EXPLANATORY MEMORANDUM TO

THE INTERNET DOMAIN REGISTRY (PRESCRIBED PRACTICES AND PRESCRIBED REQUIREMENTS) REGULATIONS 2024

2024 No. 1049

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Science, Innovation and Technology and is laid before Parliament by Command of His Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Declaration

2.1 Baroness Jones of Whitchurch, Parliamentary Under-Secretary of State for the Future Digital Economy and Online Safety at the Department for Science, Innovation and Technology confirms that this Explanatory Memorandum meets the required standard.

2.2 Nicola Spooner, Deputy Director, Online Safety Strategy, at the Department for Science, Innovation and Technology confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Jeff Alford at the Department for Science, Innovation and Technology, Telephone: 07947 203470 or Email: sohcorrespondence@dsit.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument sets out the prescribed practices and requirements for the purposes of section 124O of the Communications Act 2003 ("the 2003 Act"). Sections 124O-124R of the 2003 Act set out the Secretary of State's powers of intervention where there is a serious relevant failure in relation to a qualifying internet domain name registry. "Qualifying internet domain registry" is defined in section 124O(7).

4.2 This instrument prescribes the practices and requirements referred to in the meaning of "relevant failure" in section 124O(3) of the 2003 Act. There will be a relevant failure in relation to a qualifying internet domain registry if the registry engages in the practices set out in regulation 2, or if a registry's arrangements for complaints about cybersquatting do not comply with the requirements in regulation 3. Section 124O(4) of the 2003 Act sets out when a relevant failure is to be considered serious.

4.3 The statutory instrument covers the following areas:

4.4 Regulation 2 sets out that a registry engages in a "prescribed practice" that is unfair or involves the misuse of a domain name if it fails to require that those registering, or

seeking to register, a domain name must not use or intend to use, the name for activities listed in the regulation 2(3) of the statutory instrument.

4.5 These activities are as follows: malware, botnets, pharming, phishing and spam emails (when used as a vehicle for at least one of the preceding 'misuses') and certain activities offences involving indecent photographs of children.

4.6 The activities referred to in regulation 2 include any activity that would be an offence under section 1 of the Protection of Children Act (1978), article 3 of the Protection of Children (Northern Ireland) Order 1978 and section 52 of the Civic Government (Scotland) Act 1982. These cover offences relating to indecent photographs of children. For example, it is an offence under these provisions to:

4.7 Take, or permit to be taken, or to make any indecent photograph or pseudo-photograph of a child; distribute or show such indecent photographs or pseudo-photographs; possess such indecent photographs or pseudo-photographs with a view to their being distributed or shown; publish or cause to be published any advertisement likely to be understood as conveying that the advertiser distributes or shows such indecent photographs or pseudo-photographs, or intends to do so.

4.8 It is also an offence to take steps to prevent or stop a domain name from being used for one of those activities, where the registry knows it is being used for that activity or is intended to be used for that activity.

4.9 Regulation 2(4) of the statutory instrument also defines 'malware' and 'without authorisation' for the purpose of the regulation.

4.10 Regulation 3 of the SI sets out the prescribed requirements that qualifying internet domain registry must follow in relation to complaints about cybersquatting. The requirements include the following:

4.10.1 Where a decision is made in the complainant's favour, the registry must provide for appropriate action to be taken within a reasonable time period.

4.10.2 The complainant must be notified of the decision within a reasonable time period of the decision having been made.

4.10.3 Any charges made for dealing with the complaint must be proportionate to the cost of carrying out that procedure.

4.11 Regulation 3(3) of the SI also defines the key terms used in regulation 3. It defines 'bad faith' in relation to cybersquatting, which itself is defined as the registration of an internet domain name that is identical or similar to a trademark by a person who a) does not own, or have a legitimate interest in the trademark, and b) registers the domain name in bad faith, as defined in regulation 3(3) of the SI.

Where does the legislation extend to, and apply?

4.12 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England, and Wales, Scotland and Northern Ireland.

4.13 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales, Scotland and Northern Ireland.

5. Policy Context

What is being done and why?

5.1 The government is laying this instrument to ensure that the UK will continue to meet international best practice on governance of country code top-level domains

(ccTLDs), in line with the UK's key global trading partners and its future global trading commitments and agreements. This includes ensuring the UK remains compliant with the provision on settling domain name disputes in the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP), which the UK acceded to on 15 December 2024.

5.2 The regulations will also provide additional certainty that appropriate procedures will continue to be in place to help address the misuse and unfair use of "UK-related" domain names for their users.

5.3 As section 124O(8) of the Communications Act 2003 specifies, an internet domain name is "UK-related" "if, in the opinion of the Secretary of State, the last element of its name is likely to cause users of the internet, or a class of such users, to believe that the domain and its subdomains are connected with the United Kingdom or a part of the United Kingdom". Currently, this includes the ccTLD (.uk) and generic top-level domains (gTLDs) (.scot / .wales / .cymru and .london).

5.4 The Secretary of State's powers only apply when there is a serious relevant failure in relation to a qualifying internet domain registry in scope of the powers. This instrument prescribes the practices and prescribed requirements relevant to considering whether there is a relevant failure. Section 124O(4) of the 2003 Act provides that a relevant failure is serious if it has adversely affected, or is likely to adversely affect– (a) the reputation or availability of electronic communications networks or electronic communications services provided in the United Kingdom or a part of the United Kingdom, or (b) the interests of consumers or members of the public in the United Kingdom or a part of the United Kingdom.

5.5 The powers also say that if there is a serious relevant failure by any of the qualifying internet domain registries in scope, the Secretary of State has the power to appoint a manager of a registry (section 124P of the 2003 Act) and make provision about what powers that manager has. For example, providing for the manager to have certain functions of the directors (section 124Q of the 2003 Act).

What was the previous policy, how is this different?

5.6 Government policy has not changed, however the SI will ensure that the Secretary of State has backstop powers to intervene in the operations of a qualifying internet domain registry, should it be the case that there has been a serious relevant failure.

6. Legislative and Legal Context

How has the law changed?

6.1 Sections 124O-124R of the 2003 Act set out the Secretary of State's powers where there is a serious relevant failure in relation to a qualifying internet domain registry. This instrument sets out the prescribed practices and prescribed requirements relevant to considering whether there is a relevant failure in relation to an internet domain registry.

6.2 This instrument will ensure that the UK remains compliant with the provision on settling domain name disputes in the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP) when the UK accedes to that treaty.

Why was this approach taken to change the law?

6.3 The powers in the Communications Act 2003 were commenced in April 2024, however they cannot be used without this SI made that sets out further detail as to

what prescribed practices and prescribed requirements constitute a relevant failure by a qualifying internet domain registry.

7. Consultation

Summary of consultation outcome and methodology

7.1 The contents of this legislation have been informed by a public consultation, which the Department for Science, Innovation and Technology (DSIT) carried out for six weeks from 20 July to 31 August 2023. The consultation asked for views on proposals for regulations defining the prescribed practices and requirements, which this instrument sets out.

7.2 The consultation set out DSIT's proposals for the types and definitions of misuses and unfair uses that registries would be responsible for ensuring they have the appropriate policies and procedures in place to deal with. The consultation asked for views on whether the list and definitions were accurate and what additional types of misuses and unfair use, if any, stakeholders would like to propose to be included in the list.

7.3 The consultation also set out proposals for a list of principles which would underpin the design of a dispute resolution procedure that registries in scope would be required to have in place for dealing with complaints regarding cybersquatting in relation to their domains.

7.4 We received 39 responses to this consultation from a wide range of stakeholders. These stakeholders included domain name registries, domain name registrars, trade and business associations, charities and not for profit organisations, consultancies, commercial owners of domain names, devolved administrations, and other individuals.

7.5 Most stakeholders agreed with the proposed list of misuses, unfair uses and the proposals that underpin the design of the dispute resolution procedure, as set out in the consultation.

7.6 DSIT published the summary of consultation responses on 20 November 2023 and the policy response to the consultation on 22 February 2024. Both documents can be found at the following webpage: https://www.gov.uk/government/consultations/powers-in-relation-to-uk-related-domain-name-registries.

7.7 DSIT had regular engagement with the domain name registries in scope of the regulations and the Scottish and Welsh Governments throughout the policy development process and in the run up to the laying of the instrument.

8. Applicable Guidance

8.1 No guidance is being published with this legislation.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because the impacts are expected to be minimal and fall below the de minimis threshold as set out in section 1.2 of the previous Better Regulation Framework (March 2020)[1]. The

[1] https://assets.publishing.service.gov.uk/media/5f5b2b1ee90e0718dffc749d/better-regulation-guidance.pdf

previous framework has been used because these provisions were agreed under the previous government, and as per the terms of the transition period, qualify to be developed under the previous framework.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, expected impact on business, charities or voluntary bodies. This instrument only has an expected impact on three registries and has no impact on other business, charities and voluntary bodies. The only monetisable costs incurred by businesses will be transition costs, familiarisation and dissemination.

9.3 The Equivalent Annual Net Direct Cost to Business (EANDCB) is estimated at £900 using a 2019 price base year with a present value year of 2020. This is below the de minimis threshold of +/-£5 million per year, associated with the previous framework.

9.4 The legislation does not impact on small or micro businesses.

9.5 There is no, or no significant, expected impact on the public sector for the same reasons as set out in paragraph 9.2.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation will be through ongoing engagement with the qualifying internet domain registries in scope of the regulation.

10.2 The instrument does not include a statutory review clause and in line with the requirements of the Small Business, Enterprise and Employment Act 2015, Baroness Jones of Whitchurch has made the following statement:

"It is not appropriate in the circumstances to make provision for review as, taking into account the economic impact of this provision, a review would be disproportionate. The instrument only places requirements on registries responsible for "UK-related" domain names (there are currently three such registries), though if concerns arose, they could be addressed between the regulated organisations, and the responsible department."

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").