Draft Order laid before Parliament under section 97(4) of the Communications Act 2003 (c. 21), for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2025 No.

ELECTRONIC COMMUNICATIONS

The Electronic Communications (Networks and Services) (Designated Vendor Directions) (Penalties) Order 2025

Made - - - -

Coming into force in accordance with article 1(2)

The Secretary of State makes this Order in exercise of the powers conferred by sections 97(3)(a) and 402(3)(a) of the Communications Act 2003(**a**).

In accordance with section 97(4) of that Act, a draft of this instrument was laid before, and approved by resolution, of each House of Parliament.

Citation, commencement and extent

1.—(1) This Order may be cited as the Electronic Communications (Networks and Services) (Designated Vendor Directions) (Penalties) Order 2025.

(2) This Order comes into force on the day after the day on which it is made.

(3) This Order extends to England and Wales, Scotland and Northern Ireland.

Network, service, facility or business by reference to which calculation of turnover falls to be made for the purposes of section 105Z19 of the Communications Act 2003

2. For the purposes of section 105Z19 of the Communications Act 2003 (amount of penalty)(**b**), in the case of a contravention of a requirement imposed by a designated vendor direction(**c**) the relevant business is so much of each business carried on by the person in respect of whose contravention the penalty is imposed as consists in—

(a) the provision(**d**) of public electronic communications networks(**e**) (if any),

(b) the provision of public electronic communications services(**f**) (if any), and

(**a**) 2003 c. 21. There are amendments to section 97 which are not relevant to this Order.
(**b**) Sections 105Z18 to 105Z21 of the Communications Act 2003 ("the 2003 Act") were inserted by section 20 of the Telecommunications (Security) Act 2021 (c. 31).
(**c**) See section 105Z1(1) of the 2003 Act for the meaning of "designated vendor direction".
(**d**) See section 32(4)(a) of the 2003 Act for the meaning of "provide" in relation to an electronic communications network.
(**e**) See section 151(1) of the 2003 Act for the meaning of "public electronic communications network".
(**f**) See section 151(1) of the 2003 Act for the meaning of "public electronic communications services".

(c) the making available of facilities that are associated facilities(**a**) by reference to those networks or services (if any).

Amendment of the Electronic Communications (Networks and Services) (Penalties) (Rules for Calculation of Turnover) Order 2003

3.—(1) The Electronic Communications (Networks and Services) (Penalties) (Rules for Calculation of Turnover) Order 2003(**b**) is amended as follows.

(2) In article 2 (interpretation)—

(a) omit "and" at the end of the definition of "the Act";

(b) omit the definition of "notified provider".

(3) In article 3 (rules for calculation of turnover for the purposes of section 97) for "notified provider's" substitute "person's".

(4) In the Schedule (rules for calculation of turnover for purposes of section 97)—

(a) in paragraph 1, for "The turnover of a notified provider" substitute "A person's turnover";

(b) in paragraph 2—

(i) for "The turnover of a notified provider" substitute "A person's turnover";

(ii) for "that provider" substitute "that person";

(c) in paragraph 3, for "notified provider's" substitute "person's";

(d) in the heading to paragraph 4, omit "to a notified provider";

(e) in paragraph 4(1)—

(i) for "notified provider", in both places it occurs, substitute "person";

(ii) for "that provider's" substitute "that person's";

(iii) for "that provider" substitute "that person".

Department for Science, Innovation and Technology

(**a**) See section 32(3) of the 2003 Act for the meaning of "associated facility".
(**b**) S.I. 2003/2712, as amended by S.I. 2020/1470.

EXPLANATORY NOTE

(This note is not part of the Order)

Section 97 of the Communications Act 2003 (c. 21) ("the 2003 Act") makes provision for the calculation of the amount of a penalty under section 96 or 96A of that Act. The amount of such a penalty is to be determined by reference to a person's turnover. Section 97(3)(a) enables the Secretary of State to make rules setting out how a person's turnover is to be calculated.

Those rules are currently set out in the Electronic Communications (Networks and Services) (Penalties) (Rules for Calculation of Turnover) Order 2003 (S.I. 2003/2712) ("the 2003 Order").

Section 105Z18 of the 2003 Act (which was inserted by the Telecommunications (Security) Act 2021 (c. 31)) ("the 2021 Act") makes provision for the imposition of penalties on certain public communications providers who do not comply with a designated vendor direction or a compliance plan relating to such a direction. Section 105Z19 of the 2003 Act makes provision for the calculation of the amount of such a penalty, which may, in the case of the contravention of a designated vendor direction, be up to 10% of the provider's turnover. Section 105Z19 of the 2003 Act provides for turnover for the purposes of that section to be determined by reference to any rules made under section 97(3)(a) of the 2003 Act, and also for provision to be made about the business in relation to which that turnover is calculated.

This Order provides for all of the relevant business activities as set out in section 105Z19(8) of the 2003 Act to be included in the turnover calculation for a provider (article 2).

In consequence of the provisions made by the 2021 Act, the Order also amends the 2003 Order to replace references in that Order to a "notified provider" or a "provider" with references to a "person" (article 3).

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