

SCHEDULES

SCHEDULE 15

Section 197

LIABILITY OF PARENT ENTITIES ETC

Joint provisional notices of contravention

- 1 (1) This paragraph applies if—
 - (a) OFCOM are satisfied that there are grounds to give an entity (“E”) a provisional notice of contravention relating to a regulated service, and
 - (b) E is the provider of that service.
- (2) If there is an entity which is a parent undertaking in relation to E, the provisional notice of contravention may be given—
 - (a) to E alone, or
 - (b) jointly to E and to an entity which is a parent undertaking in relation to E.
- (3) If there is an entity which is a subsidiary undertaking in relation to E, the provisional notice of contravention may be given—
 - (a) to E alone, or
 - (b) jointly to E and to an entity which is a subsidiary undertaking in relation to E.
- (4) If E is a subsidiary undertaking and there is an entity which is a fellow subsidiary undertaking in relation to E, the provisional notice of contravention may be given—
 - (a) to E alone, or
 - (b) jointly to E and to an entity which is a fellow subsidiary undertaking in relation to E.
- (5) If an individual or individuals control E (see paragraph 5(4)), the provisional notice of contravention may be given—
 - (a) to E alone, or
 - (b) jointly to E and to the individual or individuals who control E.
- (6) If a provisional notice of contravention is given jointly as mentioned in subparagraph (2)(b), (3)(b), (4)(b) or (5)(b), section 130(8) is to be read, in its application for the purposes of this paragraph, as if it included a reference to representations about whether joint and several liability would be appropriate.

Liability of parent entities for failures by subsidiary entities

- 2 (1) This paragraph applies if—
 - (a) OFCOM are satisfied that there are grounds to give an entity (“E”) a relevant decision or notice relating to a regulated service,
 - (b) E is the provider of that service, and
 - (c) there is an entity which is a parent undertaking in relation to E (a “parent entity”).

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- (2) The relevant decision or notice may be given—
 - (a) to E alone, or
 - (b) (subject to sub-paragraph (4)) jointly to E and to a parent entity.
- (3) But before giving a penalty notice to a parent entity, or giving a confirmation decision to a parent entity which was not previously given a provisional notice of contravention relating to the same matter, OFCOM must give that entity an opportunity to make representations to OFCOM about—
 - (a) the matters contained in the decision or notice, and
 - (b) whether joint and several liability would be appropriate.
- (4) OFCOM may not give a relevant decision or notice to a parent entity (“P”) if—
 - (a) P meets the condition in section 1162(2)(a) of the Companies Act in relation to E, and
 - (b) P makes representations (under section 130(8) as applied by paragraph 1(6), or under sub-paragraph (3)) which satisfy OFCOM that P does not meet any condition in section 1162(2)(b), (c) or (d) or (4) of the Companies Act in relation to E.
- (5) If a relevant decision or notice is given to entities jointly as mentioned in sub-paragraph (2)(b), those entities are jointly and severally liable to comply with the requirements, or (as the case may be) pay the penalty, imposed by the decision or notice.
- (6) See also paragraph 5 of Schedule 13 (maximum amount of penalties: group of entities).

Liability of subsidiary entities for failures by parent entities

- 3
- (1) This paragraph applies if—
 - (a) OFCOM are satisfied that there are grounds to give an entity (“E”) a relevant decision or notice relating to a regulated service,
 - (b) E is the provider of that service, and
 - (c) there is an entity which is a subsidiary undertaking in relation to E (a “subsidiary entity”).
 - (2) The relevant decision or notice may be given—
 - (a) to E alone, or
 - (b) jointly to E and to a subsidiary entity.
 - (3) But—
 - (a) before giving a penalty notice to a subsidiary entity, or giving a confirmation decision to a subsidiary entity which was not previously given a provisional notice of contravention relating to the same matter, OFCOM must give that entity an opportunity to make representations to OFCOM about—
 - (i) the matters contained in the decision or notice, and
 - (ii) whether joint and several liability would be appropriate; and
 - (b) a relevant decision or notice may be given to a subsidiary entity only if that entity’s acts or omissions contributed to the failure in respect of which the decision or notice is given.

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- (4) If a relevant decision or notice is given to entities jointly as mentioned in subparagraph (2)(b), those entities are jointly and severally liable to comply with the requirements, or (as the case may be) pay the penalty, imposed by the decision or notice.
- (5) See also paragraph 5 of Schedule 13 (maximum amount of penalties: group of entities).

Liability of fellow subsidiary entities for failures by subsidiary entities

- 4
- (1) This paragraph applies if—
 - (a) OFCOM are satisfied that there are grounds to give an entity (“E”) a relevant decision or notice relating to a regulated service,
 - (b) E is the provider of that service,
 - (c) E is a subsidiary undertaking, and
 - (d) there is an entity which is a fellow subsidiary undertaking in relation to E (a “fellow subsidiary entity”).
 - (2) The relevant decision or notice may be given—
 - (a) to E alone, or
 - (b) jointly to E and to a fellow subsidiary entity.
 - (3) But—
 - (a) before giving a penalty notice to a fellow subsidiary entity, or giving a confirmation decision to a fellow subsidiary entity which was not previously given a provisional notice of contravention relating to the same matter, OFCOM must give that entity an opportunity to make representations to OFCOM about—
 - (i) the matters contained in the decision or notice, and
 - (ii) whether joint and several liability would be appropriate; and
 - (b) a relevant decision or notice may be given to a fellow subsidiary entity only if that entity’s acts or omissions contributed to the failure in respect of which the decision or notice is given.
 - (4) If a relevant decision or notice is given to entities jointly as mentioned in subparagraph (2)(b), those entities are jointly and severally liable to comply with the requirements, or (as the case may be) pay the penalty, imposed by the decision or notice.
 - (5) See also paragraph 5 of Schedule 13 (maximum amount of penalties: group of entities).

Liability of controlling individuals for failures by entities

- 5
- (1) This paragraph applies if—
 - (a) OFCOM are satisfied that there are grounds to give an entity (“E”) a relevant decision or notice relating to a regulated service,
 - (b) E is the provider of that service, and
 - (c) an individual or individuals control E.
 - (2) The relevant decision or notice may be given—
 - (a) to E alone, or

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- (b) (subject to sub-paragraph (5)) jointly to E and to the individual or individuals who control E.
- (3) But before giving a penalty notice to an individual, or giving a confirmation decision to an individual who was not previously given a provisional notice of contravention relating to the same matter, OFCOM must give that individual an opportunity to make representations to OFCOM about—
 - (a) the matters contained in the decision or notice, and
 - (b) whether joint and several liability would be appropriate.
- (4) An individual or individuals are to be taken to “control” E if that individual or those individuals would, if they were an undertaking, be a parent undertaking in relation to E within the meaning of section 1162 of the Companies Act by reason of meeting the condition in subsection (2)(a), (b), (c) or (d) or (4)(a) of that section.
- (5) OFCOM may not give a relevant decision or notice to an individual or individuals (“P”) if—
 - (a) the condition by reason of which P controls E is the condition in section 1162(2)(a) of the Companies Act, and
 - (b) P makes representations (under section 130(8) as applied by paragraph 1(6), or under sub-paragraph (3)) which satisfy OFCOM that P does not control E by reason of any condition in section 1162(2)(b), (c) or (d) or (4) of the Companies Act.
- (6) If a relevant decision or notice is given jointly to E and to an individual or individuals as mentioned in sub-paragraph (2)(b), that entity and that individual or those individuals are jointly and severally liable to comply with the requirements, or (as the case may be) pay the penalty, imposed by the decision or notice.

OFCOM’s guidance

- 6 OFCOM’s guidance under section 151 must include information about the factors that OFCOM would consider it appropriate to take into account when considering whether to give a decision or notice jointly as mentioned in this Schedule.

Interpretation

- 7 In this Schedule—
 - “the Companies Act” means the Companies Act 2006;
 - “fellow subsidiary undertaking” has the meaning given by section 1161(4) of the Companies Act;
 - “parent undertaking” and “subsidiary undertaking” are to be read in accordance with section 1162 of the Companies Act;
 - “penalty notice” means a penalty notice under section 139, 140(5) or 141(6);
 - “relevant decision or notice” means—
 - (a) a confirmation decision that includes requirements of a kind described in section 133(1) or imposes a penalty as mentioned in section 137 (or both), or
 - (b) a penalty notice.
- 8 In its application for the purposes of this Schedule, paragraph 4 of Schedule 7 to the Companies Act is to be read as if the reference to operating and financial policies

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were to policies relating to compliance with the regulatory requirements imposed by this Act.

- 9 For the purposes of this Schedule, sections 1161(4) and 1162 of, and Schedule 7 to, the Companies Act—
- (a) are to apply in relation to an entity which is not an undertaking (as defined in section 1161(1) of that Act) as they apply in relation to an undertaking, and
 - (b) are to be read with any necessary modifications if applied to an entity formed under the law of a country outside the United Kingdom.