EXPLANATORY MEMORANDUM TO

THE INTRA-EU COMMUNICATIONS (EU REGULATION) REGULATIONS 2019

2019 No. 980

1. Introduction

1.1 This explanatory memorandum has been prepared by DCMS and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 These regulations implement into UK legislation the requirements of Article 50 of the Regulation (EU) 2018/1971 of the European Parliament and of the Council of 11th December 2018 ("BEREC Regulation"), which amends Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 ("EU Regulation").

2.2 Article 50 of the BEREC Regulation introduced caps on retail charges for regulated intra-EU communications by inserting Article 5a into the EU Regulation ("Article 5a").

3. Matters of special interest to Parliament

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

3.2 None.

3.3 ***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)***

3.4 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the entirety of the United Kingdom.

4.2 The territorial application of this instrument is the entirety of the United Kingdom.

5. European Convention on Human Rights

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

6. Legislative Context

6.1 The BEREC Regulation came into force on 20 December 2018. Article 5a of the EU Regulation is effective from 15 May 2019.

6.2 Article 5(a)(6) requires Member States to lay down rules on penalties applicable to infringements of Article 5a, by putting in places a penalty regime that is effective, proportionate and dissuasive.

6.3 The Communications Act 2003 ("the Act") provides OFCOM (The Office of Communications) with powers to regulate the activities of the telecommunications sector in the UK. It is proposed, therefore, that these Regulations provide OFCOM with additional powers, which are required for the effective implementation of Article 5a.

7. Policy background

What is being done and why?

7.1 In 2013 the EU Commission proposed regulating in relation to intra-EU communications. Intra-EU communications are when you make a landline or mobile call, or send a text, to a EU number from another EU country. To address this, the BEREC Regulation adopted on 20 December 2018, requires providers of publicly available number-based interpersonal communications services charge their consumers no more than EUR 0,19 per minute for calls and EUR 0,06 per SMS message.

7.2 The intra-EU communications provisions were effective in the UK from 15 May 2019. Though the provisions were introduced through an EU regulation and are immediately applicable in UK law, domestic legislation is required to provide Ofcom with powers to enforce intra-EU communications. Article 5a(5) requires that Member States lay down the rules on penalties applicable to infringements of intra-EU communications and take all measures necessary to ensure that they are implemented.

7.3 The key provisions of this instrument are as follows:

- the designation of OFCOM as the national regulatory authority
- procedure for notification of breaches of Article 5a or this Regulation
- the penalties for breaches of Article 5a or this Regulation
- calculation of company turnover to calculate the level of penalties
- appeal procedures.

7.4 These provisions have adapted the following sections of the Act:

- Sections 94 and 96 – 97 in respect of penalties; and
- Sections 135 and 139 in respect of the provision of information to OFCOM.

7.5 The appeals provisions also adapt provisions of the Act, namely sections 192, 194A, and 196. Appeals against decisions made by OFCOM shall lie to the Competition Appeal Tribunal (the "CAT") and shall be reviewed on a merits review basis. Appeals from the CAT shall go to the Court of Appeal and the Court of Session in Scotland.

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

8.1 This instrument does not relate to withdrawal from the European Union or trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

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

10. Consultation outcome

10.1 A draft of the instrument was shared with Ofcom and with officials in the devolved administrations whose views have been considered.

10.2 Industry stakeholders were consulted and raised no concerns.

11. Guidance

11.1 The Government is not proposing to issue any guidance.

12. Impact

12.1 The impact on business is expected to be minimal. There is no impact on charities or voluntary bodies.

12.2 The impact on the public sector in respect of OFCOM's duties to monitor and ensure compliance is expected to be minimal.

12.3 A full Impact Assessment has not been produced for this instrument as no significant, impact on business and the public sector is foreseen.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses. Government is obliged to implement EU Regulation 2018/1971, and small businesses are not exempt from having to comply with new rules on intra-EU communications.

14. Monitoring & review

14.1 A statutory review clause is not included in this instrument. Article 5a expires on 14 May 2024 and therefore a review clause is not necessary.

15. Contact

15.1 Nicci Jerrett at the Department for Digital, Culture, Media and Sport (Telephone: 020 7211 6250/07925 890 848 or email: nicci.jerrett@culture.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Henry Shennan (Deputy Director, Fixed Telecoms and Market Regulation) 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 and the Creative Industries, Margot James, at the Department for Digital, Culture, Media and Sport can confirm that this Explanatory Memorandum meets the required standard.