

SCHEDULE 1

Amendments of primary legislation

PART 2

Amendments of Communications Act 2003 coming into force on IP completion day

66. The Communications Act 2003 is further amended as follows.

67.—(1) Section 4 (duties for the purpose of fulfilling EU obligations) is amended as follows.

(2) In subsection (2), for the words from “seven” to the end substitute “six requirements set out in the following provisions of this section”.

(3) In subsection (10)(a)(1), after “EECC Directive” insert “(whether before or after IP completion day)”.

(4) In subsection (10A)(2), for “seventh Community” substitute “sixth”.

(5) In subsection (11)(3), for “Community requirements” substitute “six requirements in this section”.

68. In section 4A (duty to take account of European Commission recommendations for harmonisation)(4), for subsection (2) substitute—

“(2) In carrying out those functions, OFCOM may take account of recommendations issued by the European Commission under Article 19(1) of the Framework Directive or Article 38(1) of the EECC Directive (including recommendations issued before the coming into force of this section or after IP completion day) if the recommendations appear to OFCOM to be relevant to those functions.”.

69. In section 49 (directions and approvals for the purposes of a section 45 condition), in subsection (3)(5), for “seven Community” substitute “six”.

70. In section 51 (matters to which general conditions may relate), in subsection (2), for paragraph (b) substitute—

“(b) provide protection for such end-users that is the same as, or similar to, any protection that was, immediately before IP completion day, required by Title 3 of Part 3 of the EECC Directive (end-user rights);”.

71. In section 74A (access-related conditions in certain cases involving use of radio spectrum)(6), in subsection (5)(a), for “member States” substitute “United Kingdom”.

72.—(1) Section 75 (conditional access systems and access to digital services)(7) is amended as follows.

(2) In subsection (2), in paragraph (b), at the end insert “as it had effect immediately before IP completion day”.

(1) Subsection (10) was amended by [S.I. 2011/1210](#) and is amended by paragraph [3\(4\)](#) of Schedule 1 to these Regulations.

(2) Subsection (10A) is inserted by paragraph [3\(5\)](#) of Schedule 1 to these Regulations.

(3) Subsection (11) is prospectively amended by paragraph 3(10) of Schedule 1 to [S.I. 2019/246](#) (which is omitted by paragraph [4\(2\)\(a\)](#) of Schedule 2 to these Regulations).

(4) Section 4A was inserted by [S.I. 2011/1210](#); subsection (2) is prospectively amended by paragraph 4(2) of Schedule 1 to [S.I. 2019/246](#) (which is omitted by paragraph 3(a) of Schedule 2 to these Regulations) and is amended by paragraph [4](#) of Schedule 1 to these Regulations.

(5) Subsection (3) is amended by paragraph [15](#) of Schedule 1 to these Regulations.

(6) Section 74A is inserted by paragraph [32](#) of Schedule 1 to these Regulations.

(7) Section 75 is amended by paragraph [33](#) of Schedule 1 to these Regulations.

Status: This is the original version (as it was originally made).

(3) After that subsection insert—

“(2A) For the purposes of subsection (2)(b), Part 1 of Annex 2 to the EECC Directive is to be read as if—

- (a) the reference to viewers and listeners in the Union were a reference to viewers and listeners in the United Kingdom;
- (b) the reference to member States were a reference to OFCOM;
- (c) the words “in accordance with Article 62” were omitted;
- (d) in point (a), the references to Union competition law were references to any provision relating to competition that is contained in or made under an enactment.”

73.—(1) Section 79 (market power determinations)(**8**) is amended as follows.

(2) Before subsection (2A) insert—

“(2ZA) In identifying or analysing a services market for the purposes of this Chapter, OFCOM may have regard to EECC materials relating to market identification and analysis.”.

(3) After subsection (2B) insert—

“(2BA) In considering whether to make or revise a market power determination in relation to a services market, OFCOM may have regard to EECC materials relating to market analysis or the determination of what constitutes significant market power.”.

(4) Omit subsection (2C).

(5) After subsection (6) insert—

“(6A) In this section “EECC materials” means recommendations or guidelines published by the European Commission, and guidelines published by BEREC, under the Framework Directive or the EECC Directive (including those published after IP completion day).”.

74. In section 84A (timing of services market identifications and determinations)(**9**), for subsection (7) substitute—

“(7) In subsection (3), “the specified period” means the period of 5 years from the publication under section 79(4) of the notification of the market power determination made on the basis of the earlier analysis, but this is subject to subsection (8).

(8) If, in relation to an analysis and review that would otherwise be required within the period mentioned in subsection (7), OFCOM are of the opinion that exceptionally a longer period is justified, OFCOM may, by publishing a statement of the reasons for their opinion, extend the specified period by up to one additional year.”.

75. In section 91A (SMP services conditions: wholesale-only undertakings)(**10**), in subsection (3), for “member States” substitute “United Kingdom”.

76. In section 93B (notification of proposed commitments relating to very high capacity network)(**11**), after subsection (5) insert—

“(6) In determining whether the requirements of subsection (3) are met, OFCOM may have regard to any guidelines that are from time to time published by BEREC under Article 76(4) of the EECC Directive (whether before or after IP completion day).”.

(8) Section 79 is amended by paragraph 35 of Schedule 1 to these Regulations and is prospectively amended by [S.I. 2019/246](#).

(9) Section 84A was inserted by [S.I. 2011/1210](#), is amended by paragraph 40 of Schedule 1 to these Regulations, and is amended prospectively by [S.I. 2019/246](#).

(10) Section 91A is inserted by paragraph 43 of Schedule 1 to these Regulations.

(11) Sections 93B and 93C are inserted by paragraph 44 of Schedule 1 to these Regulations.

- 77. In section 93C (giving effect to commitments decision), omit subsection (6).
- 78. In section 151 (interpretation of Chapter 1), omit subsection (5).
- 79. In section 186 (action by OFCOM on dispute reference)(12), in subsection (3)(b), for “Community” substitute “six”.

(12) Section 186(3)(b) is prospectively amended by paragraph 37 of Schedule 1 to [S.I. 2019/246](#) (which is omitted by paragraph 4(2)(i) of Schedule 2 to these Regulations).