Draft Regulations laid before Parliament under paragraph 1(1) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2019 No. 0000

EXITING THE EUROPEAN UNION

ELECTRONIC COMMUNICATIONS

The Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019

Made - - - - ***

Coming into force in accordance with regulation 1

The Secretary of State makes these Regulations in exercise of the powers conferred by section 8(1) of, and paragraph 21(b) of Schedule 7 to, the European Union (Withdrawal) Act 2018(**a**).

In accordance with paragraph 1(1) of Schedule 7 to that Act, a draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

Citation and commencement

1.—(1) These Regulations may be cited as the Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019.

(2) These Regulations come into force on exit day.

Amendments of primary legislation

2. Schedule 1 contains amendments of primary legislation.

Amendments of subordinate legislation

3. Schedule 2 contains amendments of subordinate legislation.

Amendments of retained direct EU legislation

4. Schedule 3 contains amendments of retained direct EU legislation.

(**a**) 2018 c.16.

Power to alter standards relating to eCall service

5.—(1) The Secretary of State may by regulations made by statutory instrument make provision to replace the standards that are for the time being referred to in Articles 2(j) and (k), 3(1) and (4) and 4 of the eCall Regulation.

(2) Regulations under paragraph (1) may amend the eCall Regulation.

(3) Regulations under paragraph (1)—

(a) may make different provision for different purposes, and

(b) may contain transitional provisions and savings.

(4) A statutory instrument containing regulations under paragraph (1) is subject to annulment in pursuance of a resolution of either House of Parliament.

(5) In this regulation "the eCall Regulation" means Commission Delegated Regulation (EU) No 305/2013 of 26 November 2012 supplementing Directive 2010/40/EU of the European Parliament and of the Council with regard to the harmonised provision for an interoperable EU-wide eCall.

Name
Minister of State
Date Department for Digital, Culture, Media and Sport

SCHEDULE 1

Regulation 2

Amendments of primary legislation

PART 1

Amendments of Communications Act 2003

1. The Communications Act 2003(**a**) is amended as follows.

2. In section 3 (general duties of OFCOM), in subsection (4), after paragraph (e) insert—

"(ea) the desirability of ensuring the security and availability of public electronic communications networks and public electronic communications services;".

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

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

(3) In subsection (3), omit "Community".

(4) Omit subsection (4).

(5) In subsection (5)—

(a) for "third Community" substitute "second";

(b) for the words from "persons" to the end substitute "members of the public in the United Kingdom".

(6) In subsections (6) and (6A), for "fourth Community" substitute "third".

(7) In subsection (7), for "fifth Community" substitute "fourth".

(8) In subsection (9), for "sixth Community" substitute "fifth".

(9) In subsection (10)(a), after "published" insert "by the European Commission".

(**a**) 2003 c. 21.

(10) In subsection (11), for "Community requirements" substitute "five requirements in this section".

(11) In the heading, for "for the purpose of fulfilling EU obligations" substitute "in relation to certain regulatory functions".

4.—(1) Section 4A (duty to take account of European Commission recommendations for harmonisation) is amended as follows.

(2) 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 (including recommendations issued before the coming into force of this section or after exit day) if the recommendations appear to OFCOM to be relevant to those functions."

(3) Omit subsection (3).

(4) In the heading, omit "Duty to take account of".

5. In section 5 (directions in respect of networks and spectrum functions), in subsection (3A)—

(a) for "that" substitute "if the function is one that, immediately before exit day,";

(b) for "requires" substitute "required".

6. In section 10 (duty to encourage availability of easily usable apparatus), in subsection (3), omit "Community".

7.—(1) Section 25 (Community requirement to provide information) is amended as follows.

(2) In subsection (1)—

(a) in paragraph (a), for "Commission requires" substitute "Commission or BEREC requests";

(b) in paragraph (b)—

(i) at the end of sub-paragraph (i), omit "or";

(ii) at the end of sub-paragraph (ii), insert "; or";

(iii) after sub-paragraph (ii), insert—

"(iii) any other enactment relating to the regulation of electronic communications networks and electronic communications services."

(3) For subsection (2) substitute—

"(2) OFCOM may comply with the request if and to the extent that—

(a) they consider it appropriate to do so in connection with their functions, and

(b) in the case of information relating to a particular business, they are satisfied that arrangements exist for preserving confidentiality."

(4) In subsection (3)—

(a) after "the European Commission" insert "or BEREC";

(b) at the end insert "or, as the case may be, to BEREC".

(5) For the heading substitute "Information requested by EU bodies".

8.—(1) Section 33 (advance notification to OFCOM) is amended as follows.

(2) Omit subsections (7) and (8).

(3) In subsection (10), omit the words from "and the reference" to the end.

9.—(1) Section 48 (procedure for setting, modifying and revoking conditions) is amended as follows.

(2) In subsection (2), omit "and section 48B".

(3) In subsection (2B)—

(a) in paragraph (a), for "sections 48A and 48B(1) do" substitute "section 48A does";

(b) omit paragraph (b) and the "and" preceding it.

(4) In subsection (7), for ", section 48A or section 48B" substitute "or section 48A".

10.—(1) Section 48A (domestic consultation for section 45 conditions) is amended as follows.

(2) In subsection (2), omit "the proposal is of EU significance and".

(3) In subsection (7)—

(a) omit the words from the beginning to "significance,";

(b) for "it" substitute "the proposal".

(4) In the heading, for "Domestic consultation" substitute "Consultation".

11. Omit section 48B (EU consultation for section 45 conditions).

12. In section 48C (delivery of copies of notification etc. in respect of section 45 conditions), omit subsections (2) to (4).

13.—(1) Section 49 (directions and approvals for the purposes of a section 45 condition) is amended as follows.

(2) In subsection (3), for "six Community" substitute "five".

(3) In subsection (4), omit "and section 49B".

(4) In subsection (4B)—

(a) in paragraph (a), for "sections 49A and 49B(1) do" substitute "section 49A does";

(b) omit paragraph (b) and the "and" preceding it.

(5) In subsection (4C)—

(a) at the end of paragraph (a), insert "and";

(b) omit paragraph (c) and the "and" preceding it.

14.—(1) Section 49A (domestic consultation for directions, approvals and consents) is amended as follows.

(2) In subsection (2), omit "the proposal is of EU significance and".

(3) In subsection (7), omit "Where the proposal is not of EU significance,".

(4) In the heading, for "Domestic consultation" substitute "Consultation".

15. Omit section 49B (EU consultation for directions, approvals and consents).

16.—(1) Section 49C (delivery of copies of notifications etc. in respect of directions, approvals and consents) is amended as follows.

(2) Omit subsections (2) and (3).

(3) In subsection (4), omit paragraphs (d) to (g).

(4) Omit subsections (5) and (6).

17.—(1) Section 51 (matters to which general conditions may relate) is amended as follows.

(2) 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 exit day, required by Chapter IV of the Universal Service Directive (end-user interests and rights);".

(3) Omit subsection (2A).

(4) In subsection (5), omit ", in accordance with EU obligations,".

18. In section 55 (orders by OFCOM in the absence of conditions under s.52), omit subsection (1)(b)(ii) and the "or" preceding it.

19. In section 65 (obligations to be secured by universal service conditions), in subsection (1) omit ", for the purpose of securing compliance with EU obligations for the time being in force,".

20. In section 66 (designation of universal service providers), omit subsections (8) and (9).

21.—(1) Section 67 (subject-matter of universal service conditions) is amended as follows.

(2) In subsection (3)—

(a) after paragraph (a), insert "and";

(b) omit paragraph (c) and the "and" preceding it.

(3) After subsection (3) insert—

"(3A) A condition set in accordance with that subsection may require the information published in accordance with it to be framed by reference to such international standards specified in the condition as OFCOM consider appropriate."

22.—(1) Section 77 (imposition of privileged supplier conditions) is amended as follows.

(2) In subsection (4), for "€50 million" substitute "£45 million".

(3) In subsection (7)(b), for "Euros" substitute "sterling".

23.—(1) Section 78 (circumstances required for the setting of SMP conditions) is amended as follows.

(2) For subsection (2) substitute—

"(2) References in this section to dominance of a market are to be construed, so far as it is appropriate to do so for the purposes of this Chapter, in the same way as the reference in section 18(1) of the Competition Act 1998 to a dominant position in a market."

(3) Omit subsection (5).

24.—(1) Section 79 (market power determinations) is amended as follows.

(2) After subsection (1) insert—

"(1A) In identifying or analysing a services market for the purposes of this Chapter, OFCOM must conduct a forward-looking assessment of the market, taking into account expected or foreseeable developments that may affect competition in the market."

(3) Omit subsections (2), (3) and (7).

25.—(1) Section 80 (proposals for identifying markets and for market power determinations) is amended as follows.

(2) In subsection (1), omit "and section 80B".

(3) In subsection (1B)—

(a) in paragraph (a) for "sections 80A and 80B(1) do" substitute "section 80A does";

(b) omit paragraph (b) and the "and" preceding it.

(4) Omit subsection (7).

26.—(1) Section 80A (domestic consultation for market identification and market power determinations) is amended as follows.

(2) In subsection (2), omit "the proposal is of EU significance and".

(3) In subsection (10)—

(a) omit "Where the proposal is not of EU significance,";

(b) for "it" substitute "the proposal".

(4) In the heading, for "Domestic consultation" substitute "Consultation".

27. Omit section 80B (EU consultation for market identifications and market power determinations).

28. In section 81 (delivery of copies of notifications under section 79 and 80A), omit subsections (2) to (4).

29. Omit section 83 (special rules for transnational markets).

30. In section 84 (review of services market identifications and determinations), in subsection (7) for "83" substitute "81".

31.—(1) Section 84A (timing of services markets identifications and determinations) is amended as follows.

(2) Omit subsection (2).

(3) In subsection (3), omit paragraph (b) and the "and" preceding it.

(4) Omit subsections (5) and (6).

(5) For subsection (7) substitute—

"(7) In subsection (3) "the specified period" means the period of 3 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 3 additional years."

32. In section 87 (conditions about network access etc.), in subsection (4)—

(a) at the end of paragraph (d) insert "and";

(b) omit paragraph (f) and the "and" preceding it.

33. In section 89 (conditions about network access in exceptional cases), in subsection (2), omit the words from "if" to the end.

34. For section 89B substitute—

"Functional separation conditions: matters to be considered by OFCOM

89B.—(1) This section applies where OFCOM propose to apply a functional separation condition to a person.

(2) OFCOM must consider the expected impact of the condition on—

(a) OFCOM;

(b) the person on whom the condition is to be imposed;

(c) the staff of the entity to which activities are to be transferred;

(d) the electronic communications sector as a whole;

(e) incentives to invest in the electronic communications sector, particularly with regard to the need to ensure social and territorial cohesion;

(f) competition in the services market affected by the condition; and

(g) other persons who in OFCOM's opinion are likely to be affected by the condition, including, in particular, consumers.

(3) OFCOM must also consider—

(a) evidence relevant to the conclusions mentioned in section 89A(1)(c) and (d);

(b) whether there is little or no prospect of effective and sustainable infrastructure based competition within a reasonable timeframe;

(c) whether a functional separation condition would be the most effective means of addressing important and persisting competition problems or market failures identified by OFCOM; and

(d) the impact that the obligations contained in the condition are likely to have on SMP services conditions set in relation to the services markets which, in OFCOM's opinion, will be affected by the proposed condition."

35.—(1) Section 105B (requirement to notify OFCOM of security breach) is amended as follows.

(2) In subsection (3)—

(a) for "must" substitute "may";

(b) in paragraph (a) omit "other".

(3) In subsection (6), for "must" substitute "may".

36. Omit section 150A (proposals of EU significance).

37. In section 186 (action by OFCOM on dispute reference), in subsection (3)(b), for "Community" substitute "five".

38. Omit section 189 (disputes involving other member States).

39. In section 191 (OFCOM's power to require information in connection with dispute), in subsection (1)—

(a) at the end of paragraph (a), insert "or";

(b) omit paragraph (b) and the "or" following it.

40. In section 197 (interpretation of Chapter 3), omit subsections (2) and (3).

41. In section 393 (general restrictions on disclosure of information), in subsection (6)(aza), for "or 24B" substitute ", 24B or 25".

42. In section 405 (general interpretation), in subsection (1)—

(a) in the definition of "international obligation of the United Kingdom", omit "any EU obligation and";

(b) omit the definition of "other member State".

43. In Schedule 18 (transitional provisions), in paragraph 13(5), for "would be" substitute "would, immediately before exit day, have been".

PART 2

Amendments of other Acts

Telecommunications Act 1984

44. In section 101 of the Telecommunications Act 1984(**a**) (general restrictions on disclosure of information), in subsection (2)—

(a) at the end of paragraph (c), insert "or";

(b) omit paragraph (e) and the "or" preceding it.

Wireless Telegraphy Act 2006

45.—(1) The Wireless Telegraphy Act 2006(**b**) is amended as follows.

(2) In section 8 (licences and exemptions), omit subsection (3A).

(3) In section 9 (terms, provisions and limitations), omit subsection (1A).

(**a**) 1984. c. 12.
(**b**) 2006 c. 36.

(4) In section 30 (spectrum trading), omit subsection (1A).

(5) In section 115 (general interpretation), in subsection (1), in the definition of "international obligation of the United Kingdom", omit "any EU obligation and".

SCHEDULE 2

Regulation 3

Amendments of subordinate legislation

Electronic Communications and Wireless Telegraphy Regulations 2011

1.—(1) Regulation 5 of the Electronic Communications and Wireless Telegraphy Regulations 2011(**a**) (review of implementation) is amended as follows.

(2) In paragraph (1)(a), for the words from "implementation" to "Directives" substitute "implementing provisions".

(3) After paragraph (1) insert—

> "(1A) "The implementing provisions" means the provisions contained in or made under an Act that were relied on by the United Kingdom immediately before exit day to implement the listed EU directives, so far as those provisions remain in force."

(4) Omit paragraph (2).

(5) In paragraph (3)(a), for the words from "implementation" to "Directives" substitute "the implementing provisions".

Communications (Access to Infrastructure) Regulations 2016

2. In regulation 16 of the Communications (Access to Infrastructure) Regulations 2016(**b**) (resolution of disputes: access to physical infrastructure), omit paragraph (3).

SCHEDULE 3

Regulation 4

Amendments of retained direct EU legislation

Regulation (EC) No 1211/2009

1. Regulation (EC) No 1211/2009 of the European Parliament and of the Council of 25 November 2009 establishing the Body of European Regulators for Electronic Communications (BEREC) and the Office is revoked.

Commission Delegated Regulation (EU) No 305/2013

2.—(1) Commission Delegated Regulation (EU) No 305/2013 of 26 November 2012 supplementing Directive 2010/40/EU of the European Parliament and of the Council with regard to the harmonised provision for an interoperable EU-wide eCall is amended as follows.

(2) In Article 1 (subject matter and scope), omit "harmonised EU-wide".

(3) In Article 2 (definitions)—

(a) in points (a) and (b), for "Member State" substitute "Secretary of State";

(b) in point (h), omit the words from "(referred to" to "EU-wide eCall)";

(**a**) S.I. 2011/1210.
(**b**) S.I. 2016/700.

(c) in point (m), for the words from "means" to the end substitute "means a communications network used wholly or mainly for the provision of publicly available mobile wireless communications services";

(d) after point (o) insert—

"(p) "the GDPR" has the meaning given in section 3(10) of the Data Protection Act 2018(**a**);

(q) "the data protection legislation" has the meaning given by section 3 of the Data Protection Act 2018."

(4) In Article 3 (eCall PSAP requirements), in paragraph 1, for "Member States" substitute "The Secretary of State".

(5) In Article 4 (conformity assessment), for "Member States" substitute "The Secretary of State".

(6) In Article 5 (obligations relating to the deployment of the eCall PSAPs infrastructure)—

(a) for "Member States" substitute "The Secretary of State";

(b) omit "interoperable EU-wide", in both places where it occurs;

(c) for "each Member State" substitute "the Secretary of State";

(d) omit the words from "on its territory" to the end.

(7) In Article 6 (rules on privacy and data protection)—

(a) in paragraph 1—

(i) for "data controllers", in both places it occurs, substitute "controllers";

(ii) for "Article 2(d) of Directive 95/46/EC" substitute "Article 4(7) of the GDPR";

(iii) for "Member States" substitute "The Secretary of State";

(iv) for "Directives 95/45/EC and 2002/58/EC" substitute "the data protection legislation and provision made by or under an enactment in implementation of Directive 2002/58/EC";

(b) in paragraph 2, for "Member States" substitute "the Secretary of State".

(8) In Article 7 (rules on liability), in paragraph 2, for "Articles 6, 13 and 17 of Directive 95/46/EC" substitute "any applicable provisions of the data protection legislation".

(9) Omit the following provisions—

(a) Article 8 (reporting),

(b) Article 9 (entry into force and application), and

(c) after Article 9, the words from "This Regulation" to "all Member States".

Regulation (EU) No 283/2014

3. Regulation (EU) No 283/2014 of the European Parliament and of the Council of 11 March 2014 on guidelines for trans-European networks in the area of telecommunications infrastructure and repealing Decision No 1336/97/EC is revoked.

Decision No 585/2014/EU

4.—(1) Decision No 585/2014/EU of the European Parliament and of the Council of 15 May 2014 on the deployment of the interoperable EU-wide eCall service is amended as follows.

(2) In Article 1—

(a) in paragraph 1—

(i) for "Member States" substitute "The Secretary of State";

(**a**) 2018 c. 12.

(ii) for “on their territory” substitute “in the United Kingdom”;

(iii) omit the words from “at least six months” to “2017”;

(iv) omit “interoperable EU-wide”;

(b) in paragraph 2—

(i) for “each Member State”, in both places where it occurs, substitute “the Secretary of State”;

(ii) for “its emergency services” substitute “emergency services in the United Kingdom”;

(iii) for “its needs” substitute “the needs of the United Kingdom”;

(iv) for “recognised by it” substitute “recognised by the Secretary of State”;

(c) in paragraph 3, for “Member States” substitute “The Secretary of State”.

(3) In Article 2—

(a) for “Member States” substitute “The Secretary of State”;

(b) omit “EU-wide”.

(4) Omit Article 3.

(5) In Article 4—

(a) for “Member States” substitute “The Secretary of State”;

(b) for “their territory” substitute “the United Kingdom”.

(6) Omit Articles 5 and 6.

Regulation (EU) 2017/1953

5. Regulation (EU) 2017/1953 of the European Parliament and of the Council of 25 October 2017 amending Regulations (EU) No 1316/2013 and (EU) No 283/2014 as regards the promotion of internet connectivity in local communities is revoked.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers conferred by section 8(1) of the European Union (Withdrawal) Act 2018 (c. 16) in order to address failures of retained EU law to operate effectively and other deficiencies (in particular under sections 8(2)(a), 8(2)(c), 8(2)(d), 8(2)(f) and 8(2)(g)) arising from the withdrawal of the UK from the European Union.

These Regulations make amendments to legislation in the field of electronic communications and, in particular, amend legislation relating to the implementation in the UK of the EU framework for electronic communications and wireless telegraphy. Schedule 1 amends primary legislation, Schedule 2 amends subordinate legislation, and Schedule 3 amends or revokes retained direct EU legislation.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private or voluntary sector is foreseen.

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