment system”—  
(a) omit the first “inter-bank”;  
(b) for “an inter-bank” substitute “ a ”.
- 33 In section 85 (relevant functions in relation to complaints scheme), in subsection (3) (a) omit “inter-bank”.

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- 34 In section 110 (payment to Treasury of penalties received by Bank of England), in subsection (5)(d) omit “inter-bank”.

*Financial Services (Banking Reform) Act 2013*

- 35 The Financial Services (Banking Reform) Act 2013 is amended as follows.
- 36 In section 45 (procedure), in subsection (1)(a) omit “inter-bank”.
- 37 In section 46 (amendment of designation order), in subsection (2)(a) omit “inter-bank”.
- 38 In section 47 (revocation of designation orders), in subsection (3)(a) omit “inter-bank”.
- 39 In section 98 (duty of regulators to ensure co-ordinated exercise of functions), in subsection (5)(b) omit “inter-bank”.
- 40 In section 110 (interpretation), in subsection (1), in the definition of “recognised inter-bank payment system”—
- (a) omit the first “inter-bank”;
  - (b) for “an inter-bank” substitute “ a ”.
- 41 In section 112 (interpretation: infrastructure companies), in subsections (2)(a), (4)(b) and (5), omit “inter-bank”.
- 42 In section 113 (interpretation: other expressions), in subsection (1)—
- (a) in the definition of “operator” omit “inter-bank”;
  - (b) in the definition of “recognised inter-bank payment system”—
    - (i) omit the first “inter-bank”;
    - (ii) for “an inter-bank” substitute “ a ”;
  - (c) in the definition of “the relevant system”, in paragraphs (a) and (c), omit “inter-bank”.
- 43 In section 115 (objective of FMI administration), in subsection (1) omit “inter-bank”.
- 44 In section 120 (power to direct FMI administrator), in subsection (8) omit “inter-bank”.
- 45 In section 127 (interpretation of Part 6), in subsection (1), in the definition of “operator” and in the definition of “recognised inter-bank payment system”, omit “inter-bank”.



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