

**EXPLANATORY MEMORANDUM TO**

**THE ELECTRONIC COMMUNICATIONS AND WIRELESS TELEGRAPHY  
(AMENDMENT) (EUROPEAN ELECTRONIC COMMUNICATIONS CODE AND  
EU EXIT) REGULATIONS 2020**

**2020 No. 1419**

**1. Introduction**

1.1 This explanatory memorandum has been prepared by the Department for Digital, Culture, Media and Sport and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

2.1 This instrument is being made in order to implement new European Union law, the European Electronic Communications Code Directive (2018/1972/EU)<sup>1</sup>. It makes amendments to the Communications Act 2003 and the Wireless Telegraphy Act 2006 along with other minor amendments to secondary legislation. The European Electronic Communications Code Directive (2018/1972/EU) repeals and replaces directives within the European Framework on Electronic Communications including the Framework Directive (2002/21/EC), the Access Directive (2002/19/EC), the Authorisation Directive (2002/20/EC), and the Universal Service Directive (2002/22/EC). The Directive was published in the Official Journal of the European Union in December 2018 with an implementation deadline for Member States of 21 December 2020.

2.2 This instrument is also being made to address deficiencies arising from the withdrawal of the United Kingdom from the European Union to ensure operability of retained European Union law following the end of the implementation period.

2.3 The amendments are to the following legislation:

- the Communications Act 2003;
- the Wireless Telegraphy Act 2006;
- the Electronic Communications (Universal Service) Order 2003;
- the Broadcasting (Amendment) (EU Exit) Regulations 2019;
- the Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019; and
- the Commission Implementing Regulation (EU) 2019/2243

2.4 Sections 2.2 to 2.4 address how this instrument deals with the operability of retained EU law.

***Explanations***

***What did any relevant EU law do before exit day?***

2.5 The European Electronic Communications Code Directive (2018/1972/EU) as implemented in the instrument provides a harmonised framework for the regulation of electronic communications across the European Union. Aiming to implement an

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<sup>1</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018L1972&from=EN>

internal market for electronic communications networks and services based on competition and choice, while also ensuring that the needs of end-users are met. Setting out the functions of national regulatory authorities and establishing a set of procedures to ensure the harmonised application of the regulatory framework across the European Union.

Why is it being changed?

- 2.6 The instrument (Parts 2 and 4 of Schedule 1 (and related regulation 2 parts), Part 2 of Schedule 2 (and related regulation 3 parts), Regulation 4, and Schedule 3) makes minor amendments to the legislation detailed in section 2.1 to address deficiencies arising from the United Kingdom's exit from the European Union and implementation day.

What will it now do?

- 2.7 The instrument addresses deficiencies that are both minor and technical in nature, or concern the procedures established to ensure the harmonised application of the regulatory framework across the European Union, recognising that the United Kingdom will no longer be a part of the European Union regulatory framework after the implementation period.

### **3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 None.

*Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)*

- 3.2 The territorial extent of this instrument includes Scotland and Northern Ireland.
- 3.3 The powers under which this instrument is made cover the entire United Kingdom (see section 2(2) of the European Communities Act 1972 and section 24(1) of the European Union (Withdrawal) Act 2018) and the territorial application of this instrument is not limited either by the Acts or by the instrument.

### **4. Extent and Territorial Application**

- 4.1 The extent of this instrument is the entire United Kingdom.
- 4.2 The territorial application of this instrument is the entire United Kingdom.

### **5. European Convention on Human Rights**

- 5.1 The Minister for Digital Infrastructure, Matt Warman, has made the following statement regarding Human Rights:

“In my view the provisions of The Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020 are compatible with the Convention rights.”

### **6. Legislative Context**

- 6.1 This instrument is being made to implement new European Union law, the European Electronic Communications Code Directive (2018/1972/EU), and to address failures

of retained European Union law after transposition and the withdrawal of the United Kingdom from the European Union.

- 6.2 The European Electronic Communications Code Directive (2018/1972/EU) includes new and amended measures to the European Framework on Electronic Communications. This Framework covers all transmission on networks and services for electronic communications, including telecommunications (fixed and mobile), communications services and content related broadcasting. The Framework included but was not limited to the following Directives:
- The Framework Directive (2002/21/EC) includes measures on a common regulatory framework for electronic communications networks and services aiming to strengthen competition in the electronic communications sector and stimulate investment. In particular, it describes tasks of national regulatory authorities, as well as the principles underpinning their operations.
  - The Access Directive (2002/19/EC) includes harmonising regulatory measures for ensuring access to, and interconnection of, electronic communications networks and associated facilities. It established a regulatory framework for the relationships between suppliers of networks and services.
  - The Authorisation Directive (2002/20/EC) sought to implement an internal market in electronic communications networks and services within the European Union through the harmonisation and simplification of authorisation rules and conditions.
  - The Universal Service Directive (2002/22/EC) includes measures to ensure the availability throughout the European Union of good-quality publicly available telecommunications services through effective competition and choice and to deal with circumstances in which the needs of end-users are not satisfactorily met by the market. The Directive also includes provisions concerning aspects of terminal equipment, including measures intended to facilitate access for end-users with disabilities.
- 6.3 These earlier directives were largely transposed in United Kingdom law through the Communications Act 2003 and the Wireless Telegraphy Act 2006. The Better Regulation Directive 2009 made modifications to the European Framework on Electronic Communications, which was reflected in United Kingdom legislation in the Electronic Communications and Wireless Telegraphy Regulations 2011.
- 6.4 The European Electronic Communications Code Directive (2018/1972/EU) recasts the objectives and regulatory tools of the current European Framework on Electronic Communications to place a stronger emphasis on incentivising investment in very high capacity networks, promoting efficient use of spectrum, and ensuring effective consumer protection and engagement.
- 6.5 The United Kingdom's approach to negotiation of the Directive (autumn 2016 to winter 2018) was cleared by the House of Lords' European Union Committee on 6 September 2018 and the House of Commons' European Scrutiny Committee on 24 October 2018.

## 7. Policy background

### *What is being done and why?*

- 7.1 These Regulations implement the recast Directive, as required under the Withdrawal Agreement. The European Electronic Communications Code Directive (2018/1972/EU) recasts the objectives and regulatory tools of the current European Framework on Electronic Communications to place a stronger emphasis on incentivising investment in very high capacity networks, promoting efficient use of spectrum, and ensuring effective consumer protection and engagement. See the Transposition Table which accompanies these Regulations on [legislation.gov.uk](http://legislation.gov.uk) for full details of how the revised Directive has been transposed into UK law. The Regulations support the government's digital ambitions and plans to deliver nationwide gigabit-capable connectivity.
- 7.2 The European Electronic Communications Code Directive (2018/1972/EU) covers a number of distinct areas, which are indicated by the sub-headings throughout 7.1.

### Access and investment

- 7.3 This instrument amends section 4 of the Communications Act 2003 to introduce a new definition of a "very high capacity network" and a new duty for Ofcom to generally promote connectivity and access to these networks. This will enable Ofcom to support deployment and investments in gigabit-capable networks.
- 7.4 Further duties are introduced for Ofcom in sections 3 and 4 of the Communications Act 2003. These include ensuring that Ofcom's use of specific market regulatory tools promotes very high capacity networks. Ofcom are also required to promote measures that facilitate a competitive retail market for consumers.
- 7.5 Ofcom currently has a broad power to impose conditions on providers to secure efficiency, sustainable competition, efficient investment and innovation, and the greatest possible benefit for public electronic communications services users. Through the instrument's amendment to section 74 of the Communications Act 2003 and insertion of a new section 74A into that Act, Ofcom will be able to impose conditions to ensure connectivity and choice for end-users where a network is already present in a location where it is challenging for wholesale competition to emerge.
- 7.6 In summary, these changes mean that Ofcom can currently impose conditions to providers of services such as pay TV services. This instrument expands this power, allowing Ofcom to impose conditions to complementary services.
- 7.7 There is a new requirement for Ofcom to periodically review conditions imposed through section 73(2) or section 74A of the Communications Act 2003 to assess if they remain appropriate, require amendment or should be revoked. This is introduced through a new section 74B.
- 7.8 There are specific conditions known as significant market power (SMP) conditions, which can only be imposed on providers with market dominance. Ofcom must analyse markets on a regular basis in what is known as a market review. If Ofcom finds that competition problems exist, it must identify the provider(s) with SMP and impose SMP conditions on the relevant provider(s). This instrument makes changes to this process in legislation between sections 78 to 88 of the Communications Act 2003. These measures support the United Kingdom government's aim of pro-investment regulation.

- 7.9 In summary, these changes crystallise existing factors that Ofcom should take into account when assessing if a market has competition problems which require Ofcom's intervention, increases the maximum time period between market reviews from three years to five years, requires Ofcom to consider innovation, competition and future networks when imposing SMP conditions. The instrument also provides new power in section 87 for Ofcom to impose third party access to the SMP provider's physical infrastructure assets (the ducts and poles that house the network), irrespective of market scope.
- 7.10 The instrument introduces through section 91A of the Communications Act 2003 new restrictions on Ofcom so that it can only apply non-pricing SMP conditions to wholesale-only service providers determined to have SMP, unless Ofcom determines that pricing access pricing regulations are required to address competition concerns in the market.
- 7.11 The new section 93A to D of the Communications Act 2003 introduces a mechanism for a SMP network provider to make network access or co-investment (a joint venture between different providers to share investment risk) commitments to Ofcom to address market competition issues in lieu of SMP conditions imposed by Ofcom. At the end of the process, Ofcom may agree to the commitments, at which point they become binding and enforceable as if they were SMP conditions. There are specific criteria to consider when considering co-investment commitments in a new very high capacity network, and provisions to ensure that commitments are upheld, reviewed and can be varied where appropriate.
- 7.12 Under the new section 134AC of the Communications Act 2003 the Secretary of State and any other public authority with responsibility for the matters set out must have regard to Ofcom's regular infrastructure reports when allocating public funds for networks, the design of national broadband plans and verifying the availability of services to which universal service conditions apply. Section 134B of the Communications Act 2003 introduces further criteria for Ofcom to include within infrastructure reports. This includes quality of service parameters as well as information on future build plans. This will ensure public authorities and industry have a better understanding of where networks will be built in the future to inform investment planning.

#### Spectrum

- 7.13 Radio spectrum ('spectrum') refers to the airwaves over which communication signals are transmitted. In the United Kingdom, Ofcom is responsible for spectrum management under the Wireless Telegraphy Act 2006 and Communications Act 2003. Part 3 of Schedule 1 of the instrument makes changes to the Wireless Telegraphy Act 2006 to update procedures for spectrum management. It strengthens powers to support efficient and effective spectrum use, promote competition and facilitate the widespread availability of mobile connectivity.
- 7.14 Under section 8 of the Wireless Telegraphy Act 2006, it is an offence to establish, install or use equipment to transmit without holding a licence, unless the use of such equipment is exempted by regulations. The instrument adds consideration of effective spectrum sharing arrangements to the relevant conditions for making licence exemption regulations under this section. Spectrum sharing can support more efficient use of spectrum and innovative new applications.

- 7.15 Section 9 of the Wireless Telegraphy Act 2006 is amended so as to clarify Ofcom powers to attach conditions to a spectrum licence requiring the licence holder to enter into a wholesale roaming access agreement. This agreement is between a holder of the spectrum licence and a service provider who depends on the use of spectrum to provide services to customers.
- 7.16 Amendments to the bidding process for a spectrum licence in section 14 of the Wireless Telegraphy Act 2006 require Ofcom to consider if a specified level of use requirement would promote the optimal use of spectrum when designing competitive awards.
- 7.17 The instrument requires Ofcom to allow the leasing or transfer of all spectrum licences, and the transfer of all grants of recognised spectrum access, via section 30A of the Wireless Telegraphy Act 2006. These requirements are subject to limitations and do not apply where, for example, the licence is granted free of charge, or the duration of the licence does not exceed 12 months. This requirement should facilitate more dynamic use of spectrum. Amendments to section 31 of the Wireless Telegraphy Act 2006 will allow information relating to spectrum leasing to be included within the wireless telegraphy register, which provides public information on spectrum licences.

End-user rights

- 7.18 Ofcom will be implementing the majority of the end-user rights (electronic communications consumer protection) provisions through its existing powers in the Communications Act 2003. This instrument implements new provisions that are not within Ofcom's current powers.
- 7.19 This includes a new protection for certain end-users who purchase a bundle of services that includes at least a mobile, landline or broadband service, in addition to at least one other service which may include terminal equipment (e.g. mobile handsets) or a service such as digital music and video streaming. This new provision allows for certain consumer protection rules to be extended to apply to all services in any such bundle. The provision applies to consumers, and furthermore, small businesses and not-for-profit organisations with a headcount of up to 10 individuals, unless such organisations choose to waive their right to this protection. To give effect to this new right, the instrument amends section 51 of the Communications Act 2003 to give Ofcom a power to set general conditions (which all providers must comply with) relating to bundled contracts.
- 7.20 The new section 124V of the Communications Act 2003 allows consumers, and small businesses and not-for-profit organisations with a headcount of up to 10 individuals, to terminate all the services in a bundled contract. This right arises where the consumer, small business or not-for-profit organisation has the right to cancel one service because that service has not been provided in a way which complies with the terms of the contract or has not been supplied. New section 124U of the Communications Act 2003 also provides that when exercising a right to terminate a contract early, no compensation is to be payable from the end-user, apart from the retained value of any subsidised terminal equipment (e.g. mobile handset). This new provision also requires providers to remove any restrictions on the terminal equipment which restrict their use on another provider's electronic communications network. To ensure compliance by providers, the existing enforcement mechanism in the

Communications Act 2003 allowing Ofcom to enforce against contraventions of general conditions is extended to cover these new provisions.

Universal service obligations

- 7.21 Universal service obligations (USOs) are placed on designated providers to guarantee levels of service and affordable prices. The USOs cover publicly available telephone services (i.e. fixed telephony) and special measures for consumers on low incomes or with special social needs, as well as the provision of broadband connections and services to premises throughout the United Kingdom to meet a minimum specification, including affordability requirements. This instrument reflects changes to market structures and helps ensure that the USOs can be adapted to meet the specific national circumstances. The amendments to the universal service provisions do not impact existing social tariff conditions (those created or amended before 21 December 2020) without further order by the Secretary of State (unless Ofcom issues a Direction to vary existing pricing (tariff) levels).
- 7.22 Through amendments to section 45, section 46 and section 51 of the Communications Act 2003, the instrument enables Ofcom to set conditions in relation to a social tariff (controlled pricing for end-users) for public electronic communication services. Ofcom will additionally and where applicable ensure that any excess and unfair burden arising from a social tariff condition placed on any particular provider is shared between providers.
- 7.23 The instrument ensures, through amendments to section 47 and section 48 of the Communications Act 2003 that the test and procedure for setting, modifying and revoking conditions does not apply to social tariff conditions. Also, through amendments to section 65 of the Communications Act 2003, the instrument removes the Secretary of State's power to give guidance on social tariffs in a universal service order. However, a new power is granted to the Secretary of State to give such guidance under section 72D(4) of the Communications Act 2003.
- 7.24 Section 72C-I provisions introduced to the Communications Act 2003 set out new procedures and rules for imposing social tariffs to ensure that elements of universal service orders (made under section 65(1) of the Communications Act 2003) are affordable for those on low incomes or with special social needs. This procedure includes:
- Section 72C of the Communications Act 2003 - A duty for Ofcom to keep under review and monitor changes in broadband, telephone, and mobile services tariffs or pricing structures other than those relating to universal service tariffs (already in force) and tariffs for businesses to inform the needs of a social tariff.
  - Section 72D of the Communications Act 2003 - The Secretary of State may provide a direction (including guidance) to Ofcom to review and provide a report on the affordability of services (such as for example broadband, telephone, and potentially mobile services) for individuals on low incomes or with special social needs to assess the need for social tariff conditions. The report may make recommendations in relation to social tariff conditions. Any recommendations to set or modify a social tariff condition must satisfy the test set out in section 47(2) of the Communications Act 2003. The Secretary of State, will consider the recommendations in light of other government

interventions that may address the same issue, and may then publish a direction to Ofcom to put the recommendation into effect.

- The conditions of such a social tariff could either apply: (i) generally to public communication service providers, (ii) generally to public communications providers of specific types of services or (iii) in exceptional circumstances to a particular person. These exceptional circumstances would exist if a social tariff condition for services would create excessive administrative or financial burdens on one or more parties, which could include such providers, Ofcom or government departments.
- Section 72D of the Communications Act 2003 - As part of any affordability review process any guidance issued to Ofcom by the Secretary of State will likely incorporate both the broadband USO and the telephony USO to ensure they are both addressed simultaneously.
- To ensure transparency, both of the directions from the Secretary of State are required to be published as well as any accompanying guidance and Ofcom's review report.
- Section 72E of the Communications Act 2003 - Ofcom are required to consult on a proposal recommending the creation, amendment or removal of a social tariff condition if the condition would significantly impact the electronic communications market unless there are exceptional circumstances and an urgent need to act in order to safeguard competition and consumers. This consultation would need to be published, Ofcom will take into account responses received allowing at least a month (save for in exceptional circumstances) for responses. Ofcom will then have to consider all responses received during the consultation time period.
- Section 72F of the Communications Act 2003 - Ofcom will be able to make minor administrative amendments to social tariff conditions providing a notification is sent to the Secretary of State providing the details.
- Section 72G of the Communications Act 2003 - To ensure that burdens are fair, Ofcom will be able to review any financial burdens arising from complying with a social tariff condition and publish their conclusions from the review. This shall take into account their views on burdens and benefits to a provider and require Ofcom to ensure that their calculations on the review are appropriately audited. Should Ofcom's published review conclude that a particular provider is burdened or an application by a social tariff provider be made, Ofcom must determine if the burden is unfair.
- Section 72H(3) of the Communications Act 2003 - If the burden is unfair, Ofcom may determine that contributions should be made by other providers to help meet the burden.
- Section 72I of the Communications Act 2003 - For transparency Ofcom will publish periodic reports setting out their determinations of costs of providing any social tariff conditions, the market benefits for providers subject to the conditions, and the contributions by other providers.

7.25 Further USO amendments include the removal of billing, directories and directory enquiry facilities from consideration of future universal service obligations within section 65 of the Communications Act 2003. Universal service obligations will however be able to include mobile services for some users if the Secretary of State



deems this necessary to ensure full social and economic participation. Users in this context include individuals, micro, small or medium enterprises (businesses), and charities. Other services related to public pay phones, billing, directories and directory enquiry facilities, and facsimile (fax) are preserved by the instrument (via a sunset provision) as services that can be subject to the universal service order through amendments to section 72A Communications Act 2003. Powers to amend this position are not being taken forward by the Government. Section 68 of the Communications Act 2003 is amended so as to carve out social tariffs from special tariff considerations.

#### General authorisations and Ofcom Powers

- 7.26 The instrument makes minor amendments to section 33 of the Communications Act 2003 to ensure the notification and information requirements for providers who intend to provide a network, service or facility under the general authorisation regime are updated in line with the European Electronic Communications Code Directive (2018/1972/EU). It should be noted that Ofcom does not currently require a notification process and the amendments do not create any new notification requirements. Rather the amendments ensure that the notification and information requirements are updated should Ofcom choose to apply them in future.
- 7.27 The instrument makes minor amendments to Ofcom's fixing of charges powers in section 38 of the Communications Act 2003 linking the provision to Ofcom's security functions. It also makes minor amendments to the Communications Act 2003 and the Wireless Telegraphy Act 2006 to allow Ofcom public consultations durations of thirty days as opposed to one month.

#### Definitions

- 7.28 The instrument recasts the definitions of electronic communications services in section 32 of the Communications Act 2003. This does not alter the class of services included within the scope of the Act but specifically denotes services as including internet access services (as already applicable to the United Kingdom), number-based interpersonal communication services (i.e. telephony services) and signal conveyance services (used for services such as broadcasting). Number independent interpersonal communication services or internet communications services including messenger services, email and internet video conferencing services have been brought in the scope of Ofcom's information gathering powers in section 135 of the Communications Act 2003 to enable Ofcom to assess the market from a consumer protection perspective.

#### European Union exit

- 7.29 The instrument also includes relatively minor changes to reflect the need for revised references to European Union law. As noted in section 2.4 this includes, by way of example, this includes the changing references to Framework Directive (2002/21/EC) articles to the requisite European Electronic Communications Code Directive (2018/1972/EU) articles.
- 7.30 The instrument further addresses failures of retained European Union law to operate effectively arising from the withdrawal of the United Kingdom from the European Union. The European Framework on Electronic Communications has already been transposed into United Kingdom law, principally in the Communications Act 2003 and (in respect of the management of the radio spectrum) the Wireless Telegraphy

Act 2006. This instrument amends those Acts to ensure that the law continues to operate effectively, and substantively in the same way as before exit. The deficiencies are for the most part minor and technical in nature, or concern the procedures established to ensure the harmonised application of the European Framework on Electronic Communications across the European Union. The amendments recognise that the United Kingdom will no longer be a part of the European Union regulatory system as a result of leaving the Union after implementation day.

## **8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**

- 8.1 This instrument is being made under powers in section 2(2) of the European Communities Act 1972 (as saved by the European Union (Withdrawal Agreement) Act 2020).
- 8.2 This instrument is also being made using the power in section 8 of the European Union (Withdrawal) Act 2018 to address failures of retained European Union law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Section 2 of this Explanatory Memorandum.

## **9. Consolidation**

- 9.1 There are no plans to consolidate the legislation amended by this instrument.

## **10. Consultation outcome**

- 10.1 The public consultation on proposals for transposing and implementing the European Electronic Communications Code Directive (2018/1972/EU) into United Kingdom legislation was published on 16 July 2019. The consultation was open for approximately two months, closing on 10 September 2019, and the Department received thirty-nine stakeholder responses. These had a varied emphasis across the Directive's measures. Responses were from a wide range of stakeholders, including fixed and mobile electronic communications companies, industry groups, consumer organisations, devolved administrations, and members of the public.
- 10.2 While the consultation invited views on all of the Directive's provisions, the specific questions in the document focused on what the government considered to be the new key measures, setting out transposition options and preferences. This focus on key measures was appropriate, as much of the Directive is built around United Kingdom best practice and is in existing United Kingdom legislation already.
- 10.3 European Union Exit requirements impinged on EECC transposition work leading to a slightly shorter consultation period. However, the government has continued to communicate with industry and other stakeholders both before the consultation and after it to ensure optimal transposition.
- 10.4 Most stakeholders agreed that the government should ensure that new legislation serves to promote new technologies, such as very high capacity networks, whilst also protecting and enhancing consumer interests in a changing electronic communications market. Many stakeholders recognised the benefits of widening information gathering powers, but a number noted that the government approach should be proportionate.

- 10.5 Several stakeholders also outlined their positions on a wider range of issues, including access to physical infrastructure, spectrum licenses and "use it or lose it", consumer protections and markets provisions.
- 10.6 Whilst electronic communications are a reserved matter and applies to the whole of the United Kingdom, we liaised with all devolved administrations both during and after the consultation period in order to ensure that transposition of the code benefits every citizen across the United Kingdom.
- 10.7 On the whole, stakeholders welcomed many of the proposals set out in our consultation. The Directive updates and modernises existing United Kingdom electronic communications legislation to allow industry the regulatory flexibility it needs to better serve the interests of United Kingdom citizens.
- 10.8 The government considered the responses received in the consultation which informed our final approach to transposing the Directive. This final approach is set out article-by-article in the government response to the consultation, which was published on Gov.uk on 22 July 2020. Publishing the response took longer than is usual; this was due to EU exit work and the pressures arising from COVID-19.

## **11. Guidance**

- 11.1 The government is not required to provide further guidance. More detail on the transposition approach is contained in the response to the public consultation on implementing the European Electronic Communications Code Directive (2018/1972/EU), which was published on 22 July 2020 and is available on Gov.uk.
- 11.2 Ofcom will publish a statement on its updated general conditions in the autumn that will assist industry with implementation of end-user rights requirements.

## **12. Impact**

- 12.1 There will be no significant impact on charities or voluntary bodies.
- 12.2 The impact on the public sector is below £5 million. Whilst the impact is not negligible, there are funding mechanisms in place to recoup the costs from industry. This is with the exception of impacts on the regulator, Ofcom, whose powers and obligations have been extended. We have worked closely with Ofcom to ensure that will be able to carry out their duties as regulator as set out on the face of the directive.
- 12.3 A full Impact Assessment has not been prepared for this instrument because the impact of the annual direct cost on business and the private sector is estimated to be below £5 million. The impact on the private sector is summarised within several De Minimis Assessments that have been completed for key sets of measures on a thematic basis. The De Minimis Assessments have been completed to cover the implementation of the European Electronic Communications Code Directive (2018/1972/EU) and will be published alongside the Explanatory Memorandum on the [www.legislation.gov.uk](http://www.legislation.gov.uk) website.

## **13. Regulating small business**

- 13.1 The legislation applies to activities undertaken by small businesses.
- 13.2 No specific action is proposed to minimise regulatory burdens on small businesses. The basis for the final decision on what action to take to assist small businesses is based on the regulation having a significant impact on large electronic

communications providers only, with the costs incurred to small businesses confined to familiarisation costs. The impact on small businesses is therefore small and proportionate, and as such, exemptions have not been made for small businesses.

#### **14. Monitoring & review**

- 14.1 The approach to monitoring of this legislation is as follows. The regulation does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, the Minister for Digital Infrastructure, Matt Warman, has made the following statement:

“In view of both the transposition approach adopted to give regulatory certainty to industry to stimulate investment in networks, and the impact of the instrument on both the private and public sector being below £5 million, a review of the instrument under the Small Business, Enterprise and Employment Act 2015 is not deemed appropriate.”

#### **15. Contact**

- 15.1 Daniel Apps at the Department for Digital, Culture, Media and Sport. Telephone: 07525919070 or email: [eecc@dcms.gov.uk](mailto:eecc@dcms.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Holly Creek, Deputy Director for the Telecoms Policy and Legislation Team, at the Department for Digital, Culture, Media and Sport can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Minister for Digital Infrastructure, Matt Warman at the Department for Digital, Culture, Media and Sport can confirm that this Explanatory Memorandum meets the required standard.

# Annex

## Statements under the European Union (Withdrawal) Act 2018

### Part 1

#### Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them.  State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 14, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 15, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

## **Part 2**

### **Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act**

#### **1. Appropriateness statement**

- 1.1 The Minister for Digital Infrastructure, Matt Warman, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view The Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020 does no more than is appropriate.”

- 1.2 This is the case because the instrument principally transposes a European Union Directive via the European Communities Act 1972 as saved by the European Union (Withdrawal Agreement) Act 2020. It further corrects deficiencies including references to European Union law generated by transposition of the European Electronic Communications Code Directive (2018/1972/EU) and is appropriate via this affirmative instrument because these references are redundant and inappropriate to retain, see Part 1 Section 2.1.

#### **2. Good reasons**

- 2.1 The Minister for Digital Infrastructure, Matt Warman, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action.”

- 2.2 These are that the instrument is transposing the European Electronic Communications Code Directive (2018/1972/EU) as the United Kingdom is legally required to do under the Withdrawal Agreement 2020. Transposition is crucial for the United Kingdom to meet its digital ambitions; further information is set out in section 7 of the main body of this explanatory memorandum.

#### **3. Equalities**

- 3.1 The Minister for Digital Infrastructure, Matt Warman, has made the following statement(s):

“The instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.”

- 3.2 The Minister for Digital Infrastructure, Matt Warman, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the instrument, I, the Minister for Digital Infrastructure, Matt Warman, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.”

**4. Explanations**

- 4.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.