

## SCHEDULES

### SCHEDULE 15

#### LIABILITY OF PARENT ENTITIES ETC

##### *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
  - (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.