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STATUTORY INSTRUMENTS

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**2016 No. 607**

**The Open Internet Access (EU Regulation) Regulations 2016**

**PART 3**

**REQUIREMENTS**

**Power to impose requirements**

7.—(1) OFCOM shall have the power to impose requirements for either or both of the purposes in paragraph (2).

(2) Those purposes are—

- (a) to ensure compliance with Articles 3 and 4 of the EU Regulation;
- (b) to ensure the continued availability of non-discriminatory internet access services at levels of quality that reflect advances in technology.

(3) OFCOM's power to impose a requirement under paragraph (1) includes the power to—

- (a) impose a duty on the person or persons to whom the requirement is applied to comply with such directions with respect to the matters to which the requirement relates as may be given from time to time by OFCOM or by another person specified in the requirement;
- (b) impose a duty with respect to those matters that is framed by reference to, or is conditional upon, the giving of a consent or of an approval, or on the making of a recommendation, by OFCOM or by another person so specified;
- (c) confer, for the purposes of provision made by virtue of either of the preceding subparagraphs, a discretion exercisable from time to time by OFCOM or by another person specified in the requirement or determined in accordance with provision contained in it;
- (d) impose different requirements for different cases (including different requirements in relation to different parts of the United Kingdom);
- (e) revoke or modify the requirements for the time being in force.

(4) Any person to whom requirements set under paragraph (1) are applied in accordance with paragraph (5) must comply with those requirements.

(5) A requirement imposed under paragraph (1) may be applied to any provider of electronic communications to the public, including any provider of internet access services.

(6) In this regulation, “provider of electronic communications to the public” and “internet access service” have the meanings given in Article 2 of the EU Regulation.

**Test for imposing, modifying or revoking requirements**

8. OFCOM must not impose a requirement under regulation 7, or modify or revoke such a requirement, unless they are satisfied that to do so is—

- (1) objectively justifiable in relation to the networks or services to which it relates;
- (2) proportionate to what the requirement or modification is intended to achieve; and

- (3) in relation to what it is intended to achieve, transparent.

### **Procedure for imposing, modifying or revoking requirements**

- 9.—(1) Subject to the following provisions of these Regulations—
  - (a) the way in which requirements are to be imposed or modified under regulation 7 is by the publication of a notification setting out the requirements or modifications of those requirements;
  - (b) the way in which such a requirement is to be revoked is by the publication of a notification stating that the requirement is revoked.
- (2) OFCOM must comply with the applicable requirements of regulation 10 before—
  - (a) imposing requirements under regulation 7; or
  - (b) modifying or revoking a requirement so imposed.
- (3) The publication of a notification under this regulation must be in such manner as appears to OFCOM to be appropriate for bringing the contents of the notification to the attention of such persons as OFCOM consider appropriate.

### **Consultation for requirements**

- 10.—(1) Subject to paragraph (2), this regulation applies where OFCOM propose to impose a requirement under regulation 7, or modify or revoke a requirement so imposed.
- (2) This regulation does not apply where in OFCOM’s opinion—
  - (a) there are exceptional circumstances; and
  - (b) there is an urgent need to act in order to ensure compliance with the EU Regulation.
- (3) OFCOM must publish a notification—
  - (a) stating that they are proposing to impose, modify or revoke the requirements that are specified in the notification;
  - (b) setting out the effects of those requirements, modifications or revocations;
  - (c) giving their reasons for making the proposal; and
  - (d) specifying the period within which representations may be made to OFCOM about their proposal.
- (4) That period must end no less than one month after the day of the publication of the notification.
- (5) But where OFCOM are satisfied that there are exceptional circumstances justifying the use of a shorter period, the period specified for making representations may be whatever shorter period OFCOM consider reasonable in those circumstances.
- (6) OFCOM must—
  - (a) consider every representation about the proposal made to them during the period specified in the notification; and
  - (b) have regard to every international obligation of the United Kingdom (if any) which has been notified to them for the purposes of this paragraph by the Secretary of State.
- (7) OFCOM may then give effect to the proposal, with any modifications that appear to OFCOM to be appropriate.
- (8) The publication of a notification under this regulation must be in such manner as appears to OFCOM to be appropriate for bringing the contents of the notification to the attention of such persons as OFCOM consider appropriate.

### **Delivery of copies of notifications in respect of requirements**

11. OFCOM must send to the Secretary of State a copy of every notification published under regulation 9(1) or regulation 10(3).

### **Test for giving, modifying or withdrawing directions, approvals and consents for the purposes of a requirement imposed under regulation 7**

12.—(1) This regulation applies where—

- (a) a requirement imposed under regulation 7 has effect by reference to directions, approvals or consents given by a person (whether OFCOM themselves or another); and
- (b) that person (referred to in this regulation and regulations 13, 14 and 15 as “the responsible person”) is proposing to give a direction, approval or consent that affects the operation of that requirement or to modify or withdraw a direction, approval or consent so as to affect the requirement’s operation.

(2) The responsible person must not give, modify or withdraw the direction, approval or consent unless the responsible person is satisfied that to do so is—

- (a) objectively justifiable in relation to the networks or services to which it relates;
- (b) proportionate to what it is intended to achieve; and
- (c) in relation to what it is intended to achieve, transparent.

### **Procedure for giving, modifying or withdrawing directions, approvals and consents**

13.—(1) Subject to the following provisions of these Regulations—

- (a) the way in which directions, approvals and consents under regulation 7(3) are to be given or modified is by the publication of a notification setting out the directions, approvals or consents, or modifications of those directions, approvals or consents;
- (b) the way in which such a direction, approval or consent is to be withdrawn is by the publication of a notification stating that the direction, approval or consent is withdrawn.

(2) The responsible person must comply with the applicable requirements of regulation 14 before—

- (a) giving a direction, approval or consent; or
- (b) modifying or withdrawing a direction, approval or consent.

(3) The publication of a notification under this regulation must be in such manner as appears to the responsible person to be appropriate for bringing the contents of the notification to the attention of such persons as the responsible person considers appropriate.

### **Consultation for directions, approvals and consents**

14.—(1) This regulation applies where the responsible person is proposing to give, modify or withdraw a direction, approval or consent under regulation 7(3).

(2) This regulation does not apply where in OFCOM’s opinion—

- (a) there are exceptional circumstances; and
- (b) there is an urgent need to act in order to ensure compliance with the EU Regulation.

(3) The responsible person must publish a notification—

- (a) stating that there is a proposal to give, modify or withdraw the direction, approval or consent;
- (b) identifying the responsible person;

- (c) setting out the direction, approval or consent to which the proposal relates;
  - (d) setting out the effect of the direction, approval or consent or its proposed modification or withdrawal;
  - (e) giving reasons for the making of the proposal; and
  - (f) specifying the period within which representations may be made about the proposal to the responsible person.
- (4) That period must end no less than one month after the day of the publication of the notification.
- (5) But where the responsible person is satisfied that there are exceptional circumstances justifying the use of a shorter period, the period specified as the period for making representations may be whatever shorter period that person considers reasonable in those circumstances.
- (6) The responsible person must—
- (a) consider every representation about the proposal made to that person during the period specified in the notification; and
  - (b) have regard to every international obligation of the United Kingdom (if any) which has been notified to OFCOM for the purpose of this paragraph by the Secretary of State.
- (7) The responsible person may then give effect to the proposal, with any modifications that appear to the responsible person to be appropriate.
- (8) The publication of a notification under this regulation must be in such manner as appears to the responsible person to be appropriate for bringing the contents of the notification to the attention of such persons as the responsible person considers appropriate.

**Delivery of copies of notifications etc. in respect of directions, approvals and consents**

- 15.—**(1) The responsible person must send to the Secretary of State—
- (a) a copy of every notification published under regulation 13(1) or 14(3);
  - (b) a copy of every direction, approval or consent given for the purposes of a requirement; and
  - (c) a copy of every instrument modifying or withdrawing such a direction, approval or consent.
- (2) In a case in which the responsible person is a person other than OFCOM, the responsible person must send to OFCOM—
- (a) a copy of every notification published under regulation 13(1) or 14(3);
  - (b) a copy of every direction, approval or consent given for the purposes of a requirement; and
  - (c) a copy of every instrument modifying or withdrawing such a direction, approval or consent.