

# DIGITAL ECONOMY ACT 2017

## EXPLANATORY NOTES

### What these notes do

These Explanatory Notes relate to the Digital Economy Act 2017 (c. 30) which received Royal Assent on 27 April 2017.

- These Explanatory Notes have been prepared by the Department for Culture, Media and Sport in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Act will mean in practice; provide background information on the development of policy; and provide additional information on how the Act will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Act. They are not, and are not intended to be, a comprehensive description of the Act.

# Table of Contents

Subject	Page of these Notes
<b>Overview of the Act</b>	<b>7</b>
<b>Policy background</b>	<b>7</b>
Access to digital services	7
Digital infrastructure	9
Online pornography	10
Intellectual property	11
Digital Government	12
Public Service Delivery	12
Civil registration	12
Debt and Fraud	13
Revenue Authorities	13
Research and Statistics	13
Data Protection	13
Miscellaneous	14
Ofcom reports and information	14
Ofcom appeals	15
Regulation and functions of the BBC	15
Ofcom powers relating to criminal content	16
On-demand programme services	16
Direct marketing code	16
Other provisions relating to Ofcom	17
Secondary ticketing	18
Payment and securities settlement systems	18
Qualifications in information technology	19
Guarantee of pension liabilities under Telecommunications Act 1984	19
<b>Legal background</b>	<b>19</b>
<b>Territorial extent and application</b>	<b>21</b>
<b>Commentary on provisions of Act</b>	<b>23</b>
Part 1: Access to Digital Services	23
Section 1: Universal service broadband obligations	23
Section 2: General conditions: switching communications provider	23
Section 3: Automatic compensation for failure to meet performance standards	23
Part 2: Digital infrastructure	23
Section 4: The electronic communications code	23
Section 5: Power to make transitional provision in connection with the code	24
Section 6: Power to make consequential provision etc in connection with the code	24
Section 7: Application of the code: protection of the environment	24
Section 8: Regulation of dynamic spectrum access services	24
Section 9: Penalties for contravention of wireless telegraphy licences	25

*These Explanatory Notes relate to the Digital Economy Act 2017 (c. 30) which received Royal Assent on 27 April 2017*

Section 10: Fixed penalties under Wireless Telegraphy Act 2006	25
Section 11: Search warrants under Wireless Telegraphy Act 2006	26
Section 12: Disposal of seized property under Wireless Telegraphy Act 2006	26
Section 13: Time limits for prosecutions under Wireless Telegraphy Act 2006	26
<b>Part 3: Online pornography</b>	<b>26</b>
Section 14: Internet pornography: requirement to prevent access by persons under 18	26
Section 15: Meaning of “pornographic material”	26
Section 16: The age-verification regulator: designation and funding	26
Section 17: Parliamentary procedure for designation of age-verification regulator	26
Section 18: Regulator’s power to require information	27
Section 19: Enforcement by regulator of sections 14 and 18	27
Section 20: Financial penalties imposed by regulator	27
Section 21: Notice by regulator to payment service providers and ancillary service providers	27
Section 22: Meaning of “extreme pornographic material”	27
Section 23: Regulator’s power to require internet services providers to block access to material	27
Section 24: No power to give notice under section 23 (1) where detrimental to national security etc	27
Section 25: Guidance to be published by regulator	27
Section 26: Exercise of functions by the regulator	28
Section 27: Guidance by Secretary of State to regulator	28
Section 28: Requirements for notices given by regulator under this Part	28
Section 29: Report on this Part	28
Section 30: Interpretation and general provisions relating to this Part	28
<b>Part 4: Intellectual property</b>	<b>28</b>
Section 31: Lending of e-books by public libraries	28
Section 32: Offences: infringing copyright online and making available right	29
Section 33: Registered designs: infringement: marking product with Internet link	29
Section 34: Copyright etc. where broadcast retransmitted by cable	29
<b>Part 5: Digital Government</b>	<b>29</b>
<b>Chapter 1: Public Service Delivery</b>	<b>29</b>
Section 35: Disclosure of information to improve public service delivery	29
Section 36: Disclosure of information to gas and electricity suppliers etc	30
Section 37: Disclosure of information by gas and electricity suppliers etc	30
Section 38: Disclosure of information to water and sewerage undertakers etc	30
Section 39: Disclosure of information by water and sewerage undertakers etc	31
Section 40: Further provisions about disclosures under any of sections 35 to 39	31
Section 41: Confidentiality of personal information	32
Section 42: Information disclosed by the Revenue and Customs	32
Section 43: Code of practice	32
Section 44: Regulations under this Chapter	32
Section 45: Interpretation of this Chapter etc	33
<b>Chapter 2: Civil Registration</b>	<b>33</b>
Section 46: Disclosure of information by civil registration officials	33
Section 47: Consequential provision	34
<b>Chapter 3: Debt owed to the public sector</b>	<b>34</b>
Section 48: Disclosure of information to reduce debt owed to the public sector	34
Section 49: Further provisions about power in section 48	35
Section 50: Confidentiality of personal information	35
Section 51: Information disclosed by the Revenue and Customs	36
Section 52: Code of practice	36
Section 53: Duty to review operation of Chapter	36
Section 54: Regulations under this Chapter	36
Section 55: Interpretation of Chapter	37
<b>Chapter 4: Fraud against the public sector</b>	<b>37</b>

*These Explanatory Notes relate to the Digital Economy Act 2017 (c. 30) which received Royal Assent on 27 April 2017*

Section 56: Disclosure of information to combat fraud against the public sector	37
Section 57: Further provisions about power in section 56	38
Section 58: Confidentiality of personal information	38
Section 59: Information disclosed by the Revenue and Customs	38
Section 60: Code of practice	39
Section 61: Duty to review operation of Chapter	39
Section 62: Regulations under this Chapter	39
Section 63: Interpretation of Chapter	40
<b>Chapter 5: Sharing for research purposes</b>	<b>40</b>
Section 64: Disclosure of information for research purposes	40
Section 65: Provisions supplementary to section 64	41
Section 66: Bar on further disclosure of personal information	41
Section 67: Information disclosed by the Revenue and Customs	42
Section 68: Information disclosed by the Welsh Revenue Authority	43
Section 69: Information disclosed by Revenue Scotland	43
Section 70: Code of practice	43
Section 71: Accreditation for the purposes of this Chapter	44
Section 72: Delegation of functions of Statistics Board	44
Section 73: Interpretation of this Chapter	44
<b>Chapter 6: Disclosure by Revenue Authorities</b>	<b>45</b>
Section 74: Disclosure of non-identifying information by the Revenue and Customs	45
Section 75: Disclosure of non-identifying information by the Welsh Revenue Authority	45
Section 76: Disclosure of non-identifying information by Revenue Scotland	45
Section 77: Disclosure of employer reference information by the Revenue and Customs	45
<b>Chapter 7: Statistics</b>	<b>45</b>
Section 78: Disclosure of information by the Revenue and Customs to the Statistics Board	45
Section 79: Disclosure of information by public authorities to the Statistics Board	46
Section 80: Access to information by Statistics Board	46
Section 81: Disclosure by the Statistics Board to devolved administrations	48
<b>Part 6: Miscellaneous</b>	<b>49</b>
Section 82: OFCOM reports on infrastructure etc	49
Section 83: Comparative overviews of quality and prices	49
Section 84: Conditions about allocation of telephone numbers	50
Section 85: Provision of information to OFCOM	50
Section 86: Information required from communications providers	50
Section 87: Appeals from decisions of OFCOM and others: standard of review	51
Section 88: Functions of OFCOM in relation to the BBC	52
Section 89: TV licence fee concessions by reference to age	52
Section 90: Provision of children's programmes	52
Section 91: Suspension of radio licences for inciting crime or disorder	53
Section 92: Digital additional services: seriously harmful extrinsic material	53
Section 93: On-demand programme services: accessibility for people with disabilities	53
Section 94: On-demand programme services: specially restricted material	54
Section 95: Electronic programme guides and public service channels	54
Section 96: Direct marketing code	54
Section 97: Televising events of national interest: power to amend qualifying conditions	54
Section 98: Strategic priorities and provision of information	55
Section 99: OFCOM and Northern Ireland	55
Section 100: Retention by OFCOM of amounts paid under Wireless Telegraphy Act 2006	56
Section 101: International recognition of satellite frequency assignments: power of OFOM to charge fees	56
Section 102: Billing limits for mobile phones	56
Section 103: Code of practice for providers of online social media platforms	56
Section 104: Internet filters	56
Section 105: Secondary ticketing: duty to provide information about tickets	57

*These Explanatory Notes relate to the Digital Economy Act 2017 (c. 30) which received Royal Assent on 27 April 2017*

Section 106: Power to create offence of breaching limits on internet and other ticket sales	57
Section 107: Prevention or restriction on use of communication devices for drug dealing	57
Section 108: Regulations about charges payable to the Information Commissioner	57
Section 109: Functions relating to regulations under section 108	57
Section 110: Supplementary provision relating to section 108	57
Section 111: Amendments relating to section 108	58
Section 112: Power to apply settlement finality regime to payment institutions	58
Section 113: Bank of England oversight of payment systems	58
Section 114: Qualification in information technology: payment of tuition fees	58
Section 115: Guarantee of pension liabilities under Telecommunications Act 1984	58
Section 116: Regulations under section 115	58
<b>Part 7: General</b>	<b>59</b>
Section 117: Financial Provisions	59
Section 118: Commencement	59
Section 119: Extent	59
Section 120: Short title	59
<b>Schedule 1: The electronic communications code</b>	<b>59</b>
Part 1: Key Concepts	60
Part 2: Conferral of code rights and their exercise	60
Part 3: Assignment of code rights, and upgrading and sharing of apparatus	61
Part 4: Power of court to impose agreement	62
Part 5: Termination and modification of agreements	63
Part 6: Rights to require removal of electronic communications apparatus	64
Part 7: Conferral of transport land rights and their exercise	65
Part 8: Conferral of street work rights and their exercise	66
Part 9: Conferral of tidal water rights and their exercise	67
Part 10: Undertaker's works affecting electronic communications apparatus	67
Part 11: Overhead apparatus	68
Part 12: Rights to object to certain apparatus	68
Part 13: Rights to lop trees	70
Part 14: Compensation under the code	70
Part 15: Notices under the code	70
Part 16: Enforcement and dispute resolution	71
Part 17: Supplementary provisions	72
Schedule 2: The electronic communications code: transitional provision	73
Schedule 3: The electronic communications code: consequential amendments	75
Schedule 4: Public service delivery: specified persons for the purposes of section 35	75
Schedule 5: Public service delivery: specified persons for the purposes of sections 36 and 37	76
Schedule 6: Public service delivery: specified persons for the purposes of sections 38 and 39	76
Schedule 7: Specified persons for the purposes of the debt provisions	76
Schedule 8: Specified persons for the purposes of the fraud provisions	76
Schedule 9: Bank of England oversight of payment systems	76

*These Explanatory Notes relate to the Digital Economy Act 2017 (c. 30) which received Royal Assent on 27 April 2017*

<b>Commencement</b>	<b>77</b>
<b>Financial implications of the Act</b>	<b>77</b>
<b>Related documents</b>	<b>78</b>
<b>Annex A - Territorial extent and application in the United Kingdom</b>	<b>80</b>
<b>Annex B - Hansard References</b>	<b>81</b>
<b>Annex C - Progress of Bill Table</b>	<b>82</b>
<b>Annex D – Glossary</b>	<b>86</b>

## Overview of the Act

- 1 This Act implements a number of policies outlined in the 2015 Conservative Party Manifesto. The Act contains measures related to providing a broadband universal service for the United Kingdom, granting additional powers to Ofcom in respect of information provision, consumer switching and automatic compensation in relation to communication matters, a new Electronic Communications Code and other communications infrastructure matters, introducing better controls on online pornography and protecting citizens from nuisance calls, digital intellectual property, powers to share data between public authorities and some measures relating to the BBC.
- 2 The Act aims to enable access to fast digital communication services for citizens and businesses, to enable investment in digital communications infrastructure, to shape the emerging digital world for the benefit of children, consumers and businesses, and to support the digital transformation of government, enabling the delivery of better public services, world leading research and better statistics.

## Policy background

### Access to digital services

- 3 The 2015 Conservative Party Manifesto committed to roll out universal broadband to ensure everyone is part of the digital economy. Improved connectivity is essential for any ambitious nation, driving economic growth, quality of life, education, and engagement with public services. The January 2014 [UK Broadband Impact Study](#) further sets out the benefits of fast broadband.
- 4 “Superfast” broadband is a term used to describe broadband capable of delivering download speeds of at least 24 Mbps, which cannot be delivered through previous generation broadband technology. A range of technologies can deliver superfast broadband. The United Kingdom’s superfast broadband networks are largely provided through Virgin Media’s cable network and through BT Openreach’s “Fibre to the Cabinet” (“FTTC”) solutions. FTTC is currently the main technology being used to extend superfast broadband coverage through publicly-funded projects but other technologies including “Fibre to the Premises” (“FTTP”), wireless, and satellite also have roles to play. In 2013 the government set an ambition that, by the end of 2017, 95 per cent of premises would be able to connect to superfast broadband. To ensure that coverage extends to areas where it would not be commercially viable for the private sector, the government, Local Authorities and devolved administrations are investing nearly £1.7 billion in improving broadband. There are also a number of projects trialling technologies to extend coverage to the final five per cent and in May 2016 it was announced that BT had confirmed more than £200 million would be available for reinvestment, because its contracts with government require it to return money to local authorities once certain take-up thresholds have been reached.
- 5 As the world goes increasingly online, those without internet access risk social and economic exclusion. The government therefore wanted to ensure that, where superfast broadband remains unavailable, a good quality broadband service is nonetheless available. In December 2015 the government launched a scheme offering a subsidised satellite broadband connection (including the option of superfast speeds) to homes and businesses unable to obtain an affordable broadband service of at least 2 Mbps. This scheme formed part of the government’s commitment to make sure every home and business in the United Kingdom could access speeds of at least 2 Mbps by the end of 2015. This commitment is termed the “Universal Service Commitment” and currently acts as a non-statutory safety net.
- 6 In November 2015 the then Prime Minister announced that government was planning to create a broadband Universal Service Obligation (“USO”) with the ambition to give people the legal right

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to request a broadband connection with speeds of 10 Mbps by the end of the Parliament. Unlike the non-statutory Universal Service Commitment, a broadband USO would be a legal right to request a connection, similar to the way the existing USO operates to request a telephone line or equivalent arrangements for utilities. On 23 March 2016 the government published [A new broadband Universal Service Obligation](#), consulting on the proposal. On 17 May 2016 the government published its response to the consultation confirming plans to legislate. On 11 October 2016 the government published a [statement of intent](#) setting out the principles that would guide the design of the broadband USO.

- 7 The government expects the broadband USO to work in a similar way to the telephony USO that is enabled by section 65 of the Communications Act 2003 (“the 2003 Act”) and implemented through the Electronic Communications (Universal Service) Order 2003 (SI 2003/1904). A provider or providers are designated to provide the service. In the case of BT, who is a designated provider under the telephony USO, a telephone connection is provided on request unless the cost of installing the connection exceeds £3,400 in which case the customer has the option of paying any additional costs. The government commissioned Ofcom to provide technical analysis and recommendations on the design of the broadband USO and on 7 April 2016 Ofcom published [Designing the broadband universal service obligation](#), inviting views from industry and others on how the detailed operation of the broadband USO would work. On 16 August 2016 Ofcom published a [summary of responses](#) and on 16 December 2016 they published their advice to government, [Achieving decent broadband connectivity for everyone](#). This Act amends section 65 of the 2003 Act to provide adequate *vires* for a broadband USO to be introduced following consultation.
- 8 In addition to ensuring the availability of broadband connectivity, the government believes that consumers need to be well informed about services available to them, be able to easily switch provider and be compensated if things go wrong. Ofcom also shares this belief and set out a similar position in their recent strategic review of digital communications, [Making communications work for everyone](#), published on 25 February 2016.
- 9 The government believes that consumers should be able to more easily switch communications provider. In 2014 just 6 per cent of consumers switched their broadband or fixed line telephone provider, half the rate of switching of gas or electricity providers. For pay-TV the switching rate was just 2%. Since June 2015 Ofcom has successfully implemented gaining provider-led switching across the Openreach network. This means that customers wishing to change their fixed voice and/or broadband service provider only need to contact their new provider, and no longer need to contact their existing provider to obtain an authorisation code that they must then give their new provider. The government supports this model and on 25 May 2016 published [Switching Principles Action Plan](#) setting out how the government wishes to ensure switching continues to be made simpler.
- 10 Ofcom has powers to require communications providers to adopt rules on switching under section 51 of the 2003 Act. The government is keen to see an extension of the 2015 switching reforms to the Openreach network extended to other electronic communication services, especially as many consumers now buy services in a bundle including mobile services and pay-TV. With the aim of ensuring that Ofcom is able to achieve these reforms in a timely manner, the Act clarifies that section 51 may be used to require communication providers to comply with switching conditions.
- 11 Electronic communications, and in particular broadband, are increasingly essential services like utilities, without which it is difficult to operate. Delays in connection and re-connection can be inconvenient and unless the consumer actively complains there is little incentive for the provider to improve quality of service. Consumers who suffer a power cut are protected by [Ofgem’s Quality of Service Guaranteed Standards](#), which are service levels that should be met by each

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distribution company. If they fail to meet the level of service required, then customers may be entitled to a payment. The government wishes to see a similar scheme set up for those who have their communication services disrupted. The Act clarifies that Ofcom is equipped with powers to achieve this.

## Digital infrastructure

- 12 The electronic communications code (“the code”) enables electronic communications network providers to install and maintain electronic communications networks by giving network operators certain rights. Under the code, operators have rights to install and keep electronic communications apparatus on land. Generally, the code requires that operators secure the agreement of the land owner before installing apparatus, but also provides that when permission is not given by the land owner, an operator can apply to the County Court or Sheriff Court in Scotland for permission. The previous code was found in the Telecommunications Act 1984, pre-dating the introduction of mobile networks in the United Kingdom and was widely considered to be out of date and in need of reform.
- 13 The government asked the Law Commission to review the code in 2012. The Law Commission published a detailed [report](#) on 28 February 2013, including detailed recommendations for reform of the code, but also advised government to carry out further consultation and research in some areas before proceeding.
- 14 Following formal consultation in February 2015 and further analysis work, on 17 May 2016 the government published [A New Electronic Communications Code](#), setting out plans to legislate. The Act reforms the underpinning rights that communications providers have to acquire land - moving to a “no scheme” valuation regime that ensures property owners will be fairly compensated for use of their land, but restricts their ability to profit from the public need for communications infrastructure. In this respect, it will put the telecommunications sector on a similar footing to utilities like electricity and water, and reduce the cost of providing infrastructure.
- 15 The new code also provides new rights to upgrade and share infrastructure. The government intends infrastructure sharing to assist future deployment of technology such as 5G. Administrative changes to court processes are intended to allow for faster dispute resolution, making sure that disputes do not delay construction and maintenance of communications infrastructure.
- 16 The Act also enables an existing temporary relaxation of the rules for installing communications apparatus to be made permanent in order to further facilitate broadband infrastructure rollout. Communications network providers with rights under the electronic communications code (“code operators”) are permitted to construct infrastructure on public land and take rights over private land. In addition to these rights, code operators are subject to conditions and restrictions relating to the installation, retention and use of electronic communications apparatus as set out in the Electronic Communications Code (Conditions and Restrictions) Regulations 2003 (SI 2003/2553) made under section 109 of the 2003 Act (“the 2003 regulations”). Section 109 was amended by the Growth and Infrastructure Act 2013, subject to a sunset provision, enabling changes to be made to these regulations relating to the installation of broadband cabinets and poles, relaxing the notification requirements placed on code operators, as well as the general requirement placed on them to bury new overhead lines underground. Complementary changes were made to planning legislation that enabled the installation of the infrastructure. The Act allows the sunset provision in the 2003 regulations to be removed.
- 17 In 2013 the government consulted on the proposed planning changes. In response to concerns expressed in the consultation that the removal of prior approval requirements might lead to the insensitive siting of cabinets and poles, it was agreed that communications providers and

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planning authorities would develop and commit to a [code of practice](#) on the siting and appearance of apparatus to safeguard against this. On 5 March 2015 the Minister for the Digital Economy made a written statement announcing the outcome of a review of the operation of the code of practice. The review was conducted by a working group comprising representatives from a range of industry and sector organisations including the Planning Officers Society, English Heritage, the National Parks Authorities, BT, Virgin Media and the UK Competitive Telecommunications Association (UKCTA). The working group jointly agreed that overall the code appeared to be working well. A further review was conducted in 2016 and reached a similar conclusion. [An updated version of the code of practice](#) was published on 22 November 2016. The government believes that the planning changes have been proven to work well and that the removal of the sunset provision will support continued rollout of superfast broadband and future technologies.

- 18 The Act also contains a number of measures relating to spectrum and wireless telegraphy licences. Spectrum is the term generally given to the electromagnetic frequency range from 3kHz to 300GHz, considered the part of the electromagnetic spectrum that can be used for wireless communication. The government considers that making better use of spectrum is essential to facilitate the development of the United Kingdom's digital communications infrastructure. Spectrum is national asset owned by the government, which is then licensed by Ofcom to a wide range of civil uses. Ofcom is responsible for managing and granting rights of use in relation to spectrum through duties and obligations under the 2003 Act and the Wireless Telegraphy Act 2006 ("the 2006 Act"). The Act implements a number of measures that were first announced in the 2013 strategy paper, [Connectivity, content and consumers: Britain's digital platform for growth](#).
- 19 White spaces are unused parts of allocated spectrum. These frequencies are not always used at a specific time or in a specific location. They are a technical consequence of the way spectrum bands are allocated, but they are also wasted space. The government is keen that better use is made of white space, and new technologies known as white space devices will share spectrum bands with existing users. This process is known as dynamic spectrum access and it enables white space devices, operating in frequency bands authorised by Ofcom, to connect to geolocation databases which identify when and where spectrum may be available for use. These databases are not regulated under existing legislation. The Act allows Ofcom to register and then regulate such database providers so that it is better placed to undertake its spectrum management duties and prevent interference and to help facilitate dynamic spectrum access.
- 20 Currently, where there is a contravention of a provision, term or limitation of a spectrum licence, Ofcom can revoke (or vary) the licence or prosecute. In limited circumstances, Ofcom may impose a financial penalty. The government's view is that the current enforcement powers available to Ofcom in relation to such a contravention are not necessarily proportionate or sufficiently flexible in all cases. For example, spectrum licences granted to mobile network operators contain requirements to achieve certain rates of coverage, such as the term in the 900 MHz and 1800 MHz licences requiring 90% coverage of the United Kingdom's landmass by the end of 2017. If these requirements are not met Ofcom's only available sanction is to revoke the licence. The Act provides Ofcom with powers to issue financial penalties if matters such as coverage requirements are not satisfied.

## Online pornography

- 21 The 2015 Conservative Party Manifesto committed the government to measures to restrict access to harmful sexualised content online, by requiring age verification for access to all sites containing pornographic material. In February 2016 the government published [Child Safety Online: Age Verification for Pornography](#), consulting on how to implement the commitment. The government believes that commercial providers of pornography (material designed primarily to cause sexual arousal and stimulation), should have age verification controls in place where it is accessed online

in the United Kingdom. The Act introduces such a requirement and gives the Secretary of State the power to designate a regulator. The Act sets out the functions and powers of the regulator. These include powers to notify payment providers such as credit card companies of non-compliant sites to enable them to consider whether to withdraw services. Similarly, non-compliant sites may be notified to ancillary service providers. In addition, the regulator can require internet service providers to take steps to prevent access to offending material.

## Intellectual property

- 22 The 2015 Conservative Party Manifesto committed to protect intellectual property and to make Britain the best place in Europe to innovate, patent new ideas and set up and expand a business. The Act contains a number of intellectual property measures to support creative industries.
- 23 The Public Lending Right Act 1979 provides a right for authors, known as the “public lending right”, to receive payments from a central fund in respect of such of their books as are lent out to the public by local library authorities in the United Kingdom. The Digital Economy Act 2010 extended the public lending right to e-books, but only where they are downloaded on the library premises. The 2015 Conservative Party Manifesto committed the government to assist public libraries in embracing the digital age by working with them to ensure remote access to e-books, rather than just access on the library premises. The Act updates the public lending right to enable this.
- 24 The main ‘physical’ criminal copyright offences in the Copyright, Designs and Patents Act 1988 (“the 1988 Act”) carry a ten-year maximum custodial sentence but the provisions governing online infringement, introduced using secondary legislation in 2003 in the course of implementing the Information Society Directive 2001/29/EC, provide for a maximum two-year sentence. In March 2015 the government published [Penalty Fair?](#), a study of criminal sanctions for copyright infringement available under the 1988 Act. This recommended that the offence for online copyrights infringement was increased to achieve parity with physical copyright infringement. In July 2015 the government published a [consultation on changes to the penalties for online copyright infringement](#). On 21 April 2016 the government published a response to the consultation announcing its intention to legislate to increase the maximum sentence for online copyright infringement to ten years, achieving parity with the physical offence, and also to re-draft the offence to address wider concerns about the offence provisions themselves. The Act implements the necessary changes.
- 25 Registered design owners can stamp or label their products with the word ‘registered’ and the relevant registered design numbers in order to ensure that anyone who infringes the design cannot later claim they were unaware of the registration, and so be excused from paying damages to the owner. The optional marking of a product in this way to make others aware of the intellectual property protection afforded to the product is sometimes called providing “constructive notice”. Multiple rights may subsist in a single product, and these may lapse or be revoked at different points in time. As it is an offence to represent falsely that a design in any product is a registered design, products had to be re-marked when the details changed, which is costly, both in terms of time and money. The Act amends the Registered Designs Act 1949 to provide design owners with the option of marking a product with the address of a website which links the product with the relevant registered design numbers as an alternative way of providing constructive notice.
- 26 Section 73 of the 1988 Act exempts cable platforms, such as Virgin Media, from paying copyright licence fees to retransmit the core public service broadcaster channels, such as ITV1. The provision exists to support the specific policy objective of supporting the development of cable television infrastructure in the 1980s and 1990s. In March 2015 the government published: [The balance of payments between television platforms and public service broadcasters: Options for deregulation](#),

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consulting on, amongst other things, repealing section 73. It was proposed that the measure was no longer relevant with the development of multi-channel and digital TV on satellite, terrestrial and increasingly internet based platforms. The Act repeals section 73. In the government's view, with over 4.5 million cable subscribers across the country, many of whom use the service for far more than just television, the objective of developing cable infrastructure is now met through other legislative measures such as reform of the electronic communications code – as above. Following consultation on [transitional arrangements following the repeal of section 73](#), on 10 February 2017 the government concluded that section 73 can be repealed without a transition period.

## Digital Government

- 27 In November 2012 the previous government published the [Government Digital Strategy](#) setting out the objective of delivering government services as “digital by default”. The government's view was that the public increasingly expects to access services quickly and conveniently, at times and in ways that suit them, often online. The strategy identified that, up to that point, the government had been hindered in delivering better services because of a reliance on digitised versions of pre-digital business processes, layered on top of legacy IT systems, some of which were over 30 years old. It was stated that outdated back-end systems prevented effective data sharing.
- 28 In 2013 the government started on a two-year programme of open policymaking to find a way of overcoming the legal barriers to the better delivery of public services, better research and better statistics ([www.datasharing.org.uk](http://www.datasharing.org.uk)). In February 2016 this process culminated in the government's publication of [Better Use of Data in Government](#), consulting on proposed reforms, ahead of the [Government Transformation Strategy](#), published in February 2017, which set out in more detail how the government intended to develop government services in response to the “internet age” and make government a digital organisation. The Strategy's objectives include making better use of data within government while taking security into full account.

## Public Service Delivery

- 29 For a public authority to access information held in another part of the public sector it requires appropriate legal powers, which are often provided by express legal gateways to disclose information. The government believed that the previous set of data-sharing powers for public service delivery was complex and inconsistent across public services and organisations. This lack of a clear framework of rules risked hindering the ability of public authorities to offer citizens timely and appropriate interventions and to respond quickly to a changing social and policy environment.
- 30 The Act provides a gateway to enable specified persons, listed in Schedules, to share information for tightly constrained objectives. Those objectives must be set out in regulations, must be for the improvement or targeting of the provision of a public service or the provision of a benefit to individuals or households, and must also have as their purpose the improvement of the well-being of individuals or households. Objectives must support the delivery of a specified public authority's functions, which includes the administration, monitoring or enforcement of the delivery of the function. To use the gateway, the proposed sharing of information must be for the purpose of one of the specified objectives, and those undertaking the share must be specified persons in relation to that objective.
- 31 The public service delivery chapter also contains powers to share information for the purpose of assisting people living in fuel poverty and water poverty.

## Civil registration

- 32 The Act provides a gateway in England and Wales to enable civil registration information to be

shared in certain circumstances. Most transactions to prove eligibility for public services still rely on individuals providing paper birth, marriage, civil partnership and death certificates as evidence. The Act will allow for electronic verification between public authorities and the General Register Office, removing reliance on paper certificates. The government's view is that this will also reduce the risk of fraud in relation to forged or altered certificates. Further, the Act will enable access to civil registration data on births, deaths and marriages, for example to use that information to prevent public authorities from inadvertently sending letters to people who are deceased.

## Debt and Fraud

- 33 The government is seeking to help manage debts owed to the public sector more effectively. The Act creates a new gateway enabling information to be shared between specified persons, listed in a Schedule on the face of the Act, in relation to debt owed to public authorities or the Crown. This is with a view to improving efficiency in dealing with debt owed to the public sector, and using effective data-sharing to get a more informed view of a customer's individual circumstances and their ability to pay. Each proposed data-sharing arrangement under this power will be subject to a pilot process which will be set out in a statutory code of practice to measure the effectiveness of the information-sharing.
- 34 Government agencies work to detect and prevent fraudulent activity against the public sector. Similar to the debt power, the Act enables bodies listed in a Schedule on the face of the Act to share information with a view to taking action in respect of fraud against a public authority. These data-sharing arrangements are also subject to a pilot process, which will allow new methods of information-sharing to be trialled and measured for effectiveness. It is intended that more effective data-sharing in this area will make it easier, for example, to spot conflicting information across different public services that could suggest patterns of fraud for further investigation by officials.

## Revenue Authorities

- 35 The Act provides a general power for Her Majesty's Revenue and Customs, the Welsh Revenue Authority and Revenue Scotland to disclose non-identifying information in the public interest, including for purposes that are not related to the specific functions of those revenue authorities. The Revenue and Customs is also given powers to share employer reference information with the Employers' Liability Tracing Office, an independent body which helps people who have suffered personal injury as a result of their employment to trace liability policies.

## Research and Statistics

- 36 Official statistics produced by the executive arm of the United Kingdom Statistics Authority ("UKSA"), the Office for National Statistics ("ONS"), are intended to support the development of economic and public policy and inform decision-makers. The Act provides the Statistics Board access to administrative data from across government and businesses. The government's view is that this will provide more accurate, frequent and timely statistics, instead of relying on surveys.
- 37 The Act also provides for the use of de-identified (de-personalised) data to support accredited researchers to access and link data in secure facilities for the purpose of carrying out research for public benefit.

## Data Protection

- 38 The Digital Government measures in the Act operate within the framework of the Data Protection Act 1998 and the Human Rights Act 1998, and all processing of information under these powers must be carried out in compliance with that legislation. The Part 5 powers of the present Act explicitly state that information cannot be disclosed if to do so would contravene the Data Protection Act 1998, which provides a framework of principle-based safeguards on processing



personal data, including requirements for fair and lawful processing and for data minimisation.

- 39 In particular, the provisions in and the codes of practice produced under the Act will be subject to the “Data Protection Principles” set out in Schedule 1 to the Data Protection Act 1998 which require that use of personal data must be proportionate (i.e. that only the minimum amount of data required to fulfil a given objective is to be shared). The powers are limited to ensure that information can only be shared for the specific purposes set out in the Act.
- 40 The General Data Protection Regulation or “GDPR” (Regulation (EU) 2016/679) was adopted on 27 April 2016 and must take effect by 25 May 2018. In the government’s view the measures in Part 5 of the Act are also consistent with the GDPR.
- 41 Information cannot be disclosed under Part 5 if to do so would be prohibited by any of Parts 1 to 7 or Chapter 1 of Part 9 of the Investigatory Powers Act 2016 (or, until those provisions are fully in force, is prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000).
- 42 The information-sharing powers in Part 5 are supplemented by statutory codes of practice or statements of principles, each of which is required to be consistent with the Information Commissioner’s [Data sharing code of practice](#) which is issued under section 52B of the Data Protection Act 1998. Persons who disclose information under Part 5 are also explicitly required to have regard, in so far as they apply to the information in question, to certain codes of practice issued by the Information Commissioner under section 51(3) of the Data Protection Act 1998.

## Miscellaneous

### Ofcom reports and information

- 43 Ofcom already has several powers to require communication providers to provide information for various purposes, in particular the power in section 135 of the 2003 Act that allows it to collect information for the purpose of fulfilling its regulatory function in respect of electronic communication services. The powers are limited and in particular Ofcom can only require communications providers to make data publicly available themselves for specific purposes such as consumer protection, but not to promote competition. Ofcom can publish information on its own website but it is limited in its ability to release information directly to third parties, such as price comparison websites. Further, a provider is not obliged to give Ofcom information that it does not presently have, either because it has not collected the information, or having collected it, has not retained it. The Act provides Ofcom with a broader information collection power that the government envisages could be used to obtain address-level data on broadband line speeds, in formats suitable for third party intermediaries to use to present comparisons; and for Ofcom to use for monitoring speed prediction accuracy. This could address one of the key problems consumers face: that providers only advertise estimated broadband speeds within wide ranges, often only at postcode level and the speed can vary significantly where premises are further down the road from the nearest curbside cabinet.
- 44 In addition to this new information gathering power, the Act also amends some of Ofcom’s existing powers to collect information. Ofcom’s general information gathering power in section 135 of the 2003 Act will be widened to enable them to access customer experience data held by communications providers to ensure visibility of metrics such as the number of complaints received and the time taken to be resolved. Ofcom’s power to publish reports on the state of the country’s communications infrastructure every three years under section 134A, as inserted by the Digital Economy Act 2010, will be added to so that Ofcom can report more frequently where necessary in fast developing areas such as 4G coverage where the government has a target of achieving 90% coverage by the end of 2017. The Act also gives Ofcom the power to publish comparative data that it already collected under section 136, and which the government believes could aid the consumer in determining which provider is offering a higher quality product.

*These Explanatory Notes relate to the Digital Economy Act 2017 (c. 30) which received Royal Assent on 27 April 2017*

## Ofcom appeals

- 45 Sections 192 to 196 of the 2003 Act set out the rights of appeal against the majority of Ofcom's decisions regarding the regulation of electronic communications networks, services and spectrum. These provisions also apply to appeals against Ofcom's decisions in respect of radio and television regulation that are made under powers in the Broadcasting Act 1990, the Broadcasting Act 1996 and Part 3 of the 2003 Act for a competition purpose. These appeals are heard by the Competition Appeal Tribunal ("the CAT"), which the 2003 Act requires to carry out a review of Ofcom's decisions "on the merits". In the case of appeals against price control decisions, the CAT must refer the case to the Competition and Markets Authority ("the CMA") and then decide the matter in accordance with the determination of the CMA.
- 46 The government believes that an "on the merits" standard of review is overly burdensome. A 2013 analysis by the Department for Business, Innovation & Skills found that the average length of an appeal to the CAT reviewed "on the merits" was 11 months. The high costs of continuing litigation and subsequent delays in the regulatory regime can hinder effective regulation that must be able to keep pace with technological advances in the sector. The CAT itself has stressed "an appeal before the Tribunal is not a *de novo* hearing" (BT v Ofcom [2015] CAT 6). The government wanted to ensure that this is clear in legislation. A judicial review standard will ensure that appellants can still challenge Ofcom's decisions, but litigants will no longer be able to seek complete reappraisals of Ofcom's fair decision making.
- 47 Regulation of the telecommunications sector in the United Kingdom must comply with the Framework Directive (2002/21/EC) for electronic communications. Article 4 of the Framework Directive requires Member States to provide a right of appeal for any user or network or service provider that is affected by a decision of the national regulatory authority to an appeal body. Member States must ensure that "*the merits of the case are duly taken into account and that there is an effective appeal mechanism*". The government's view is that a requirement for the CAT to decide appeals "on the merits" goes further than is required by Article 4, and that a judicial review standard of appeal is appropriate. The intensity of judicial review is flexible, dependent on the circumstances, and can therefore duly take into account the merits of the case as required by the Framework Directive.
- 48 There is precedent for regulatory appeals to be decided on a judicial review standard. Section 120 of the Enterprise Act 2002 provides a right of review to the CAT of certain decisions of Ofcom, the Secretary of State or the Competition and Markets Authority in relation to mergers. The CAT is required to determine the application by applying the same principles as would be applied by a court on an application for judicial review. Similarly section 57 of the Postal Services Act 2011 provides for an appeal against Ofcom decisions on a judicial review standard.
- 49 There have been three consultations on this issue since 2010. Most recently, in June 2013 the Department for Business, Innovation & Skills published a consultation entitled [Streamlining Regulatory and Competition Appeals](#), consulting on a range of reforms to the regulatory system, including the option of changing the basis of appeals under the 2003 Act to a judicial review standard. The Act implements this reform.

## Regulation and functions of the BBC

- 50 On 12 May 2016 the government published the white paper: [A BBC for the future: a broadcaster of distinction](#), in which it was announced that Ofcom would be appointed as the external independent regulator of the BBC, as recommended by the independent review by Sir David Clementi. The Act amends section 198 of the 2003 Act to broaden the ability of Ofcom to regulate the activities of the BBC, giving Ofcom expanded regulatory powers in relation to the BBC's activities. This is an enabling measure and the detail of what functions Ofcom will be required to carry out is set out in the BBC's Charter and Framework Agreement.

51 As part the summer 2015 [agreement](#) between the government and the BBC, the BBC agreed to cover the full costs of the so-called ‘over-75s TV licence concession’ and to take on policy responsibility for the concession from 2020. The Act transfers to the BBC the function of making provision for a concession by reference to age (for persons who are aged 65 or over). The Secretary of State will retain the power to make provision for all other concessions as set out in the 2003 Act.

### Ofcom powers relating to criminal content

52 The 2015 Conservative Party Manifesto committed to strengthening Ofcom’s role so that tough measures can be taken against channels that broadcast extremist content. Broadcasters must hold a licence from Ofcom to broadcast television or radio in the UK and Ofcom already has powers to set conditions on these licensees to keep seriously harmful content off air. This licence regime has developed over time and in response to technological developments. Different licence types apply depending on the way in which content is broadcast. The Act contains measures to ensure that Ofcom can enforce conditions on Digital Television Additional Service (“DTAS”) licences. DTAS licences include those given to channels that are only accessible to owners of “smart” televisions, which are capable of viewing channels that can only be received over internet-protocol.

53 The Act also amends Ofcom’s powers to suspend radio service licences for broadcasting content that incites crime and disorder. Ofcom possesses a power to immediately suspend the licence of a cable or satellite radio station that has broadcast incitements to crime or disorder. When it comes to an analogue or digital radio station, however, Ofcom first had to seek representations before a licence could be suspended, allowing repeat violations before enforcement could commence. The Act ensures that Ofcom always has the necessary powers to take swift action.

### On-demand programme services

54 Ofcom is the regulator of UK video-on- demand (“VoD”) services. VoD services include TV catch-up, online film services and those providing a library of archive content. Ofcom are required to encourage the providers of VoD services to ensure that their services are progressively made more accessible to people with disabilities affecting their sight or hearing or both. They do not, however, have the power to require compliance with particular accessibility requirements. This contrasts with Ofcom’s position in relation to linear television broadcasting, where Ofcom can require compliance with a Code of Practice setting out accessibility service requirements, including the meeting of specified targets, as conditions of broadcasting licences. The Act allows the Secretary of State to require providers of VoD services to provide designated levels of subtitling, signing and audio-description. In the government’s view this will improve accessibility to such services for people with disabilities affecting hearing and/or sight.

55 Ofcom also regulates editorial content on VoD services. Under Part 4A of the 2003 Act, VoD services must not contain any “specially restricted material” unless the material is made available in a manner which secures that persons under the age of 18 will not normally see or hear it. “Specially restricted material” specifically includes material that has been given an R18 certificate and material that it is reasonable to expect (if it were submitted) would be certified as R18. The age verification requirement in Part 3 of the 2003 Act also applies to R18 certificate material and equivalent material, but additionally it applies to 18 certificate material (and equivalent) produced solely or principally for the purposes of sexual arousal. To ensure better consistency between the two regulatory regimes, the Act amends Part 4A of the 2003 Act to ensure that age verification is also required by VoD services offering certificate 18 (and equivalent) pornography.

### Direct marketing code

56 The Act contains measures that the government believes will contribute to reducing the number of unwanted direct marketing telephone calls. The Information Commissioner’s [direct marketing guidance](#) sets out best practice to ensure that the law is complied with. The Act places this guidance on a statutory footing by requiring the Information Commissioner to issue a statutory



code of practice on direct marketing. It is the government's view that this will make it easier for the Information Commissioner to take enforcement action against those organisations in breach of the direct marketing rules under the Data Protection Act 1998 and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) ("PECR").

- 57 Direct marketing without consent from targeted consumers is an offence under PECR. Consent for direct marketing does not last indefinitely and in PECR consent is referred to as only being given 'for the time being'. The Information Commissioner's direct marketing guidance is that if an organisation is making contact by telephone, text or email for the first time it should not, in most circumstances, rely on any indirect (third party) consent given more than six months ago, even if the consent did clearly cover that organisation. The Commissioner frequently sees situations where third party consent is taken to last indefinitely and to apply to any number of different companies and products. Fines imposed may be challenged and where the quality of consent is a core issue, enforcement has proven difficult to sustain. The Act will aid enforcement of the regulations.

### Other provisions relating to Ofcom

- 58 In most regulated sectors the regulator is required to have regard to government priorities. For example, Part 5 of the Energy Act 2013 provides for the Secretary of State to set out the strategic priorities, and other main considerations, of the government in formulating its energy policy for Great Britain, and the particular outcomes to be achieved as a result of the implementation of that policy. Ofgem must have regard to the strategic priorities when carrying out regulatory functions; further, the Secretary of State and Ofgem must carry out their respective regulatory functions in the manner each consider is best calculated to further the delivery of the policy outcome. Section 2A of the Water Industry Act 1991 (as amended by section 24 of the Water Act 2014) allows the Secretary of State to publish a statement setting out strategic priorities and objectives for Ofwat in carrying out relevant functions relating wholly or mainly to England (section 2B makes equivalent provision for Wales). Ofwat must carry out those functions in accordance with any such statement. Telecommunications infrastructure is of vital importance to the UK's economy and radio spectrum is a limited resource subject to increasing demands from technologies dependent on mobile connectivity. It is the government's view that a strategic approach is needed to regulate these matters. The Act makes provision for Ofcom to have regard, when carrying out its functions relating to telecommunications, the management of radio spectrum and postal services, to a statement setting out the strategic priorities of the government.
- 59 The government believes that economic regulators should be independent from government and funded by industry. Ofcom is largely funded through fees from industry for regulating broadcasting, postal services and communications networks. Additionally Ofcom is funded by government to perform statutory duties that do not permit the raising of fees or charges from industry, such as its duty to tackle silent and abandoned calls. Ofcom is prohibited from charging fees to cover these costs. As referred to above, Ofcom is also tasked with managing and granting rights of use in relation to spectrum and levies fees and charges on those who use the radio spectrum under the 2006 Act. In 2014/15 there were 79,910 2006 Act licences in issue, covering a wide range of frequencies, technologies and methods of use. Ofcom collects the money raised from these licences and pays it to into the Consolidated Fund. The government returns approximately £50m of these receipts as grant in aid to Ofcom to fund its spectrum management and other activities. The Act allows Ofcom to cover all its non-fee raising activities from spectrum management receipts and then only return the net proceeds to government. This will not increase costs or fees (other than for satellite filings – see below) but will create an accounting mechanism that aims to allow Ofcom to be fully independent.
- 60 The Act enables Ofcom to charge for the satellite filings work it does in relation to obtaining or maintaining international recognition of assignments of radio frequencies to satellite stations

under the International Telecommunication Union's Radio Regulations. The International Telecommunication Union is the United Nations agency for information and communication technologies. Satellite filings facilitate equitable access to and rational use of the natural resources of the radio-frequency spectrum and the geostationary-satellite orbit. The International Telecommunication Union manage this through the maintenance of a Master International Frequency Register so that frequency assignments and any associated orbits obtain international recognition and there is less chance of interference. Ofcom's existing powers to charge fees do not currently cover satellite filings so they provide this service free of charge, with the cost of filings being covered by public money. The Act corrects this anomaly, allowing Ofcom to charge, as is already the case for regulators in many other countries who charge for providing this type of service.

- 61 The Scotland Act 2016 implemented the [Smith Commission Agreement](#), which was published in November 2014 having gained all-party agreement in Scotland. The Smith Commission Agreement provided that Scottish Ministers should have the power to appoint a member to the Ofcom Board, Ofcom should lay its annual report and accounts before the Scottish Parliament and submit reports to, and appear before, committees of the Scottish Parliament. Sections 65 and 66 of the Scotland Act 2016 have implemented this. The government has agreed with the Welsh Government and the Northern Ireland Executive to make equivalent provision for those jurisdictions. This Act makes provision for Northern Ireland. Section 68 of the Wales Act 2017 makes equivalent for provision for Wales.

### Secondary ticketing

- 62 The government recognises that the process for distributing and buying tickets can often be a cause for public frustration and concern. New rules regarding tickets offered for sale on the secondary ticketing market were introduced in the Consumer Rights Act 2015 ("the 2015 Act"). These came into force on 27 May 2015 and related mainly to the information that should be provided to purchasers using the secondary ticketing platforms.
- 63 The Act builds on the 2015 Act, introducing a new duty to require secondary ticketing sites and sellers to provide a unique ticket number where one has been assigned originally. The unique ticket number may be used to verify the validity of tickets with events organisers. The Act also provides the power to introduce a criminal offence in order to address the use of automated software to purchase tickets for a recreational, sporting or cultural event in excess of the maximum set by events organisers.

### Payment and securities settlement systems

- 64 The government is committed to creating a more competitive financial services sector. Greater competition in financial services creates better outcomes for consumers, lowering cost and broadening the range of services available. In June 2016 the government and the Bank of England [announced](#) further support for financial technology, in particular, widening access to central bank settlement accounts and to the UK's payment systems to non-bank payment service providers. Measures in the Act will allow HM Treasury to apply the existing Settlement Finality regime to non-bank payment service providers. This allows these providers to benefit from the preferential treatment concerning Settlement Finality (i.e. ensuring that transactions are settled without being unwound by creditors), in the event of a provider becoming insolvent while it has unsettled transactions in the system. Inclusion within the Settlement Finality regime is an access requirement of interbank payment systems.
- 65 HM Treasury has powers in the Banking Act 2009 to recognise payment systems for the purposes of regulatory oversight by the Bank of England. These existing powers only apply to systems involving banks and building societies. The Act allows HM Treasury to recognise non-interbank payment systems, so that all payment systems may be covered. This ensures that HM Treasury

and the Bank can respond in a timely manner to potential financial stability risks that could be created by a systemically important non-bank payment system.

## Qualifications in information technology

66 On 1 October 2016, the government [announced](#) plans to make training in basic digital skills free for adults lacking relevant qualifications. The government is under an existing duty to provide training in literacy and numeracy as found in section 88 and schedule 5 of the Apprenticeships, Skills, Children and Learning Act 2009 and implemented by the Adult Skills (Specified Qualifications) Regulations 2010 (S.I. 2010/733). The Act makes equivalent provision for digital skills. The government intends to consult on the level of qualification to which the new duty will apply.

## Guarantee of pension liabilities under Telecommunications Act 1984

67 The British Telecommunications Pension Scheme is a defined benefit private pension scheme. When British Telecom was privatised, the Telecommunications Act 1984 created a Crown guarantee for the BT Pension Scheme, covering the liabilities of BT plc to the Pension Scheme in the event that the company entered insolvent winding-up. The guarantee has never been called upon.

68 Openreach is the division of BT Group that develops and maintains the UK's main telecoms network used by other communications providers as well as BT's own retail business. On 29 November 2016, following consultation on proposals to address competition concerns, Ofcom published their [update on plans to reform Openreach](#), concluding that they were minded to order legal separation of Openreach from the rest of BT Plc unless a voluntary agreement could be reached. On 10 March 2017 Ofcom and BT agreed proposals on a voluntary separation of the Openreach business. The Act provides powers to maintain the coverage of the Crown guarantee for pension liabilities relating to members of the Pension Scheme who transfer employment from BT plc to the separated Openreach business.

## Legal background

69 In February 2002 the European Parliament and the Council of Ministers adopted four Directives, which set out a package of measures for a common regulatory framework for electronic communications networks and services. The Framework Directive (2002/21/EC) is the overarching Directive dealing with electronic communications. It sets out principles that apply across all the specific Directives. The Access Directive (2002/19/EC) regulates access to, and interconnection of, electronic communications networks and associated facilities. The Authorisation Directive (2002/20/EC) deals with requirements electronic communication networks and services must satisfy to operate legally in a Member State. The Universal Service Directive (2002/22/EC) sets out the universal service obligations Member States are required to ensure are available and specifies particular roles/functions for the Member State and the national regulator. These Directives were given effect in the United Kingdom through the 2003 Act.

70 Ofcom is the communications regulator in the United Kingdom. Ofcom is established under the Office of Communications Act 2002. Ofcom's powers are found in the 2003 Act and the 2006 Act as well as the Broadcasting Act 1990 and the Broadcasting Act 1996.

71 The Act amends Ofcom's powers to set general conditions on communication providers, to report and collect information and to regulate the BBC. All of these powers relate to the 2003 Act. The Act also amends Ofcom's powers to manage electromagnetic spectrum and these powers relate to the 2006 Act.

72 The electronic communications code was previously part of the Telecommunications Act 1984.

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This Act replaces it with a new code, which is inserted into the 2003 Act (as Schedule 3A to that Act).

- 73 Currently the legal framework in respect of data sharing is found across a complex range of common law and statutory provisions, conferring powers to share information often in very specific circumstances and subject to a range of different conditions and restrictions. Part 5 of the Act provides additional statutory powers in a framework which enable data to be shared for particular public interest purposes, subject to consistent safeguards and new offences that help protect personal information.
- 74 The new powers to disclose information to gas and electricity suppliers relate to fuel poverty. The Warm Homes and Energy Conservation Act 2000 sets out the legislative framework for addressing fuel poverty in England and Wales. For the purposes of that Act, a person is to be regarded as "living in fuel poverty" if they are a member of a household living on a lower income in a home which cannot be kept warm at reasonable cost. The Act also introduces similar powers to disclose information to water and sewerage undertakers for the purpose of addressing water poverty.
- 75 The Act inserts a new data sharing power, enabling disclosure of civil registration data to public authorities, into the Registration Service Act 1953 and amends that Act to provide that a charge for disclosure of information under the new power may be made. The Registration Service Act 1953 sets out the structure of the registration service, establishes the office of the Registrar General and provides for functions relating to all registration areas. Responsibility for delivery of civil registration services in England and Wales is split between central and local government. The other principal Acts governing registration are the Marriage Act 1949, Births and Deaths Registration Act 1953, Civil Partnership Act 2004 and Marriage (Same Sex Couples) Act 2013 which contain detailed provision in relation to each of the relevant areas.
- 76 The new powers to disclose information to the Statistics Board amend the Statistics and Registration Service Act 2007, which established the Board. The Act will repeal the disclosure powers currently set out in sections 47, 48 and 49 of that Act.
- 77 The Data Protection Act 1998 regulates the processing of personal data, including data used by direct marketing businesses. It was enacted principally for the purpose of transposing the Data Protection Directive (95/46/EC). The PECR implement the E-privacy Directive (2002/58/EC). The PECR provide detailed privacy rules in relation to the developing area of electronic communications.

## Territorial extent and application

- 78 Schedule 1 of the Act concerns the electronic communications code and extends to the whole of the United Kingdom. Telecommunications is a reserved matter. The code provides for disputes to be settled by the Sheriff Court in Scotland and the County Court in Northern Ireland but also provides powers for the Secretary of State to in future confer jurisdiction on the Lands Tribunal for Scotland and the Lands Tribunal in Northern Ireland respectively. The Scottish Ministers have the power to make rules and fees in relation to the Lands Tribunal for Scotland so far as exercisable within devolved competence. In the event of conferral of jurisdiction on the Lands Tribunal for Scotland, new rules and fees will be required in respect of a reserved matter: the code. The Act specifically provides Scottish Ministers with additional powers to make tribunal fees and rules in relation to the code. The Act does not provide equivalent powers for Northern Ireland because adequate powers already exist on the statute book.
- 79 Section 31 relates to an extension of the Public Lending Right to include remote loans of e-books and e-audio-books by public libraries. The Public Lending Right Act 1979 (“the 1979 Act”) extends to whole of the United Kingdom and the government would like the extension of the Public Lending Right to apply throughout the UK. The subject matter of the 1979 Act is not devolved in respect of Scotland and Wales but is transferred to the Northern Ireland Assembly.
- 80 Sections 36 and 37 provide powers for the disclosure of information to and from gas suppliers licensed under the Gas Act 1986 and electricity suppliers licensed under the Electricity Act 1989. The licensing regime under those Acts does not extend to Northern Ireland. Legislative competence in respect of gas and electricity, with some exceptions, has been transferred to the Northern Ireland Assembly. Sections 36 and 37 only extend to England, Wales and Scotland. These provisions relate to matters concerning energy and fuel poverty, some of which is devolved to the Scottish Parliament and the National Assembly for Wales.
- 81 Sections 38 and 39 provide powers for the disclosure of information to and by water and sewerage undertakers wholly or mainly in England or in Wales. Sections 38 and 39 only extend to England and Wales. Once the relevant provisions of the Wales Act 2017 are commenced, the devolution settlement in Wales will move to the national boundary from the “wholly or mainly” model. Subsection (11) of section 45 of the Digital Economy Act 2017 enables the Secretary of State to make necessary amendments to this Chapter in consequence of this.
- 82 Section 46 provides powers for civil registration officials to disclose certain information to other public authorities. Legislative competence in respect of civil registration has been devolved to the Scottish Parliament and the Northern Ireland Assembly, but not under the Government of Wales Act 2006. The new powers only extend to England and Wales with the exception of provisions enabling consequential amendments that extend to the whole of the United Kingdom. The powers might be used by a registration official in England and Wales to share registration data with a department or public authority performing reserved functions in Scotland, and there may also be good reason for a devolved body in Scotland or Northern Ireland to receive such information. The Act does not, however, provide for sharing with devolved public authorities in Scotland and Northern Ireland but there is the power to add such bodies by regulation in future. Section 47 allows provisions that are consequential on section 46 to be made by regulations.
- 83 Other than sections 36 to 39 and 46, Part 5 applies to the whole of the United Kingdom. Public authorities that may be authorised by regulations to share information may include public authorities for whom the devolved legislatures have legislative competence. Where the provisions relate to such public authorities, or to persons providing them with services, the Scottish Parliament, the Northern Ireland Assembly or the National Assembly for Wales are given powers to authorise the sharing of information by adding such persons to the Schedules by regulations

- 84 Section 99 provides the Minister for the Economy in Northern Ireland with the power to appoint a member of the Ofcom board and a requirement for Ofcom to lay its annual report and accounts before Northern Ireland ministers, who shall then lay them before the Northern Ireland Assembly. This provision will require legislative consent from the Northern Ireland Assembly before it can be commenced.
- 85 Sections 105 and 106 concern the secondary ticketing market, and provide for amendments to the Consumer Rights Act 2015. The secondary ticketing measures in this Act apply to England and Wales, Scotland and Northern Ireland.
- 86 Section 114 provides for a free educational entitlement to qualifications in information technology. This measure extends to England and Wales only though it only applies to England as education and training are transferred to the National Assembly for Wales and devolved to the Scottish Parliament and the Northern Ireland Assembly.
- 87 All of the remaining provisions in the Act extend and apply to the whole of the United Kingdom. In the view of the UK Government, all the remaining provisions of the Act are not within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly.
- 88 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom.



# Commentary on provisions of Act

## Part 1: Access to Digital Services

### Section 1: Universal service broadband obligations

- 89 Section 65 of the 2003 Act provides powers to make an order specifying the services that fall within the scope of the Universal Service Obligation. This section inserts new subsections into section 65 of the 2003 Act clarifying the government's powers to include broadband within the scope of universal service.
- 90 This section also inserts new sections 72A and 72B into the 2003 Act. Section 72A gives the Secretary of State the power to require Ofcom to review the broadband USO, as appropriate, to ensure that in future it continues to reflect connectivity needs, including whether the minimum speed needs to be updated. Section 72B requires the Secretary of State to direct Ofcom to review the broadband USO if it specifies a minimum download speed that is less than 30 megabits per second and it appears, on the basis of information published by Ofcom, that at least 75% of premises in the UK subscribe to broadband connections or services that provide a download speed of at least 30 megabits per second.

### Section 2: General conditions: switching communications provider

- 91 Section 51 of the 2003 Act provides Ofcom with powers to set general conditions that apply to communications providers. In particular, section 51(1)(a) enables Ofcom to set conditions for protecting the interests of end-users of public electronic communications services and subsection (2) provides examples of the purposes for which conditions protecting the interests of end-users may be made. This section amends section 51 by inserting new subsection (2)(i) which makes it explicit that the scope of Ofcom's powers to set general conditions includes the power to require communications providers to adhere to arrangements and processes to facilitate an end-user changing communications provider on request, including but not limited to gaining-provider led processes.

### Section 3: Automatic compensation for failure to meet performance standards

- 92 Section 51 of the 2003 Act provides Ofcom with powers to set general conditions that apply to communication providers. In particular, section 51(1)(a) enables Ofcom to set conditions for protecting the interests of end-users of public electronic communications services and subsection (2) provides examples of the purposes for which conditions protecting the interests of end-users may be made. This section amends section 51 of the 2003 Act by inserting new subsection 2(da) making explicit the scope of Ofcom's power to set a condition requiring the payment of compensation by communications providers to end-users – communications providers may be required to pay compensation to an end-user where they fail to meet a specified standard or obligation.

## Part 2: Digital infrastructure

### Section 4: The electronic communications code

- 93 This section repeals the Telecommunications Code in schedule 2 to the Telecommunications Act 1984 and inserts a new Schedule 3A to the 2003 Act, containing the electronic communications code.
- 94 *Subsections (4) to (9)*, make consequential amendments to section 106 of the 2003 Act, substituting the term "conduit system", which is not used in the new code, with "system of infrastructure".
- 95 *Subsection (10)* introduces Schedule 2 to the Act, which contains transitional provision, and

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Schedule 3 to the Act, which contains consequential amendments.

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

96 *Subsection (1)* confers a regulation-making power on the Secretary of State to make amendments related to any transitional provisions in connection with the code coming into force. *Subsection (2)* provides that the power can be used to amend any legislation, including primary legislation, passed until the end of the Parliamentary Session in which the Act is passed. Where the power is used to amend primary legislation, *subsection (3)(a)* provides that the affirmative procedure will be required. Otherwise the negative procedure is applied, as provided for by *subsection (3)(b)*.

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

97 Schedule 3 to the Act provides for consequential amendments that stem from the new code in Schedule 1. This section confers a regulation-making power on the Secretary of State to make further consequential amendments connected to the new electronic communications code, should they be needed. Under *subsection (2)*, this power can be used to amend any legislation, including primary legislation, passed until the end of the Parliamentary Session in which the Act is passed. Where the power is used to amend primary legislation, *subsection (5)* provides that the affirmative procedure will be required. Otherwise the negative procedure is applied, as provided for by *subsection (6)*.

### Section 7: Application of the code: protection of the environment

98 This section amends section 109 of the 2003 Act so that for regulations made where the Secretary of State has had regard to section 109(2)(b) (the need to protect the environment), the Secretary of State will be treated as having complied with any duty imposed in connection with that exercise of that power by the legislation set out in section 109(2B).

### Section 8: Regulation of dynamic spectrum access services

99 *Subsection (1)* inserts Part 2A (comprising sections 53A to 53M) into the 2006 Act, which allows Ofcom to regulate spectrum that is used through technologies that enable “dynamic spectrum access”. Dynamic spectrum access services are provided by means of a database that allows the identification of frequencies available for use by radio equipment known as white space devices in spectrum bands authorised by Ofcom.

100 Section 53A provides that a person who provides, or proposes to provide, a dynamic spectrum access service may be registered by Ofcom. It requires Ofcom to publish criteria by which they will determine if an application for registration should be accepted and also to publish information relating to the restrictions and conditions to which registration may be subject.

101 Section 53B enables Ofcom to revoke or vary a registration. Subsections (1) and (2) identify the procedure by which Ofcom may revoke or vary a registration. Subsection (2) does not apply if the proposal to vary or revoke is made at the request of or with the consent of the registered person in section 53A.

102 Section 53C requires Ofcom to establish and maintain a register for the purposes of Part 2A.

103 Section 53D allows Ofcom to make regulations to provide for Ofcom to charge fees. This will allow Ofcom to recover its costs for registering providers of dynamic spectrum services under section 53A and for activities undertaken on their behalf to facilitate the service they provide, for example, the processing of spectrum availability information etc. Subsection (2) ensures that Ofcom may only charge fees to recover costs where the activities to which a charge is applied are not covered or met by other charging powers.

104 Sections 53E-53I concern enforcement where a person contravenes the restrictions or conditions subject to which that person is registered. Section 53E enables Ofcom to give a person a



notification where they have reasonable grounds for believing that such a person is contravening or has contravened the restrictions or conditions of a registration made under section 53A.

105 Section 53F concerns penalties under section 53E, including making provision as to the penalty that may be specified in relation to a continuing contravention.

106 Section 53G details Ofcom's powers in relation to enforcing a notification issued under section 53E.

107 Section 53H makes provision about the meaning of the "relevant amount of gross revenue" for the purpose of section 53F.

108 Section 53I allows Ofcom to require a recipient of a notification under section 53E to provide them with information for the purposes of ascertaining their gross revenue.

109 Section 53J allows Ofcom to require certain persons, as detailed in subsection (2), to provide information to a person registered under section 53A for the purpose of enabling the registered person to avoid undue interference with wireless telegraphy. Subsections (3) to (4) describe how any such demand for information should be made.

110 Section 53K allows Ofcom to issue a notification for contravention of a requirement imposed under 53J.

111 Section 53L makes provision as to penalties under section 53K.

112 Section 53M details Ofcom's powers in relation to enforcing a notification under section 53K.

113 *Subsection (2)* amends section 111 of the 2006 Act. Section 111 concerns restrictions on the disclosure of information. Section 111(3) sets out disclosures of information to which the restriction in section 111(1) does not apply. Section 111(3) is amended to add to the list of exceptions information disclosed 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. This will allow Ofcom to share such information with registered providers, without needing the consent of the person from whom the information was obtained.

## Section 9: Penalties for contravention of wireless telegraphy licences

114 This section widens the circumstances in which Ofcom may impose a penalty for contravention of a wireless telegraphy licence.

115 *Subsections (2)-(4)* amend section 42 of the 2006 Act and the heading to that section. *Subsection (2)* amends section 42 so that Ofcom's power to impose a penalty under section 42 applies where a person is or has been in contravention in any respect of the terms, provisions or limitations of a wireless telegraphy licence. *Subsection (3)* inserts a definition of "relevant multiplex contravention".

116 *Subsections (5) to (7)* amend section 43. *Subsection (6)* inserts new subsection (2A) into section 43. This specifies the amount of a penalty imposed under section 42 for a contravention that is not a relevant multiplex contravention. The amount of a penalty for a relevant multiplex contravention is dealt with in section 43(1) and (2).

117 *Subsection (8)* repeals section 43A. *Subsection (12)* repeals section 39 of the Digital Economy Act 2010 (which inserted section 43A into the 2006 Act).

## Section 10: Fixed penalties under Wireless Telegraphy Act 2006

118 Paragraph 4 of Schedule 4 to the 2006 Act sets out what information a fixed penalty notice must include. Proceedings against the person to whom a fixed penalty notice is issued cannot be commenced in respect of the offence until the end of the suspended enforcement period. This

section amends the minimum suspended enforcement period from ‘one month’ to ‘28 days’ beginning with the day after that on which the fixed penalty notice was issued.

### Section 11: Search warrants under Wireless Telegraphy Act 2006

119 Section 97 of the 2006 Act makes provision for Ofcom’s powers of entry, search and seizure. Subsection 97(3) defines the ‘relevant period’ during which a search warrant may be used.

120 This section amends the definition of ‘relevant period’ in subsection 97(3) so that a search warrant is valid from when it is granted, and ends three months after the end of the day on which the warrant is granted (except in Scotland or Northern Ireland where the reference to three months is to be read as a reference to one month). It enables Ofcom (or whomever is empowered to act by the warrant) to enter and search a property from the time that the warrant is issued or at any time until the end of a three-month period running from the end of that day.

### Section 12: Disposal of seized property under Wireless Telegraphy Act 2006

121 Section 101 of the 2006 Act makes provision for the detention and disposal of property that has been seized by Ofcom, or by a person authorised by Ofcom. Subsection 101(5) sets out the period of time, following the end of the detention period authorised by subsection 101(2), after which Ofcom may dispose of property that remains in their possession.

122 This section amends subsection 101(5) so that the time period that Ofcom is required to retain the property is 6 months following the end of the detention period authorised by section 101(2)(a), or, if section 101(2)(b) applies, 6 months following the end of the day on which the proceedings referred to in section 101(2)(b) were concluded.

### Section 13: Time limits for prosecutions under Wireless Telegraphy Act 2006

123 This section inserts new subsections (3A) to (3D) into section 107 of the 2006 Act and extends the time limits for bringing proceedings for those summary offences listed in subsection (3B). The 2006 Act is amended so that the time limit for bringing proceedings for those summary offences listed in subsection (3B) is one year from the end of the day on which the prosecutor becomes aware of evidence which he or she considered sufficient to justify a prosecution for the offence, or, if earlier, three years from the end of the day on which the offence was committed.

## Part 3: Online pornography

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

124 This section sets out the requirement that a person must not make pornographic material available online to users in the United Kingdom on a commercial basis without sufficient age verification controls in place. It also provides for the Secretary of State to make regulations specifying the circumstances in which pornography is to be regarded as made available on a commercial basis.

### Section 15: Meaning of “pornographic material”

125 This section defines ‘pornographic material’.

### Section 16: The age-verification regulator: designation and funding

126 This section establishes a power for the Secretary of State to designate a person or any two or more persons as the age verification regulator, and sets out that the Secretary of State may revoke such a designation, and designate an alternative person.

### Section 17: Parliamentary procedure for designation of age-verification regulator

127 This section makes provision for the parliamentary procedure that applies where the Secretary of State proposes to make a designation under section 16.

## Section 18: Regulator's power to require information

128 This section establishes a power for the regulator to request information from a relevant person (an internet service provider or person the regulator believes to be involved in making available pornography on a commercial basis) to enable the regulator to carry out its functions.

## Section 19: Enforcement by regulator of sections 14 and 18

129 This section sets out the powers of the regulator to take enforcement action in relation to sections 14 and 18. Where a person is contravening section 14 (requirement to prevent access by persons under 18), the regulator may impose a financial penalty on the person and/or give that person an enforcement notice. Where a person has failed to comply with a requirement to provide information under section 18 the regulator may impose a financial penalty on that person.

## Section 20: Financial penalties imposed by regulator

130 This section makes further provision about the amount of a financial penalty that the regulator may impose under section 19(1) or (10).

131 *Subsection (8)* requires that penalties received must be paid into the Consolidated Fund.

132 *Subsection (9)* requires the age-verification regulator to publish guidelines it proposes to follow in deciding the amounts of financial penalties under section 19(1) and (10).

## Section 21: Notice by regulator to payment service providers and ancillary service providers

133 This section enables the regulator to notify payment-services providers and ancillary service providers of those who are in breach of section 14(1) or who are making extreme pornographic material as defined in section 22 available on the internet to persons in the United Kingdom.

## Section 22: Meaning of "extreme pornographic material"

134 This section sets out the meaning of "extreme pornographic material". The definition of "extreme pornographic material" is based on the approach in section 63 of the Criminal Justice and Immigration Act 2008.

## Section 23: Regulator's power to require internet services providers to block access to material

135 This section provides the regulator with the power to give a notice to any internet service provider requiring it to prevent access by persons in the UK to material that the regulator considers to be in breach of section 14(1), or to be extreme pornographic material as defined in section 22. It is the duty of an internet service provider to comply with any requirement imposed on it by such a notice; that duty is enforceable in civil proceedings by the age-verification regulator.

## Section 24: No power to give notice under section 23 (1) where detrimental to national security etc

136 This section provides that the regulator may not give a notice to an internet service provider under section 23(1) (Age-verification regulator's power to direct internet service providers to block access to material) if it appears to the regulator that the steps or arrangements that would be required of the provider by the notice would be likely to be detrimental to national security, the prevention or detection of serious crime, or the prevention or detection of an offence listed in Schedule 3 to the Sexual Offences Act 2003.

## Section 25: Guidance to be published by regulator

137 This section requires the regulator to publish guidance on the types of age-verification

arrangements it will treat as complying with section 14(1) and on the circumstances in which the regulator will treat services as those provided by “ancillary service providers”. The regulator’s guidance must be laid before Parliament subject to the affirmative procedure for first exercise of the power and the negative procedure thereafter. The Secretary of State must also approve the guidance on ancillary service providers before it is laid before Parliament.

### Section 26: Exercise of functions by the regulator

138 This section provides discretion for the regulator to exercise its functions in a targeted way, focusing on those commercial providers of online pornography who reach the most number of people or have the largest turnovers.

### Section 27: Guidance by Secretary of State to regulator

139 This section provides the Secretary of State with the power to issue guidance to which the age-verification regulator must have regard. The guidance may cover, for example, the preparation, publication and content of guidance by the regulator. Guidance issued by the Secretary of State under this power must be laid before Parliament.

### Section 28: Requirements for notices given by regulator under this Part

140 This section makes provision about how the regulator can give a notice under Part 3 to a person.

### Section 29: Report on this Part

141 This section requires the Secretary of State to produce a report on the impact and effectiveness of the regulatory framework, within 18 months, but not before 12 months, of the coming into force of Part 3. Before publishing this report, the Secretary of State must consult on the definitions used within this Part and the report must be laid in each House.

### Section 30: Interpretation and general provisions relating to this Part

142 This section sets out definitions for interpreting this Part and also makes some general provisions that are relevant when reading this Part.

## Part 4: Intellectual property

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

143 The Public Lending Right Act 1979 (“the 1979 Act”) provides a right for authors, known as the “public lending right”, to receive payments from a central fund in respect of such of their books as are lent out to the public by local library authorities in the United Kingdom.

144 This section amends the definition of “lent out” in section 5 of the 1979 Act to extend the public lending right to include remote loans of e-books and audio-books from public libraries in the United Kingdom – that is, where those e-books or audio-books are communicated by means of electronic transmission to a place other than library premises.

145 This section also amends section 40A of the Copyright, Designs and Patents Act 1988 so that copyright in an e-book or e-audio-book (as defined) within the public lending right scheme is not infringed by lending by a public library, provided that the e-book or e-audio-book has been lawfully acquired by the public library, and the lending of that book complies with any purchase or licensing terms that may have been applied to it.

146 This ensures copyright owners have the right to authorise remote loans by public libraries of e-books and e-audio-books, and maintains the previous right to authorise such loans. This reflects the differences between digital and physical books and enables copyright owners to include technological features and/or terms and conditions in respect of e-books and e-audio-books to mirror physical lending.

## Section 32: Offences: infringing copyright online and making available right

147 Sections 107 (2A) and 198 (1A) of the 1988 Act provided a maximum two-year sentence for online copyright infringement and infringement of a performer's making available right. The Act amends the maximum sentence for both offences to ten years. The Act also amends offence provisions to introduce an additional *mens rea* so that a person must either intend to make a monetary gain for himself or another, or know or have reason to believe that his actions will cause loss to the owner of the right or expose the owner to a risk of loss. The Act also replaces the pre-existing concept of 'prejudicial effect' with more precise notions of "gain" and "loss" in money.

## Section 33: Registered designs: infringement: marking product with Internet link

148 This section amends the 1949 Act to provide registered design owners with an alternative way of providing notice of their rights. Registered design proprietors would have the ability to mark their products with either the specific registered design number(s) or the web address of a webpage, which clearly associates the product with the relevant registration number(s).

149 *Subsection (3)* makes provision to ensure that the registered design numbers can be looked up on a website free of charge.

## Section 34: Copyright etc. where broadcast retransmitted by cable

150 This section repeals section 73 of the 1988 Act, which provided that the copyright in the broadcast of public service broadcaster channels (and the copyright in any work included in the broadcast) was not infringed where the broadcast was retransmitted by cable. This amounted to an exemption for cable providers from paying copyright fees to retransmit the core public service broadcaster channels.

# Part 5: Digital Government

## Chapter 1: Public Service Delivery

### Section 35: Disclosure of information to improve public service delivery

151 This section creates a permissive gateway enabling specified persons, listed in Schedule 4 (public service delivery: specified persons for the purposes of section 35), to share information for the purposes of a specified objective. Each person who is a party to the share must have been specified in relation to that objective. *Subsection (3)* sets out a power for the appropriate national authority to add, remove or modify entries on the Schedule by regulations. *Subsection (4)* provides that in order to be added to Schedule 4, a person must be a public authority or a person providing services to a public authority. Where a specified person is a person providing services to a public authority its power to disclose information is limited to the functions it exercises for that public authority.

152 In deciding whether to make regulations under *subsection (3)* to amend Schedule 4, the appropriate national authority must consider the provisions the person(s) in question have in place to ensure secure handling of information shared. In deciding whether to make regulations which remove a specified person from the list of persons permitted to exercise the power, the appropriate national authority must consider whether the person in question has had regard to the code of practice required by section 43, which will set out best practice to be observed in exercising this power.

153 A specified objective is an objective specified in regulations made by the appropriate national authority. An objective may be specified by regulations only if it meets the criteria at *subsections (9), (10) and (12)*. The requirement for "benefit" under *subsection (9)(b)* means an offer or delivery



of a service or type of financial assistance that is for the good or advantage of the individual or household. The “provision of a benefit” should not result in the loss or withdrawal of a service or type of financial assistance.

### Section 36: Disclosure of information to gas and electricity suppliers etc

- 154 This section allows the persons specified in Schedule 5 (public service delivery: specified persons for the purposes of sections 36 and 37) to disclose information to licensed gas or electricity suppliers. The disclosure must be for the purpose of assisting people living in fuel poverty by reducing their energy costs, or improving efficiency in their use of energy or improving their health or financial well-being.
- 155 The disclosure must be in connection with a fuel poverty measure listed in *subsection (3)*. These measures are grant schemes made under section 15 of the Social Security Act 1990 by the Scottish Ministers or the Welsh Ministers, the Warm Home Discount (which is made under Part 2 of the Energy Act 2010) and the Energy Company Obligation (which is made under various provisions of the Gas Act 1986 and the Electricity Act 1989). These schemes do not extend to Northern Ireland.
- 156 Section 142 of the Pensions Act 2008 already enables the disclosure of social security information about persons in receipt of state pension credit in connection with the Warm Home Discount scheme. This has been used to enable electricity suppliers to automatically provide rebates to customers on state pension credit under the Warm Home Discount scheme, without the need for the customers to identify themselves by applying for support. This section will enable other datasets to be used for the purpose of providing support under the Warm Home Discount and Energy Company Obligation schemes or under grant schemes in Scotland and Wales to people living in fuel poverty.
- 157 *Subsections (5) to (8)* enable the “appropriate national authority” to make regulations to amend the list of specified persons in Schedule 5, to amend the list of fuel poverty measures in *subsection (3)* in connection with which information may be disclosed under the section, and to amend *subsection (1)* so as to add or remove persons permitted to receive information under the section. See section 45 for how to identify who the appropriate national authority is in particular cases.

### Section 37: Disclosure of information by gas and electricity suppliers etc

- 158 This section allows gas and electricity suppliers (and any other permitted recipient of information under the previous section) to share information with specified persons, for the purpose of reducing the energy costs of, or improving energy efficiency or the health and financial well-being of, people living in fuel poverty. This section will enable energy suppliers to share details of their customers with the public authority, or with a person providing services to the public authority, who will then be able to ‘flag’ which of the suppliers’ customers should be eligible for assistance under the fuel poverty measure.

### Section 38: Disclosure of information to water and sewerage undertakers etc

- 159 This section allows the persons specified in Schedule 6 (public service delivery: specified persons for the purposes of sections 38 and 39) to the Act to disclose information to water and sewerage undertakers (an “undertaker”) in England and Wales. The disclosure must be in connection with a water poverty measure listed in *subsection (3)*.
- 160 The disclosure must be with the intention that it will be used by an undertaker in connection with provision of its charging scheme under section 143 of the Water Industry Act 1991. This section enables undertakers to receive information from specified persons in order to help identify eligibility for support schemes for the purposes of reducing water poverty.
- 161 *Subsections (5) to (8)* enable the “appropriate national authority” to make regulations to amend the

list of specified persons in Schedule 6, to amend the list of water poverty measures in subsection (3) in connection with which information may be disclosed under the section and to amend subsection (1) so as to add or remove persons permitted to receive information under the section. See section 45 for how to identify the appropriate national authority in particular cases.

162 For the purposes of Chapter 1, a person lives in water poverty if they are a member of a household living on a lower income in a home which cannot be supplied with water at a reasonable cost or cannot be supplied with sewerage services at a reasonable cost.

### Section 39: Disclosure of information by water and sewerage undertakers etc

163 This section allows water and sewerage undertakers (an “undertaker”), to whom information may be disclosed under section 38, to disclose information to a specified person (as set out in Schedule 6) for the purpose of assisting people living in water poverty by reducing their water or sewerage costs, improving efficiency in their use of water, or improving their health or financial well-being.

164 This section enables undertakers to share details of their customers with the specified persons in Schedule 6 to the Act who will then be able to ‘flag’ which of the undertakers’ customers should be eligible for assistance.

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

165 This section provides that the person receiving personal information under sections 35 to 39 can only use it for the purpose for which it was disclosed, unless one of the exceptions set out in *subsection (2)* is engaged. These exceptions are broadly designed to cover situations where it would not be appropriate to adhere to the general rule at subsection (1). For example:

- paragraphs (c), (d), and (e) enable personal information received under the power to be used for the purposes of the prevention or detection of crime, the prevention of anti-social behaviour criminal investigations, and civil or criminal legal proceedings;
- paragraph (f) provides exemptions permitting personal information to be used to prevent serious physical harm to a person or loss of human life, and to protect vulnerable adults or children, responding to emergencies, or protecting national security.

166 The exceptions do not apply to information disclosed by the Revenue and Customs unless the Commissioners for Her Majesty’s Revenue and Customs have provided consent.

167 *Subsections (5) and (6)* also provide a definition of personal information for the purpose of Chapter 1.

168 *Subsection (7)* provides that information disclosed under this power does not constitute a breach of any obligation of confidence or any other restriction on disclosing the information, however imposed. The statutory override applies to a disclosure between specified persons under the powers in this Chapter, and so existing restrictions on disclosure and offences continue to apply in other circumstances. However, the section expressly provides that information cannot be disclosed under these powers if to do so would breach the Data Protection Act 1998 or would be prohibited by any of Parts 1 to 7 or Chapter 1 of Part 9 of the Investigatory Powers Act 2016 (or, until such time as those provisions are in force, Part 1 of the Regulation of Investigatory Powers Act 2000).

169 *Subsection (10)* provides that sections 35 to 39 do not limit any power to disclose that exists apart from those sections.

## Section 41: Confidentiality of personal information

- 170 This section is intended to ensure that personal information received under this power may only be onwardly disclosed in narrowly defined circumstances. *Subsection (1)* provides that a person (P) receiving the information under sections 35 to 39 or any other person who receives that information either directly or indirectly from P cannot further disclose that personal information. The limited circumstances when such personal information can be disclosed without committing an offence under this section are set out in *subsection (2)*. Any person who knowingly or recklessly contravenes this prohibition on further disclosure is guilty of an offence under *subsection (4)*, carrying a penalty of up to two years' imprisonment, a fine, or both. Other restrictions on disclosure of information – including other criminal offences regarding the unauthorised disclosure of information – may still also apply.
- 171 This section does not apply to personal information disclosed by the Revenue and Customs under the powers at sections 35, 36 or 38. Specific conditions that relate to information disclosed by the Revenue and Customs are set out in section 42.

## Section 42: Information disclosed by the Revenue and Customs

- 172 This section sets out that a person (P) receiving personal information under sections 35, 36 or 38 from Her Majesty's Revenue and Customs cannot disclose that personal information. This restriction on onward disclosure of personal information provided by the Revenue and Customs does not apply if the Commissioners for Her Majesty's Revenue and Customs have given general or specific consent for the specific disclosure. *Subsection (3)* sets out that anyone who breaches this prohibition is guilty of an offence. *Subsection (4)* sets out a defence to the offence under subsection (3) where the person reasonably believed that the disclosure was lawful or that the information was already lawfully in the public domain. The criminal sanctions set out in section 19 of the Commissioners for Revenue and Customs Act 2005, which prohibits the wrongful disclosure of Revenue and Customs' information, will apply to an offence under subsection (3).

## Section 43: Code of practice

- 173 This section sets out that a code of practice must be issued by the Secretary of State or the Minister for the Cabinet Office about the disclosure and use of information under sections 35 to 39. The code of practice must be consistent with the code of practice issued by the Information Commissioner under section 52B of the Data Protection Act 1998.
- 174 All persons disclosing or using information under sections 35 to 39 must have regard to the code of practice and to applicable codes of practice that the Information Commissioner has issued under section 51(3) of the Data Protection Act 1998 on the identification and reduction of risks to privacy or on information to be provided to data subjects on the use of information collected from them, in so far as the codes apply. This would include the current codes which relate to privacy impact assessments and privacy notices.
- 175 Before issuing or reissuing the code of practice, the Minister must consult the Information Commissioner, relevant Ministers in the devolved administrations, the Commissioners for Her Majesty's Revenue and Customs and other appropriate bodies and persons as the Minister sees fit. *Subsection (4)* permits the relevant Minister to revise and re-issue the code of practice. The code of practice will be subject to approval by a resolution in both Houses of Parliament before it is first issued, and subject to the draft negative procedure for every reissue. The code must be laid before the devolved legislatures, when it is issued, and every time it is reissued.

## Section 44: Regulations under this Chapter

- 176 Before making regulations under this Chapter the appropriate national authority must consult the Information Commissioner, each other person who is an appropriate national authority in relation to regulations under this Chapter, the Commissioners for Her Majesty's Revenue and Customs



and any other persons the appropriate national authority thinks appropriate. The regulations may contain consequential, supplementary, transitional or transitory provisions or savings.

177 The power to make regulations under sections 35(3), 36(5)(a) or 38(5)(a) to add to Schedule 4, 5 or 6 respectively include power to make provision that restricts onward disclosure similar to that made by section 42 in respect of information disclosed by the Revenue and Customs. This is intended to cover situations where the nature of the body to be added is such that its information would require similar protection to that offered to Revenue and Customs' information.

178 All regulations made under this Chapter will be subject to the affirmative resolution procedure, which requires the regulations to be approved by both Houses of Parliament, or the equivalent procedures in devolved legislatures when regulations are made by the devolved administrations.

### Section 45: Interpretation of this Chapter etc

179 This section sets out definitions for interpreting Chapter 1, which include the definitions of devolved bodies for the purposes of this Chapter.

180 "Scottish body" does not include cross-border public authorities within the meaning of section 88 of the Scotland Act 1998. By virtue of section 127 of the Scotland Act 1998 and paragraph 1 of Part III of Schedule 5 to that Act, cross-border public authorities (including those which only exercise functions in or as regards Scotland) do not fall within the definition, at subsection (3), of "a Scottish public authority with mixed functions or no reserved functions (within the meaning of the Scotland Act 1998)".

181 The meaning given to "Welsh body" ensures that the definition is consistent with the definition of a devolved Welsh authority in section 157A of the Government of Wales Act 2006.

182 The meaning given to "Northern Ireland body" captures Northern Ireland Ministers, departments and public authorities whose functions are exercisable only or mainly as regards Northern Ireland and relate only or mainly to matters devolved to Northern Ireland.

183 *Subsection (11)* enables the Secretary of State to make necessary amendments to this Chapter in consequence of section 48 (water and sewerage) of the Wales Act 2017. Sections 38 and 39 of the present Act reflect the current "wholly or mainly in Wales" arrangement for the devolution of water supply with Wales. Commencement of section 48(1) of the Wales Act 2017 will align the devolution of water supply with the national boundary. This subsection extends the Secretary of State's powers under section 69(2) of the Wales Act 2017 to make consequential amendments to primary legislation.

## Chapter 2: Civil Registration

### Section 46: Disclosure of information by civil registration officials

184 This section inserts new sections 19AA, 19AB and 19AC, concerning the disclosure of information by civil registration officials, into the Registration Service Act 1953.

185 New section 19AA allows civil registration officials to disclose any information they hold to another registration official or to a specified public authority. Before disclosing any information a civil registration official must ensure that the information is required by a recipient to fulfil one or more of their functions. If there are restrictions in other legislation which prevent disclosure of certain data then the civil registration official would not be able to share that data.

186 New section 19AB specifies the public authorities to which a registration official is able to disclose data. Subsections (2) to (7) of this section enable the Secretary of State to make regulations to add, modify or remove public authorities from the list and to make different provision for different purposes. It also sets out the parliamentary procedure for regulations made under this section:

*These Explanatory Notes relate to the Digital Economy Act 2017 (c. 30) which received Royal Assent on 27 April 2017*

they are subject to the affirmative resolution procedure, which requires the regulations to be approved by both Houses of Parliament.

- 187 New section 19AC requires the Registrar General to issue a code of practice for civil registration officials to have regard to when considering the disclosure of information under section 19AA. The code of practice must be consistent with the code of practice issued by the Information Commissioner under section 52B of the Data Protection Act 1998.
- 188 Civil registration officials disclosing information under new section 19AA must have regard to the code of practice and to applicable codes of practice that the Information Commissioner has issued under section 51(3) of the Data Protection Act 1998 on the identification and reduction of risks to privacy or on information to be provided to data subjects on the use of information collected from them. Subsections (4) to (7) of new section 19AC enable the Registrar General to revise and re-issue the code of practice having consulted with those listed at subsection (5). The code of practice will be subject to approval by a resolution in both Houses of Parliament before it is first issued, and subject to the draft negative procedure for every reissue.
- 189 New subsection (1A) to section 19B of the Registration Service Act 1953 allows for the Minister to make regulations for fees to be payable to a civil registration official in respect of the disclosure by the official of information under new section 19AA.

### Section 47: Consequential provision

- 190 This section enables the Secretary of State to make regulations to amend, repeal or revoke any provision in any Act, which was passed before or in the same session as this Act, as a consequence of the provisions set out in section 46.
- 191 Regulations made under this section, which amend or repeal an Act, will be subject to the affirmative resolution procedure which requires the regulations to be approved by both Houses of Parliament. Any other regulations under this section will be subject to the negative resolution procedure.

## Chapter 3: Debt owed to the public sector

### Section 48: Disclosure of information to reduce debt owed to the public sector

- 192 *Subsection (1)* creates a permissive gateway enabling specified persons, listed in Schedule 7 (specified persons for the purposes of the debt provisions), to disclose information for the purposes of the taking of action in connection with debt owed to a public authority or to the Crown. The section provides a definition of a debt for the purposes of this power, and explains what “the taking of action in connection with debt owed to a public authority or to the Crown” is, namely, identifying and collecting debt, bringing civil proceedings, and taking administrative action as a result of that debt.
- 193 *Subsection (4)* states that the “specified persons” permitted to make use of the power are set out in Schedule 7. *Subsection (5)* sets out a power for the appropriate national authority to add, remove or modify entries in the Schedule by regulations. *Subsections (6) to (8)* set out the conditions which a given body must meet before it can be added to Schedule 7. First, the body or type of body must be a public authority or a person providing services to a public authority. Second, the body must require information from a public authority or person providing services to a public authority to improve its ability to identify, manage or recover debt owed to a public authority or the Crown, or hold information that, if shared, would improve a public authority or person providing services to a public authority’s ability to do so. Alternatively, the body must have functions relating to the recovery or management of such debt, the exercise of which may be improved by the disclosure of information to or by that body. Where a specified person is a person providing services to a public authority, its power to disclose information is limited to the functions it exercises for that public

authority.

194 In deciding whether to make regulations under subsection (5) to amend Schedule 7, *subsection (10)* requires the appropriate national authority to consider the arrangements the persons in question have to ensure secure handling of information. In deciding whether to make regulations which remove a specified person from Schedule 7, the appropriate national authority must consider whether the person in question has had regard to the code of practice under section 52, which will set out best practice to be observed in exercising this power. *Subsection (11)* sets out consultation requirements in making regulations.

### Section 49: Further provisions about power in section 48

195 *Subsection (1)* provides that the person receiving personal information under section 48 can only use it for the purpose for which it was disclosed, unless one of the exceptions set out in *subsection (2)* is engaged. These exceptions broadly are designed to cover situations where it would not be appropriate to adhere to the general rule at subsection (1). Paragraphs (c), (d) and (e) enable personal information received under the power to be used for the purposes of the prevention or detection of crime, the prevention of anti-social behaviour, and for the purposes of criminal investigations and civil or criminal legal proceedings. Paragraphs (f) and (g) set out additional exceptions to the general rule in subsection (1), enabling information to be used for the purposes of protecting vulnerable adults or children, or protecting national security.

196 The exceptions do not apply to information disclosed by the Revenue and Customs unless the Commissioners for Her Majesty's Revenue and Customs have provided consent.

197 *Subsection (5)* provides a definition of "personal information" for the purposes of Chapter 3 and sets out further conditions on the disclosure and use of personal information. *Subsection (7)* states that information disclosed under this power does not constitute a breach of any obligation of confidence or any other restriction on disclosing the information, however imposed. The statutory override applies to a disclosure between specified persons under the powers in Chapter 3, and so existing restrictions on disclosure and offences continue to apply in other circumstances. It is, however, expressly set out in *subsections (8)* and *(9)* that information cannot be disclosed under this power if to do so would breach the Data Protection Act 1998 or would be prohibited by any of Parts 1 to 7 or Chapter 1 of Part 9 of the Investigatory Powers Act 2016 (or, until such time as those provisions are in force, Part 1 of the Regulation of Investigatory Powers Act 2000).

198 *Subsection (10)* provides that section 48 does not limit any power to disclose information that exists apart from that section.

### Section 50: Confidentiality of personal information

199 This section is intended to ensure that personal information received under this power is only onwardly disclosed in narrowly defined circumstances. *Subsection (1)* provides that a person (P) receiving personal information under the power at section 48, or any other person who receives that information either directly or indirectly from P, cannot further disclose that information. The limited circumstances when such information can be further disclosed without committing an offence under this section are set out in *subsection (2)*. Any person who knowingly or recklessly contravenes this prohibition on further disclosure is guilty of an offence under *subsection (4)*, carrying a penalty on indictment of up to two years' imprisonment, a fine, or both. Other restrictions on disclosure of information – including other criminal offences regarding the unauthorised disclosure of information – may still also apply.

200 This section does not apply to personal information disclosed by the Revenue and Customs under section 48. Specific conditions that relate to information disclosed by the Revenue and Customs are set out in section 51.

## Section 51: Information disclosed by the Revenue and Customs

201 This section sets out that a person receiving personal information under section 48 from the Revenue and Customs cannot disclose that information. This restriction on onward disclosure of personal information provided by the Revenue and Customs does not apply if the Commissioners for Her Majesty's Revenue and Customs have given general or specific consent for the specific disclosure. *Subsection (3)* sets out that anyone who breaches this prohibition is guilty of an offence. *Subsection (4)* sets out a defence to the offence under subsection (3). The criminal sanctions set out in section 19 of the Commissioners for Revenue and Customs Act 2005, which prohibit the wrongful disclosure of revenue and customs information, will apply to an offence under subsection (3).

## Section 52: Code of practice

202 This section sets out that a code of practice must be issued by the Secretary of State or the Minister for the Cabinet Office about the disclosure and use of information under the section 48 power. The code of practice must be consistent with the code of practice issued by the Information Commissioner under section 52B of the Data Protection Act 1998.

203 All persons disclosing or using information under section 48 must have regard to the code of practice and to applicable codes of practice that the Information Commissioner has issued under section 51(3) of the Data Protection Act 1998 on the identification and reduction of risks to privacy or on information to be provided to data subjects on the use of information collected from them, in so far as the codes apply. This would include the current codes which relate to privacy impact assessments and privacy notices.

204 Before issuing or reissuing the code of practice, the Minister must consult the Information Commissioner, ministers in the devolved administrations, the Commissioners for Her Majesty's Revenue and Customs and other appropriate bodies and people as the Minister sees fit. The code of practice will be subject to approval by a resolution of both Houses of Parliament before it is first issued, and subject to the draft negative procedure in respect of every reissue. The code must be laid before the devolved legislatures when it is issued and every time it is reissued.

## Section 53: Duty to review operation of Chapter

205 *Subsection (1)* sets out that three years after Chapter 3 comes into force, the relevant Minister must, as soon as is reasonably practicable, carry out a review of the operation of the Chapter to determine whether it should be amended or repealed. Before carrying out the review the Minister must publish criteria against which that decision will be made. In carrying out the review, the Minister is required to consult the Information Commissioner, relevant Ministers from the devolved administrations, and other persons as the Minister considers appropriate.

206 Under *subsection (4)*, upon completion of the review, the Minister must publish a report setting out the findings, and have a copy of the report laid before Parliament and the relevant bodies in the devolved administrations. The section provides an order-making power for the Minister to amend or repeal the Chapter as a result of the review. *Subsection (6)* makes clear that the power to amend the Chapter may only be used to improve the effectiveness of the section 48 power, and expressly states that it cannot be used to remove any existing safeguards on use or disclosure of information in sections 49, 50 or 51. Where any such regulations seek to repeal the Chapter or make provision in respect of devolved matters, the Minister must, before making any such regulations, obtain the consent of the relevant devolved administrations. The Minister must seek the consent of HM Treasury before any regulations are made which could affect the disclosure of information by Her Majesty's Revenue and Customs.

## Section 54: Regulations under this Chapter

207 Before making regulations under this Chapter the appropriate national authority must consult the

Information Commissioner, each other person who is an appropriate national authority in relation to regulations under this Chapter, the Commissioners for Her Majesty's Revenue and Customs and any other persons the appropriate national authority thinks appropriate. The regulations may contain consequential, supplementary, transitional or transitory provisions or savings.

- 208 The power to make regulations under section 48(5) to add to the Schedule includes a power to make provision that restricts onward disclosure similar to that made by section 51 in respect of information disclosed by the Revenue and Customs. This is intended to cover a situation where the nature of the body to be added is such that its information would require similar protection to that offered to Revenue and Customs' information.
- 209 Regulations made under this Chapter will be subject to the affirmative resolution procedure, which requires the regulations to be approved by both Houses of Parliament, or the equivalent procedures in the devolved legislatures.

### Section 55: Interpretation of Chapter

- 210 This section sets out definitions for interpreting Chapter 3, which include the definitions of devolved bodies. As in section 45 for Chapter 1, "Scottish body" does not include cross-border public authorities and the meaning given to "Welsh body" ensures that the definition is consistent with the definition of a devolved Welsh authority in section 157A of the Government of Wales Act 2006.

## Chapter 4: Fraud against the public sector

### Section 56: Disclosure of information to combat fraud against the public sector

- 211 *Subsection (1)* creates a permissive gateway enabling specified persons, listed in Schedule 8 (specified persons for the purposes of the fraud provisions), to share information for the purposes of taking action in connection with fraud against a public authority. *Subsection (2)* provides a definition of "fraud against a public authority" for the purposes of this power, and explains what "taking action in connection with fraud against a public authority" is, namely preventing, detecting, investigating, and prosecuting such fraud, and bringing civil proceedings and taking administrative action as a result of that fraud.
- 212 *Subsection (5)* explains that the "specified persons" permitted to make use of the power are set out in Schedule 8. *Subsection (6)* sets out a power for the appropriate national authority to add, remove, or modify an entry in the Schedule by regulations. *Subsections (7) to (9)* set out the conditions which a given body must meet before it can be added to Schedule 8. First, the body or type of body being added must be a public authority or a person providing services to a public authority. Second, that person either requires from a public authority (or person providing services to a public authority) information to improve its ability to identify or reduce fraud against it or a public authority to which it provides services, or holds information that would assist other public authorities (or person providing services to a public authority) to do so. Alternatively, the body in question must have functions of taking action in connection with fraud against a public authority, the exercise of which would be improved by it disclosing or receiving information. By *subsection (10)*, where a specified person is a person providing services to a public authority its ability to disclose information is limited to the functions it exercises for that public authority.
- 213 In deciding whether to make regulations under subsection (6) to amend Schedule 8, the appropriate national authority must consider the arrangements the persons in question have in place to ensure secure handling of information. In deciding whether to make regulations which remove a specified person from Schedule 8, the appropriate national authority must consider whether the person in question has had regard to the code of practice under section 60, which will set out best practice to be observed in exercising this power. *Subsection (12)* sets out consultation



requirements in making such regulations. *Subsection (14)* provides a definition of a ‘public authority’ for the purposes of Chapter 4.

### Section 57: Further provisions about power in section 56

214 *Subsection (1)* provides that the person receiving personal information under section 56 can only use it for the purpose for which it was disclosed, unless one of the exceptions set out in *subsection (2)* is engaged. These exceptions broadly are designed to cover situations where it would not be appropriate to adhere to the general rule at *subsection (1)*. Paragraphs (c), (d) and (e) provide exceptions enabling data to be used for the purposes of the prevention or detection of crime, the prevention of anti-social behaviour and for the purposes of criminal investigations or civil or criminal legal proceedings. Paragraph (f) provides additional exceptions to the general rule in *subsection (1)*, designed to cover circumstances where it is envisaged that a public authority in receipt of information under the power at section 56 might need to use personal information to protect the public interest or in the interests of an individual’s well-being, namely preventing serious physical harm to a person, preventing loss of human life, safeguarding vulnerable adults or children, responding to an emergency, or protecting national security.

215 The exceptions do not apply to information disclosed by the Revenue and Customs unless the Commissioners for Her Majesty’s Revenue and Customs have provided consent.

216 *Subsection (5)* provides a definition of “personal information” for the purposes of Chapter 4 and sets out further conditions on the disclosure and use of personal information. *Subsection (7)* states that information disclosed under this power does not constitute a breach of any obligation of confidence or any other restriction on disclosing the information, however imposed. The statutory override applies to a disclosure between specified persons under the powers in this Chapter, and so existing restrictions on disclosure and offences continue to apply in other circumstances. *Subsection (8)*, however, sets out that information cannot be disclosed under this power if to do so would contravene the Data Protection Act 1998 or would be prohibited by any of Parts 1 to 7 or Chapter 1 of Part 9 of the Investigatory Powers Act 2016 (or, until such time as those provisions are in force, Part 1 of the Regulation of Investigatory Powers Act 2000).

217 *Subsection (10)* provides that section 56 does not limit any power to disclose information that exists apart from that section.

### Section 58: Confidentiality of personal information

218 This section provides safeguards to ensure personal information is only onwardly disclosed in narrowly defined circumstances. *Subsection (1)* provides that a person (P) receiving personal information under the power at section 56, or any other person who receives that information either directly or indirectly from P, cannot further disclose that personal information. The limited circumstances when such information can be further disclosed without committing an offence under this section are set out in *subsection (2)*. Any person who knowingly or recklessly contravenes this prohibition on further disclosure is guilty of an offence under *subsection (4)*, carrying a penalty on indictment of up to two years’ imprisonment, a fine, or both. Other restrictions on disclosure of information – including other criminal offences regarding the unauthorised disclosure of information – may still also apply.

219 This section does not apply to personal information disclosed by the Revenue and Customs under the power at section 56. Specific conditions that relate to information disclosed by the Revenue and Customs are set out in section 59.

### Section 59: Information disclosed by the Revenue and Customs

220 This section sets out that a person receiving personal information from the Revenue and Customs under section 56 cannot disclose that personal information. This restriction on onward disclosure

of personal information provided by the Revenue and Customs does not apply if the Commissioners for Her Majesty's Revenue and Customs have given general or specific consent for the specific disclosure. *Subsection (3)* sets out that anyone who breaches this prohibition is guilty of an offence. *Subsection (4)* sets out a defence to the offence. The criminal sanctions set out in section 19 of the Commissioners for Revenue and Customs Act 2005 will apply to an offence under subsection (3).

## Section 60: Code of practice

221 *Subsection (1)* sets out that a code of practice must be issued by the Secretary of State or the Minister for the Cabinet Office about the disclosure and use of information under the section 56 power. The code of practice must be consistent with the code of practice issued by the Information Commissioner under section 52B of the Data Protection Act 1998. All persons disclosing or using information under section 56 must have regard to the code of practice and to applicable codes of practice that the Information Commissioner has issued under section 51(3) of the Data Protection Act 1998 on the identification and reduction of risks to privacy or on information to be provided to data subjects on the use of information collected from them, so far as the codes apply. This would include the current codes which relate to privacy impact assessments and privacy notices. Before issuing or reissuing the code of practice, the Minister must consult the Information Commissioner, ministers in the devolved administrations, the Commissioners for Her Majesty's Revenue and Customs and other appropriate bodies and people as the Minister sees fit. *Subsection (4)* permits the relevant Minister to revise and re-issue the code of practice. The code of practice will be subject to approval by a resolution in both Houses of Parliament before it is first issued, and subject to the draft negative procedure in respect of every reissue. The code must be laid before the relevant devolved legislatures when it is issued and every time it is reissued.

## Section 61: Duty to review operation of Chapter

222 *Subsection (1)* sets out that three years after Chapter 4 comes into force, the relevant Minister must, as soon as is reasonably practicable, carry out a review of the operation of the power to determine whether it should be amended or repealed. Before carrying out the review the Minister must publish criteria against which that decision will be made. In carrying out the review, the Minister is required to consult the Information Commissioner, relevant Ministers from the devolved administrations and other persons as the Minister considers appropriate.

223 Under *subsection (4)*, upon completion of the review, the Minister must publish a report setting out the findings, and have a copy of the report laid before Parliament and the legislatures in the devolved administrations. The section provides an order-making power for the Minister to amend or repeal the Chapter as a result of the review. *Subsection (6)* makes clear that the power to amend the Chapter may only be used to improve the effectiveness of the section 56 power, and expressly states that it cannot be used to remove any existing safeguards in sections 57, 58 or 59. Where any such regulations seek to repeal the Chapter or make provision in respect of devolved matters, the Minister must, before making any such regulations, obtain the consent of the relevant devolved administrations. The Minister must seek the consent of HM Treasury before any regulations are made which could affect the disclosure of information by Her Majesty's Revenue and Customs.

## Section 62: Regulations under this Chapter

224 Before making regulations under this Chapter the appropriate national authority must consult the Information Commissioner, each other person who is an appropriate national authority in relation to regulations under the Chapter, the Commissioners for Her Majesty's Revenue and Customs and any other persons the appropriate national authority thinks appropriate. The regulations may contain consequential, supplementary, transitional or transitory provisions or savings.

225 The power to make regulations under section 56(6) to add to the Schedule includes a power to make provisions that restrict onward disclosure similar to that made by section 59 in respect of

information disclosed by the Revenue and Customs. This is intended to cover a situation where the nature of the body to be added is such that its information would require similar protection to that offered to Revenue and Customs' information.

226 Regulations made under this Chapter will be subject to the affirmative resolution procedure, which requires the regulations to be approved by both Houses of Parliament or the equivalent procedure in the devolved legislatures.

### Section 63: Interpretation of Chapter

227 This section sets out definitions for interpreting Chapter 4, which include the definitions of devolved bodies for the purposes of the Chapter. As in section 45 for Chapter 1, "Scottish body" does not include cross-border public authorities and the meaning given to "Welsh body" ensures that the definition is consistent with the definition of a devolved Welsh authority in section 157A of the Government of Wales Act 2006.

## Chapter 5: Sharing for research purposes

### Section 64: Disclosure of information for research purposes

228 *Subsection (1)* allows public authorities to share information that they hold in connection with their functions for the purposes of research. Information-sharing arrangements in support of these provisions will allow two or more public authorities to share and link information in secure conditions. Both non-personal and personal information can be disclosed pursuant to section 64(1). Non-personal information includes information from surveys or from existing findings or studies. This could also include Unique Property Reference Numbers if the view is taken that they are not personal information.

229 For the purposes of safeguarding the privacy of individuals, section 64 provides that six conditions must be met before "personal information" can be disclosed under subsection (1).

230 The *first condition* is that information must be processed before it is disclosed if it identifies a particular person. Subsection (12) provides that information identifies a particular person if the information specifies the identity of a person or if a person's identity can be deduced from the information (whether by itself or taken together with *any* other information). A "particular person" includes a body corporate (subsection (11)). The public authority may process its own information or another public authority, or some other person, may process the information on its behalf (subsection (4)). Other persons may include private companies which specialise in removing "identifiers" from information and those which provide secure access to personal information provided in both cases that they are accredited to do so in accordance with the fifth condition.

231 Processing the information involves removing identifying information so that (a) the information does not specify a person's identity and (b) it is not *reasonably likely* that the identity of a person will be deduced from the information (whether by itself or taken together with *any* other information). *Subsection (5)* permits the disclosure of personal information, as defined by subsection (11), to processors, for the purposes of processing it for disclosure under section 64(1). When it comes to information disclosed by the Revenue and Customs, the Welsh Revenue Authority and Revenue Scotland, a processor will need the consent of the relevant revenue authority before making a disclosure under subsection (5)(b).

232 By *subsection (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 unlawful disclosure of such information.



- 233 By *subsection (7)*, the *third condition* is that the disclosure under subsection (1) is made by the public authority or by a person involved in processing the information for disclosure.
- 234 By *subsection (8)*, the *fourth condition* is that the research for the purposes of which the information is disclosed is accredited under section 71. By virtue of section 71(4), the research must be in the public interest. Criteria for determining whether research is in the public interest will be set out in the code of practice established by section 70.
- 235 By *subsection (9)*, the *fifth condition* is that the following persons must also be accredited: (a) any person involved in processing information for disclosure (including the public authority if it is involved in processing its own information); (b) any person to whom information is disclosed (including providers of secure access facilities, which provide researchers and peer reviewers with carefully controlled access to the information); and (c) any person by whom such information is used for research purposes, such as researchers and peer reviewers.
- 236 By *subsection (10)*, the *sixth condition* is that each person who discloses the information or is involved in processing it for disclosure must have regard to the code of practice under section 70 in doing so.
- 237 *Subsections (11) and (12)* define “personal information” and information that “identifies a particular person”.

## Section 65: Provisions supplementary to section 64

- 238 This section sets out the parameters of the power, and how it interacts with existing law.
- 239 *Subsection (1)* provides that disclosure of information under section 64 does not breach the common law duty of confidentiality or any other restrictions on disclosing the information.
- 240 *Subsections (2) and (3)* provide, however, that information cannot be disclosed under section 64 if to do so would breach the Data Protection Act 1998 or be prohibited by any of Parts 1 to 7 or Chapter 1 of Part 9 of the Investigatory Powers Act 2016 or, until its repeal, by Part 1 of the Regulation of Investigatory Powers Act 2000.
- 241 *Subsection (4)* provides that where a public authority has functions which relate to the provision of health services or adult social care, that public authority cannot disclose under section 64(1) information it holds in connection with such functions. Subsection (4) does not prevent the public authority from disclosing information that it holds in connection with its other functions.
- 242 *Subsection (5)* provides that section 64 does not limit any power to disclose information that exists apart from that section.
- 243 *Subsections (6) to (8)* allow for public authorities and processors to charge fees to researchers for work done, where the researchers have requested information to be disclosed under section 64(1). Fees charged a by public authority must be charged on a cost-recovery basis.

## Section 66: Bar on further disclosure of personal information

- 244 This section applies to personal information disclosed by public authorities other than the revenue authorities. It establishes two criminal offences.
- 245 The *subsection (2)* offence protects a defined class of personal information once it has been disclosed under section 64(1). The offence applies to information which specifies the identity of a particular person, even though section 64(1) does not permit the disclosure of such information. This is to ensure that if such information is purportedly disclosed under section 64(1), when it should not have been, that the information is protected by the offence.
- 246 Once information has been properly processed for disclosure, it will not be *reasonably likely* that a person’s identity will be deduced from the information. However, it might still be *possible* to

*These Explanatory Notes relate to the Digital Economy Act 2017 (c. 30) which received Royal Assent on 27 April 2017*

deduce a person's identity from the information. The subsection (2) offence recognises this and protects the information if a person's identity *could* be deduced (from the information itself or from the information taken together with any other published information).

- 247 Any person who receives that defined class of personal information under section 64(1) and any other person who receives that information, directly or indirectly, from such a person, is prohibited from disclosing it, other than in accordance with subsection (3) or subsection (7). *Subsection (3)(a)* permits a disclosure to the researcher who is accredited to carry out the relevant research. *Subsection (3)(b)* permits disclosure to an accredited peer reviewer. *Subsection (7)* contains a list of various exceptions, including disclosures that are required or permitted by any enactment (including the Act itself) and disclosures made with consent of the person to whom the information relates.
- 248 The Act does not place restrictions on the use or onward disclosure of information which has been disclosed under section 64(1) but which is not personal information within the meaning of section 66(1).
- 249 The *subsection (5)* offence protects personal information (within the meaning of sections 64(11) and (12)) that has been disclosed for the purpose of processing it for disclosure under section 64(1). It is an offence for a processor, or any person who receives such information directly or indirectly from a processor, to disclose that information other than as permitted by subsection (6) or (7). *Subsection (6)(a)* ensures that the offence is not committed when a processor discloses the processed information under section 64(1) or when a processor discloses the information to another processor under section 64(5)(b). *Subsection (6)(b)* ensures – where it is a processor that makes the disclosure under section 64(1) on behalf of the public authority – that the subsection (5)(b) offence does not apply to a disclosure made by the initial recipient of the information or by any person who receives the information from that initial recipient. The last line of subsection (6)(b) ensures that the subsection (2) offence may still apply to a disclosure of information made by those persons.
- 250 Given that the offence applies to personal information which has been disclosed for processing, it will apply even if the information has been processed and is ready for disclosure under section 64(1). As set out above, however, subsection (6)(a) permits a processor to make a disclosure of that information under section 64(1).
- 251 By virtue of *subsection (10)*, a person commits an offence if at the time the person makes the disclosure, the person knows that the disclosure contravenes subsections (2) or (5) or is reckless as to whether the disclosure does so.
- 252 The limited circumstances in which personal information can be disclosed without committing the offence apply to the offences under subsections (2) and (5). Other restrictions on disclosure of personal information – including other criminal offences regarding the unauthorised disclosure of information – may still also apply.

## Section 67: Information disclosed by the Revenue and Customs

- 253 The two offences in section 67 apply to personal information which has been disclosed by the Revenue and Customs under section 64(1) or (5). The *subsection (2)* offence protects the same defined class of information as set out for the section 66(2) offence, but differs in two principal respects. Firstly, there is no equivalent of section 66(7). A disclosure will be caught by the offence unless it is permitted by *subsection (3)* or the Revenue and Customs consents to the disclosure (*subsection (7)*). As with the section 66(2) offence, subsection (3)(a) permits a disclosure to the researcher who is accredited to carry out the relevant research. Subsection (3)(b) permits disclosure to an accredited peer reviewer. Secondly, the offence only applies to certain onward disclosures of personal information that has been disclosed under section 64(1). By virtue of

subsection (2)(a), the offence applies to a disclosure made by the initial recipient of the information under section 64(1). By virtue of subsection (2)(b), the offence also applies to disclosures made by a person to whom the information is disclosed under subsection (3), that is accredited researchers and accredited peer reviewers.

254 The Act does not place restrictions on the use or onward disclosure of information which has been disclosed under section 64(1) but which is not personal information within the meaning of section 66(1).

255 The *subsection (5)* offence, like the section 66(5) offence, protects personal information (within the meaning of section 64(11) and (12)), that has been disclosed for the purposes of processing it for disclosure under section 64(1). It differs from the section 66(5) offence in two principal respects. Firstly, there is no equivalent of section 66(7). A disclosure will be an offence unless, by virtue of *subsection (6)*, it is a disclosure by a processor pursuant to section 64(1) or the Commissioners for Her Majesty's Revenue and Customs consent to the disclosure (*subsection (7)*). Secondly, the offence applies to disclosures made by processors who have received the information under section 64(5). It does not apply to onward disclosures made by other persons. For example, if an accredited researcher unlawfully disclosed personal information to a journalist, a further disclosure by that journalist would not be a criminal offence under *subsection (5)*.

256 Given that the offence applies to personal information which has been disclosed for processing, it will apply even if the information has been processed and is ready for disclosure under section 64(1). As set out above, however, *subsection (6)* permits a processor to make a disclosure of that information under section 64(1).

257 By virtue of *subsection (9)*, it is a defence for a person charged with either offence to prove that the person reasonably believed that the disclosure was lawful or that the information had already and lawfully been made available to the public.

### Section 68: Information disclosed by the Welsh Revenue Authority

258 Section 68 establishes two offences which provide equivalent protection for information disclosed by the Welsh Revenue Authority under sections 64(1) and (5) as that provided by section 67 for information disclosed by Her Majesty's Revenue and Customs.

259 By virtue of *subsection (9)* it is a defence for a person charged with either offence to prove that the person reasonably believed that the disclosure was lawful or that the information had already and lawfully been made available to the public.

### Section 69: Information disclosed by Revenue Scotland

260 Section 69 establishes two offences which provide equivalent protection for information disclosed by Revenue Scotland under sections 64(1) and (5) as that provided by section 67 for information disclosed by Her Majesty's Revenue and Customs.

261 By virtue of *subsection (9)*, it is a defence for a person charged with either offence to prove that the person reasonably believed that the disclosure was lawful or that the information had already and lawfully been made available to the public.

### Section 70: Code of practice

262 This section provides that a code of practice must be issued by the Statistics Board (the name used in legislation when describing the United Kingdom Statistics Authority) about the disclosure and processing of personal information under section 64 and about the holding or use of personal information disclosed under section 64. The Statistics Board must prepare, consult on, and issue the code of practice and may from time to time revise and re-issue it. The code of practice must be consistent with the code of practice issued by the Information Commissioner under section 52B of

the Data Protection Act 1998. *Subsection (9)* requires that the first version of the code be approved by a resolution of each House of Parliament. *Subsections (10) and (12)* set out the procedure to be followed before the Statistics Board may reissue the code. *Subsection (14)* provides that as soon as reasonably practicable after issuing or reissuing the code, the Statistics Board must lay a copy before the devolved legislatures.

263 *Subsections (3) and (15)* provide that all persons disclosing or using information under section 64 must have regard to the code of practice and to applicable codes of practice that the Information Commissioner has issued under section 51(3) of the Data Protection Act 1998 on the identification and reduction of risks to privacy and on information to be provided to data subjects on the use of information collected from them, in so far as the codes apply. This would include the current codes which relate to privacy impact assessments and privacy notices.

## Section 71: Accreditation for the purposes of this Chapter

264 This section sets out the system of accreditation which will be operated by the Statistics Board. Accreditation applies to both the research itself and the persons involved in processing information for use in research.

265 *Subsection (1)* gives the Statistics Board the power to accredit, and withdraw accreditation from:

- a. persons who may be involved in processing information for disclosure under section 64(1),
- b. persons to whom information may be disclosed under section 64(1),
- c. researchers by whom the disclosed information may be used for research purposes, and
- d. the research itself.

266 *Subsections (2) to (5)* set out the duty of the Statistics Board to establish and publish conditions for accreditation as well as grounds for withdrawing accreditation. The conditions for the accreditation of persons involved in the processing of information for disclosure must include a condition that the person is a “fit and proper person” to be involved in such processing. The conditions for the accreditation of research must include a condition that the research is in the public interest. The grounds for withdrawal of accreditation must include a ground that the person has failed to have regard to the code of practice under section 70.

267 *Subsection (6)* requires the Statistics Board, before publishing conditions for accreditation or grounds for withdrawal of accreditation, to consult the Minister for the Cabinet Office, the Information Commissioner, the Commissioners for Her Majesty’s Revenue and Customs, the Scottish Ministers, the Welsh Ministers, the Department of Finance in Northern Ireland and such other persons as the Statistics Board thinks appropriate.

268 *Subsection (7)* allows the Statistics Board to revise and update the accreditation criteria as and when it considers it to be appropriate. *Subsection (8)* provides that the Statistics Board must consult the same persons as required by subsection (7), before revising the accreditation criteria.

269 *Subsections (9) to (11)* set out requirements for the Statistics Board to maintain and publish a register of accredited persons.

## Section 72: Delegation of functions of Statistics Board

270 This section provides the Statistics Board with the power to delegate any of its functions under section 71 to another person, providing certain conditions are met.

## Section 73: Interpretation of this Chapter

*These Explanatory Notes relate to the Digital Economy Act 2017 (c. 30) which received Royal Assent on 27 April 2017*

271 This section sets out definitions for interpreting this Chapter of the legislation.

## Chapter 6: Disclosure by Revenue Authorities

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

272 Section 74 relaxes the current legal constraints on disclosing non-identifying information, allowing Her Majesty's Revenue and Customs to share aggregate and general information more widely, for purposes in the public interest.

273 *Subsection (1)* gives Revenue and Customs officials the authority to decide whether disclosure is in the public interest. Non-identifying information is defined through *subsections (2) and (3)* as information that does not specify the identity of a person or allow a person's identity to be deduced either from that information alone or from that information taken together with any other information. *Subsection (4)* provides definitions for this section.

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

274 Section 75 permits a relevant official of the Welsh Revenue Authority to disclose non-identifying information if the official thinks that the disclosure would be in the public interest. *Subsection (2)* defines "non-identifying" information and *subsection (3)* defines "identifying" information. By *subsection (4)(b)*, the power applies to: (i) non-identifying information held by the Welsh Revenue Authority in connection with its functions and (ii) non-identifying information held by a person to whom any of the functions of the Welsh Revenue Authority have been delegated in connection with those functions.

### Section 76: Disclosure of non-identifying information by Revenue Scotland

275 Section 76 permits a relevant official of Revenue Scotland to disclose non-identifying information if the official thinks that the disclosure would be in the public interest. *Subsection (2)* defines "non-identifying" information and *subsection (3)* defines "identifying" information. The information must be held by a relevant person in connection with a relevant function, as defined by *subsection (4)*.

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

276 The Employer Liability Tracing Office (ELTO) is a non-profit making company which maintains a database of insurance policies to enable employees to trace former or current employers and their insurers in order to obtain compensation for workplace injuries. Section 77 enables Her Majesty's Revenue and Customs to share the name and address of an employer and associated reference numbers with ELTO, for the purpose of assisting with such claims. Access to this information is expected to help improve the quality of the ELTO databases.

## Chapter 7: Statistics

### Section 78: Disclosure of information by the Revenue and Customs to the Statistics Board

277 This section amends section 45 of the Statistics and Registration Service Act 2007 ("the 2007 Act") which makes provision for the disclosure of information held by Her Majesty's Revenue and Customs to the Statistics Board (the name used in legislation when describing the United Kingdom Statistics Authority). It lifts the restriction that prevents the Revenue and Customs from disclosing information to the Statistics Board for the Board's functions under section 22 of the 2007 Act (statistical services), and it permits the Board to use information for those functions where it

*These Explanatory Notes relate to the Digital Economy Act 2017 (c. 30) which received Royal Assent on 27 April 2017*



has the consent of the Commissioners for Her Majesty's Revenue and Customs. It also omits subsection (5) of section 45 of the 2007 Act which prevents the disclosure of personal information held by the Revenue and Customs that does not relate to imports and exports.

278 *Subsections (6) to (8)* insert a new subsection (4A) into section 45, providing that in disclosing information under section 45, the Commissioners or an officer of Revenue and Customs must have regard to applicable codes of practice that the Information Commissioner has issued under section 51(3) of the Data Protection Act 1998 on the identification and reduction of risks to privacy or on information to be provided to data subjects on the use of information collected from them, in so far as the codes apply to the information in question. This would include the current codes on privacy impact assessments and privacy notices. In determining how to comply with this duty, the Commissioners or the officer of Revenue or Customs must have regard to any view of the Statistics Board which is communicated to them.

## Section 79: Disclosure of information by public authorities to the Statistics Board

279 *Subsection (2)* inserts new section 45A (information held by other public authorities) into the Statistics and Registration Service Act 2007 ("the 2007 Act") to make provision for the disclosure of information held by public authorities to the Statistics Board where the public authority is satisfied that the Board requires that information for the purposes of any one or more of the Board's functions. Such information may not be used by the Statistics Board for the purposes of its functions under section 22 of the 2007 Act (statistical services), or be disclosed by the Board to an approved researcher under section 39(4)(i) of the 2007 Act, without the consent of the public authority which provided the information.

280 Subsection (8) of new section 45A provides that in disclosing information under section 45A, a public authority must have regard to applicable codes of practice that the Information Commissioner has issued under section 51(3) of the Data Protection Act 1998 on identification and reduction of risks to privacy or on information to be provided to data subjects on the use of information collected from them, in so far as the codes apply to the information in question. This would include the current codes on privacy impact assessments and privacy notices. In determining how to comply with this duty, the public authority must have regard to any views of the Statistics Board that are communicated to it.

281 Subsection (11) of new section 45A provides that any such disclosure does not breach any obligation of confidence or other restriction on disclosure, however imposed. The section does not authorise a disclosure that contravenes the Data Protection Act 1998, is prohibited by any of Parts 1 to 7 or Chapter 1 of Part 9 of the Investigatory Powers Act 2016 (or, until such time as those provisions are in force, Part 1 of the Regulation of Investigatory Powers Act 2000) or contravenes EU law.

282 *Subsection (3)* omits sections 47 to 49 of the 2007 Act which make provision for regulations to authorise disclosure by public authorities, including devolved authorities, to the Statistics Board. Those powers to make provision by regulations for sharing information are replaced by the regime set out in new section 45A.

## Section 80: Access to information by Statistics Board

283 This section inserts new sections 45B to 45G into the Statistics and Registration Service Act 2007 ("the 2007 Act") to give the Statistics Board access to information held by a range of different bodies.

284 New section 45B (access to information held by Crown bodies etc) concerns access by the Statistics Board to information held by Crown bodies and other named bodies. Subsection (2) of new section 45B provides that the Board has a right of access to information which is held by a Crown body, or one of these other named bodies, in connection with the body's functions and which is



required by the Board to enable it to exercise one or more of its functions.

285 New section 45B allows the Statistics Board to make a formal written request for information from Crown bodies. The right is subject to the terms of new sections 45B and 45E. The body in question must respond in writing to the request, either indicating it is willing to provide the information (and the date it will provide it) or that it is not willing to provide the information (and giving reasons for not providing it). If the body does not provide the information requested the Statistics Board may bring the matter to the legislature's attention by laying the request and the body's response before Parliament or the relevant devolved legislature. Subsection (3) of new section 45B specifies that it does not authorise a disclosure that would contravene the Data Protection Act 1998, would be prohibited by any of Parts 1 to 7 or Chapter 1 of Part 9 of the Investigatory Powers Act 2016 (or, until such time as those provisions are in force, would be prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000) or would contravene EU law.

286 New section 45C (power to require disclosures by other public authorities) confers powers on the Statistics Board, by notice in writing, to require the disclosure of information held by other public authorities. The information required will be specified in a notice. The notice may also specify times and dates to which the information relates, the date by which, and the form and manner in which, the information must be disclosed. Subsection (6) of new section 45C also allows the Statistics Board to include in a notice a requirement for a public authority to consult the Board before making changes to its processes for collecting, organising, storing or retrieving information to which the notice relates, or to processes for supplying such information to the Board.

287 Subsection (8) of new section 45C provides that the Statistics Board may only issue a request or a notice if the information to be disclosed is required by the Board for any one or more of the Board's functions.

288 By subsections (9) to (11) of new section 45C, the Statistics Board must obtain the consent of Ministers in the devolved administrations before giving a notice to a public authority that is:

- a. a Scottish public authority, defined by reference to the Scotland Act 1998,
- b. a devolved Welsh authority, as defined by the Government of Wales Act 2006, or
- c. a public authority that exercises devolved functions only as regards Northern Ireland.

289 Subsection (13) of new section 45C specifies that it does not authorise a disclosure that might prejudice national security, would contravene the Data Protection Act 1998, would be prohibited by any of Parts 1 to 7 or Chapter 1 of Part 9 of the Investigatory Powers Act 2016 (or, until such time as those provisions are in force, would be prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000) or would contravene EU law.

290 New section 45D (power to require disclosure by undertakings) confers a power on the Statistics Board, by notice in writing, to require the disclosure of information held by undertakings. As with new section 45C, the information required will be specified in a notice, which may also specify the times and dates to which the information relates, the date by which, and the form and manner in which, the information must be disclosed. Subsection (5) of new section 45D also allows the Statistics Board to include in a notice a requirement for the undertaking to consult the Board before making changes to its processes for collecting, organising, storing or retrieving information to which the notice relates, or to processes for supplying such information to the Board.

291 Subsection (7) of new section 45D provides that the Statistics Board may only issue a notice if the information to be disclosed is required by the Board for any one or more of the Board's functions.

292 Subsection (9) of new section 45D specifies that it does not authorise a disclosure that might prejudice national security, would contravene the Data Protection Act 1998, would be prohibited

by any of Parts 1 to 7 or Chapter 1 of Part 9 of the Investigatory Powers Act 2016 (or, until such time as those provisions are in force, would be prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000).

- 293 Subsection (11) of new section 45D provides a definition of an undertaking for the purposes of section 45D.
- 294 New section 45E (further provisions about powers in sections 45B, 45C and 45D) sets out additional provisions which are common to new sections 45B, 45C and 45D. Subsections (2) and (3) of new section 45E prevent information disclosed in response to a request or a notice from being used by the Statistics Board for the purposes of its functions under section 22 of the 2007 Act (statistical services), or disclosed by the Board to an approved researcher under section 39(4)(i) of the 2007 Act, without the consent of the public authority or undertaking which provided that information. Subsection (4) of new section 45E provides that a disclosure in response to a request does not breach any obligation of confidence or any other restriction on disclosure.
- 295 Subsections (5) and (8) of new section 45E require the Statistics Board to prepare, consult on, and publish a statement of principles and procedures by which it will exercise its functions under this section. The draft statement must be laid before Parliament. By subsection (6), it must be consistent with the code of practice issued by the Information Commissioner under section 52B of the Data Protection Act 1998.
- 296 By subsection (10) of new section 45E, the first version of the statement must be approved by resolution of each House of Parliament before it can be published. Subsections (11) and (12) of new section 45E set out the procedure to be followed before the Statistics Board may publish a revised statement. Subsection (15) of section 45E provides that after preparing or revising a statement, the Statistics Board must lay it before the devolved legislatures.
- 297 Subsection (16) of new section 45E provides that in exercising any of its functions under sections 45B, 45C or 45D, the Statistics Board must have regard to any applicable code of practice the Information Commissioner has issued under section 51(3) of the Data Protection Act 1998 on the identification and reduction of risks to privacy, in so far as the code applies to the information in question. This would include the current code on privacy impact assessments.
- 298 New section 45F (offences relating to notices under section 45C or 45D) makes it an offence to fail to comply with a notice issued under new sections 45C or 45D without reasonable excuse, or if in purporting to comply with a notice a person knowingly or recklessly provides false information.
- 299 Subsection (1) of new section 45G (code of practice on changes to data systems) requires the Statistics Board to prepare, consult on, and publish a code of practice setting out guidance that public authorities, including Crown bodies, need to take into account when making such changes. The purpose of the code is to ensure that the requirements of the Statistics Board are taken into account when public authorities change their collection and storage of information in ways that could affect the continued supply of information which is used to compile official statistics. Subsection (2) of new section 45G requires a public authority to have regard to that code of practice in making such changes. By subsection (6) of new section 45G, the first version of the code must be approved by a resolution of each House of Parliament before it can be published. Subsections (7) and (8) of new section 45G set out the procedure to be followed before the Statistics Board may publish a revised code. Subsection (11) of new section 45G provides that after preparing or revising a code, the Statistics Board must lay it before the devolved legislatures.

## Section 81: Disclosure by the Statistics Board to devolved administrations

- 300 This section inserts a new section 53A into the Statistics and Registration Service Act 2007. New section 53A will allow the Statistics Board to disclose information it holds in connection with the exercise of any of its functions to a devolved authority (which is defined in subsection (2) of the

new section). Information may only be disclosed for the purpose of the statistical functions of the devolved authority. New section 53A sets out the procedure by which the devolved authority must request the information, which requires a written request which specifies the information that is sought and the purposes for which it is sought. Subsection (6) of new section 53A specifies conditions for disclosure which include, in the case of information received from public authorities, that the public authority consents to its disclosure. Subsection (7) of new section 53A permits the Statistics Board to set conditions the devolved authority must meet before the information is disclosed. Subsection (8) of new section 53A limits use of the information disclosed to the purposes for which it was disclosed.

- 301 Subsection (9) of new section 53A provides that in disclosing information under section 53A, the Statistics Board must have regard to applicable codes of practice that the Information Commissioner has issued under section 51(3) of the Data Protection Act 1998 on the identification and reduction of risks to privacy or on information to be provided to data subjects on the use of information collected from them, in so far as the codes apply to the information in question. This would include the current codes on privacy impact assessments and privacy notices.
- 302 By subsection (12), new section 53A does not permit a disclosure which would breach a restriction on disclosure (such as an obligation of confidence owed by the Statistics Board), would contravene the Data Protection Act 1998, would be prohibited by any of Parts 1 to 7 or Chapter 1 of Part 9 of the Investigatory Powers Act 2016 (or, until such time as those provisions are in force, would be prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000) or any other restriction on the disclosure of information (however imposed).

## Part 6: Miscellaneous

### Section 82: OFCOM reports on infrastructure etc

- 303 Section 134A of the 2003 Act requires Ofcom to report to the Secretary of State triennially on various matters relating to electronic communications networks and electronic communications services listed in section 134B(1) and (2). This section inserts new sections 134AA and 134AB. New section 134AA sets out that Ofcom has the power to prepare and publish a report on any of those matters at times or at intervals it considers appropriate. Ofcom is not required to report on all matters listed in section 134B(1) and (2). It is for Ofcom to consider which matters to report on. New section 134AB allows Ofcom to publish information obtained under section 135 for the purpose of preparing a report under 134A or 134AA, and also allows Ofcom to publish information derived from such information.
- 304 New sections 134AA and 134AB place a duty on Ofcom to consider whether they could refuse to disclose under the Freedom of Information Act 2000 information to be contained in a report and, if so, whether that information should be excluded from the report or be published, respectively.
- 305 This section does not affect Ofcom's duty to prepare a report on a triennial basis to the Secretary of State, as set out in section 134A.

### Section 83: Comparative overviews of quality and prices

- 306 This section inserts new section 134D in the 2003 Act, giving Ofcom an express power to carry out and publish comparative overviews of the quality and price of public electronic communications services, in the interest of end-users of those services.
- 307 *Subsection (3)* amends section 136 so as to repeal the provision it replaces and ensure that Ofcom has the power to require a communications provider or person who make available associated facilities to provide Ofcom with information for the purpose of carrying out comparative overviews. *Subsection (4)* amends section 393(6) of the 2003 Act to provide that nothing in section 393 (general restrictions on the disclosure of information) limits the matters that may be published

*These Explanatory Notes relate to the Digital Economy Act 2017 (c. 30) which received Royal Assent on 27 April 2017*

as part of such a comparative overview.

308 This section repeals section 136(2) and replaces it with a new section 134D, which gives Ofcom an express power to carry out and publish such comparative overviews. It also amends section 393(6) of the 2003 Act to provide that nothing in section 393 (general restrictions on the disclosure of information) limits the matters that may be published as part of such a comparative overview.

#### Section 84: Conditions about allocation of telephone numbers

309 Section 58 of the 2003 Act provides that general conditions (which may be set by Ofcom under section 45 of the 2003 Act) may include conditions about the allocation and adoption of telephone numbers. This section amends section 58 by inserting new subsection (2A) which provides that general conditions may also require communications providers that have been allocated telephone numbers to inform Ofcom of certain circumstances or events. These are further specified in subsections (2A)(a) to (d).

310 New subsection (2A)(a) covers information which a communication provider was not required to provide at the time of applying for an allocation of numbers, but which has since been made a requirement on application. New subsection (2A)(b) covers any changes to the information provided at the time of applying for an allocation of telephone numbers. New subsection (2A)(c) covers any proposal by the provider to cease providing an electronic communications service or network. New subsection (2A)(d) covers any other circumstances or events that Ofcom may specify in the general condition itself. These might include (but are not limited to) events such as the commencement of proceedings for liquidation, bankruptcy, administration or receivership in relation to the communications provider.

#### Section 85: Provision of information to OFCOM

311 Section 135 of the 2003 Act provides Ofcom with powers to obtain information necessary for the purpose of carrying out its functions under Chapter 1 of Part 2 of the 2003 Act. This section amends section 135 by substituting a new subsection (1). This new subsection sets out that Ofcom may also use its information gathering powers under Section 135 to obtain information necessary for the purpose of carrying out two of its functions that are outside of Part 2 Chapter 1.

312 New subsection (1)(a) enables Ofcom to use its information gathering powers under section 135 to carry out its functions under section 14(1) of the 2003 Act. Section 14(1) requires Ofcom to make arrangements for ascertaining the state of public opinion and the interests and experiences of consumers in relation to various specified matters.

313 New subsection (1)(b) enables Ofcom to use its information gathering powers under section 135 of the 2003 Act to carry out its functions under section 26 of the 2003 Act, insofar as they relate to matters in relation to which Ofcom have functions under Part 2 Chapter 1. Section 26 requires Ofcom to arrange for the publication of information and advice about matters in relation to which they have functions as appears to them to be appropriate to make available to various specified persons.

#### Section 86: Information required from communications providers

314 This section amends the 2003 Act by inserting new sections 137A and 137B, which set out the scope of Ofcom's powers to require communications providers to collect, generate or retain information for the purpose of publication, either by the communications provider, or by Ofcom.

315 Subsection (1)(a) of new section 137A gives Ofcom power to require communications providers to publish any information held by the provider. Subsection (1)(b) provides powers to require communications providers to provide any such information to Ofcom, for the purposes of Ofcom publishing such material.

- 316 Subsection (2) of new section 137A allows the requirements imposed under subsection (1) to include requirements to produce, generate or obtain information. Subsection (3)(a) to (c) of new section 137A contains a non-exhaustive list of some of the things that the communications provider might be required to do, including collect information, retain information or generate new information through analysis of data or information. The power also encompasses a requirement for communications providers to answer any questions that Ofcom might ask under this subsection.
- 317 Subsection (4) of new section 137A sets out the limitations on Ofcom's powers under subsections (1) to (3). Ofcom may use the powers conferred by subsections (1) to (3) only in connection with the carrying out its functions under Chapter 1 of Part 2 of the 2003 Act (provisions relating to electronic communications networks and services), or related functions under Part 1. Subsection (4)(b) requires that the exercise of the powers conferred by subsection (1) to (3) is proportionate to the use to which the material will be put in connection with the carrying out of those functions.
- 318 Subsection (5) of new section 137A provides that the power conferred is to be exercised by a demand contained in a notice served on the communications provider, which describes the information or analysis required, or sets out the questions to be answered. The notice must also set out Ofcom's reasons for imposing the requirement.
- 319 Subsection (6)(a) requires that Ofcom serve a draft of any forthcoming demand to the recipient in advance of issuing it, and inform the provider of the period in which they may make representations. Subsection (6)(b) requires that Ofcom have regard to representations made by a communications provider within that period which identify restrictions in complying with the demand, due to restrictions on the disclosure or publication of information, as set out in subsection 6(b)(i) or due to the practicability of complying with the demand, as set out in subsection 6(b)(ii).
- 320 Subsection (7) of new section 137A gives Ofcom power to prescribe the manner and form in which information, analysis or answers are to be published or provided under subsection (1)(a) or (b), and the timeframe within which they must be published or provided (subject to it being a reasonable period). Subsection (8) provides that, when Ofcom publishes information, analysis or answers, it must do so in a manner and form that it considers appropriate.
- 321 New section 137B(1) requires that in exercising the powers conferred on it under new section 137A, Ofcom must have regard to the need to exclude from publication matters which are confidential, as defined in subsections (2) and (3). This mirrors the qualification on Ofcom's duty to arrange for the publication of information and advice under section 26.

## Section 87: Appeals from decisions of OFCOM and others: standard of review

- 322 This section amends the 2003 Act by inserting a new section 194A that requires appeals to the CAT against specified regulatory decisions under section 192 to be decided by applying the same principles as would be applied by a court on an application for judicial review. The CAT may then dismiss the appeal or quash the whole or part of the decision to which it relates; and where it quashes the whole or part of the decision, remit the matter back to the decision-maker with a direction to reconsider and make a new decision in accordance with its ruling.
- 323 *Subsection (2)* of this section amends section 193 of the 2003 Act, relating to price control matters referred to the Competition and Markets Authority ("CMA"), so that when considering a price control matter the CMA must have regard to the principles to be applied by the CAT under section 194A.
- 324 *Subsection (11)* amends section 317 of the 2003 Act to ensure that the provisions of the new section 194A also apply to appeals against decisions of the regulator when exercising a Broadcasting Act power for a competition purpose under section 317 of the 2003 Act.



325 *Subsection (12)* provides that the changes made by this section do not apply to appeals against decisions made before the section comes into force.

326 Those appeals that are not specified will continue to be decided “on the merits” under section 195 of the 2003 Act.

### Section 88: Functions of OFCOM in relation to the BBC

327 This section amends section 198 of the 2003 Act to broaden the ability of Ofcom to regulate the activities of the BBC, giving Ofcom expanded regulatory powers in relation to the BBC’s activities. *Subsection (3)* provides that the BBC Charter and Framework Agreement will specify how Ofcom will exercise its statutory powers in relation to the BBC, including in relation to the BBC’s commercial services.

328 This section also creates a new provision in the 2003 Act which confers a power for Ofcom to fine a person who does not provide information in connection with Ofcom’s regulatory functions in relation to the BBC. The substantive requirements for Ofcom to fulfil before it can issue a fine are provided for in section 88. The section also requires Ofcom to publish guidance in order to provide clarity as to how it will approach issuing penalties. These powers are similar to those Ofcom already has in relation to telecommunications, but with a lesser maximum financial penalty of up to £250,000 (which will be a form of civil, as opposed to criminal, fine).

### Section 89: TV licence fee concessions by reference to age

329 Section 365 of the 2003 Act enables the Secretary of State to make provision for concessions in relation to the payment of the television licence fee, which may take the form of exemptions from payment or of reduced rate payments. This includes a concession for a free television licence for those who have reached a qualifying age, currently set at 75 years. The Secretary of State exercises the function of conferring concessions by making regulations.

330 This section inserts new section 365A into the 2003 Act to confer on the BBC the function of making provision for a TV licence fee concession by reference to age, limited by subsection (2) of the new section to persons who are aged 65 or over and by subsection (3) to exclude a concession of the same form as that are currently provided by the Secretary of State in relation to residential care. From 1 June 2020 this concession will no longer be determined by regulations but determined independently by the BBC following consultation. The BBC will have the power to make changes to the concession, including changing the eligibility criteria, level of concession and qualifying age (although this may not be lower than 65) or to end the concession.

331 The Secretary of State retains the power to make provision for all other concessions. This includes the current residential care concession or its equivalent.

### Section 90: Provision of children’s programmes

332 This section confers a power on Ofcom, if it thinks fit, to publish criteria relating to the provision of children’s programmes on licensed public service channels (i.e. Channel 3, Channel 4 and Channel 5) and services related to those channels. This section also confers a power on Ofcom to impose, if it considers necessary, conditions (quotas) that it deems appropriate for securing that the provision of children’s programmes meets any such criteria.

333 This section requires Ofcom to publish any criteria relating to the provision of children’s programmes in a statement that sets out the criteria and how it proposes to apply them. Before publishing or reviewing any statement, Ofcom must carry out a public consultation. After any review, Ofcom would revise or withdraw the criteria by publishing a further statement. Where Ofcom publishes criteria, it may from time to time assess the provision of children’s programmes in relation to any licensed public service channel. For the purposes of that assessment, Ofcom must take into account the provision of children’s programmes on all “related services” and draw



no distinction between whether a programme is provided on a licenced public service channel or on another service.

### Section 91: Suspension of radio licences for inciting crime or disorder

- 334 *Subsection (1)* replaces section 111B of the Broadcasting Act 1990 to give Ofcom the ability to suspend (pending a decision whether to revoke) the licence of a radio station that has breached a condition of its broadcast licence by broadcasting material which, in Ofcom's view, is likely to encourage or incite the commission of crime or lead to disorder. This replaces a power for Ofcom to rapidly suspend licences (pending a decision to revoke) which previously only applied to Radio Licensable Content Services (RLCS) broadcasting via satellite and cable platforms; this new power applies the same procedure to all types of radio licences.
- 335 Subsection (1) of the new section 111B requires Ofcom to serve a notice suspending a radio service licence if they are satisfied that the licensee has breached a condition of its licence by broadcasting material likely to encourage or incite the commission of crime or lead to disorder and Ofcom considers the contravention justifies the revocation of the licence.
- 336 New subsection (2) specifies that the notice served on the licence holder by Ofcom must set out the reasons why it considers the licensee has failed to comply with its licence condition and give the licensee a period of 21 days during which it can make representations to Ofcom.
- 337 New subsection (3) confirms that the effect of serving a notice is to suspend the licence (so that the licensee must stop broadcasting immediately) until Ofcom makes a decision either to revoke the licence or reinstate it. Subsections (4) to (6) specify the process for revoking the licence.
- 338 New subsection (7) provides that this power is separate from Ofcom's wider power to revoke broadcasting licences in section 111 of the Broadcasting Act 1990.

### Section 92: Digital additional services: seriously harmful extrinsic material

- 339 Subsection (1) of new section 24A of the Broadcasting Act 1996 places a duty on Ofcom to take appropriate measures to protect viewers from potentially seriously harmful extrinsic material that is accessible through Digital Television Additional Services (DTAS). Ofcom possesses an existing power in section 4 of the Broadcasting Act 1996 to impose conditions in broadcast licences it considers appropriate having regard to its duties under broadcasting legislation. Ofcom can use that power further to this duty.
- 340 Subsection (2) defines "seriously harmful extrinsic material".

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

- 341 This section introduces into Part 4A of the 2003 Act new sections 368BC, 368BD and 368CA, allowing the Secretary of State to require providers of VoD services to make their services more accessible to people with disabilities affecting their sight or hearing or both.
- 342 New section 368BC provides the Secretary of State with the power, by regulations, to impose requirements on providers of on-demand programme services, including designated levels of subtitling, audio-description and sign language in programmes. Subsections (4) to (6) set out the steps that must be taken before regulations are made under this section.
- 343 New section 368BD provides for the enforcement of the requirements set by regulations made under new section 368BC. Failure to comply with an enforcement notice issued under this section is itself grounds for the imposition of a financial penalty under section 368J of the 2003 Act.
- 344 New section 368CA requires Ofcom to draw up and periodically review and revise a code giving guidance to on-demand programme services on steps to be taken to meet the requirements set by regulations under section 368BC, as well as other steps to ensure their services are made

progressively more accessible for people with disabilities affecting their sight or hearing or both.

#### Section 94: On-demand programme services: specially restricted material

345 This section amends the definition of ‘specially restricted material’ in section 368E (5) of the 2003 Act to include pornographic video works which have received an 18 certificate (“18 sex works”) or other pornographic material which would receive an 18 certificate had it been submitted for classification. The latter will also cover excerpts from 18 sex works.

#### Section 95: Electronic programme guides and public service channels

346 This section inserts new section 311A into the 2003 Act. Ofcom is placed under a duty to publish a report on the provision in electronic programme guides of information for accessing and selecting programmes included in public service channels and by means of on-demand programme services run by those who provide public service channels. After publication of this initial report, Ofcom must then review and revise its code of practice for electronic programme guides under s.310 of the 2003 Act. Subsection (3) requires that such a revision must be completed by 1 December 2020.

#### Section 96: Direct marketing code

347 This section inserts new sections 52AA into the Data Protection Act 1998 (“the 1998 Act”) and makes amendments to sections 51 and 52B to 52E.

348 New section 52AA places the Information Commissioner under a duty to publish and keep under review a direct marketing code of practice.

349 New section 52AA(1) and (2) provide that the code will contain practical guidance and any other guidance that promotes good practice in direct marketing activities. Good practice is defined as practice that appears to the Information Commissioner to be desirable including, but not limited to, compliance with the requirements of the 1998 Act and the PECR. When deciding what constitutes good practice, the Information Commissioner must have regard to the interests of data subjects and others.

350 New section 52AA(3) requires that in preparing the code the Information Commissioner must consult, as he or she considers appropriate, with trade associations, data subjects and persons who represent the interests of data subjects.

351 New section 52AA(4) applies the definition of direct marketing in section 11(3) of the 1998 Act, which defines direct marketing as the communication (by whatever means) of any advertising or marketing material which is directed to particular individuals.

352 *Subsections (3) to (8)* amend sections 51(5A) and 52B to 52E of the 1998 Act so that these provisions apply to the direct marketing code of practice as well as to the data-sharing code of practice, established under section 52A. These provisions set out the procedure to be adopted when preparing the code, require the code to be kept under review and altered or replaced as necessary, provide for the publishing of the code and set out the legal effect of the code.

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

353 This section inserts into section 98 of the Broadcasting Act 1996 a power for the Secretary of State to amend the conditions in subsection (2) of that section which a television channel must meet in order to be a qualifying service for the purposes of the listed events regime.

354 New subsection (5A) enables the Secretary of State to amend by regulations the percentage of the population by which a channel must be received in order to be a qualifying service.

355 New subsection (5B) prevents a change made by regulations under this section from altering the validity of pre-existing contracts between broadcasters and holders of rights to listed events. New subsection (5C) enables the inclusion of transitional, transitory, or saving provisions in regulations under this section.

## Section 98: Strategic priorities and provision of information

356 This section provides the Secretary of State with the power to set out a statement of strategic priorities which Ofcom must have regard to on: telecommunications, the management of the radio spectrum, and postal services.

357 This would have to be consulted on (including with Ofcom) and laid before Parliament and subject to an annulment by either House within 40 days.

358 Ofcom are also be required to share with the Secretary of State documents it is about to publish - subject to the exclusion certain publications specified by regulation. In the government's view this will ensure that the government is better informed of key research, developments and decisions, and through this aid the government's development of policy.

## Section 99: OFCOM and Northern Ireland

359 Ofcom is the UK-wide independent communications regulator overseeing television, radio, telecommunications, mobiles, postal services and the airwaves. It was established by the Office of Communications Act 2002 ("the 2002 Act").

360 Section 1 of the 2002 Act provides that the Secretary of State appoints the chair and other members of Ofcom and that the Scottish Ministers appoint a member. *Subsections (1) to (4)* of this section amend section 1 of the 2002 Act to provide that the Minister for the Economy in Northern Ireland shall appoint one member of Ofcom and that, before doing so, they must consult the Secretary of State. *Subsection (4)* ensures that the member appointed by the Northern Ireland Ministers has the same functions as other non-executive members of Ofcom in the appointment of any executive members of Ofcom.

361 The Schedule to the 2002 Act makes further provision about Ofcom including: qualification for membership, tenure of office, accounts and audit and annual reports. *Subsection (5)* of this section amends the application of the Schedule in relation to the member of Ofcom appointed by the Minister for the Economy of Northern Ireland. The functions relating to ensuring that a person being appointed to Ofcom does not have any conflict of interest and the functions relating to the member's resignation or removal from office are conferred on the Northern Ireland Ministers. The member may only be removed from office by the Minister for the Economy in Northern Ireland following consultation with the Secretary of State.

362 *Subsection (7)* of this section amends the Schedule to the 2002 Act to require the Comptroller and Auditor General to send a copy of Ofcom's statement of accounts and the Comptroller and Auditor General's report to the Minister for the Economy in Northern Ireland and for the Minister to lay those documents before the Northern Ireland Assembly. Similarly, *subsection (8)* amends the Schedule to the 2002 Act to require Ofcom to send its annual report to the Minister for the Economy in Northern Ireland and for the Minister to lay the report before the Northern Ireland Assembly.

363 Section 44 of the Northern Ireland Act 1998 (power of Assembly to call for witnesses and documents: limitation by reference to transferred matters etc) gives the Northern Ireland Assembly the power to require persons and UK Ministers to appear before it to give evidence or produce documents in relation to any subject for which the Northern Ireland Assembly has general responsibility. *Subsection (9)* of this section gives the Northern Ireland Assembly the power to compel witnesses and documents from Ofcom in relation to the functions exercised by

OFCOM in relation to Northern Ireland.

## Section 100: Retention by OFCOM of amounts paid under Wireless Telegraphy Act 2006

364 Section 400(1)(c) of the 2003 Act (Destination of fees and penalties) requires that that all charges imposed by Ofcom by or under its powers to manage the radio spectrum contained in Chapters 1 and 2 of Part 2 of the 2006 Act and the ordinary charging provisions in the new Part 2A (regulation of dynamic spectrum access services as inserted by section 8 of this Act) be paid into the Consolidated Fund. Section 401 of the 2003 Act (Power of Ofcom to retain costs of carrying out spectrum functions) - once that section is brought into force - enables Ofcom to publish a statement of principles (referred to in this section as “the statement”) setting out the basis on which it can retain money that would otherwise be payable into the Consolidated Fund.

365 This section provides that the statement no longer requires that the amounts retained by Ofcom in accordance with section 401 need be spent on or match only Ofcom’s own costs in performing spectrum management functions. *Subsection (3)* allows Ofcom’s statement to set out that it will use amounts retained by it under section 401 for such purposes as it specifies.

366 *Subsection (5)* substitutes existing subsections (3) to (5) of section 401 with a new subsection (3) which requires that the amounts retained by Ofcom are objectively justifiable and proportionate to the costs in respect of which they are retained. Other limitations on how amounts are used are repealed.

367 *Subsection (7)* of this section adds the requirement for the Secretary of State (in addition to the Treasury) to consent to the making, revision or withdrawal of a statement made in accordance with this section.

## Section 101: International recognition of satellite frequency assignments: power of OFOM to charge fees

368 This section inserts section 28A into the 2003 Act. This gives Ofcom the power to charge a fee for the services they provide to satellite operators to obtain or maintain international recognition for their satellite frequency assignments in line with the relevant provisions of the International Telecommunications Union’s Radio Regulations.

## Section 102: Billing limits for mobile phones

369 This section requires mobile phone service providers to offer customers entering into a mobile phone contract the option of placing a limit on their bill. Where a limit is set, the provider must notify the customer (so far as practicable) in reasonable time if a limit is likely to be reached and as soon as practicable when a limit is reached, and the limit may only be exceeded if the customer agrees after being so notified.

## Section 103: Code of practice for providers of online social media platforms

370 This section requires the Secretary of State to issue a code of practice to social media providers that sets out guidance as to action it may be appropriate for a social media provider to take against the use of their platform for conduct which is directed at an individual and involves bullying or insulting the individual, or other behaviour likely to intimidate or humiliate the individual.

## Section 104: Internet filters

371 This section provides that an internet service provider may restrict access to information, content, applications or services, for child protection or other purposes, where that is in accordance with the terms agreed by the end-user.

*These Explanatory Notes relate to the Digital Economy Act 2017 (c. 30) which received Royal Assent on 27 April 2017*

### Section 105: Secondary ticketing: duty to provide information about tickets

372 This section amends the Consumer Rights Act 2015 by inserting an additional requirement into section 90 to provide a unique ticket reference number where it is included to help the buyer identify the seat or standing area or its location.

### Section 106: Power to create offence of breaching limits on internet and other ticket sales

373 This section provides the power to introduce a criminal offence of purchasing tickets for a recreational, sporting or cultural event in excess of the maximum permitted. The intended offence will apply to tickets bought using automated software for events in the UK, but cover activity to obtain tickets that occurs outside the UK.

374 The offence will be summary only, with a maximum punishment of an unlimited fine in England and Wales, and an exceptional summary maxima in Scotland.

### Section 107: Prevention or restriction on use of communication devices for drug dealing

375 This section inserts a new section 80A into the Serious Crime Act 2015 to provide the Secretary of State with a power to make UK-wide regulations, subject to the affirmative procedure (new subsection 11), which would, in turn, confer power on the civil courts to make a drug dealing telecommunication restriction order ('DDTRO') on application by the police or NCA.

376 The effect of such an order will be to require the relevant 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, such as closing down mobile phone handsets, blocking SIM cards (and the associated phone number), and preventing the portability of phone numbers to another mobile network. New subsections (5) to (8) sets out the matters that must be addressed in any regulations, including who can make applications for such orders and provision about appeals. New subsection (9) sets out the matters that may be addressed in any regulations, for example, provision about time limits and costs. New subsections 4 and 12 would provide definitions of certain terms, including "drug dealing offence" and "communications provider".

### Section 108: Regulations about charges payable to the Information Commissioner

377 This section provides the Secretary of State with a power to charge data controllers for an amount equivalent to that needed to fund the Information Commissioner's data protection and privacy and electronic communications regulatory functions. Once commenced, the charging power will replace the Information Commissioner's current fees charging powers under Section 18 and 26 of the Data Protection Act 1998.

### Section 109: Functions relating to regulations under section 108

378 *Subsection (1)* makes it a requirement for the Secretary of State to consult with the Information Commissioner, such representatives of persons likely to be affected by the regulations as the Secretary of State thinks appropriate, and such other persons as the Secretary of State thinks appropriate, before making regulations under section 108.

379 *Subsection (2)* sets out the expenses of the Information Commissioner for which charges can be levied under section 108.

### Section 110: Supplementary provision relating to section 108

380 This section makes it a requirement for the Secretary of State to use the affirmative procedure when making regulations under section 108, except for in the case of inflation increases, when the



negative procedure will apply.

### Section 111: Amendments relating to section 108

381 This section repeals Part 3 of the Data Protection Act 1998. Part 3 imposes an obligation on data controllers to notify the Information Commissioner of certain types of data processing and the Commissioner maintains a register of all data controllers. It is necessary to repeal Part 3 of the 1998 Act as the General Data Protection Regulation, which will become part of UK law on 25 May 2018, removes the obligation on data controllers to notify the Information Commissioner.

### Section 112: Power to apply settlement finality regime to payment institutions

382 This section amends the Financial Services and Markets Act 2000, by inserting provisions that give HM Treasury the power to apply the settlement finality regime to payment institutions. The current settlement finality regime for payment systems and securities settlement systems is in the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (S.I. 1999/2979).

383 Subsection (1) of new section 379A of the Financial Services and Markets Act 2000 sets out that HM Treasury may, by statutory instrument apply relevant secondary legislation that modifies the law of insolvency (or related law), or that relates to the securing of rights and obligations, to payment institutions to provide for the application of the settlement finality regime.

384 Subsection (2) sets out the definition of a “payment institution.” This cross-refers to relevant terms in the Payment Services Regulations 2009 (SI 2009/09) and includes certain persons with corresponding functions located outside the United Kingdom.

385 Subsection (3) sets out the definition of a payment or securities settlement system. It is defined as arrangements between participants for, or in connection with, clearing or execution of instructions (by participants). Such arrangements must relate to the placement of money, payment obligations, or transfers associated with securities.

386 Subsections (4) (5) and (6) are self-explanatory

### Section 113: Bank of England oversight of payment systems

387 This section introduces Schedule 9 (Bank of England oversight of payment systems) which extends Part 5 of the Banking Act 2009 to other, non-interbank, payment systems.

### Section 114: Qualification in information technology: payment of tuition fees

388 This section amends section 88 and Schedule 5 to the Apprenticeships, Skills, Children and Learning Act 2009. The amendments create a statutory duty on the Secretary of State for Education to ensure that specified qualifications in making use of information technology are free of charge to people aged 19 and over who do not already have a relevant qualification. The qualifications or descriptions of qualification to which the duty applies are to be set out in secondary legislation. The level of attainment demonstrated by the qualification to which the duty applies must be the level that the Secretary of State considers is the minimum required by a person aged 19 or over to be able to operate effectively in day-to-day life.

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

389 This section gives the Secretary of State the power to make regulations modifying or supplementing section 68 of the Telecommunications Act 1984, which makes the Secretary of State liable for the payment of liabilities of BT plc for the payment of pensions, in the event of the company entering insolvent winding-up (the “Crown guarantee”). The regulations may make provision for the Crown guarantee to be extended to include liability for the payment of pensions of employees of BT plc who transfer to another company.

### Section 116: Regulations under section 115

*These Explanatory Notes relate to the Digital Economy Act 2017 (c. 30) which received Royal Assent on 27 April 2017*



390 This section specifies that the power to make regulations under section 115 is exercisable only with the consent of the Treasury and after the Secretary of State has consulted the following: the Pensions Regulator; BT plc; the Trustee of the BT Pension Scheme; any transferee or successor to which the regulations apply; and any other appropriate persons. A statutory instrument containing regulations under section 115 may not be made unless a draft has been laid before and approved by both Houses of Parliament.

## Part 7: General

### Section 117: Financial Provisions

391 This section is self-explanatory.

### Section 118: Commencement

392 The amendments to Ofcom's powers in relation to the BBC came into force on Royal Assent. Section 112, giving HM Treasury the power to include payment institutions in the settlement finality regime, also came into force on Royal Assent, as did sections 115 and 116 in respect of the power to amend the Crown guarantee of pension liabilities under the Telecommunications Act 1984.

393 A number of provisions will be brought into force two months after Royal Assent. These include the provision relating to universal service broadband obligations, powers for Ofcom to set general conditions on communication providers in respect of switching and automatic compensation as well as Ofcom's powers to collect and report information. A number of technical matters in respect of spectrum and the provision relating to the direct marketing code will also be brought into force at the same time. Section 113 and Schedule 9 also come into force two months after Royal Assent, enabling HM Treasury to recognise non-interbank payment systems.

394 A commencement date of 1 June 2020 will apply to the measure concerning the TV licence concession. The government has committed to maintain free TV licences for those aged 75 and over for the whole of this Parliament, with responsibility for the policy passing to the BBC in the next Parliament. The timing of the implementation of this measure was agreed with the BBC in July 2015.

395 The remaining measures in the Act will be brought into force by regulations.

### Section 119: Extent

396 Detailed analysis of the extent of the Act can be found at Annex A. Otherwise this section is self-explanatory.

### Section 120: Short title

397 This section is self-explanatory.

## Schedule 1: The electronic communications code

398 The electronic communications code was previously found in the Telecommunications Act 1984 (see Schedule 2 of that Act). This Act replaces that code with a new code (see Schedule 1 of this Act), which is inserted into the 2003 Act (as Schedule 3A to that Act). In these notes, we refer to the *existing code* (meaning the code in Schedule 2 to the 1984 Act) and the *new code* (in Schedule 1 to this Act) where appropriate to draw out similarities and differences between the previous and new legislation. References to the *existing code* and the *new code* adopts the terminology used in paragraph 1 of Schedule 2 to this Act (transitional provisions relating to the electronic communications code).

## Part 1: Key Concepts

399 *Paragraph 1* is introductory and signposts the location of other definitions in the code.

400 *Paragraph 2* defines “operators” as firstly, those who have been designated by Ofcom under section 106 of the 2003 Act as being persons to whom the code applies and secondly (in certain circumstances) the Secretary of State or a Northern Ireland department. The amendments made to section 106 of the 2003 Act by section 4 of this Act extend the definition of operators to include not only providers of electronic communications networks but also providers of infrastructure systems (see Paragraph 7). Operators are the only persons who can exercise code rights under the electronic communications code.

401 *Paragraph 3* sets out the code rights: a list of specific rights relevant to the installation on, under or over land of electronic communications apparatus. These are broadly the same as the equivalent rights in the existing code. The code right to lop or cut back trees and vegetation that interfere with electronic communications apparatus is new. Note also the definition of land in paragraph 108 which clarifies that the code does not confer a right on an operator to install apparatus on other apparatus. Paragraph 3 provides that code rights can only be exercised for the “statutory purposes”.

402 *Paragraph 4* defines the statutory purposes as the provision of the operator’s “network” or the provision of an “infrastructure system”. These terms are defined in paragraphs 6 and 7.

403 *Paragraph 5* defines *electronic communications apparatus* i.e. the apparatus which can be installed on, under or over land. This definition is important for two reasons. Firstly, it defines the scope of what can be installed and kept on land under the provisions of the code. Secondly, because paragraph 108(1) specifically provides that land does not include electronic communications apparatus, anything that falls within the definition of ‘electronic communications apparatus’ (as it is set out in paragraph 5) cannot have code rights imposed against it. This has the practical effect of ensuring that one code operator cannot seek to exercise code rights against the apparatus of another (or indeed against the apparatus of a person who is not a code operator). Paragraph 5 defines electronic communications apparatus in broad terms, which reflect its diversity. Whether a particular structure or thing has been adapted to a point at which it can properly be considered as electronic communications apparatus is a question of fact, which will depend on the specific circumstances, including what the parties have agreed, the nature of the installation and the extent of the adaptation.

## Part 2: Conferral of code rights and their exercise

404 *Paragraph 8* is introductory and self-explanatory.

405 *Paragraph 9* provides that only the occupier of land may confer a code right on an operator. This reflects the position in paragraph 2(1) of the existing code.

406 *Paragraph 10* makes provision for who else is bound by code rights. Code rights bind not only the occupier but also any other person with an interest in the land who has agreed to be bound by the code rights; persons who are the successors in title to any person who is bound; and any person whose interest is created after the right is conferred and derived from an interest that is bound.

407 *Paragraph 11* makes provision about the formal requirements for an agreement and any subsequent variation of it.

408 *Paragraph 12* provides that code rights may be exercised only according to the other terms of the agreement. The equivalent provision is found in paragraph 4 of the existing code. This shows the importance of compliance by the operator with each of the surrounding terms of the operator’s agreement with the landowner. Its effect is that, where the operator exercises the rights agreed, *in accordance with the terms of the agreement*, they do so with the statutory protection of the code and

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as a result, are not vulnerable to common law claims in nuisance or trespass. Paragraph 12(3) provides that if a person with a freehold or leasehold interest in the land is not bound by the agreement under which the code rights are granted, the operator does not have statutory protection against such a person. This provision is intended to encourage operators to obtain agreement from each person with an interest in the land (where it is necessary for the operator to have agreement from that person). Paragraph 12(4) provides that the benefit of a statutory covenant is preserved in relation to the exercise of code rights (and has equivalent provision in paragraph 4(1) of the existing code).

409 *Paragraph 13* provides that an operator who installs electronic communications apparatus with the agreement of the occupier of “land A”, may not obstruct or interfere with access (including emergency access) to or from “land B” (*neighbouring land*) without obtaining a code right to do so from the occupier of “land B” (and from such other persons with an interest in land B as the operator may require). It is important to note that although land A and land B might be adjoining or situated closely together, that is not an essential requirement in the context of paragraph 13. For example, if there was a track leading from a road across land A, through land C to land B, and electronic communications apparatus was installed across the track on land A, then access to land B might be obstructed even though the obstruction might be situated, say, two miles or more from land B and on land that did not adjoin land B. Paragraphs 13(4) and (5) provide that where “land B” is a street, road or tidal land (in relation to which special provisions apply under Parts 8 and 9 of the code, permitting operators to install and keep apparatus without prior agreement), the agreement of the occupier of “land B” is not required if access to “land B” from “land A” is obstructed by electronic apparatus on “land A”. Paragraph 13 replicates the effect of paragraph 3 of the existing code. See also paragraphs 38 and 39 in Part 6 of the code as they relate to the rights of a person occupying neighbouring land to require removal of apparatus that is obstructing access to such land.

410 *Paragraph 14* explains the relationship between the code and statutory land registration rules. Any non-compliance with land registration requirements does not affect who is bound under paragraph 10 of the code.

### **Part 3: Assignment of code rights, and upgrading and sharing of apparatus**

411 Part 3 of the new code makes provision about the assignment of code rights, and the upgrading and sharing of apparatus.

412 *Paragraph 16* provides that an operator may assign an agreement under which code rights are conferred to another operator, enabling the second operator to ‘stand in the shoes’ of the first. An operator may assign only the entirety of the agreement and the code rights it contains and may not separately assign the individual code rights it confers. The other party to the agreement (the site provider) is not permitted to prevent or make such an assignment subject to conditions. After the date of the assignment the assignor operator is not liable for any breach of the agreement by the assignee operator, provided that notice of the assignment is given to the other party (i.e. to the site provider). If, however, the assignor operator had agreed to guarantee the performance of the assignee operator, in accordance with paragraph 16, the guarantee will still apply. Such a guarantee agreement may impose liabilities on the assignor operator only for the obligations of its immediate assignee operator. The same principle applies as between subsequent assignors and assignees in the event that the agreement is the subject of further assignments. Paragraph 16 does not affect the position of third party guarantees that may have been given in relation to the original agreement (e.g. a guarantee given to a site provider by a bank or group company of the operator).

413 *Paragraph 17* confers a statutory right on an operator who has obtained an agreement to install or

keep apparatus on land to upgrade or share that apparatus, without needing the agreement of the site provider, or having to pay in order to do so. Specific conditions must be met for this right to apply. If the conditions are not met, the operator must seek agreement for the right, in the normal way, under Part 2. Paragraph 17(5) prevents the parties contracting out of the right or making it subject to conditions. It should be noted that paragraph 24 (which deals with the amount to be paid for code rights) prevents the right in paragraph 17 from being taken into account when the value of an agreement is being considered.

414 *Paragraph 18* has the same effect as paragraph 29 of the existing code. Its purpose is to facilitate sharing of apparatus between: (i) one or more operators to whom the code has been applied by Ofcom under section 106 of the 2003 Act; (ii) other providers of electronic communications networks to whom the code has not been applied by Ofcom; and (iii) qualifying persons whom the Secretary of State may designate by regulations. At least one of the parties to such an agreement must be an operator to whom Ofcom has applied the code. The effect of paragraph 18 is that the provisions of the code may not be interpreted so as to restrict the operators' agreement to share apparatus with each other. Paragraph 18 does not affect the interpretation of an agreement between an operator and a site provider.

## Part 4: Power of court to impose agreement

415 Part 4 makes provision for the imposition by the court of an agreement conferring code rights where such an agreement cannot be reached consensually under Part 2. The power of the court to impose agreements and the granting of compulsory access to land was an essential part of the existing code (see paragraph 5 of the existing code). The meaning of "the court" is set out in Part 16.

416 *Paragraph 20* sets out the circumstances in which the court can impose an agreement. It replicates much of the effect of paragraphs 5(1), 5(2) and 5(7) of the existing code.

417 *Paragraph 21* sets out the threshold test that the court must apply and the conditions that must be met for imposing an agreement. It replaces the test in paragraph 5(3) of the existing code. The court must have regard to any prejudice to the site provider and whether it can be compensated for, as well as the public benefit likely to arise from any order imposing code rights. Where both these requirements are met, the court may – but is not obliged to – impose an agreement. Nothing in these provisions prevents the court from having regard to other factors in deciding whether this is appropriate. (It should be noted that Part 12 of the code sets out who, other than the person whose agreement is required for apparatus to be installed on land, has the right to object to the proposed installation of apparatus).

418 *Paragraph 22*, like paragraph 5(7) of the existing code, provides that the court's order takes effect as an agreement under Part 2 of the code. This means any provisions applicable to an agreement reached in accordance with Part 2 of the code will apply to an agreement imposed by the courts in the same way as they apply to an agreement reached without the court's intervention. For example: the rights to assign an agreement or to upgrade and share apparatus set out in paragraphs 16 and 17 will apply to a court imposed agreement as if it had been reached under Part 2 of the code.

419 *Paragraph 23* sets out key terms that the court must include, or consider including, in the court-imposed agreement. It contains provisions corresponding to paragraphs 5(4) and 5(5) of the existing code. *Paragraph 23(2)* provides that the court **must** include any terms that it considers appropriate. This might include, for example, that an operator may share their apparatus with another, in circumstances where the extent of the sharing sought goes beyond that provided by the statutory right to share in paragraph 17. The inclusion of such a term, conferring a contractual right on an operator, would be taken into account also in determining the consideration to be paid to the site provider in accordance with paragraph 23(3).

420 *Paragraph 24* makes provision for how consideration (the price) is assessed for the rights that the court has ordered. This is to be assessed as the market value of the rights being granted and of the particular terms of the agreement. The market value excludes any additional value deriving from electronic communications use, i.e. it is “no scheme” value. The value of the rights contained in paragraphs 16 and 17, which relate to the assignment of an agreement or to upgrading and sharing apparatus, is specifically excluded from the assessment of market value, to ensure that no “premium” is added for rights conferred by statute, not by agreement.

421 *Paragraph 25* provides for the court to order an operator to pay compensation to a person bound by a code right for loss or damage as a result of the imposition of the code right on usual compensatory principles. Paragraph 84 makes further provision about such compensation.

422 *Paragraph 26* provides that an operator may apply for “interim code rights”. This enables code rights to be granted on an interim basis pending the parties reaching, or the court imposing, a final agreement. Rights may be granted on an interim basis either (a) where the parties agree to the making of the order and the terms of the interim agreement (which may be the case, for example, where the only issue not agreed between them is the consideration to be paid); or (b) when the court considers that there is a good arguable case that the interim code right will be made permanent at a final hearing. If the right is not made permanent at a final hearing, the interim right ends and the operator must remove the apparatus in accordance with Part 6. The power to order interim code rights was not part of the existing code in Schedule 2 to the Telecommunications Act 1984.

423 *Paragraph 27* provides for the court to be able to grant “temporary code rights” on application by the operator. It corresponds to paragraph 6 of the existing code. This right is different from an interim code right in that it arises where there is existing apparatus already on the land, but the operator has no right to keep it installed and accordingly requires temporary code rights to maintain the apparatus and the network service while they seek permanent rights. The temporary code rights will continue until either the operator has secured permanent code rights or the person with interest in the land has secured the right to enforce removal of the apparatus. When assessing whether or not new permanent code rights should be granted, the court must disregard the fact that the apparatus is already on the land.

## **Part 5: Termination and modification of agreements**

424 Part 5 makes provision about the termination and modification of agreements, and for statutory continuity of agreements.

425 *Paragraphs 29 and 30* provide for code rights to continue as a matter of statute notwithstanding that they may have come to an end in accordance with their contractual terms. In England and Wales the Landlord and Tenant Act 1954 contains similar provisions that apply to business tenancies generally, and there is similar legislation in Northern Ireland (the Business Tenancies (Northern Ireland) Order 1996). Accordingly *paragraph 29* clarifies when the continuity provisions of Part 5 of the code are applicable, and when provisions in other statutes apply, in order to avoid ambiguity and conflict between the separate statutory regimes.

426 *Paragraph 30* provides that code agreements continue in effect after the date of termination. This ensures that there is continuity of rights, and of network provision, pending determination of an application by the operator for new permanent rights or of an application by a site provider for the right to remove the apparatus.

427 *Paragraph 31 and 32* makes provision for how a site provider who is party to a code agreement may bring that agreement to an end, the required notice period that must be given, and the grounds on which the site provider is entitled to terminate the agreement. The procedure requires the site provider to give a notice to the operator, the effect of which is to end the agreement, unless



the parties agree otherwise, or the operator gives a counter-notice within 3 months proposing that the existing agreement continues or proposing new terms. The operator must then apply to the court for an order within 3 months of serving the counter-notice. If, on such an application, the court considers any of the required grounds to have been made out by the site provider, it must order the agreement to come to an end. Otherwise, it must make an order pursuant to paragraph 34 (see below).

428 *Paragraph 33* makes provision so that where a code agreement comes to an end, an operator may by notice seek new or modified terms of agreement from the site provider or, failing agreement, from the court.

429 *Paragraphs 34 and 35* set out the orders the court may make on an application made by the operator or site provider under paragraphs 32 or 33. The court can order that the right or rights may (or may not) continue to be exercised, the period for which rights may be exercised and whether any of the other terms of the agreement, including terms as to consideration, should remain the same or be modified. The court may order that a new code right or rights be exercised, that a new agreement be entered into and, if agreement on new terms is not reached by the parties, the court can specify the terms. When specifying the terms, the court must include: terms as to payment, which should be determined on the basis set out in paragraph 24; terms designed to minimise loss and damage; the period of the agreement; and any compensation for loss and damage (which can include expenses, diminution in value and reinstatement costs as set out in paragraph 84). Under sub paragraphs (14) and (15), the court can also order payment of the difference between the new rate of consideration and the consideration actually paid for the period between the old agreement ending and the new agreement being imposed, where the new rate of consideration is higher.

## Part 6: Rights to require removal of electronic communications apparatus

430 *Paragraph 36* introduces Part 6 of the code, which sets out who can require the removal of electronic communications apparatus, and / or require the restoration of the land to its former condition, the circumstances in which these rights arise and the procedure that must be followed. Paragraphs 21 and 22 of the existing code included provisions that correspond to some extent to this part, but the provisions in Part 6 of the code are much more detailed.

431 *Paragraph 37* provides that a landowner may require the removal of apparatus only if one of five conditions is met. The effect of paragraph 37(9) is important: if a landowner has an additional legal right or relationship with the operator, so as to have legal entitlement to require removal of apparatus also under an enactment (other than the code), or otherwise than under an enactment, then the landowner can exercise those rights to require removal under paragraphs 41 and 42 and in so doing is acting as a “third party” for the purposes of those paragraphs.

432 *Paragraph 38* sets out the two conditions, both of which must be met, for a landowner or occupier of *neighbouring land* (as defined) to be entitled to require the removal of electronic communications apparatus that obstructs access to their land. This is relevant where apparatus situated on land A obstructs access to land B. It is important to note that although land A and land B might be adjoining or situated closely together, that is not an essential requirement in the context of paragraph 38. For example if there was a track leading from a road, across land A, then through land C to land B, and electronic communications apparatus was installed across the track, on land A, then access to land B could be obstructed even though the obstruction might be situated, say, two miles or more from land B, and on land not adjoining land B. See also paragraph 13 of the code.

433 *Paragraph 39* makes provision enabling landowners and occupiers of *neighbouring land* (as defined) to require an operator to disclose whether they own apparatus on the land pursuant to a code



right. There are costs consequences for the operator in any proceedings to remove the apparatus if they have such rights but fail to disclose the information within 3 months.

- 434 *Paragraph 40* makes provision for enforcing the removal of apparatus when the landowner is no longer entitled to keep it installed. In order to protect networks and apparatus, removal may be enforced only in accordance with the procedures described, which encourage the parties to agree how apparatus will be removed. If there is no agreement, or the operator does not comply with the agreement for removal, the landowner can apply to the court for an order enforcing removal.
- 435 *Paragraph 41* makes provision for persons entitled to remove apparatus under another enactment, or on other legal grounds. Paragraph 41 defines such a person as a “third party” to distinguish their entitlement to remove apparatus from the entitlement to remove apparatus of a person acting as a landowner (see paragraph 37) and from the entitlement of an occupier or landowner of neighbouring land (see paragraph 38). This might apply for example in the case of a planning authority which seeks to remove apparatus that is installed in breach of planning legislation. Removal must be in accordance with the procedure set out in paragraph 41, in order to protect apparatus and networks. The provisions are based on those in paragraph 21 of the existing code. Note that a third party, as defined, may also in some circumstances be a landowner. However if such a landowner were exercising rights under paragraph 41 or 42, they would be acting as a third party for the purposes of those paragraphs. See also the explanatory note for paragraph 37(9) above.
- 436 *Paragraph 42* sets out how paragraph 41 applies in cases where a third party has a right, arising from another statute or enactment, to require the alteration of apparatus because of changes to a street, road or other public right of way. These provisions are based on those in paragraph 21(10) of the existing code, and apply in the same way.
- 437 *Paragraph 43* makes provision for a landowner or occupier of land to require an operator to restore land to its original condition (before the exercise of a code right). The procedure encourages the landowner and operator to reach agreement, but enables the landowner to seek a court order if agreement is not reached. The right under this paragraph to restore the land is not dependent on apparatus being removed from the land. It might for example apply where apparatus has previously been removed from the land but the land was not properly restored to its original condition, and it might apply where the land was disturbed in preparation for installing apparatus but the apparatus was not installed for some reason.
- 438 *Paragraph 44* sets out the orders a court may make to enforce removal of apparatus under paragraphs 40 – 43. These include an order for the operator to pay compensation for the period during which the apparatus was on the land after the right to remove arose (paragraph 44(5)). If the operator does not comply with an order to remove, the court may permit the landowner to remove the apparatus. Paragraph 44(3) includes provisions corresponding to paragraphs 21(7) and 21(8) of the existing code.

## **Part 7: Conferral of transport land rights and their exercise**

- 439 Part 7 of the code applies to “transport land” and “transport undertakers”, which are defined in paragraph 46. Part 7 rewrites what were paragraphs 12 to 14 of the existing code. The provisions set out the rules that apply when an operator wishes to cross (with their electronic communications apparatus and networks) a canal, tramway or railway, so that the interests of electronic communications network and the relevant transport undertaker (as defined) are appropriately protected. The relevant provisions in the existing code were considered in some detail by the Court of Appeal in *Geo Networks Limited v The Bridgewater Canal Company Limited [2010] EWCA Civ, 1348*, an important case which clarified the meaning and effect of the relevant provisions in the existing code and which is still of relevance to the equivalent redrafted provisions in the new code. Transport land rights do not require the operator to seek an

agreement under Part 2 (or Part 4) of the code: they are conferred on an operator automatically as code rights by paragraph 47(1), subject to strict regulation of those rights by the remaining provisions of Part 7.

- 440 *Paragraph 48* defines a “transport land right”. Paragraphs 48(2) and (3) largely provide that the operator is not required to cross the transport land by the most direct route but permits the operator to go alongside the railway, canal or tramway for up to 400 metres, for example if the land immediately opposite the point at which the line enters the transport land is unsuitable for taking a line across (e.g. a reservoir).
- 441 The exercise of transport land rights must not interfere with traffic on the transport undertaking (paragraph 48(4)). The exercise of rights by the operator is subject to a notice procedure (in non emergency cases) (paragraph 49); and the transport undertaker may object to the proposed works (paragraph 50).
- 442 Different notice procedures apply if the operator needs to carry out emergency works and the transport undertaker can require the operator to pay compensation when the emergency procedure is relied on by the operator (paragraph 51).
- 443 Disputes between the operator and transport undertaker, concerning objections to proposed works and amount of the compensation to be paid, are referred to expert arbitration (paragraph 52) rather than to the court. The arbitrator’s powers include the power to order the operator to pay compensation for loss or damage and consideration for the right of the operator to carry out the work.
- 444 *Paragraph 53* allows a transport undertaker to give notice requiring an operator to alter the line or other electronic communications apparatus on the grounds that it will interfere with the carrying on of the transport undertaking. Disputes about altering the electronic communications apparatus so installed are referred to the court (not to an expert arbitrator). In determining whether to make an order, the court must have regard to the public interest in there being access to a choice of high quality electronic communications services.
- 445 *Paragraph 54* is a provision not found in the existing code. It provides that where land ceases to be transport land, the operator may continue to exercise the transport land rights in accordance with Part 7 in relation to apparatus already on the land and in relation to substantially similar replacements. This is subject to the ability of the occupier of the land to give 12 months’ notice to terminate such rights. If the occupier takes that step, the operator (the Part 7 rights having ended) would need to secure new rights by agreement under Part 2 or court order under Part 4.
- 446 *Paragraph 55* provides that a criminal offence is committed if an operator commences works in contravention of the provisions of Part 7. This replicates the provisions in the existing code and underlines the seriousness of protecting transport undertakings from works which do not follow the required notice procedures. An operator who is guilty of an offence will be liable on conviction to a fine not exceeding level 3 on the standard scale.

## **Part 8: Conferral of street work rights and their exercise**

- 447 Part 8 of the code applies to streets in England and Wales and roads in Northern Ireland and Scotland, and gives the operator certain rights in relation to such streets and roads, which may be exercised without agreement or a court order. Part 8 replicates what was paragraph 9 of the existing code.
- 448 *Paragraph 56* sets out the scope of Part 8. *Paragraph 7* defines the streets in England and Wales and the roads in Scotland and Northern Ireland to which Part 8 applies.
- 449 *Paragraph 58* provides that the operator can exercise the street work rights for the statutory

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purposes (defined in paragraph 4 of the code), allowing the operator to exercise the rights without agreement under Part 2 or a court order under Part 4, subject to the remaining provisions of Part 8 and subject of course to the requirements of other legislation (see paragraph 99 of the code).

450 *Paragraph 59* sets out the rights that can be exercised under Part 8. The street work rights allow the operator to install and keep apparatus in, on, under or along or across a street or road. There are associated rights to enter land, inspect, maintain, adjust, alter, repair, upgrade and operate the apparatus and to carry out associated works.

## **Part 9: Conferral of tidal water rights and their exercise**

451 Part 9 of the code applies to “tidal water and lands” (as defined). Part 9 broadly corresponds to much of the content of what was paragraph 11 of the existing code. It is important to note that Part 9 provides for different rights in relation to tidal water and lands which are in the ownership of the Crown, and tidal water and lands which are not in the ownership of the Crown.

452 *Paragraph 60* sets out the scope of Part 9. *Paragraph 61* defines “tidal waters or lands”.

453 *Paragraph 62* provides that the operator can exercise the tidal water rights for the statutory purposes, (defined in paragraph 4 of the code). The operator may exercise the rights without agreement under Part 2 or a court order under Part 4. This is however subject to the remaining provisions of Part 9, and to the provisions of other enactments (see paragraph 99 of the code).

454 *Paragraph 63* sets out what rights can be exercised under Part 9 (defined as a “tidal water right”). The tidal water rights allow the operator to install and keep other apparatus on, under or over tidal water or lands, and there are associated rights to enter land, inspect, maintain, adjust, alter, repair, upgrade and operate the apparatus and to carry out associated works.

455 *Paragraph 64* requires the agreement of the Crown in accordance with paragraph 104 of the code before the tidal water rights can be exercised on Crown tidal water or lands. This is not the same as an agreement under Part 2 and so the Crown cannot be the subject of a court-imposed agreement (for a tidal water right) under Part 4. If the Crown agrees to confer a tidal water right, paragraph 64 provides that disputes about the amount to be paid for such rights by an operator can be referred to an independent third party valuer, who is charged with determining the market value. The assessment of market value corresponds to the “no-scheme” approach found in paragraph 24 of the code.

## **Part 10: Undertaker’s works affecting electronic communications apparatus**

456 Part 10 of the code is concerned with regulating the works of statutory undertakers when those works affect electronic communications apparatus. It replicates what was paragraph 23 of the existing code in Schedule 2 to the Telecommunications Act 1984.

457 *Paragraph 65* sets out the scope of Part 10.

458 *Paragraph 66* sets out the key definitions of “undertaker” and “undertaker’s works”. The definition includes other code operators, as well those who, under statute, carry on a railway, canal, tramway, road transport, water transport, inland navigation, dock, harbour, pier or lighthouse undertaking.

459 *Paragraphs 67 and 68* set out the notice requirements that must be complied with before the undertaker may carry out non-emergency works that interfere with an electronic communications network.

460 *Paragraph 68* provides that an operator served with a notice of proposed works may give counter-notice, requiring the undertaker to alter electronic communications apparatus (as a result

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of the proposed works) under the supervision and to the satisfaction of the operator, or stating that the operator itself intends to make such an alteration.

461 *Paragraph 69* requires the undertaker who carries out non-emergency works to pay the operator for any loss or damage sustained as a result of such works and for expenses incurred by the operator in supervising the works.

462 *Paragraph 70* provides that an operator may alter electronic communications apparatus in connection with non-emergency undertaker's works where it has given counter-notice that it intends to do so. In such a case, the undertaker must pay the operator any expenses associated with the alteration and the amount of any loss or damage incurred as a result of the alteration. This amount is recoverable in any court of competent jurisdiction.

463 *Paragraph 71* sets out the notice requirements that must be complied with for the undertaker to alter apparatus in carrying out "emergency undertaker's works" (defined in sub-paragraph (7)). The undertaker must give notice of the emergency works as soon as is practicable after beginning the works. The undertaker must complete the works to the satisfaction of the operator and must pay the operator any expenses incurred in supervising the work and the amount of any loss or damages sustained as a result of the alteration.

464 *Paragraph 72* deals with enforcement of Part 10 and corresponds to what were paragraphs 23(8) and (9) of the existing code in Schedule 2 to the Telecommunications Act 1984. It makes provision for criminal offences where an undertaker, or an agent of an undertaker, commences works in contravention of the provisions of Part 10. An undertaker or agent who is guilty of an offence will be liable on conviction to a fine not exceeding level 3 on the standard scale, or level 4 if the service provided by the operator's network is interrupted.

## **Part 11: Overhead apparatus**

465 Part 11 of the code deals with overhead apparatus. It replicates what were paragraphs 10 and 18 of the existing code in Schedule 2 to the Telecommunications Act 1984.

466 *Paragraph 74* provides that an operator has the right to install overhead lines that pass above third party land (on which no apparatus is installed) without the requirement of the agreement (under Part 2) of the person over whose land the lines pass. This is subject to the apparatus to which the lines are attached being on land on which the operator has a right to install such apparatus. The lines must be at least three metres above the ground, must not pass within two metres of any building and may not interfere with the carrying on of any business carried out on that land.

467 *Paragraph 75* provides that operators must attach notices to any apparatus, the whole or part of which is three metres or more above the ground. This includes lines and other apparatus. The operator must attach a notice (within three days, beginning with the day after installation) to every major item of apparatus, or (if no new major apparatus has been installed) to the nearest *existing* major item of apparatus to which the new apparatus is connected. The notice must be legible, secure and provide the name and address of the operator to which an objector can send notice of objection under Part 12 of the code (see below for the right to object to certain apparatus). Enforcement is dealt with in paragraphs 75(5) and (6) which provide that it is a criminal offence for an operator to breach the notice requirements of paragraph 75, punishable on summary conviction by a fine not exceeding level 2 on the standard scale.

## **Part 12: Rights to object to certain apparatus**

468 Part 12 of the code sets out the rights that particular persons have to object to certain types of apparatus and the time periods within which those objections may be made. The rights do not apply to persons whose agreement is required under Part 2, since those persons' rights can be considered and established in the context of negotiating the code agreement. The rights in this

Part apply to persons who may be affected by the installation of apparatus but whose agreement is not required for the installation of such apparatus. The nature of the right to object depends on how soon the objection is made after installation of the apparatus. Rights to object are significantly more restricted if objection is made later than 12 months after installation. Rights to apply to “the court” (See Part 16, paragraph 94) to pursue an objection are subject to specific time periods.

469 *Paragraph 77* sets out which people are eligible to object and which types of apparatus they are able to object to.

470 *Paragraph 77(7)* is an exception to the right to object. It provides that there is no right to object if the new apparatus installed is not substantially different from apparatus that it is replacing and is not in a significantly different position.

471 *Paragraph 78* provides that the right to object is exercised by giving notice to the operator. The right to object and the procedure for exercising this right depend on whether notice of objection is given within 12 months of installation, or after that period.

472 *Paragraph 79* sets out the procedure and the time periods that apply if objection is made *within* 12 months of installation. After two months of having given notice, but within four months of having given notice, the objector may apply to the court to have the objection upheld. The court must uphold the objection if two conditions are met. The first condition is that the apparatus materially prejudices the person’s enjoyment of, or interest in, the land. The second is that the court must be satisfied that there are possible alterations to the apparatus which:

(a) will not substantially increase the cost of or diminish the quality of the service provided to users of the network;

(b) will not involve the operator in substantial “additional expenditure”. Additional expenditure in this context has a particular meaning: it is not the cost of altering the apparatus that is taken into account in assessing additional expenditure, but rather the difference in cost between the original installation and the additional cost of the proposed altered installation if the latter had been installed from the outset. Similarly if the court considers that the apparatus has been unnecessarily installed, expenditure incurred in removing it is not to be taken into account; and

(c) will not give another person a right to object “at least as good” as the first objector’s. Subparagraph (c) can be illustrated by an example. Person A objects to an installation of apparatus because it prejudices A’s enjoyment of A’s land. The court determines that the only possible alterations to the apparatus which would address A’s objections, would themselves prejudice person B’s enjoyment of B’s land and would give B a right to object as strong as, or stronger than, A’s objection. If that is the case, the court is not required to uphold A’s objection.

If these conditions are met, the court can require the apparatus to be changed or moved, and (in either case) the court can direct that further objections may not be made against an installation authorised by the court.

473 *Paragraph 80* provides the procedure that applies if the notice of objection is given later than 12 months after installation. After two months of having given notice, but within four months of having given notice, the objector may apply to the court to have the objection upheld. The court’s powers are more limited than under paragraph 79. It may uphold the objection only if it is satisfied that the alteration is necessary to enable the objector to carry out an improvement to the land and the alteration will not substantially interfere with the operator’s network service. Sub-paragraph (7) provides that the objector must, unless the court orders otherwise, pay the operator’s costs of the alteration.

474 *Paragraph 81* sets out limitations on the court's powers where the court is considering making an order under paragraph 79 (directing the alteration of any apparatus or authorising the installation of any apparatus) or under paragraph 80 (directing the alteration of any apparatus). The court must not make an order unless the operator has the necessary code rights to effect the alteration or unless the court imposes such code rights as are necessary to effect the alteration. The court also has the power under this paragraph to require the objector to bring matters to the notice of other interested persons.

## Part 13: Rights to lop trees

475 Part 13 of the code allows operators in applicable circumstances to lop trees or other vegetation that overhangs a street in England and Wales or Northern Ireland or a road in Scotland. Part 13 replicates what was paragraph 19 of the existing code in Schedule 2 to the Telecommunications Act 1984, but in addition extends the right to lop trees to include the lopping or cutting back of vegetation other than trees.

476 Under *paragraph 82*, the operator may require the tree to be lopped or vegetation to be cut back where it overhangs the street. If no objection is made by the owner of the land on which the tree or vegetation is situated within 28 days of the operator giving notice of that requirement, the operator may itself have the tree lopped or the vegetation cut back. If the owner of the tree or of other vegetation objects within the relevant time period, the court (see Part 16, paragraph 94) decides the matter. The operator must reimburse the landowner for any expenses associated with the lopping or cutting back, or for any loss or damage caused. This right applies to trees that are protected by a tree preservation order and trees in conservation areas but, by virtue of paragraph 99(1) of the code, is subject to the provisions of any relevant tree preservation legislation. Such legislation provides certain exceptions for statutory undertakers including operators.

## Part 14: Compensation under the code

477 Part 14 contains general provision about compensation.

478 *Paragraph 84* makes provision about the powers of the court to order compensation in relation to agreements imposed under Part 4 and in relation to the removal of apparatus under Part 6.

479 *Paragraph 84(2)* enables the court to order compensation for reasonable legal and valuation costs incurred by a landowner. This is because the landowner's reasonable costs in obtaining legal and / or valuation advice are part of the cost to a landowner of agreeing (or being ordered by the court) to have apparatus installed on their land. This provision does not however interfere with the court's discretion to award costs that relate to a dispute about code rights. Paragraph 84(7) provides that compensation cannot exceed actual loss.

480 *Paragraph 85* makes general provision for the application of established statutory rules for the assessment of rights to compensation for injurious affection to neighbouring land where rights under Parts 2 to 9 are exercised.

481 *Paragraph 86* provides that no other rights to compensation arise in relation to the lawful exercise of code rights other than as provided by the code.

## Part 15: Notices under the code

482 Part 15 makes provision about requirements for the form of notices given under the code and about procedures for giving notices. Part 15 makes clear that giving notices in the proper form is an important aspect of the code and the potential consequences of not doing so include having to bear wasted costs, or the notice not having legal effect. Part 15 accordingly encourages legal certainty, and so protects the rights of both operators and landowners.

483 *Paragraph 88* makes requirements for the form of notices given by operators under the code. An



example of when an operator is required to give such a notice is when they are requesting an agreement for code rights from a landowner (see paragraph 20(2) of the code). Paragraph 88(1) requires the operator's notice to give a proper explanation to the landowner of the effect of the notice and the steps the landowner may take in response. Operator notices which do not comply with paragraph 88 are not valid notices.

484 *Paragraph 89* makes requirements for the form of notices given by a person other than an operator (e.g. a landowner).

485 *Paragraph 90* requires Ofcom to prescribe the form of a notice to be given under each provision of the code that requires a notice to be given.

486 *Paragraph 91* makes requirements about the procedures for giving notice.

## **Part 16: Enforcement and dispute resolution**

487 Part 16 concerns how and where agreements under the code may be enforced. It sets out what precisely the code means when its provisions refer to "the court". It gives the Secretary of State the power to make regulations to confer, on specified tribunals, the jurisdiction to deal with functions that the code describes as functions of "the court".

488 *Paragraph 93* makes provision as to which court or tribunal can enforce an agreement under the code or a right conferred by the code.

489 Since the courts have greater enforcement powers than tribunals (because the courts can impose sanctions for non-compliance with orders), the expectation is that parties will usually seek to enforce agreements and rights conferred by the code in the courts. Further, because the code provides for orders of "the court" (as defined) to take effect as "an agreement" (see for example paragraphs 22, 26(4)(b), 34(8), 44(7)), that agreement may be enforced in any court of competent jurisdiction in the same way as any contract. Accordingly, orders made under those same provisions of the code by a *tribunal* exercising the functions conferred on "the court" (see paragraph 95 of the code) will also take effect as "an agreement" and will be enforceable in any court of competent jurisdiction in the same way. This is in addition to any other enforcement rules that may apply to tribunal orders (see for example [section 27 of the Tribunals, Courts and Enforcement Act 2007](#)).

490 *Paragraph 95* gives the Secretary of State the power to make regulations to confer jurisdiction on the First-tier Tribunal and Upper Tribunal in England, on the Upper Tribunal in Wales, the Lands Tribunal for Scotland, and the Lands Tribunal for Northern Ireland for functions conferred by the code on "the court". Should this power be exercised, references in the code to "the court" will need to be read also as references to the tribunals on which such jurisdiction is conferred.

491 *Paragraph 95(3)* enables jurisdiction to be conferred on the tribunals as well as or instead of the court. Where jurisdiction is conferred on more than one body, paragraph 95(3) permits the Secretary of State to make regulations setting out in which court or tribunal proceedings are to be commenced and enabling that court or tribunal to transfer proceedings to another court or tribunal. For example, in relation to England it will be possible for jurisdiction to adjudicate code disputes to be conferred on the First-Tier Tribunal, the Upper Tribunal and the county court.

492 *Paragraph 96* provides that any tribunal on which jurisdiction may be conferred under paragraph 95 shall have a discretion when making awards of costs (expenses in Scotland) and in doing so must have regard in particular to the extent to which a party is successful. The purpose of the provision is to ensure that the approach to costs in the courts (see paragraph 94) is continued after jurisdiction is conferred on tribunals which often, but not always, take this approach. The provision's intention is to encourage parties to continue to carefully consider their chances of success before litigating a dispute, and incentivise reasonable agreements to be reached without

recourse to litigation.

493 *Paragraph 97* refers to regulation 3 of the Electronic Communications and Wireless Telegraphy Regulations 2011 which applies to certain applications to install facilities. Where regulation 3 applies to an application under the code, there is a six-month time limit for determining the application.

494 *Paragraph 98* makes provision in relation to appeals in Northern Ireland.

## Part 17: Supplementary provisions

495 Part 17 contains a number of supplementary provisions, including definitions of terms used elsewhere in the code.

496 *Paragraph 99* provides that the code does not authorise the contravention of any enactment made before the new code comes into force unless such an enactment itself provides otherwise. So for example, nothing in the code authorises an operator, or any other person, to do anything that would be in breach of existing planning legislation, or other legislation.

497 *Paragraph 100(1)* concerns the binding quality of agreements made under the code, and whether it is possible to “contract out” out of provisions of the code. Agreements for code rights are final so that once agreed (see Part 2), it is not possible for either party to re-open the agreement. For example if an operator agrees to pay £5,000 for a (consensual) code agreement, the operator (or landowner) cannot then apply to the court to get a better price or improve the accompanying terms that relate to the code right that has been agreed. It is possible to vary an agreement by further agreement (see paragraph 11 of the code).

498 *Paragraph 100(2)* ensures that an operator cannot be required by a landowner to agree to exclude the effect of paragraph 99 and Parts 3 to 6 of the code. This is commonly known as a “no contracting out” rule. (There is similar provision in what was paragraph 27(2) of the existing code in Schedule 2 to the Telecommunications Act 1984). Paragraphs 16(1) and 17(5) of the code prevent the possibility that operators could be required to contract out of the automatic upgrading and sharing rights provided by those paragraphs, and the reference in paragraph 100(2) to Part 3 is to ensure consistency between paragraph 100 and those provisions. Part 5 provides for code agreements to continue, notwithstanding the terms of the agreement, and to be terminated only in accordance with the provisions of the code. Part 6 provides for apparatus to be removed only in accordance with the provisions of the code. So paragraph 100(2) ensures that operators cannot be required to contract out of the rights they enjoy under Parts 5 and 6 which are essential to protect networks. In the existing code, what was paragraph 27(2) similarly prevented parties contracting out of what was paragraph 21 of the existing code.

499 Similarly an operator cannot be required to agree that it will forgo its right to make an application to the court under Part 4 for a different or additional code right (for which it would have to pay additional consideration). For example an operator may have an agreement with a site provider under which the operator is entitled to enter the land to maintain apparatus on terms that it gives at least 72 hours’ notice (see paragraph 3(f) of the code). The operator might later wish to seek a different code agreement, e.g. to enter the land to maintain apparatus giving only 48 hours’ notice. That would be a new right, more onerous for the landowner, which would have to be agreed on further terms, including as to payment. Failing agreement, the operator could apply to the court to be granted the new right. The court would be required to apply the test under paragraph 21.

500 *Paragraph 101*. Under general land law, a movable object (a “chattel”) that is attached to the land may become, by operation of the law, part of the land (and consequently become the property of the owner of the land) if it has become a “fixture”. *Paragraph 101* prevents this from happening to apparatus installed on the land by an operator using code rights by providing that property rights in apparatus are unaffected by that apparatus becoming attached to land. A similar provision was

contained in what was paragraph 27(4) of the existing code in Schedule 2 to the Telecommunications Act 1984.

- 501 *Paragraph 102* replicates what was paragraph 15 of the existing code. Its effect is that an operator must have the agreement of the authority with control of a relevant conduit to install apparatus in that conduit (i.e. such rights cannot be ordered by the court under Part 4).
- 502 *Paragraph 103* obliges Ofcom to publish a code of practice on the operation of the code and suggested (but not mandatory) standard terms for use in code agreements. These may be updated from time to time. Ofcom is required to consult with operators and anyone else it thinks appropriate before it first publishes the code of practice and suggested standard terms.
- 503 *Paragraph 104* provides that Crown land (meaning, primarily, land owned or leased by the government) is subject to the code in the same way as any other land. It also sets out who has the authority to enter into agreements or grant code rights over various different categories of Crown land.
- 504 *Paragraph 105* sets out the meaning of “occupier” for the purposes of the code.
- 505 *Paragraph 106* makes provisions for the Scottish Ministers to make rules for the Lands Tribunal for Scotland in relation to the code.
- 506 *Paragraph 107* makes provision in relation to arbitration in Scotland.
- 507 *Paragraph 108* defines other terms used within the code including the definition of land under the code, which excludes electronic communications apparatus, thereby ensuring that code rights cannot be used to confer rights to install electronic communications apparatus on another person’s apparatus. Paragraph 108(2) defines “alteration” of apparatus as including moving, removing and replacing that apparatus.

## **Schedule 2: The electronic communications code: transitional provision**

- 508 This Schedule sets out transitional provisions connected with the new electronic communications code in Schedule 1 coming into force. This Schedule provides for agreements made under the electronic communications code set out in Schedule 2 to the Telecommunications Act 1984 (defined for transitional purposes as the “existing code”), and for other rights and matters affected by that code, to transition to the code in Schedule 1 of this Act which Section 4(2) of the Act inserts as Schedule 3A to the 2003 Act (and which is defined for transitional purposes as the “new code”). Further transitional provision may be made by regulations pursuant to Section 5 of the Act.
- 509 *Paragraph 1* defines key terms used in Schedule 2, including a “subsisting agreement” (an agreement made under paragraph 2 or 3 of the existing code in Schedule 2 to the Telecommunications Act 1984) or an agreement imposed by the court under paragraph 5 of the existing code.
- 510 *Paragraph 2* provides that on commencement of the new code, subsisting agreements have effect as if made under the new code, save as modified by this Schedule. It also provides that a person bound by a right under the existing code is treated as bound by the corresponding right under the new code.
- 511 *Paragraph 3* provides that references to a code right in the new code are, in relation to subsisting agreements, to be read as references to the corresponding rights in paragraphs 2 and 3 of the existing code.
- 512 *Paragraph 4* preserves the effect of paragraph 2(3) of the existing code for transitional purposes as

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it relates to subsisting agreements. However, because paragraph 2(3) of the existing code has no corresponding provision in the new code, paragraph 7(2) of Schedule 2 (see below) ensures that paragraph 2(3) of the existing code ceases to have effect when the subsisting agreement comes to an end.

513 *Paragraph 5* provides that Part 3 of the new code (the assignment of code rights, upgrading and sharing provisions) does not apply to subsisting agreements, or to rights conferred under the new code that depend on rights under a subsisting agreement. The purpose of this paragraph is to avoid retrospective effect of paragraphs 16 and 17 of the new code.

514 *Paragraphs 6 and 7* make transitional provision in relation to Part 5 of the new code (termination and modification of agreements). The purpose of paragraph 29 of the new code is to delineate when the statutory continuity provisions of Part 5 of the new code apply and when, instead, the continuity regime in the Landlord and Tenant Act 1954, and Business Tenancies (Northern Ireland) Order 1996 applies. Paragraph 6 of Schedule 2 delineates which continuity provisions apply for transitional purposes, and so specifies those subsisting agreements to which Part 5 of the new code will not apply. Paragraph 7(1) provides that (unless excluded by paragraph 6 above) Part 5 of the new code applies to a subsisting agreement, with the modifications set out in paragraphs 7(2) to 7(4). The modification in paragraph 7(2) is made because there is no corresponding provision in the new code to paragraphs 2(2)(c) and (3) of the existing code; and the modification in 7(3) in order to avoid retrospectively applying to a subsisting agreement the 18 month period in paragraph 31(3)(a) of the new code. Paragraph 7(4) ensures that when the court comes to determine the terms of a new agreement it is not required to take into account the consideration payable under the terms of the subsisting agreement. This is so that the basis of consideration, once a new agreement is agreed or imposed under the new code, (see paragraph 24 of the new code) is applied without reference to the consideration agreed under the different provisions of the existing code.

515 *Paragraph 8* concerns rights in relation to street works, flying lines, tidal waters and linear obstacles. Paragraph 8(1) provides that paragraphs 9 to 14 of the existing code dealing with these rights will continue to apply to anything (including works, notice procedures, proceedings, or other matters) already in the process of being done when the new code comes into force. Paragraph 8(2) provides that any apparatus lawfully installed under paragraphs 9 to 14 is to be treated as installed under the corresponding new provisions in the revised code. Paragraph 8(3) sets out the corresponding provisions in the new code.

516 *Paragraph 9* provides that an agreement for the purposes of paragraph 11(2) of the existing code in relation to tidal water or lands in which there is a Crown interest has effect as an agreement for the purposes of paragraph 64 of the new code.

517 *Paragraph 10* provides that agreements under paragraph 15 of the existing code (which relate to certain specified conduits) are treated as having the same effect as if made under the like provision in the new code.

518 *Paragraphs 11 and 12* make transitional provision in relation to notices given under paragraph 5(1) of the existing code (requesting an agreement for rights) and applications to the court for code rights made under the existing code.

519 *Paragraph 13* makes transitional provision in relation to an application or order for temporary code rights made pursuant to paragraph 6 of the existing code.

520 *Paragraph 14* provides that the repeal of the existing code does not affect rights to compensation that arise in relation to matters that occurred before repeal.

521 *Paragraph 15* preserves existing rights and obligations under paragraph 17 (objections to overhead

apparatus) and paragraph 18 (obligation to affix notices to overhead apparatus) of the existing code, where the relevant apparatus was installed before the new code comes into force.

522 *Paragraph 16* provides that the repeal of the existing code will not affect rights under paragraph 20 of the existing code (power to require alteration of apparatus) in relation to apparatus installed before the new code comes into force. The effect of paragraph 20 of the existing code is not replicated in the new code, accordingly paragraph 16(1) is intended to ensure that persons who have rights under paragraph 20 of the existing code do not lose them. An exception to this principle is made in paragraph 16(2) for persons who become party to or bound by an agreement under the new code. This is because such persons will in appropriate circumstances (see paragraph 23(8)(b) of the new code) be able to secure rights similar to those in paragraph 20 of the existing code. Paragraph 16(3) makes clear that the exception in paragraph 16(2) applies only to new agreements under the new code and not to a “subsisting agreement” (see paragraph 2 of Schedule 2).

523 *Paragraph 17* provides that Part 12 of the new code (rights to object to certain apparatus) applies only to apparatus installed after the new code comes into force. (See paragraph 15 above in relation to apparatus installed before the new code comes into force).

524 *Paragraphs 18 and 19* make transitional provision in relation to the right to cut back trees that overhang the street and make clear the circumstances in which a contested right to cut back trees is dealt with under the provisions of the existing code.

525 *Paragraph 20*. Paragraph 21 of the existing code makes provision for the right to require removal of apparatus (for example when code rights have ceased) and for restrictions on the right to require removal (for example so that the operator may contest removal by applying for new rights). Paragraph 20 of Schedule 2 provides that paragraph 21 of the existing code will continue to apply for transitional purposes if, before the existing code is repealed, a notice requiring removal of apparatus was served under paragraph 21 of the existing code.

526 *Paragraph 21*. Paragraph 23 of the existing code and Part 10 of the new code both contain similar rules that apply when the works required by other statutory undertakers affect electronic communications apparatus. Paragraph 21 of Schedule 2 clarifies when the relevant provisions of the existing code, notwithstanding its repeal, will continue to apply to such works.

527 *Paragraphs 22 and 23* are self-explanatory.

528 *Paragraphs 24 to 25* make additional transitional and saving provisions dealing with the giving of notices, avoiding double compensation and other supplementary matters.

## **Schedule 3: The electronic communications code: consequential amendments**

529 Schedule 3 makes amendments that are consequential on the introduction of the new electronic communications code in Schedule 1. Schedule 3 is in two parts. Part 1 includes an interpretation provision (definitions) and makes provision so that where other enactments make reference to certain paragraphs or terms in the existing code, they are to be read as a reference to the specified corresponding provision of the new code. Part 2 of Schedule 3 provides for specific textual amendments of the enactments listed in Part 2. Further consequential provision may be made in regulations pursuant to Section 6 of the Act.

## **Schedule 4: Public service delivery: specified persons for the purposes of section 35**

530 Schedule 4 to the Act lists the specified persons who may share information for the purpose of

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specified objectives under section 35.

## **Schedule 5: Public service delivery: specified persons for the purposes of sections 36 and 37**

531 Schedule 5 to the Act lists the specified persons with whom gas and electricity suppliers may share information, and from whom they may receive information, for the purpose of assisting people living in fuel poverty.

## **Schedule 6: Public service delivery: specified persons for the purposes of sections 38 and 39**

532 Schedule 6 to the Act lists the specified persons with whom water and sewerage undertakers may share information, and from whom they may receive information, for the purpose of assisting people living in water poverty

## **Schedule 7: Specified persons for the purposes of the debt provisions**

533 Schedule 7 to the Act lists the specified persons who are permitted to make use of the power under section 48 to share information in connection with debt owed to a public authority or to the Crown.

## **Schedule 8: Specified persons for the purposes of the fraud provisions**

534 Schedule 8 to the Act lists the specified persons who are permitted to make use of the power under section 56 to share information for the purposes of taking action in connection with fraud against a public authority.

## **Schedule 9: Bank of England oversight of payment systems**

535 Part 1 of this Schedule makes amendments to the Banking Act 2009 to allow HM Treasury to formally recognise non-bank payment systems for oversight by the Bank of England.

536 *Paragraph 1* introduces the amendments.

537 *Paragraph 4* amends the definition of “inter-bank payment system” for the purposes of Part 5 of the Banking Act 2009 (with the new defined phrase being just “payment system”). The amendments to section 182(1) in sub-paragraph (2) remove the requirement that a system be designed for transfers between financial institutions in order to be recognised. Sub-paragraph (3) inserts a new subsection (1A) into s.182 of the Banking Act 2009, and clarifies that arrangements for the physical movement of cash do not amount to a payment system for these purposes.

538 The remaining paragraphs in Part 1 of the amend other provisions of Part 5 of the Banking Act 2009 so that they apply in relation to payment systems as defined in the amended s.182, rather than only to inter-bank payment systems.

539 Part 2 of the Schedule makes amendments that are consequential on these amendments. It makes consequential amendments to the Financial Services Act 2012 and the Financial Services (Banking Reform) Act 2013.



## Commencement

540 The provisions of the Act will come into force as provided for by section 118 of the Act. The notes on that section above provide full details. Subject to parliamentary approval of any necessary secondary legislation, it is intended to start commencement of the provisions of the Act from Summer 2017.

## Financial implications of the Act

541 The financial costs and benefits of the Act have been set out in accompanying impact assessments. The following assessments have been made:

- a. An overarching impact assessment;
- b. Part 2: Access to Digital Services:
  - i. An impact assessment of the new electronic communications code;
  - ii. An impact assessment of broadband planning;
  - iii. An impact assessment of Dynamic Spectrum Access;
  - iv. An impact assessment of Financial penalties for Breaches of Wireless Telegraphy Act Licence Conditions;
  - v. An impact assessment of Wireless Telegraphy Act enforcement;
- c. Part 3: Online pornography:
  - i. An impact assessment of Age verification for online pornography;
- d. Part 4: Intellectual Property:
  - i. An impact assessment of Webmarking: Constructive notice - products protected by registered designs;
  - ii. An impact assessment of the repeal of section 73, Copyright, Design and Patents Act 1988;
- e. Part 5: Digital Government:
  - i. An impact assessment of Digital Government: public services;
  - ii. An impact assessment of Digital Government: civil registration;
  - iii. An impact assessment of Digital Government: disclose identified data for the purpose of taking action in connection with debt owed to a specified public authority;
  - iv. An impact assessment of Digital Government: new powers for bodies to disclose identified data for the purpose of combating fraud against the public sector;
  - v. An impact assessment of Digital Government: power to allow public authorities to disclose de-identified data in controlled conditions for research in the public interest;
  - vi. An impact assessment of Digital Government: new power to allow HMRC to disclose non-identifying data for a purpose in the public interest;

- vii. An impact assessment of Digital Government: new powers for access to identified data for the purposes of producing national and other official statistics and research;
- f. Part 6: Miscellaneous
  - i. An impact assessment of Ofcom data transparency powers;
  - ii. An impact assessment of Ofcom appeals;
  - iii. An impact assessment of Protections from extremist radio content;
  - iv. An impact assessment of Protections for digital terrestrial television viewers who access Internet-protocol television content;
  - v. An impact assessment of the prevention and restriction of communication devices for the purpose of drug dealing;
  - vi. An impact assessment of Direct Marketing Code of Practice;
  - vii. An impact assessment of Ofcom satellite filings.

## Related documents

542 The government has published online a number of related documents:

[www.gov.uk/government/collections/digital-economy-bill-2016](http://www.gov.uk/government/collections/digital-economy-bill-2016)

543 The following documents are relevant to the Bill and can be read at the stated locations:

- A new broadband Universal Service Obligation, Department for Culture, Media and Sport, March 2016,  
[www.gov.uk/government/consultations/broadband-universal-service-obligation](http://www.gov.uk/government/consultations/broadband-universal-service-obligation)
- Making communications work for everyone, Ofcom, February 2016,  
[media.ofcom.org.uk/news/2016/digital-comms-review-feb16/](http://media.ofcom.org.uk/news/2016/digital-comms-review-feb16/)
- Switching Principles Action Plan, Department for Business, Innovation and Skills, May 2016,  
[www.gov.uk/government/publications/switching-suppliers-action-plan](http://www.gov.uk/government/publications/switching-suppliers-action-plan)
- Electronic Communications Code, Law Commission, February 2013,  
[www.lawcom.gov.uk/project/electronic-communications-code/](http://www.lawcom.gov.uk/project/electronic-communications-code/)
- A New Electronic Communications Code, Department for Culture, Media and Sport, May 2016,  
[www.gov.uk/government/publications/government-publishes-proposals-for-a-new-electronic-communications-code](http://www.gov.uk/government/publications/government-publishes-proposals-for-a-new-electronic-communications-code)
- Connectivity, content and consumers: Britain's digital platform for growth, Department for Culture, Media and Sport, July 2013,  
[www.gov.uk/government/publications/connectivity-content-and-consumers-britains-digital-platform-for-growth](http://www.gov.uk/government/publications/connectivity-content-and-consumers-britains-digital-platform-for-growth)
- Child Safety Online: Age Verification for Pornography, Department for Culture,

*These Explanatory Notes relate to the Digital Economy Act 2017 (c. 30) which received Royal Assent on 27 April 2017*

Media and Sport, February 2016,  
[www.gov.uk/government/consultations/child-safety-online-age-verification-for-pornography](http://www.gov.uk/government/consultations/child-safety-online-age-verification-for-pornography)

- Changes to penalties for online copyright infringement, Intellectual Property Office, July 2015,  
[www.gov.uk/government/consultations/changes-to-penalties-for-online-copyright-infringement](http://www.gov.uk/government/consultations/changes-to-penalties-for-online-copyright-infringement)
- Webmarking for registered design rights, Intellectual Property Office, July 2015,  
[www.gov.uk/government/consultations/webmarking-for-registered-design-rights-call-for-evidence](http://www.gov.uk/government/consultations/webmarking-for-registered-design-rights-call-for-evidence)
- Better use of data in government, Cabinet Office, February 2016,  
[www.gov.uk/government/consultations/better-use-of-data-in-government](http://www.gov.uk/government/consultations/better-use-of-data-in-government)
- Sharing and publishing data for public benefit, HM Revenue and Customs, July 2013,  
[www.gov.uk/government/consultations/sharing-and-publishing-data-for-public-benefit](http://www.gov.uk/government/consultations/sharing-and-publishing-data-for-public-benefit)
- Direct Marketing Guidance, Information Commissioner's Office, May 2016,  
[ico.org.uk/for-organisations/guide-to-pecr/electronic-and-telephone-marketing/](http://ico.org.uk/for-organisations/guide-to-pecr/electronic-and-telephone-marketing/)
- Public Administration Committee - Tenth Report 2013-14: Statistics and Open Data: Harvesting unused knowledge, empowering citizens and improving public services, House of Commons, 11 March 2014  
<http://www.publications.parliament.uk/pa/cm201314/cmselect/cmpublicadm/564/564.pdf>
- Environment, Food and Rural Affairs Committee - Seventh Report 2014-15: Rural broadband and digital-only services, House of Commons, 28 January 2015  
<http://www.publications.parliament.uk/pa/cm201415/cmselect/cmenvfru/834/834.pdf>
- Culture, Media and Sport Committee – First Report 2016-17: Cyber Security: Protection of Personal Data Online, House of Commons, 15 June 2016  
<http://www.publications.parliament.uk/pa/cm201617/cmselect/cmcmumeds/148/148.pdf>

# Annex A - Territorial extent and application in the United Kingdom

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?
<b>Part 1: Access to digital services</b>				
Sections 1 to 3	Yes	Yes	Yes	Yes
<b>Part 2: Digital infrastructure</b>				
Section 4 to 13 and Schedules 1 to 3	Yes	Yes	Yes	Yes
<b>Part 3: Online pornography</b>				
Sections 14 to 30	Yes	Yes	Yes	Yes
<b>Part 4: Intellectual property</b>				
Sections 31 to 34	Yes	Yes	Yes	Yes
<b>Part 5: Digital government</b>				
Section 35 and Schedule 4	Yes	Yes	Yes	Yes
Sections 36 to 37 and Schedule 5	Yes	Yes	Yes	No
Sections 38 to 39 and Schedule 6	Yes	Yes	No	No
Sections 40 to 81 and Schedules 7 and 8	Yes	Yes	Yes	Yes
<b>Part 6: Miscellaneous</b>				
Sections 82 to 113 and Schedule 9	Yes	Yes	Yes	Yes
Section 114	Yes	No	No	No
Sections 115 to 116	Yes	Yes	Yes	Yes

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## Annex B - Hansard References

544 The following table sets out the dates and Hansard references for each stage of the Act's passage through Parliament.

Stage	Date	Hansard Reference
<i>House of Commons</i>		
Introduction	5 July 2016	<a href="#">Vol. 612 Col. 760</a>
Second Reading	13 September 2016	<a href="#">Vol. 614 Col. 771</a>
Public Bill Committee	11 October 2016 13 October 2016 18 October 2016 20 October 2016 25 October 2016 27 October 2016 1 November 2016	<a href="#">PBC (Bill 045) 2016 - 2017</a>
Report and Third Reading	28 November 2016	<a href="#">Vol. 617 Col. 1268</a>
<i>House of Lords</i>		
Introduction	29 November 2016	<a href="#">Vol. 777 Col. 94</a>
Second Reading	13 December 2016	<a href="#">Vol. 777 Col. 1142</a>
Committee	31 January 2017 2 February 2017 6 February 2017 8 February 2017	<a href="#">Vol. 778 Col. 1110</a> <a href="#">Vol. 778 Col. 1287</a> <a href="#">Vol. 778 Col. 1471</a> <a href="#">Vol. 778 Col. 1724</a>
Report	22 February 2017 20 March 2017 29 March 2017	<a href="#">Vol. 779 Col. 335</a> <a href="#">Vol. 782 Col. 11</a> <a href="#">Vol. 782 Col. 615</a>
Third Reading	5 April 2017	<a href="#">Vol. 782 Col. 1088</a>
Commons Consideration of Lords Amendments	26 April 2017	<a href="#">Vol. 624 Col. 1122</a>
Lords Consideration of Commons Reasons	27 April 2017	<a href="#">Vol. 782 Col. 1486</a>
Royal Assent	27 April 2017	<a href="#">Vol. 782 Col. 1527</a>

*These Explanatory Notes relate to the Digital Economy Act 2017 (c. 30) which received Royal Assent on 27 April 2017*

## Annex C - Progress of Bill Table

545 This Annex shows how each section and Schedule of the Act was numbered during the passage of the Bill through Parliament.

Section of the Act	Bill as Introduced in the Commons	Bill as amended in Committee in the Commons	Bill as introduced in the Lords	Bill as amended in Committee in the Lords	Bill as amended on Report in the Lords
Section 1	Clause 1	Clause 1	Clause 1	Clause 1	Clause 1
Section 2	Clause 2	Clause 2	Clause 2	Clause 2	Clause 2
Section 3	Clause 3	Clause 3	Clause 3	Clause 3	Clause 4
Section 4	Clause 4	Clause 4	Clause 4	Clause 4	Clause 5
Section 5	Clause 5	Clause 5	Clause 5	Clause 5	Clause 6
Section 6	Clause 6	Clause 6	Clause 6	Clause 6	Clause 7
Section 7	Clause 7	Clause 7	Clause 7	Clause 7	Clause 8
Section 8	Clause 8	Clause 8	Clause 8	Clause 8	Clause 9
Section 9	Clause 10	Clause 10	Clause 10	Clause 10	Clause 11
Section 10	Clause 11	Clause 11	Clause 11	Clause 11	Clause 12
Section 11	Clause 12	Clause 12	Clause 12	Clause 12	Clause 13
Section 12	Clause 13	Clause 13	Clause 13	Clause 13	Clause 14
Section 13	Clause 14	Clause 14	Clause 14	Clause 14	Clause 15
Section 14	Clause 15	Clause 15	Clause 15	Clause 15	Clause 16
Section 15	Clause 16	Clause 16	Clause 16	Clause 16	Clause 17
Section 16	Clause 17	Clause 17	Clause 17	Clause 17	Clause 18
Section 17	Clause 18	Clause 18	Clause 18	Clause 18	Clause 19
Section 18	Clause 19	Clause 19	Clause 19	Clause 19	Clause 20
Section 19	Clause 20	Clause 20	Clause 20	Clause 20	Clause 21
Section 20	Clause 21	Clause 21	Clause 21	Clause 21	Clause 22
Section 21	Clause 22	Clause 22	Clause 22	Clause 22	Clause 23
Section 22					Clause 24
Section 23			Clause 23	Clause 23	Clause 25
Section 24				Clause 24	Clause 26
Section 25					Clause 27
Section 26	Clause 23	Clause 23	Clause 24	Clause 25	Clause 28
Section 27					Clause 29
Section 28	Clause 24	Clause 24	Clause 25	Clause 26	Clause 30
Section 29					Clause 32
Section 30	Clause 25	Clause 25	Clause 26	Clause 27	Clause 33
Section 31					Clause 34
Section 32	Clause 26	Clause 26	Clause 27	Clause 28	Clause 35

*These Explanatory Notes relate to the Digital Economy Act 2017 (c. 30) which received Royal Assent on 27 April 2017*



<b>Section of the Act</b>	<b>Bill as Introduced in the Commons</b>	<b>Bill as amended in Committee in the Commons</b>	<b>Bill as introduced in the Lords</b>	<b>Bill as amended in Committee in the Lords</b>	<b>Bill as amended on Report in the Lords</b>
Section 33	Clause 27	Clause 27	Clause 28	Clause 29	Clause 36
Section 34	Clause 28	Clause 28	Clause 29	Clause 30	Clause 37
Section 35	Clause 29	Clause 29	Clause 30	Clause 31	Clause 38
Section 36	Clause 30	Clause 30	Clause 31	Clause 32	Clause 39
Section 37	Clause 31	Clause 31	Clause 32	Clause 33	Clause 40
Section 38				Clause 34	Clause 41
Section 39				Clause 35	Clause 42
Section 40	Clause 32	Clause 32	Clause 33	Clause 36	Clause 43
Section 41	Clause 33	Clause 33	Clause 34	Clause 37	Clause 44
Section 42	Clause 34	Clause 34	Clause 35	Clause 38	Clause 45
Section 43	Clause 35	Clause 35	Clause 36	Clause 39	Clause 46
Section 44	Clause 36	Clause 36	Clause 37	Clause 40	Clause 47
Section 45	Clause 37	Clause 37	Clause 38	Clause 41	Clause 48
Section 46	Clause 38	Clause 38	Clause 39	Clause 42	Clause 49
Section 47	Clause 39	Clause 39	Clause 40	Clause 43	Clause 50
Section 48	Clause 40	Clause 40	Clause 41	Clause 44	Clause 51
Section 49	Clause 41	Clause 41	Clause 42	Clause 45	Clause 52
Section 50	Clause 42	Clause 42	Clause 43	Clause 46	Clause 53
Section 51	Clause 43	Clause 43	Clause 44	Clause 47	Clause 54
Section 52	Clause 44	Clause 44	Clause 45	Clause 48	Clause 55
Section 53	Clause 45	Clause 45	Clause 46	Clause 49	Clause 56
Section 54	Clause 46	Clause 46	Clause 47	Clause 50	Clause 57
Section 55	Clause 47	Clause 47	Clause 48	Clause 51	Clause 58
Section 56	Clause 48	Clause 48	Clause 49	Clause 52	Clause 59
Section 57	Clause 49	Clause 49	Clause 50	Clause 53	Clause 60
Section 58	Clause 50	Clause 50	Clause 51	Clause 54	Clause 61
Section 59	Clause 51	Clause 51	Clause 52	Clause 55	Clause 62
Section 60	Clause 52	Clause 52	Clause 53	Clause 56	Clause 63
Section 61	Clause 53	Clause 53	Clause 54	Clause 57	Clause 64
Section 62	Clause 54	Clause 54	Clause 55	Clause 58	Clause 65
Section 63	Clause 55	Clause 55	Clause 56	Clause 59	Clause 66
Section 64	Clause 56	Clause 56	Clause 57	Clause 60	Clause 67
Section 65	Clause 57	Clause 57	Clause 58	Clause 61	Clause 68
Section 66	Clause 58	Clause 58	Clause 59	Clause 62	Clause 69
Section 67	Clause 59	Clause 59	Clause 60	Clause 63	Clause 70

*These Explanatory Notes relate to the Digital Economy Act 2017 (c. 30) which received Royal Assent on 27 April 2017*

<b>Section of the Act</b>	<b>Bill as Introduced in the Commons</b>	<b>Bill as amended in Committee in the Commons</b>	<b>Bill as introduced in the Lords</b>	<b>Bill as amended in Committee in the Lords</b>	<b>Bill as amended on Report in the Lords</b>
Section 68				Clause 64	Clause 71
Section 69				Clause 65	Clause 72
Section 70	Clause 60	Clause 60	Clause 61	Clause 66	Clause 73
Section 71	Clause 61	Clause 61	Clause 62	Clause 67	Clause 74
Section 72	Clause 62	Clause 62	Clause 63	Clause 68	Clause 75
Section 73	Clause 63	Clause 63	Clause 64	Clause 69	Clause 76
Section 74	Clause 64	Clause 64	Clause 65	Clause 70	Clause 77
Section 75					Clause 78
Section 76					Clause 79
Section 77					Clause 80
Section 78	Clause 65	Clause 65	Clause 66	Clause 71	Clause 81
Section 79	Clause 66	Clause 66	Clause 67	Clause 72	Clause 82
Section 80	Clause 67	Clause 67	Clause 68	Clause 73	Clause 83
Section 81	Clause 68	Clause 68	Clause 69	Clause 74	Clause 84
Section 82	Clause 69	Clause 69	Clause 70	Clause 75	Clause 85
Section 83	Clause 70	Clause 70	Clause 71	Clause 76	Clause 86
Section 84	Clause 71	Clause 71	Clause 72	Clause 77	Clause 87
Section 85	Clause 72	Clause 72	Clause 73	Clause 78	Clause 88
Section 86	Clause 73	Clause 73	Clause 74	Clause 79	Clause 89
Section 87	Clause 74	Clause 74	Clause 75	Clause 80	Clause 90
Section 88	Clause 75	Clause 75	Clause 76	Clause 81	Clause 91
Section 89	Clause 76	Clause 76	Clause 77	Clause 82	Clause 95
Section 90					Clause 96
Section 91		Clause 77	Clause 78	Clause 83	Clause 97
Section 92		Clause 78	Clause 79	Clause 84	Clause 98
Section 93				Clause 85	Clause 99
Section 94			Clause 80	Clause 86	Clause 100
Section 95					Clause 101
Section 96	Clause 77	Clause 79	Clause 81	Clause 87	Clause 102
Section 97					Clause 103
Section 98					Clause 104
Section 99	Clause 78	Clause 80	Clause 82	Clause 88	Clause 105
Section 100	Clause 79	Clause 81	Clause 83	Clause 89	Clause 106
Section 101	Clause 80	Clause 82	Clause 84	Clause 90	Clause 107
Section 102					Clause 3

*These Explanatory Notes relate to the Digital Economy Act 2017 (c. 30) which received Royal Assent on 27 April 2017*

<b>Section of the Act</b>	<b>Bill as Introduced in the Commons</b>	<b>Bill as amended in Committee in the Commons</b>	<b>Bill as introduced in the Lords</b>	<b>Bill as amended in Committee in the Lords</b>	<b>Bill as amended on Report in the Lords</b>
Section 103					Clause 31
Section 104				Clause 91	Clause 108
Section 105					Clause 109
Section 106					Clause 110
Section 107				Clause 92	Clause 111
Section 108					Clause 112
Section 109					Clause 113
Section 110					Clause 114
Section 111					Clause 115
Section 112		Clause 83	Clause 85	Clause 93	Clause 116
Section 113		Clause 84	Clause 86	Clause 94	Clause 117
Section 114		Clause 85	Clause 87	Clause 95	Clause 118
Section 115					Clause 119
Section 116					Clause 120
Section 117	Clause 81	Clause 86	Clause 88	Clause 96	Clause 121
Section 118	Clause 82	Clause 87	Clause 89	Clause 97	Clause 122
Section 119	Clause 83	Clause 88	Clause 90	Clause 98	Clause 123
Section 120	Clause 84	Clause 89	Clause 91	Clause 99	Clause 124
Schedule 1	Schedule 1	Schedule 1	Schedule 1	Schedule 1	Schedule 1
Schedule 2	Schedule 2	Schedule 2	Schedule 2	Schedule 2	Schedule 2
Schedule 3	Schedule 3	Schedule 3	Schedule 3	Schedule 3	Schedule 3
Schedule 4					Schedule 4
Schedule 5					Schedule 5
Schedule 6					Schedule 6
Schedule 7					Schedule 7
Schedule 8					Schedule 8
Schedule 9		Schedule 4	Schedule 4	Schedule 4	Schedule 9

*These Explanatory Notes relate to the Digital Economy Act 2017 (c. 30) which received Royal Assent on 27 April 2017*

## Annex D – Glossary

Term	Reference
CAT	Competition Appeal Tribunal
CMA	Competition and Markets Authority
PECR	Privacy and Electronic Communications Regulations 2003
Superfast broadband	Broadband capable of delivering download speeds of at least 24 Mbps
the 1988 Act	Copyright, Designs and Patents Act 1988
the 1998 Act	Data Protection Act 1998
the 2002 Act	The Office of Communications Act 2002
the 2003 Act	Communications Act 2003
the 2006 Act	Wireless Telegraphy Act 2006
the 2007 Act	Statistics and Registration Service Act 2007
the 2015 Act	Consumer Rights Act 2015
USO	Universal Service Obligation
the code	The electronic communications code
existing code	The electronic communications code in Schedule 2 to the Telecommunications Act 1984
new code	The electronic communications code in Schedule 2 to this Act
code rights	Rights conferred on a communications network provider concerning the installation and maintenance of apparatus on, over or under land
code operators	Communications network providers with rights under the electronic communications code
VoD	Video on demand

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