

# Digital Economy Bill [HL]

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## EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Department for Business, Innovation and Skills and the Department for Culture, Media and Sport, are published separately as Bill 89 – EN.

## EUROPEAN CONVENTION ON HUMAN RIGHTS

Secretary Ben Bradshaw has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Digital Economy Bill [HL] are compatible with the Convention rights.

# Digital Economy Bill [HL]

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[NOTE: The words marked in bold type were inserted by the Lords to avoid questions of privilege.]

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# B I L L

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Make provision about the functions of the Office of Communications; to make provision about the online infringement of copyright, about licensing of copyright and performers' rights and about penalties for infringement; to make provision about internet domain registries; to make provision about the functions of the Channel Four Television Corporation; to make provision about the regulation of television and radio services; to make provision about the regulation of the use of the electromagnetic spectrum; to amend the Video Recordings Act 1984; to make provision about public lending right in relation to electronic publications; and for connected purposes.

**B**E IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

## *General duties of OFCOM*

### **1 General duties of OFCOM**

(1) Section 3 of the Communications Act 2003 (general duties of OFCOM) is amended as follows.

(2) After subsection (1) insert—

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“(1A) In performing their duties under subsection (1), OFCOM must have particular regard, in all cases, to the need—

(a) to promote investment in electronic communications networks, where appropriate;

(b) to promote investment in public service media content, where appropriate; and

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(c) for the investment to be efficient (taking account of the interests of citizens and the interests of consumers in relevant markets).”

(3) In subsection (2)(c) and (d), for “television and radio services” substitute “media services”.

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- (4) In subsection (4)(m), for “the furthering or securing of the matters mentioned in subsections (1) and (2)” substitute “the furthering, promoting or securing of the matters mentioned in subsections (1), (1A) and (2)”.
- (5) In subsection (14), after the definition of “general duties” insert—
- ““media services” means any of the following services that are available to members of the public in all or part of the United Kingdom—
- (a) television and radio services;
- (b) on-demand programme services; and
- (c) other services provided by means of the internet where there is a person who exercises editorial control over the material included in the service;
- “public service media content” means material, other than advertisements, which is included in media services and which OFCOM consider contributes or may contribute towards the fulfilment of the public service objectives (as defined in section 264A);”.
- (6) After that subsection insert—
- “(15) The services that are to be taken for the purposes of this section to be available to members of the public include any service which—
- (a) is available for reception by members of the public (within the meaning of section 361); or
- (b) is available for use by members of the public (within the meaning of section 368R(4)).”
- 2 OFCOM reports on infrastructure, internet domain names etc**
- (1) In Chapter 1 of Part 2 of the Communications Act 2003 (electronic communications networks and services), after section 134 insert—
- “Reports on infrastructure etc*
- 134A OFCOM reports on infrastructure etc**
- (1) OFCOM must prepare reports in accordance with subsections (2) and (3) and each report must deal with—
- (a) the electronic communications networks matters listed in section 134B(1), and
- (b) the electronic communications services matters listed in section 134B(2).
- (2) The first report must—
- (a) relate to the position on a day specified in the report which falls within the period of 12 months beginning with the day on which this section comes into force, and
- (b) be sent to the Secretary of State by OFCOM not more than 2 months after the specified day.
- (3) A further report must—
- (a) be prepared for each relevant period, and
- (b) be sent to the Secretary of State by OFCOM as soon as practicable after the end of the relevant period.

- (4) “Relevant period” means –
- (a) the period of 3 years beginning with the day specified in the first report, and
  - (b) each subsequent period of 3 years beginning with the end of the previous period. 5
- (5) Where there is a significant change in connection with a matter listed in section 134B(1) or (2) and OFCOM consider that the change should be brought to the attention of the Secretary of State, OFCOM must –
- (a) prepare a report on the change, and
  - (b) send it to the Secretary of State as soon as practicable. 10
- (6) For the purposes of subsection (5), a change is significant if OFCOM consider that it has, or is likely to have, a significant adverse impact on –
- (a) persons carrying on business in the United Kingdom or a part of the United Kingdom, or
  - (b) the general public in the United Kingdom or a part of the United Kingdom. 15
- (7) OFCOM must publish every report under this section –
- (a) as soon as practicable after they send it to the Secretary of State, and
  - (b) in such manner as they consider appropriate for bringing it to the attention of persons who, in their opinion, are likely to have an interest in it. 20
- (8) OFCOM may exclude information from a report when it is published under subsection (7) if they consider that it is information that they could refuse to disclose in response to a request under the Freedom of Information Act 2000. 25

#### **134B Networks and services matters**

- (1) For the purposes of section 134A, the electronic communications networks matters are –
- (a) the different types of electronic communications network provided in the United Kingdom (“UK networks”),
  - (b) the geographic coverage of the different UK networks,
  - (c) the proportion of the population covered by the different UK networks, 35
  - (d) the extent to which UK networks share infrastructure,
  - (e) the capacity of the different UK networks,
  - (f) the extent to which the providers of the different UK networks allow other communications providers to use their networks to provide services, 40
  - (g) the amount of time for which the different UK networks are and are not available, including the steps that have been or are to be taken to maintain or improve the level of availability,
  - (h) the preparations made by providers of UK networks for responding to an emergency, including preparations for restoring normal operation of UK networks disrupted by the emergency, and 45

- (i) the standard of the different UK networks in comparison with electronic communications networks provided in a range of other countries, having regard, in particular, to their coverage and capacity.
- (2) For the purposes of section 134A, the electronic communications services matters are—
  - (a) the use of the electromagnetic spectrum for wireless telegraphy in the United Kingdom,
  - (b) the different types of electronic communications service provided in the United Kingdom (“UK services”),
  - (c) the geographic coverage of the different UK services,
  - (d) the proportion of the population covered by the different UK services,
  - (e) the amount of time for which the different UK services are and are not available, including the steps that have been or are to be taken to maintain or improve the level of availability,
  - (f) the preparations made by providers of UK services for responding to an emergency, including preparations for restoring normal operation of UK services disrupted by the emergency, and
  - (g) the standard of the different UK services in comparison with electronic communications services provided in a range of other countries.
- (3) The preparations referred to in subsections (1)(h) and (2)(f) include—
  - (a) the steps taken to assess the risks of different types of emergency occurring,
  - (b) the steps taken to reduce or remove those risks, and
  - (c) the testing of proposed responses to different types of emergency.
- (4) In a report under section 134A, OFCOM are required to include only information about, and analysis of, such networks, services and providers as they consider appropriate.
- (5) In this section “emergency” means an event or situation that seriously disrupts a UK network or UK service.

*Reports on internet domain names*

**134C OFCOM reports on internet domain names**

- (1) OFCOM must, if requested to do so by the Secretary of State—
  - (a) prepare a report on matters specified by the Secretary of State relating to internet domain names, and
  - (b) send the report to the Secretary of State as soon as practicable.
- (2) The specified matters may, in particular, include matters relating to—
  - (a) the allocation and registration of internet domain names, and
  - (b) the misuse of internet domain names.
- (3) OFCOM must publish every report under this section—
  - (a) as soon as practicable after they send it to the Secretary of State, and

- (b) in such manner as they consider appropriate for bringing it to the attention of persons who, in their opinion, are likely to have an interest in it.
- (4) OFCOM may exclude information from a report when it is published under subsection (3) if they consider that it is information that they could refuse to disclose in response to a request under the Freedom of Information Act 2000.” 5
- (2) In section 135(3) of that Act (information required for purposes of Chapter 1 functions), after paragraph (ib) insert—
  - “(ic) preparing a report under section 134A; 10
  - (id) preparing a report under section 134C;”.

### 3 OFCOM reports on media content

After section 264 of the Communications Act 2003 insert—

#### “264A OFCOM reports: wider review and reporting obligations

- (1) When carrying out a review under section 264 for a period, OFCOM must also carry out a review of the extent to which material included in media services during that period (taken together over the period as a whole) contributed towards the fulfilment of the public service objectives. 15
- (2) Every report under section 264 must— 20
  - (a) include a report on the matters found on the review under this section,
  - (b) specify, and comment on, whatever changes appear to OFCOM to have occurred, during the period to which the report relates, in the extent to which the public service objectives have been fulfilled, 25
  - (c) specify, and comment on, whatever changes appear to OFCOM to have occurred, during that period, in the manner in which those objectives are fulfilled, and
  - (d) set out OFCOM’s conclusions on the current state of material included in media services. 30
- (3) “The public service objectives” are the objectives set out in paragraphs (b) to (j) of section 264(6) (as modified by subsection (4)).
- (4) Paragraphs (b) to (j) of section 264(6) have effect for the purposes of subsection (3) as if— 35
  - (a) references to the relevant television services were to media services, and
  - (b) references to programmes were to material included in such services.
- (5) In this section— 40
  - “material” does not include advertisements;
  - “media services” means any of the following services that are available to members of the public in all or part of the United Kingdom—
    - (a) television and radio services, 45
    - (b) on-demand programme services, and

- (c) other services provided by means of the internet where there is a person who exercises editorial control over the material included in the service.
- (6) The services that are to be taken for the purposes of this section to be available to members of the public include any service which— 5
  - (a) is available for reception by members of the public (within the meaning of section 361); or
  - (b) is available for use by members of the public (within the meaning of section 368R(4)).”

*Online infringement of copyright* 10

#### 4 **Obligation to notify subscribers of reported infringements**

After section 124 of the Communications Act 2003 insert—

*“Online infringement of copyright: obligations of internet service providers*

##### **124A Obligation to notify subscribers of copyright infringement reports**

- (1) This section applies if it appears to a copyright owner that— 15
  - (a) a subscriber to an internet access service has infringed the owner’s copyright by means of the service; or
  - (b) a subscriber to an internet access service has allowed another person to use the service, and that other person has infringed the owner’s copyright by means of the service. 20
- (2) The owner may make a copyright infringement report to the internet service provider who provided the internet access service if a code in force under section 124C or 124D (an “initial obligations code”) allows the owner to do so.
- (3) A “copyright infringement report” is a report that— 25
  - (a) states that there appears to have been an infringement of the owner’s copyright;
  - (b) includes a description of the apparent infringement;
  - (c) includes evidence of the apparent infringement that shows the subscriber’s IP address and the time at which the evidence was gathered; 30
  - (d) is sent to the internet service provider within the period of 1 month beginning with the day on which the evidence was gathered; and
  - (e) complies with any other requirement of the initial obligations code. 35
- (4) An internet service provider who receives a copyright infringement report must notify the subscriber of the report if the initial obligations code requires the provider to do so.
- (5) A notification under subsection (4) must be sent to the subscriber within the period of 1 month beginning with the day on which the provider receives the report. 40
- (6) A notification under subsection (4) must include—

- (a) a statement that the notification is sent under this section in response to a copyright infringement report;
  - (b) the name of the copyright owner who made the report;
  - (c) a description of the apparent infringement;
  - (d) evidence of the apparent infringement that shows the subscriber's IP address and the time at which the evidence was gathered; 5
  - (e) information about subscriber appeals and the grounds on which they may be made;
  - (f) information about copyright and its purpose; 10
  - (g) advice, or information enabling the subscriber to obtain advice, about how to obtain lawful access to copyright works;
  - (h) advice, or information enabling the subscriber to obtain advice, about steps that a subscriber can take to protect an internet access service from unauthorised use; and 15
  - (i) anything else that the initial obligations code requires the notification to include.
- (7) For the purposes of subsection (6)(h) the internet service provider must take into account the suitability of different protection for subscribers in different circumstances. 20
- (8) The things that may be required under subsection (6)(i), whether in general or in a particular case, include in particular –
- (a) a statement that information about the apparent infringement may be kept by the internet service provider;
  - (b) a statement that the copyright owner may require the provider to disclose which copyright infringement reports made by the owner to the provider relate to the subscriber; 25
  - (c) a statement that, following such a disclosure, the copyright owner may apply to a court to learn the subscriber's identity and may bring proceedings against the subscriber for copyright infringement; and 30
  - (d) where the requirement for the provider to send the notification arises partly because of a report that has already been the subject of a notification under subsection (4), a statement that the number of copyright infringement reports relating to the subscriber may be taken into account for the purposes of any technical measures. 35
- (9) In this section “notify”, in relation to a subscriber, means send a notification to the electronic or postal address held by the internet service provider for the subscriber (and sections 394 to 396 do not apply).” 40

## 5 **Obligation to provide infringement lists to copyright owners**

After section 124A of the Communications Act 2003 insert –

### **“124B Obligation to provide copyright infringement lists to copyright owners** 45

- (1) An internet service provider must provide a copyright owner with a copyright infringement list for a period if –

- (a) the owner requests the list for that period; and
  - (b) an initial obligations code requires the internet service provider to provide it.
- (2) A “copyright infringement list” is a list that –
- (a) sets out, in relation to each relevant subscriber, which of the copyright infringement reports made by the owner to the provider relate to the subscriber, but 5
  - (b) does not enable any subscriber to be identified.
- (3) A subscriber is a “relevant subscriber” in relation to a copyright owner and an internet service provider if copyright infringement reports made by the owner to the provider in relation to the subscriber have reached the threshold set in the initial obligations code.” 10

## 6 Approval of code about the initial obligations

After section 124B of the Communications Act 2003 insert –

### “124C Approval of code about the initial obligations 15

- (1) The obligations of internet service providers under sections 124A and 124B are the “initial obligations”.
- (2) If it appears to OFCOM –
- (a) that a code has been made by any person for the purpose of regulating the initial obligations; and 20
  - (b) that it would be appropriate for them to approve the code for that purpose,
- they may by order approve it, with effect from the date given in the order.
- (3) The provision that may be contained in a code and approved under this section includes provision that – 25
- (a) specifies conditions that must be met for rights and obligations under the copyright infringement provisions or the code to apply in a particular case;
  - (b) requires copyright owners or internet service providers to provide any information or assistance that is reasonably required to determine whether a condition under paragraph (a) is met. 30
- (4) The provision mentioned in subsection (3)(a) may, in particular, specify that a right or obligation does not apply in relation to a copyright owner unless the owner has made arrangements with an internet service provider regarding – 35
- (a) the number of copyright infringement reports that the owner may make to the provider within a particular period; and
  - (b) payment in advance of a contribution towards meeting costs incurred by the provider. 40
- (5) The provision mentioned in subsection (3)(a) may also, in particular, provide that –
- (a) except as provided by the code, rights and obligations do not apply in relation to an internet service provider unless the number of copyright infringement reports the provider receives 45

- within a particular period reaches a threshold set in the code;  
and
- (b) if the threshold is reached, rights or obligations apply with effect from the date when it is reached or from a later time.
- (6) OFCOM must not approve a code under this section unless satisfied that it meets the criteria set out in section 124E. 5
- (7) Not more than one approved code may have effect at a time.
- (8) OFCOM must keep an approved code under review.
- (9) OFCOM may by order, at any time, for the purpose mentioned in subsection (2) – 10
- (a) approve modifications that have been made to an approved code; or
- (b) withdraw their approval from an approved code, with effect from the date given in the order, and must do so if the code ceases to meet the criteria set out in section 124E. 15
- (10) The consent of the Secretary of State is required for the approval of a code or the modification of an approved code.
- (11) An order made by OFCOM under this section approving a code or modification must set out the code or modification.
- (12) Section 403 applies to the power of OFCOM to make an order under this section. 20
- (13) A statutory instrument containing an order made by OFCOM under this section is subject to annulment in pursuance of a resolution of either House of Parliament.”
- 7 Initial obligations code by OFCOM in the absence of an approved code** 25
- After section 124C of the Communications Act 2003 insert –
- “124D Initial obligations code by OFCOM in the absence of an approved code**
- (1) For any period when sections 124A and 124B are in force but for which there is no approved initial obligations code under section 124C, OFCOM must by order make a code for the purpose of regulating the initial obligations. 30
- (2) OFCOM may but need not make a code under subsection (1) for a time before the end of –
- (a) the period of six months beginning with the day on which sections 124A and 124B come into force, or 35
- (b) such longer period as the Secretary of State may specify by notice to OFCOM.
- (3) The Secretary of State may give a notice under subsection (2)(b) only if it appears to the Secretary of State that it is not practicable for OFCOM to make a code with effect from the end of the period mentioned in subsection (2)(a) or any longer period for the time being specified under subsection (2)(b). 40

- (4) A code under this section may do any of the things mentioned in section 124C(3) to (5).
- (5) A code under this section may also –
- (a) confer jurisdiction with respect to any matter (other than jurisdiction to determine appeals by subscribers) on OFCOM themselves; 5
  - (b) provide for OFCOM, in exercising such jurisdiction, to make awards of compensation, to direct the reimbursement of costs, or to do both;
  - (c) provide for OFCOM to enforce, or to participate in the enforcement of, any awards or directions made under the code; 10
  - (d) make other provision for the enforcement of such awards and directions;
  - (e) establish a body corporate, with the capacity to make its own rules and establish its own procedures, for the purpose of determining subscriber appeals; 15
  - (f) provide for a person with the function of determining subscriber appeals to enforce, or to participate in the enforcement of, any awards or directions made by the person;
  - (g) make other provision for the enforcement of such awards and directions; and 20
  - (h) make other provision for the purpose of regulating the initial obligations.
- (6) OFCOM must not make a code under this section unless they are satisfied that it meets the criteria set out in section 124E. 25
- (7) OFCOM must –
- (a) keep a code under this section under review; and
  - (b) by order make any amendment of it that is necessary to ensure that while it is in force it continues to meet the criteria set out in section 124E. 30
- (8) The consent of the Secretary of State is required for the making or amendment by OFCOM of a code under this section.
- (9) Section 403 applies to the power of OFCOM to make an order under this section.
- (10) A statutory instrument containing an order made by OFCOM under this section is subject to annulment in pursuance of a resolution of either House of Parliament.” 35

## 8 Contents of initial obligations code

After section 124D of the Communications Act 2003 insert –

- “124E Contents of initial obligations code 40**
- (1) The criteria referred to in sections 124C(6) and 124D(6) are –
- (a) that the code makes the required provision about copyright infringement reports (see subsection (2));
  - (b) that it makes the required provision about the notification of subscribers (see subsections (3) and (4)); 45

- (c) that it sets the threshold applying for the purposes of determining who is a relevant subscriber within the meaning of section 124B(3) (see subsections (5) and (6));
- (d) that it makes provision about how internet service providers are to keep information about subscribers; 5
- (e) that it limits the time for which they may keep that information;
- (f) that it makes any provision about contributions towards meeting costs that is required to be included by an order under section 124M;
- (g) that the requirements concerning administration and enforcement are met in relation to the code (see subsections (7) and (8)); 10
- (h) that the requirements concerning subscriber appeals are met in relation to the code (see section 124K);
- (i) that the provisions of the code are objectively justifiable in relation to the matters to which it relates; 15
- (j) that those provisions are not such as to discriminate unduly against particular persons or against a particular description of persons;
- (k) that those provisions are proportionate to what they are intended to achieve; 20
- (l) that, in relation to what those provisions are intended to achieve, they are transparent; and
- (m) that takes into account circumstances whereby injunctions under section 97B as inserted by section 18 of the Digital Economy Act 2010 may be brought. 25
- (2) The required provision about copyright infringement reports is provision that specifies –
- (a) requirements as to the means of obtaining evidence of infringement of copyright for inclusion in a report; 30
- (b) the standard of evidence that must be included; and
- (c) the required form of the report.
- (3) The required provision about the notification of subscribers is provision that specifies, in relation to a subscriber in relation to whom an internet service provider receives one or more copyright infringement reports – 35
- (a) requirements as to the means by which the provider identifies the subscriber;
- (b) which of the reports the provider must notify the subscriber of; and 40
- (c) requirements as to the form, contents and means of the notification in each case.
- (4) The provision mentioned in subsection (3) must not permit any copyright infringement report received by an internet service provider more than 12 months before the date of a notification of a subscriber to be taken into account for the purposes of the notification. 45
- (5) The threshold applying in accordance with subsection (1)(c) may, subject to subsection (6), be set by reference to any matter, including in particular one or more of –
- (a) the number of copyright infringement reports; 50

- (b) the time within which the reports are made; and
  - (c) the time of the apparent infringements to which they relate.
- (6) The threshold applying in accordance with subsection (1)(c) must operate in such a way that a copyright infringement report received by an internet service provider more than 12 months before a particular date does not affect whether the threshold is met on that date; and a copyright infringement list provided under section 124B must not take into account any such report. 5
- (7) The requirements concerning administration and enforcement are –
  - (a) that OFCOM have, under the code, the functions of administering and enforcing it, including the function of resolving owner-provider disputes; 10
  - (b) that there are adequate arrangements under the code for OFCOM to obtain any information or assistance from internet service providers or copyright owners that OFCOM reasonably require for the purposes of administering and enforcing the code; and 15
  - (c) that there are adequate arrangements under the code for the costs incurred by OFCOM in administering and enforcing the code to be met by internet service providers and copyright owners. 20
- (8) The provision mentioned in subsection (7) may include, in particular –
  - (a) provision for the payment, to a person specified in the code, of a penalty not exceeding the maximum penalty for the time being specified in section 124L(2); 25
  - (b) provision requiring a copyright owner to indemnify an internet service provider for any loss or damage resulting from the owner’s failure to comply with the code or the copyright infringement provisions.
- (9) In this section “owner-provider dispute” means a dispute that – 30
  - (a) is between persons who are copyright owners or internet service providers; and
  - (b) relates to an act or omission in relation to an initial obligation or an initial obligations code.”
- 9 Progress reports** 35
 

After section 124E of the Communications Act 2003 insert –

**“124F Progress reports**

  - (1) OFCOM must prepare the following reports for the Secretary of State about the infringement of copyright by subscribers to internet access services. 40
  - (2) OFCOM must prepare a full report for –
    - (a) the period of 12 months beginning with the first day on which there is an initial obligations code in force; and
    - (b) each successive period of 12 months.
  - (3) OFCOM must prepare an interim report for – 45

- (a) the period of 3 months beginning with the first day on which there is an initial obligations code in force; and
- (b) each successive period of 3 months, other than one ending at the same time as a period of 12 months under subsection (2).
- But this is subject to any direction by the Secretary of State under subsection (4). 5
- (4) The Secretary of State may direct that subsection (3) no longer applies, with effect from the date given in the direction.
- (5) A full report under this section must include –
- (a) an assessment of the current level of subscribers’ use of internet access services to infringe copyright; 10
- (b) a description of the steps taken by copyright owners to enable subscribers to obtain lawful access to copyright works;
- (c) a description of the steps taken by copyright owners to inform, and change the attitude of, members of the public in relation to the infringement of copyright; 15
- (d) an assessment of the extent of the steps mentioned in paragraphs (b) and (c);
- (e) an assessment of the extent to which copyright owners have made copyright infringement reports; 20
- (f) an assessment of the extent to which they have brought legal proceedings against subscribers in relation to whom such reports have been made;
- (g) an assessment of the extent to which any such proceedings have been against subscribers in relation to whom a substantial number of reports have been made; and 25
- (h) anything else that the Secretary of State directs OFCOM to include in the report.
- (6) An interim report under this section must include –
- (a) the assessments mentioned in subsection (5)(a), (e) and (f); and 30
- (b) anything else that the Secretary of State directs OFCOM to include in the report.
- (7) OFCOM must send a report prepared under this section to the Secretary of State as soon as practicable after the end of the period for which it is prepared. 35
- (8) OFCOM must publish every full report under this section –
- (a) as soon as practicable after they send it to the Secretary of State, and
- (b) in such manner as they consider appropriate for bringing it to the attention of persons who, in their opinion, are likely to have an interest in it. 40
- (9) OFCOM may exclude information from a report when it is published under subsection (8) if they consider that it is information that they could refuse to disclose in response to a request under the Freedom of Information Act 2000.” 45

## 10 Obligations to limit internet access: assessment and preparation

After section 124F of the Communications Act 2003 insert—

### “124G Obligations to limit internet access: assessment and preparation

- (1) The Secretary of State may direct OFCOM to—
  - (a) assess whether one or more technical obligations should be imposed on internet service providers; 5
  - (b) take steps to prepare for the obligations;
  - (c) provide a report on the assessment or steps to the Secretary of State.
- (2) A “technical obligation”, in relation to an internet service provider, is an obligation for the provider to take a technical measure against some or all relevant subscribers to its service for the purpose of preventing or reducing infringement of copyright by means of the internet. 10
- (3) A “technical measure” is a measure that—
  - (a) limits the speed or other capacity of the service provided to a subscriber; 15
  - (b) prevents a subscriber from using the service to gain access to particular material, or limits such use;
  - (c) suspends the service provided to a subscriber; or
  - (d) limits the service provided to a subscriber in another way. 20
- (4) A subscriber to an internet access service is “relevant” if the subscriber is a relevant subscriber, within the meaning of section 124B(3), in relation to the provider of the service and one or more copyright owners.
- (5) The assessment and steps that the Secretary of State may direct OFCOM to carry out or take under subsection (1) include, in particular— 25
  - (a) consultation of copyright owners, internet service providers, subscribers or any other person;
  - (b) an assessment of the likely efficacy of a technical measure in relation to a particular type of internet access service; and 30
  - (c) steps to prepare a proposed technical obligations code.
- (6) Internet service providers and copyright owners must give OFCOM any assistance that OFCOM reasonably require for the purposes of complying with any direction under this section. 35
- (7) The Secretary of State must lay before Parliament any direction under this section.
- (8) OFCOM must publish every report under this section—
  - (a) as soon as practicable after they send it to the Secretary of State, and 40
  - (b) in such manner as they consider appropriate for bringing it to the attention of persons who, in their opinion, are likely to have an interest in it.
- (9) OFCOM may exclude information from a report when it is published under subsection (8) if they consider that it is information that they 45

could refuse to disclose in response to a request under the Freedom of Information Act 2000.”

## 11 Obligations to limit internet access

After section 124G of the Communications Act 2003 insert—

### “124H Obligations to limit internet access 5

- (1) The Secretary of State may by order impose a technical obligation on internet service providers if—
  - (a) OFCOM have assessed whether one or more technical obligations should be imposed on internet service providers; and 10
  - (b) taking into account that assessment, reports prepared by OFCOM under section 124F, and any other matter that appears to the Secretary of State to be relevant, the Secretary of State considers it appropriate to make the order.
- (2) No order may be made under this section within the period of 12 months beginning with the first day on which there is an initial obligations code in force. 15
- (3) An order under this section must specify the date from which the technical obligation is to have effect, or provide for it to be specified.
- (4) The order may also specify— 20
  - (a) the criteria for taking the technical measure concerned against a subscriber;
  - (b) the steps to be taken as part of the measure and when they are to be taken.
- (5) No order is to be made under this section unless a draft of the order has been laid before Parliament and approved by a resolution of each House.” 25

## 12 Code by OFCOM about obligations to limit internet access

After section 124H of the Communications Act 2003 insert—

### “124I Code by OFCOM about obligations to limit internet access 30

- (1) For any period during which there are one or more technical obligations in force under section 124H, OFCOM must by order make a technical obligations code for the purpose of regulating those obligations.
- (2) The code may be made separately from, or in combination with, any initial obligations code under section 124D. 35
- (3) A code under this section may—
  - (a) do any of the things mentioned in section 124C(3) to (5) or section 124D(5)(a) to (g); and
  - (b) make other provision for the purpose of regulating the technical obligations. 40

- (4) OFCOM must not make a code under this section unless they are satisfied that it meets the criteria set out in section 124J.
- (5) OFCOM must –
- (a) keep a code under this section under review; and
  - (b) by order make any amendment of it that is necessary to ensure that while it is in force it continues to meet the criteria set out in section 124J. 5
- (6) The consent of the Secretary of State is required for the making or amendment by OFCOM of a code under this section.
- (7) Section 403 applies to the power of OFCOM to make an order under this section. 10
- (8) A statutory instrument containing an order made by OFCOM under this section is subject to annulment in pursuance of a resolution of either House of Parliament.”
- 13 Contents of code about obligations to limit internet access 15**
- After section 124I of the Communications Act 2003 insert –
- “124J Contents of code about obligations to limit internet access**
- (1) The criteria referred to in section 124I(4) are –
- (a) that the requirements concerning enforcement and related matters are met in relation to the code (see subsections (2) and (3)); 20
  - (b) that the requirements concerning subscriber appeals are met in relation to the code (see section 124K);
  - (c) that it makes any provision about contributions towards meeting costs that is required to be included by an order under section 124M; 25
  - (d) that it makes any other provision that the Secretary of State requires it to make;
  - (e) that the provisions of the code are objectively justifiable in relation to the matters to which it relates; 30
  - (f) that those provisions are not such as to discriminate unduly against particular persons or against a particular description of persons;
  - (g) that those provisions are proportionate to what they are intended to achieve; and 35
  - (h) that, in relation to what those provisions are intended to achieve, they are transparent.
- (2) The requirements concerning enforcement and related matters are –
- (a) that OFCOM have, under the code, the functions of administering and enforcing it, including the function of resolving owner-provider disputes; 40
  - (b) that there are adequate arrangements under the code for OFCOM to obtain any information or assistance from internet service providers or copyright owners that OFCOM reasonably require for the purposes of administering and enforcing the code; and 45

- (c) that there are adequate arrangements under the code for the costs incurred by OFCOM in administering and enforcing the code to be met by internet service providers and copyright owners.
- (3) The provision made concerning enforcement and related matters may also (unless the Secretary of State requires otherwise) include, in particular – 5
- (a) provision for the payment, to a person specified in the code, of a penalty not exceeding the maximum penalty for the time being specified in section 124L(2); 10
- (b) provision requiring a copyright owner to indemnify an internet service provider for any loss or damage resulting from the owner’s infringement or error in relation to the code or the copyright infringement provisions.
- (4) In this section “owner-provider dispute” means a dispute that – 15
- (a) is between persons who are copyright owners or internet service providers; and
- (b) relates to an act or omission in relation to a technical obligation or a technical obligations code.”
- 14 Subscriber appeals** 20
- After section 124J of the Communications Act 2003 insert –
- “124K Subscriber appeals**
- (1) The requirements concerning subscriber appeals are –
- (a) for the purposes of section 124E(1)(h), the requirements of subsections (2) to (8); and 25
- (b) for the purposes of section 124J(1)(b), the requirements of subsections (2) to (11).
- (2) The requirements of this subsection are –
- (a) that the code confers on subscribers the right to bring a subscriber appeal and, in the case of a technical obligations code, a further right of appeal to the First-tier Tribunal; 30
- (b) that there is a person who, under the code, has the function of determining subscriber appeals;
- (c) that that person is for practical purposes independent (so far as determining subscriber appeals is concerned) of internet service providers, copyright owners and OFCOM; and 35
- (d) that there are adequate arrangements under the code for the costs incurred by that person in determining subscriber appeals to be met by internet service providers, copyright owners and the subscriber concerned. 40
- (3) The code must provide for the grounds of appeal (so far as an appeal relates to, or to anything done by reference to, a copyright infringement report) to include the following –
- (a) that the apparent infringement to which the report relates was not an infringement of copyright; 45
- (b) that the report does not relate to the subscriber’s IP address at the time of the apparent infringement.

- (4) The code must provide for the grounds of appeal to include contravention by the copyright owner or internet service provider of the code or of an obligation regulated by the code.
- (5) The code must provide that an appeal on any grounds must be determined in favour of the subscriber unless the copyright owner or internet service provider shows that, as respects any copyright infringement report to which the appeal relates or by reference to which anything to which the appeal relates was done (or, if there is more than one such report, as respects each of them) – 5
- (a) the apparent infringement was an infringement of copyright, and 10
  - (b) the report relates to the subscriber’s IP address at the time of that infringement.
- (6) The code must provide that, where a ground mentioned in subsection (3) is relied on, the appeal must be determined in favour of the subscriber if the subscriber shows that – 15
- (a) the act constituting the apparent infringement to which the report relates was not done by the subscriber, and
  - (b) the subscriber took reasonable steps to prevent other persons infringing copyright by means of the internet access service. 20
- (7) The powers of the person determining subscriber appeals must include power –
- (a) to secure so far as practicable that a subscriber is not prejudiced for the purposes of the copyright infringement provisions by an act or omission in respect of which an appeal is determined in favour of the subscriber; 25
  - (b) to make an award of compensation to be paid by a copyright owner or internet service provider to a subscriber affected by such an act or omission; and
  - (c) where the appeal is determined in favour of the subscriber, to direct the copyright owner or internet service provider to reimburse the reasonable costs of the subscriber. 30
- (8) The code must provide that the power to direct the reimbursement of costs under subsection (7)(c) is to be exercised to award reasonable costs to a subscriber whose appeal is successful, unless the person deciding the appeal is satisfied that it would be unjust to give such a direction having regard to all the circumstances including the conduct of the parties before and during the proceedings. 35
- (9) In the case of a technical obligations code, the powers of the person determining subscriber appeals must include power – 40
- (a) on an appeal in relation to a technical measure or proposed technical measure –
    - (i) to confirm the measure;
    - (ii) to require the measure not to be taken or to be withdrawn; 45
    - (iii) to substitute any other technical measure that the internet service provider has power to take;
  - (b) to exercise the power mentioned in paragraph (a)(ii) or (iii) where an appeal is not upheld but the person determining it is

- satisfied that there are exceptional circumstances that justify the exercise of the power;
- (c) to take any steps that OFCOM could take in relation to the act or omission giving rise to the technical measure; and
  - (d) to remit the decision whether to confirm the technical measure, or any matter relating to that decision, to OFCOM. 5
- (10) In the case of a technical obligations code, the code must make provision –
- (a) enabling a determination of a subscriber appeal to be appealed to the First-tier Tribunal, including on grounds that it was based on an error of fact, wrong in law or unreasonable; 10
  - (b) giving the First-tier Tribunal, in relation to an appeal to it, the powers mentioned in subsections (7) and (9); and
  - (c) in relation to recovery of costs awarded by the Tribunal.
- (11) In the case of a technical obligations code, the code must include provision to secure that a technical measure is not taken against a subscriber until – 15
- (a) the period for bringing a subscriber appeal, or any further appeal to the First-tier Tribunal, in relation to the proposed measure has ended (or the subscriber has waived the right to appeal); and 20
  - (b) any such subscriber appeal or further appeal has been determined, abandoned or otherwise disposed of.”
- 15 Enforcement of obligations**
- After section 124K of the Communications Act 2003 insert – 25
- “124L Enforcement of obligations**
- (1) Sections 94 to 96 apply in relation to a contravention of an initial obligation or a technical obligation, or a contravention of an obligation under section 124G(6), as they apply in relation to a contravention of a condition set out under section 45. 30
  - (2) The amount of the penalty imposed under section 96 as applied by this section is to be such amount not exceeding £250,000 as OFCOM determine to be –
    - (a) appropriate; and
    - (b) proportionate to the contravention in respect of which it is imposed. 35  - (3) In making that determination OFCOM must have regard to –
    - (a) any representations made to them by the internet service provider or copyright owner on whom the penalty is imposed;
    - (b) any steps taken by the provider or owner towards complying with the obligations contraventions of which have been notified to the provider under section 94 (as applied); and 40
    - (c) any steps taken by the provider or owner for remedying the consequences of those contraventions.

- (4) The Secretary of State may by order amend this section so as to substitute a different maximum penalty for the maximum penalty for the time being specified in subsection (2).
- (5) No order is to be made containing provision authorised by subsection (4) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.” 5

## 16 Sharing of costs

After section 124L of the Communications Act 2003 insert –

### “124M Sharing of costs

- (1) The Secretary of State may by order specify provision that must be included in an initial obligations code or a technical obligations code about payment of contributions towards costs incurred under the copyright infringement provisions. 10
- (2) Any provision specified under subsection (1) must relate to payment of contributions by one or more of the following only – 15
- (a) copyright owners;
  - (b) internet service providers;
  - (c) in relation to a subscriber appeal or a further appeal by a subscriber to the First-tier Tribunal, the subscriber.
- (3) Provision specified under subsection (1) may relate to, in particular – 20
- (a) payment by a copyright owner of a contribution towards the costs that an internet service provider incurs;
  - (b) payment by a copyright owner or internet service provider of a contribution towards the costs that OFCOM incur.
- (4) Provision specified under subsection (1) may include, in particular – 25
- (a) provision about costs incurred before the provision is included in an initial obligations code or a technical obligations code;
  - (b) provision for payment in advance of expected costs (and for reimbursement of overpayments where the costs incurred are less than expected); 30
  - (c) provision about how costs, expected costs or contributions must be calculated;
  - (d) other provision about when and how contributions must be paid.
- (5) No order is to be made under this section unless a draft of the order has been laid before Parliament and approved by a resolution of each House.” 35

## 17 Interpretation and consequential provision

- (1) After section 124M of the Communications Act 2003 insert –

### “124N Interpretation

In sections 124A to 124M and this section – 40

- “apparent infringement”, in relation to a copyright infringement report, means the infringement of copyright that the report states appears to have taken place;
- “copyright infringement list” has the meaning given in section 124B(2); 5
- “copyright infringement provisions” means sections 124A to 124M and this section;
- “copyright infringement report” has the meaning given in section 124A(3);
- “copyright owner” means – 10
- (a) a copyright owner within the meaning of Part 1 of the Copyright, Designs and Patents Act 1988 (see section 173 of that Act); or
  - (b) someone authorised by that person to act on the person’s behalf; 15
- “copyright work” has the same meaning as in Part 1 of the Copyright, Designs and Patents Act 1988 (see section 1(2) of that Act);
- “initial obligations” has the meaning given in section 124C(1);
- “initial obligations code” has the meaning given in section 124A(2); 20
- “internet access service” means an electronic communications service that –
- (a) is provided to a subscriber;
  - (b) consists entirely or mainly of the provision of access to the internet; and 25
  - (c) includes the allocation of an IP address or IP addresses to the subscriber to enable that access;
- “internet service provider” means a person who provides an internet access service; 30
- “IP address” means an internet protocol address;
- “subscriber”, in relation to an internet access service, means a person who –
- (a) receives the service under an agreement between the person and the provider of the service; and 35
  - (b) does not receive it as a communications provider;
- “subscriber appeal” means –
- (a) in relation to an initial obligations code, an appeal by a subscriber on grounds specified in the code in relation to – 40
    - (i) the making of a copyright infringement report;
    - (ii) notification under section 124A(4);
    - (iii) the inclusion or proposed inclusion of an entry in a copyright infringement list; or
    - (iv) any other act or omission in relation to an initial obligation or an initial obligations code; 45
  - (b) in relation to a technical obligations code, an appeal by a subscriber on grounds specified in the code in relation to –
    - (i) the proposed taking of a technical measure; or 50

- (ii) any other act or omission in relation to a technical obligation or a technical obligations code;  
 “technical measure” has the meaning given in section 124G(3);  
 “technical obligation” has the meaning given in section 124G(2);  
 “technical obligations code” means a code in force under section 124I.” 5
- (2) In section 135(3) of that Act (information required for purposes of Chapter 1 functions), after paragraph (i) insert –  
 “(ia) preparing a report under section 124F;  
 (ib) carrying out an assessment, taking steps or providing a report under section 124G;”. 10
- (3) In Schedule 8 to that Act (decisions not subject to appeal to the Competition Appeal Tribunal), after paragraph 9 insert –  
 “9A A decision relating to any of sections 124A to 124N or to anything done under them.” 15
- 18 Preventing access to specified online locations for the prevention of online copyright infringement**
- In Part 1 of the Copyright, Designs and Patents Act 1988, after section 97A insert – 20
- “97B Preventing access to specified online locations for the prevention of online copyright infringement**
- (1) The High Court (in Scotland, the Court of Session) shall have power to grant an injunction against a service provider, requiring it to prevent access to online locations specified in the order of the Court for the prevention of online copyright infringement. 25
- (2) In determining whether to grant an injunction under subsection (1), the Court shall have regard to the following matters –  
 (a) whether a substantial proportion of the content accessible at or via each specified online location infringes copyright, 30  
 (b) the extent to which the operator of each specified online location has taken reasonable steps to prevent copyright infringement content being accessed at or via that online location or taken reasonable steps to remove copyright infringing content from that online location (or both), 35  
 (c) whether the service provider has itself taken reasonable steps to prevent access to the specified online location,  
 (d) any issues of national security raised by the Secretary of State,  
 (e) the extent to which the copyright owner has made reasonable efforts to facilitate legal access to content, 40  
 (f) the importance of preserving human rights, including freedom of expression, and the right to property, and  
 (g) any other matters which appear to the Court to be relevant.
- (3) An application for an injunction under subsection (1) shall be made on notice to the service provider and to the operator of each specified 45

online location in relation to which an injunction is sought and to the Secretary of State.

- (4) Where –
- (a) the Court grants an injunction under subsection (1) upon the application of an owner of copyright whose copyright is infringed by the content accessible at or via each specified online location in the injunction, and 5
  - (b) the owner of copyright before making the application made a written request to the service provider giving it a reasonable period of time to take measures to prevent its service being used to access the specified online location in the injunction, and no steps were taken, 10
- the Court shall order the service provider to pay the copyright owner’s costs of the application unless there were exceptional circumstances justifying the service provider’s failure to prevent access despite notification by the copyright owner. 15
- (5) In this section –
- “copyright owner” includes a licensee with an exclusive licence within the meaning of section 92 of this Act,
  - “infringing content” means content which is produced or made available in infringement of copyright, 20
  - “online location” means a location on the internet, a mobile data network or other data network at or via which copyright infringing content is accessible,
  - “operator” means a person or persons in joint or sole control of the decisions to make content accessible at or via an online location, and 25
  - “service provider” has the meaning given to it by section 97A(3) of this Act.
- (6) Subsections (1) to (5) shall come into force on such day as the Secretary of State may by order appoint not less than 3 months and not more than 12 months after subsections (1) to (5) have been notified to the Commission of the European Communities (“the Commission”) in accordance with the obligations of notification imposed by Directive 98/34/EC. 30 35
- (7) If any comments are received from Member States of the European Union or the Commission after subsections (1) to (5) have been so notified and the Secretary of State reasonably considers amendments are necessary to give effect to such comments, he may make the necessary regulations within the period referred to in subsection (6)(a), to amend subsections (1) to (5).” 40

*Powers in relation to internet domain registries***19 Powers in relation to internet domain registries**

After section 124N of the Communications Act 2003 insert –

*“Powers in relation to internet domain registries*

<b>124O Notification of failure in relation to internet domain registry</b>	5
(1) This section applies where the Secretary of State –	
(a) is satisfied that a serious relevant failure in relation to a qualifying internet domain registry is taking place or has taken place, and	
(b) wishes to exercise the powers under section 124P or 124R.	10
(2) The Secretary of State must notify the internet domain registry, specifying the failure and a period during which the registry has the opportunity to make representations to the Secretary of State.	
(3) There is a relevant failure in relation to a qualifying internet domain registry if –	15
(a) the registry, or any of its registrars or end-users, engages in prescribed practices that are unfair or involve the misuse of internet domain names, or	
(b) the arrangements made by the registry for dealing with complaints in connection with internet domain names do not comply with prescribed requirements.	20
(4) A relevant failure is serious, for the purposes of this section, if it has adversely affected or is likely adversely to 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	25
(b) the interests of consumers or members of the public in the United Kingdom or a part of the United Kingdom.	
(5) In subsection (3) “prescribed” means prescribed by regulations made by the Secretary of State.	30
(6) Before making regulations under subsection (3) the Secretary of State must consult such persons as the Secretary of State considers appropriate.	
(7) In this section and sections 124P to 124R –	
“end-user”, in relation to a qualifying internet domain registry, means a person who has been or wants to be allocated an internet domain name that is or would be included in the register maintained by the registry;	35
“qualifying internet domain registry” means a relevant body that –	40
(a) maintains a relevant register of internet domain names, and	
(b) operates a computer program or server that forms part of the system that enables the names included in the	

- register to be used to access internet protocol addresses or other information by means of the internet;
- “registrar”, in relation to a qualifying internet domain registry, means a person authorised by the registry to act on behalf of end-users in connection with the registration of internet domain names; 5
- “relevant body” means a company formed and registered under the Companies Act 2006 or a limited liability partnership;
- “relevant register of internet domain names” means a register of—
- (a) the names of second level internet domains that form part of the same UK-related top level internet domain, or 10
- (b) the names of third level internet domains that form part of the same UK-related second level internet domain;
- “second level internet domain” means an internet domain indicated by the last two elements of an internet domain name; 15
- “third level internet domain” means an internet domain indicated by the last three elements of an internet domain name;
- “top level internet domain” means an internet domain indicated by the last element of an internet domain name. 20
- (8) An internet domain 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 sub-domains are connected with the United Kingdom or a part of the United Kingdom.” 25

## 20 Appointment of manager of internet domain registry

- (1) After section 124O of the Communications Act 2003 insert—

### “124P Appointment of manager of internet domain registry

- (1) This section applies where—
- (a) the Secretary of State has given a notification under section 124O to a qualifying internet domain registry specifying a failure, 30
- (b) the period allowed for making representations has expired, and
- (c) the Secretary of State is satisfied that the registry has not taken the steps that the Secretary of State considers appropriate for remedying the failure. 35
- (2) The Secretary of State may by order appoint a manager in respect of the property and affairs of the internet domain registry for the purpose of securing that the registry takes the steps described in subsection (1)(c).
- (3) The person appointed may be anyone whom the Secretary of State thinks appropriate. 40
- (4) The appointment of the manager does not affect—
- (a) a right of a person to appoint a receiver of the registry’s property, or
- (b) the rights of a receiver appointed by a person other than the Secretary of State. 45

- (5) The Secretary of State must –  
 (a) keep the order under review, and  
 (b) if appropriate, discharge all or part of the order.
- (6) The Secretary of State must discharge the order on the appointment of a person to act as administrative receiver, administrator, provisional liquidator or liquidator of the registry. 5
- (7) The Secretary of State must discharge the order before the end of the period of 2 years beginning with the day on which it was made (but this does not prevent the Secretary of State from making a further order in the same or similar terms). 10
- (8) When discharging an order under this section, the Secretary of State may make savings and transitional provision.
- (9) The Secretary of State must send a copy of an order made under this section to the registry as soon as practicable after it is made.
- (10) In subsection (4), “receiver” includes a manager (other than a manager appointed by the registry) and a person who is appointed as both receiver and manager. 15
- (11) In subsection (6) –  
 “administrative receiver” means an administrative receiver within the meaning of section 251 of the Insolvency Act 1986 or Article 5(1) of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)); 20  
 “administrator” means a person appointed to manage the affairs, business and property of the registry under Schedule B1 to that Act or Schedule B1 to that Order. 25

#### **124Q Functions of manager etc**

- (1) An order under section 124P may make provision about the functions to be exercised by, and the powers of, the manager.
- (2) The order may, in particular –  
 (a) provide for the manager to have such of the functions of the registry’s directors as are specified in the order (including functions exercisable only by a particular director or class of directors), and 30  
 (b) provide for one or more of the registry’s directors to be prevented from exercising any of those functions. 35
- (3) The order may make provision about the remuneration of the manager, including in particular –  
 (a) provision for the amount of the remuneration to be determined by the Secretary of State, and  
 (b) provision for the remuneration to be payable from the property of the registry. 40
- (4) In carrying out the functions conferred by the order, the manager acts as the registry’s agent.
- (5) The Secretary of State may apply to the court for directions in relation to any matter arising in connection with the functions or powers of the manager (and the costs of the application are to be paid by the registry). 45

- (6) On an application under subsection (5) the court may give such directions or make such orders as it thinks fit.
- (7) In this section “the court” means –
- (a) in England and Wales, the High Court or a county court,
  - (b) in Scotland, the Court of Session or the sheriff, and
  - (c) in Northern Ireland, the High Court.
- (8) Where the registry is a limited liability partnership, this section applies as if references to a director of the registry were references to a member of the limited liability partnership.”
- (2) In section 192(1)(d) of that Act (appeals against decisions of the Secretary of State), after sub-paragraph (ii) insert –
- “(ia) an order under section 124P;”.
- (3) In section 402(1) of that Act (powers of the Secretary of State to make orders and regulations), after “conferred by” insert “section 124P and”.
- 21 Application to court to alter constitution of internet domain registry**
- After section 124Q of the Communications Act 2003 insert –
- “124R Application to court to alter constitution of internet domain registry**
- (1) This section applies where –
- (a) the Secretary of State has given a notification under section 124O to a qualifying internet domain registry specifying a failure,
  - (b) the period allowed for making representations has expired, and
  - (c) the Secretary of State is satisfied that the registry has not taken the steps that the Secretary of State considers appropriate for remedying the failure.
- (2) The Secretary of State may apply to the court (as defined in section 124Q) for an order under this section.
- (3) The court may make an order –
- (a) making alterations of the registry’s constitution, and
  - (b) requiring the registry not to make any alterations, or any specified alterations, of its constitution without the leave of the court.
- (4) An order under this section may contain only such provision as the court considers appropriate for securing that the registry remedies the failure specified in the notification under section 124O.
- (5) In this section –
- “constitution” means, in the case of a company, the articles of association and, in the case of a limited liability partnership, the limited liability partnership agreement;
- “limited liability partnership agreement” means the agreement or agreements, whether express or implied, between the members of a limited liability partnership, and between the partnership and the members of the partnership, determining –
- (a) the mutual rights and duties of the members, and

(b) their rights and duties in relation to the partnership.”

*Channel Four Television Corporation*

**22 Functions of C4C in relation to media content**

(1) Before section 199 of the Communications Act 2003 insert—

- |  |    |
|--|----|
| <b>“198A C4C’s functions in relation to media content</b>  | 5  |
| (1) C4C must participate in—   |    |
| (a) the making of a broad range of relevant media content of high quality that, taken as a whole, appeals to the tastes and interests of a culturally diverse society,                       |    |
| (b) the making of high quality films intended to be shown to the general public at the cinema in the United Kingdom, and   | 10 |
| (c) the broadcasting and distribution of such content and films.   |    |
| (2) C4C must, in particular, participate in—   |    |
| (a) the making of relevant media content that consists of news and current affairs,  | 15 |
| (b) the making of relevant media content that appeals to the tastes and interests of older children and young adults,  |    |
| (c) the broadcasting or distribution by means of electronic communications networks of feature films that reflect cultural activity in the United Kingdom (including third party films), and | 20 |
| (d) the broadcasting or distribution of relevant media content by means of a range of different types of electronic communications networks.   |    |
| (3) In performing their duties under subsections (1) and (2) C4C must—   | 25 |
| (a) promote measures intended to secure that people are well-informed and motivated to participate in society in a variety of ways, and  |    |
| (b) contribute towards the fulfilment of the public service objectives (as defined in section 264A).   | 30 |
| (4) In performing their duties under subsections (1) to (3) C4C must—  |    |
| (a) support the development of people with creative talent, in particular—   |    |
| (i) people at the beginning of their careers in relevant media content or films, and   | 35 |
| (ii) people involved in the making of innovative content and films,  |    |
| (b) support and stimulate well-informed debate on a wide range of issues, including by providing access to information and views from around the world and by challenging established views, | 40 |
| (c) promote alternative views and new perspectives, and  |    |
| (d) provide access to material that is intended to inspire people to make changes in their lives.  |    |
| (5) In performing those duties C4C must have regard to the desirability of—  | 45 |

- (a) working with cultural organisations,
  - (b) encouraging innovation in the means by which relevant media content is broadcast or distributed, and
  - (c) promoting access to and awareness of services provided in digital form. 5
- (6) In this section –
  - “participate in” includes invest in or otherwise procure;
  - “relevant media content” means material, other than advertisements, which is included in any of the following services that are available to members of the public in all or part of the United Kingdom – 10
    - (a) television programme services, additional television services or digital additional television services,
    - (b) on-demand programme services, or
    - (c) other services provided by means of the internet where there is a person who exercises editorial control over the material included in the service; 15

and a film is a “third party film” if C4C did not participate in making it.
- (7) The services that are to be taken for the purposes of this section to be available to members of the public include any service which – 20
  - (a) is available for reception by members of the public (within the meaning of section 361); or
  - (b) is available for use by members of the public (within the meaning of section 368R(4)).”
- (2) In section 199(2) of that Act (functions of C4C), for “C4C’s primary functions are” substitute “In subsection (1) “primary functions” means – 25
  - (za) the performance of C4C’s duties under section 198A;”

and in the heading for that section, at the beginning insert “Other”.
- (3) In Schedule 9 to that Act (arrangements about carrying on C4C’s activities) – 30
  - (a) in paragraph 1(1), after paragraph (a) (but before “and”) insert –
    - “(aa) as soon as practicable after the day on which section 198A comes into force;”,
  - (b) in paragraph 10, in the definition of “relevant licence period”, after paragraph (a) (but before “and”) insert – 35
    - “(aa) in relation to the notification under paragraph 1(1)(aa), the period beginning on the day on which section 198A comes into force and ending on the last day of the first licence period to expire after that day;”, and
  - (c) in that definition, in paragraph (b), for “any other such notification” substitute “any other notification under paragraph 1”. 40
- (4) Accordingly, in the heading for Part 3 of that Act (television and radio services), at the end insert “ETC”.
- (5) In section 24(1) of the Broadcasting Act 1990 (Channel 4 to be provided by C4C), for “The function of the Corporation shall be to” substitute “The Corporation must”. 45
- (6) In paragraph 1 of Schedule 3 to that Act (status and capacity of C4C) –

- (a) in sub-paragraph (4)(b), for “primary functions” substitute “Channel 4 functions”, and
- (b) after that sub-paragraph insert—
  - “(5) In sub-paragraph (4) “Channel 4 functions” means—
    - (a) securing the continued provision of Channel 4, and
    - (b) the fulfilment of the public service remit for that Channel under section 265 of the Communications Act 2003.”

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### 23 Monitoring and enforcing C4C’s media content duties

- (1) After section 198A of the Communications Act 2003 insert— 10

#### “198B Statement of media content policy

- (1) C4C must prepare a statement of media content policy—
  - (a) at the same time as they prepare the first statement of programme policy that is prepared under section 266 after this section comes into force, and
  - (b) subsequently at annual intervals.
- (2) C4C must monitor their performance in carrying out the proposals contained in their statements of media content policy. 15
- (3) A statement of media content policy must—
  - (a) set out C4C’s proposals for securing that, during the following year, they will discharge their duties under section 198A, and
  - (b) include a report on their performance in carrying out the proposals contained in the previous statement.
- (4) In preparing the statement, C4C must—
  - (a) have regard to guidance given by OFCOM, and
  - (b) consult OFCOM.
- (5) C4C must publish each statement of media content policy—
  - (a) as soon as practicable after its preparation is complete, and
  - (b) in such manner as they consider appropriate, having regard to any guidance given by OFCOM.
- (6) OFCOM must—
  - (a) from time to time review the guidance for the time being in force for the purposes of this section, and
  - (b) revise that guidance as they think fit.

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#### 198C OFCOM reports on C4C’s media content duties

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- (1) For each relevant period, OFCOM must—
  - (a) carry out a review of the extent to which C4C have discharged their duties under section 198A, and
  - (b) prepare a report on the matters found on the review.
- (2) OFCOM must publish each report under this section—
  - (a) as soon as practicable after its preparation is complete, and
  - (b) in such manner as they consider appropriate.

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- (3) “Relevant period” means each period selected by OFCOM for the purposes of section 264(1)(b) that ends after this section comes into force.

#### **198D Directions in relation to C4C’s media content duties**

- (1) This section applies if OFCOM – 5
- (a) are of the opinion that C4C have failed to perform one or more of their duties under section 198A or section 198B(1), (3) or (5),
  - (b) are of the opinion that the failure is serious and is not excused by economic or market conditions, and
  - (c) determine that the situation requires the exercise of their functions under this section. 10
- (2) In making a determination under subsection (1)(c), OFCOM must have regard, in particular, to – 15
- (a) C4C’s statements of media content policy,
  - (b) C4C’s effectiveness and efficiency in monitoring their own performance, and
  - (c) general economic and market conditions affecting the provision of relevant media content (as defined in section 198A).
- (3) OFCOM may give directions to C4C to do one or both of the following – 20
- (a) to revise the latest statement of media content policy in accordance with the direction;
  - (b) to take such steps for remedying the failure as OFCOM specify in the direction.
- (4) A direction given under this section must set out – 25
- (a) a reasonable timetable for complying with it, and
  - (b) the factors that OFCOM will take into account in determining whether or not a failure has been remedied.
- (5) OFCOM must consult C4C before giving a direction under this section.” 30
- (2) After section 271 of that Act insert –

#### **“271A Remedying failure by C4C to perform media content duties**

- (1) This section applies if OFCOM are satisfied – 35
- (a) that C4C have failed to comply with a direction under section 198D in respect of a failure to perform one or more of their duties under section 198A,
  - (b) that C4C are still failing to perform that duty or those duties, and
  - (c) that it would be both reasonable and proportionate to the seriousness of the failure to vary the licence under which Channel 4 is licensed (“the Channel 4 licence”) in accordance with this section. 40
- (2) OFCOM may, by notice to C4C, vary the Channel 4 licence by adding such conditions, or making such modifications of conditions, as OFCOM consider appropriate for remedying (entirely or partly) C4C’s failure to perform the duty or duties under section 198A. 45

- (3) If, at any time following such a variation, OFCOM consider that any of the additional conditions or modifications is no longer necessary, they may again vary the licence with effect from such time as they may determine.
- (4) OFCOM must consult C4C before exercising their power under this section to vary the Channel 4 licence.” 5

*Independent television services*

**24 Determination of Channel 3 licence areas**

- (1) In section 14 of the Broadcasting Act 1990 (establishment of Channel 3) – 10
- (a) omit subsection (7) (restriction on providing a single Channel 3 service for the whole of England or the whole of Scotland), and
- (b) after that subsection insert –
- “(7A) The areas mentioned in subsection (2) must at all times include at least one area that comprises, or falls entirely within, Scotland.” 15
- (2) Section 216 of the Communications Act 2003 (renewal of Channel 3 and 5 licences) is amended as follows.
- (3) For subsection (4) substitute –
- “(4) Where OFCOM receive an application under this section for the renewal of a licence they must – 20
- (a) decide whether to renew the licence; and
- (b) notify the applicant of their decision.
- (4A) If OFCOM decide to renew the licence they must –
- (a) in the case of a licence to provide a Channel 3 service, determine in accordance with section 216A the area for which the licence will be renewed; 25
- (b) in every case, determine in accordance with section 217 the financial terms on which the licence will be renewed; and
- (c) notify the applicant of their determinations.”
- (4) After subsection (6) insert – 30
- “(6A) OFCOM may also decide not to renew a licence to provide a Channel 3 service if, for the licensing period in question, they have renewed or propose to renew one or more other licences to provide a Channel 3 service for all of the area to which the licence relates.”
- (5) In subsection (8)(a) for “subsection (4)(c)” substitute “subsection (4A)(c)”. 35
- (6) In subsection (10) for the words from “, in accordance” to the end substitute “ –
- (a) to any determination under subsection (4A)(a);
- (b) in accordance with the determination under subsection (4A)(b), to the requirements imposed by section 217(4).”

(7) After section 216 of that Act insert –

**“216A Renewal of Channel 3 licences: determination of licence areas**

- (1) This section applies if OFCOM decide under section 216(4) to renew a licence to provide a Channel 3 service.
- (2) The area determined under section 216(4A)(a) for the licence – 5
- (a) must include all or part of the area to which the licence being renewed currently relates, and
- (b) may include all or part of another area if the holder of the licence to provide a Channel 3 service for the other area gives (and does not withdraw) consent before the determination is made.” 10

(8) In section 217(1) of that Act, in the opening words, for “section 216(4)(b)” substitute “section 216(4A)(b)”.

**25 Initial expiry date for Channel 3 and 5 and public teletext licences**

- (1) Section 224 of the Communications Act 2003 (initial expiry date for licences) is amended as follows. 15
- (2) For subsection (1) (meaning of “initial expiry date”) substitute –
- “(1) Subject to any postponement under this section, for the purposes of this Part the initial expiry date for the following types of licence is 31 December 2014 – 20
- (a) a licence to provide a Channel 3 service;
- (b) a licence to provide Channel 5;
- (c) the licence to provide the public teletext service.”
- (3) In subsection (2) (power to postpone initial expiry date), at the end insert “for one or more of the types of licence mentioned in subsection (1)”. 25
- (4) Omit subsection (3) (no postponement if digital switchover is to occur before 1 July 2013).

**26 Initial expiry date: consequential provision**

- (1) Chapter 2 of Part 3 of the Communications Act 2003 (regulatory structure for independent television services) is amended as follows. 30
- (2) In each of sections 214(6) and 216(12) (definition of “licensing period” for Channels 3 and 5) –
- (a) in the opening words, after “licensing period” insert “, in relation to a licence,”,
- (b) in paragraph (a), at the end (but before “or”) insert “for that type of licence”, and 35
- (c) in paragraph (b), at the end insert “for that type of licence”.
- (3) In each of sections 219(3) and 222(12) (definition of “licensing period” for public teletext service) – 40
- (a) in paragraph (a), at the end (but before “or”) insert “for the licence to provide the public teletext service”, and
- (b) in paragraph (b), at the end insert “for that type of licence”.

- (4) In section 225(3) (period for review of financial terms of replacement Channel 3 and 5 and public teletext licences), after “initial expiry date” insert “for that type of licence”.
- (5) In section 228(8) (giving effect to review of financial terms of replacement licence), in the definition of “licensing period” – 5  
 (a) after ““licensing period”” insert “, in relation to a licence,”,  
 (b) in paragraph (a), at the end (but before “or”) insert “for that type of licence”, and  
 (c) in paragraph (b), at the end insert “for that type of licence”.
- (6) Section 229 (report in anticipation of new licensing round) is amended as follows. 10
- (7) In subsection (1), after “licensing period” insert “for a type of relevant licence”.
- (8) In subsection (2) –  
 (a) for “holders of relevant licences” substitute “holder or holders of that type of licence”, and 15  
 (b) for “licence holders” substitute “licence holder or holders”.
- (9) In subsection (3)(a) and (b), for “relevant licences” substitute “that type of licence”.
- (10) After subsection (4) insert –  
 “(4A) Subsection (5) applies where the Secretary of State – 20  
 (a) receives a report under this section in anticipation of the end of a licensing period for a type of relevant licence, and  
 (b) subsequently makes an order under section 224 extending the licensing period for that type of licence.”
- (11) In subsection (5) – 25  
 (a) for the words from the beginning to “the order –” substitute “Where this subsection applies –”, and  
 (b) in paragraph (a), for “he” substitute “the Secretary of State” and at the end (but before “and”) insert “for that type of licence”.
- (12) In subsection (6), in the definition of “licensing period” – 30  
 (a) in the opening words, after ““licensing period”” insert “, in relation to a licence,”,  
 (b) in paragraph (a), at the end (but before “or”) insert “for that type of licence”, and  
 (c) in paragraph (b), at the end insert “for that type of licence”. 35
- (13) Section 230 (orders suspending rights of renewal) is amended as follows.
- (14) In subsection (2), for “licences for the time being in force that are of a description specified in the order are” substitute “a licence for the time being in force that is of a description specified in the order is”.
- (15) In that subsection, at the end insert “(but see subsection (7))”. 40
- (16) In each of subsections (3), (4), (5) and (8)(b), for “licences” substitute “a licence”.
- (17) In subsection (7), for “Channel 3 licences” substitute “a Channel 3 licence”.
- (18) In subsection (11), in the definition of “initial licensing period” –

- (a) after ““initial licensing period”” insert “, in relation to a licence,”, and
- (b) at the end (but before “and”) insert “for that type of licence”.

## 27 Report by OFCOM on public teletext service

After section 218 of the Communications Act 2003 insert –

### “218A Duty to report on public teletext service

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- (1) OFCOM must –
  - (a) prepare a report on the public teletext service, and
  - (b) send it to the Secretary of State as soon as practicable after this section comes into force.
- (2) OFCOM must prepare and send to the Secretary of State further reports on the public teletext service when asked to do so by the Secretary of State. 10
- (3) Each report must include, in particular –
  - (a) an assessment of the advantages and disadvantages for members of the public of the public teletext service being provided, and 15
  - (b) an assessment of whether the public teletext service can be provided at a cost to the licence holder that is commercially sustainable.
- (4) An assessment under subsection (3)(a) must take account of alternative uses for the capacity that would be available if the public teletext service were not provided. 20
- (5) OFCOM must publish every report under this section –
  - (a) as soon as practicable after they send it to the Secretary of State, and 25
  - (b) in such manner as they consider appropriate.
- (6) “Capacity” means capacity on the frequencies on which Channel 3 services, Channel 4, S4C and television multiplex services are broadcast.”

## 28 Power to remove OFCOM’s duty to secure provision of public teletext service

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- (1) Section 218 of the Communications Act 2003 (provision of public teletext service) is amended as follows.
- (2) In subsection (1) –
  - (a) for “must do all that they can to” substitute “may”, and
  - (b) at the end insert “and complies with this section”. 35
- (3) In subsection (7) –
  - (a) for “OFCOM must exercise their powers” substitute “If there is a public teletext provider, OFCOM must take account of the requirements of the public teletext service when exercising their powers”, and
  - (b) omit the words after paragraph (b). 40
- (4) Accordingly, in the heading of the section, for “Duty” substitute “Power”.

- (5) Omit section 221 of that Act (replacement of existing public teletext provider's licence).
- (6) In section 276(1) of that Act (co-operation with the public teletext provider), for "the provider of the service or channel" substitute "if there is a public teletext provider, the provider of the Channel 3 service or Channel 4". 5
- (7) In section 362 of that Act (interpretation of Part 3), in the definition of "the public teletext service", for "is required to be" substitute "is or may be".
- (8) The amendments made by this section and the entries in Schedule 3 relating to sections 218(7) and 221 of the Communications Act 2003 (and section 47 so far as relating to those entries) come into force on such day as the Secretary of State may by order made by statutory instrument appoint. 10
- (9) An order may not be made under subsection (8) unless—
- (a) condition A or B is met,
  - (b) the Secretary of State is satisfied that making the order is in the public interest, and 15
  - (c) a draft of the instrument containing the order has been laid before, and approved by a resolution of, each House of Parliament.
- (10) Condition A is that the Secretary of State has laid before Parliament a report by the Office of Communications ("OFCOM") under section 218A of the Communications Act 2003 (report on public teletext service). 20
- (11) Condition B is that OFCOM have invited applications for the licence to provide the public teletext service (within the meaning of Part 3 of the Communications Act 2003) and—
- (a) no applications were made by the closing date, or
  - (b) OFCOM considered that they could not award the licence to any of the applicants. 25

## 29 Appointed providers of regional or local news

After section 287 of the Communications Act 2003 insert—

### "287A Appointed providers of regional or local news

- (1) OFCOM may— 30
- (a) appoint a person to provide relevant media content consisting of regional news or local news (or both) for all or part of a designated Channel 3 area, and
  - (b) pay amounts to the appointed person for use in, or in connection with, the provision of such content. 35
- (2) OFCOM must do all that they can to secure that a person does not become or remain a person appointed under this section if the person is a disqualified person under paragraph 1 of Part 2 of Schedule 2 to the 1990 Act in relation to a Broadcasting Act licence.
- (3) Where a person has been appointed under this section to provide news for all or part of a designated Channel 3 area, the regulatory regime for the regional Channel 3 service provided for that area includes the conditions (if any) that OFCOM consider appropriate for securing that the service includes news programmes provided by that person. 40

- (4) OFCOM must publish the criteria that they intend to use in making an appointment under this section.
- (5) The appointment—
- (a) must specify the period for which the person is appointed, 5
  - (b) must specify the area for which the person is appointed (the “appointed area”),
  - (c) may specify the parts of the appointed area, or the communities, for which the appointed person is to provide local news,
  - (d) may make provision for the variation of the appointment, including the appointed area, 10
  - (e) must be made subject to such conditions relating to the form, character and quality of the relevant media content as OFCOM consider appropriate,
  - (f) must be made subject to such conditions as OFCOM consider appropriate for securing the standards objectives in section 319(2)(c) and (d) (impartiality and accuracy in programmes included in television and radio services), 15
  - (g) may be made subject to such other conditions as OFCOM consider appropriate, and
  - (h) may be revoked by OFCOM at any time. 20
- (6) The conditions may include, in particular, conditions requiring the appointed person to make the relevant media content available to—
- (a) the provider of the regional Channel 3 service for the appointed area,
  - (b) the body corporate appointed under section 280 as the appointed news provider for Channel 3, and 25
  - (c) any other person.
- (7) The conditions may also include, in particular—
- (a) conditions requiring the appointed person to broadcast or distribute the relevant media content, whether by means involving the use of an electronic communications network or otherwise, and 30
  - (b) conditions requiring the appointed person to support and promote the provision by other persons of regional news or local news (or both) for the appointed area, whether in the form of relevant media content or otherwise. 35
- (8) An amount paid under this section may be paid on such conditions as OFCOM consider appropriate, including—
- (a) conditions as to the use of the amount, and
  - (b) conditions as to the circumstances in which all or part of the amount must be repaid. 40
- (9) Before inviting applications for an appointment under this section to provide news for all or part of a designated Channel 3 area, OFCOM must—
- (a) give notice to the provider of the regional Channel 3 service for the area, and 45
  - (b) have regard to any representations made by the provider of that service during the period specified in the notice.

- (10) The period must end not less than 28 days after the date on which OFCOM give the notice.
- (11) Section 287(5) and (6) apply to a condition imposed under subsection (3) as they apply to a condition imposed under that section.
- (12) OFCOM must consult the Secretary of State – 5  
 (a) before publishing criteria in accordance with subsection (4), and  
 (b) before determining conditions to be imposed under subsection (5) or (8).
- (13) In this section – 10  
 “designated Channel 3 area” means an area –  
 (a) for which a regional Channel 3 service is provided, and  
 (b) which has been designated for the purposes of this section by OFCOM with the consent of the Secretary of State;  
 “local news”, for an appointed area, means news that is intended 15  
 to be of particular interest to persons living within a part of the area or to a particular community living within the area;  
 “regional news”, for an appointed area, means news that is intended to be of particular interest to persons living within the area; 20  
 “relevant media content” means material, other than advertisements, which is included, or is capable of being included, in any of the following services that are available to members of the public in all or part of the United Kingdom –  
 (a) television programme services, additional television services or digital additional television services, 25  
 (b) on-demand programme services, or  
 (c) other services provided by means of the internet where there is a person who exercises editorial control over the material included in the service. 30
- (14) The services that are to be taken for the purposes of this section to be available to members of the public include any service which –  
 (a) is available for reception by members of the public (within the meaning of section 361); or  
 (b) is available for use by members of the public (within the meaning of section 368R(4)).” 35

### 30 Broadcasting of programmes in Gaelic

- (1) Omit section 184 of the Broadcasting Act 1990 (broadcasting of programmes in Gaelic on Channel 3 in Scotland).
- (2) Accordingly, omit section 183A(7)(a) and (b) of that Act (representation in Gaelic Media Service of interests of holders of certain licences). 40

*Independent radio services***31 Digital switchover**

- (1) In section 86(6) of the Broadcasting Act 1990 (varying licences under Part 3), for “section 110(1)(b)” substitute “section 97B or 110(1)(b)”.
- (2) After section 97 of that Act insert –

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*“Digital switchover***97A Date for digital switchover**

- (1) The Secretary of State may give notice to OFCOM nominating a date for digital switchover for the post-commencement services specified or described in the notice.
- (2) When nominating a date, or considering whether to nominate a date, the Secretary of State must have regard to any report submitted by OFCOM or the BBC under section 67(1)(b) of the Broadcasting Act 1996 (review of digital radio broadcasting).
- (3) The Secretary of State –
- (a) may nominate different dates for different services, and
  - (b) may give notice to OFCOM withdrawing a nomination under this section.
- (4) In this section and section 97B –
- “date for digital switchover”, in relation to a post-commencement service, means a date after which it will cease to be appropriate for the service to continue to be provided in analogue form;
- “post-commencement service” means a local service, national service or additional service that is provided under a licence that –
- (a) was granted on or after the day on which this section comes into force, or
  - (b) has been renewed under section 103B or 104AA.

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**97B Variation of licence period after date for digital switchover nominated**

- (1) This section applies if the Secretary of State has nominated a date for digital switchover for a post-commencement service (and has not withdrawn the nomination).
- (2) If the period for which the licence to provide the post-commencement service is to continue in force ends after the date for digital switchover, OFCOM must by notice vary the licence so that the period ends on or before that date, subject to subsection (3).
- (3) OFCOM may not reduce the period so that it ends less than 2 years after the day on which they issue the notice, unless the licence holder consents to such a reduction.
- (4) If the period for which the licence to provide the post-commencement service is to continue in force ends on or before the date for digital switchover, OFCOM may not vary the licence so that the period ends after that date.”

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- (3) In section 199(5) of that Act (publication of notices by OFCOM), after “55,” insert “97B,”.

### 32 Renewal of national radio licences

- (1) In section 103A of the Broadcasting Act 1990 (renewal of national licences), in subsection (1), after “renewed” insert “under this section”. 5
- (2) After that section insert –

#### “103B Further renewal of national licences

- (1) A national licence may be renewed under this section on one occasion for a period of not more than 7 years beginning with the date of renewal (“the renewal period”) (subject to the following provisions of this section). 10
- (2) Subsections (2) to (9), (11) and (12) of section 103A apply in relation to the renewal of a licence under this section as they apply in relation to the renewal of a licence under section 103A, subject to subsection (3).
- (3) Those provisions apply in relation to the renewal of a licence under this section as if the following were omitted – 15
- (a) subsection (4)(b),
  - (b) in subsection (4)(c), the words from “or OFCOM” to the end,
  - (c) subsection (6)(a),
  - (d) subsection (8)(a), and 20
  - (e) subsection (9)(c).
- (4) Where OFCOM renew a licence under this section they must include in the licence as renewed a condition requiring the licence holder to do all that the licence holder can to secure the broadcasting of a simulcast radio service in digital form throughout the renewal period.” 25
- (3) Section 103A(12) of the Broadcasting Act 1990 (as applied by section 103B of that Act) does not prevent the determination of a date falling less than one year after the making of the determination where –
- (a) the Office of Communications consider that the relevant date for the purposes of that section (as applied) is a date which is not more than 15 months after the day on which this section comes into force, and 30
  - (b) the determination is made as soon as practicable after that day.

### 33 Renewal and variation of local radio licences

- (1) In section 104A of the Broadcasting Act 1990 (renewal of local licences) – 35
- (a) in subsection (1), after “renewed” insert “under this section”, and
  - (b) after that subsection insert –
- “(1A) A local licence may be renewed under this section only if it is granted before the day on which section 104AA comes into force.”

(2) After that section insert –

**“104AA Further renewal of local licences**

- (1) A local licence may be renewed under this section on one occasion for a period of not more than 7 years beginning with the date of renewal (subject to the following provisions of this section and section 104AB). 5
- (2) A local licence may be renewed under this section only if –
- (a) it has been renewed under section 104A, or
  - (b) it is granted on or after the day on which this section comes into force.
- (3) Subsections (3) to (12), (13) and (14) of section 104A apply in relation to the renewal of a licence under this section as they apply in relation to the renewal of a licence under section 104A, subject to subsections (4) and (5). 10
- (4) Section 104A(3) (as applied) has effect as if the words “Subject to subsection (2)” were omitted. 15
- (5) In the case of an approved licence, if an applicant for renewal of the licence under this section makes a national nomination in accordance with section 104AB, section 104A (as applied) has effect as if –
- (a) subsections (4) and (13)(b) were omitted,
  - (b) references to the nominated local digital sound programme service were references to the national digital sound programme service nominated under section 104AB, and 20
  - (c) references to the nominated local radio multiplex service were references to the national radio multiplex service nominated under section 104AB. 25
- (6) In this section and sections 104AB and 104AC –
- “approved licence” means a local licence approved by OFCOM for the purposes of this section;
- “local digital sound programme service”, “local radio multiplex service”, “national digital sound programme service” and “national radio multiplex service” have the same meanings as in Part 2 of the Broadcasting Act 1996. 30
- (7) Before approving a licence for the purposes of this section, OFCOM must publish a document specifying –
- (a) the licence proposed to be approved, and 35
  - (b) a period in which representations may be made to OFCOM.

**104AB Renewal under section 104AA: nomination of national services**

- (1) For the purposes of section 104AA, a “national nomination” by an applicant for the renewal of an approved licence is the nomination of –
- (a) a national digital sound programme service provided or to be provided by the applicant, and 40
  - (b) a national radio multiplex service.
- (2) A national nomination must be made in the application for the renewal of the approved licence or before OFCOM consider the application.

- (3) The applicant may not nominate a national digital sound programme service unless OFCOM are satisfied that, if the application in question were granted, the programmes included in that service in each calendar month would include at least 80% of the programmes included in the service provided under the approved licence. 5
- (4) A national nomination must specify the other approved licences (if any) in relation to which, in reliance on the nomination, an application may be made under section 104AC.

#### **104AC Variation of conditions relating to digital services**

- (1) This section applies where – 10
- (a) a licence that is an approved licence has been renewed under section 104A and includes a local digital services condition,
  - (b) an application has been made under section 104AA for the renewal of another approved licence and the applicant has made a national nomination under section 104AB, and 15
  - (c) the nomination specifies the licence mentioned in paragraph (a) in accordance with section 104AB(4).
- (2) OFCOM may, if the requirements of subsections (3) and (4) are met, vary the licence mentioned in subsection (1)(a) by – 20
- (a) removing the local digital services condition, and
  - (b) adding a national digital services condition.
- (3) OFCOM must have received an application for the variation from the licence holder.
- (4) OFCOM must be satisfied that, if they varied the licence, the programmes included in the nominated national digital sound programme service in each calendar month would include at least 80% of the programmes included in the service provided under that licence. 25
- (5) In this section –
- “local digital services condition” means a condition requiring the licence holder to do all that the licence holder can to ensure that a local digital sound programme service is broadcast by means of a local radio multiplex service; 30
  - “national digital services condition” means a condition requiring the licence holder to do all that the licence holder can to ensure that the nominated national digital sound programme service is broadcast by means of the nominated national radio multiplex service until the day on which the licence (as renewed under section 104A) is to expire; 35
  - “nominated” means nominated in the nomination referred to in subsection (1)(b).” 40
- (3) Section 104A(14) of the Broadcasting Act 1990 (as applied by section 104AA of that Act) does not prevent the determination of a date falling less than one year after the making of the determination where –
- (a) the Office of Communications consider that the relevant date for the purposes of that section (as applied) is a date which is not more than 15 months after the day on which this section comes into force, and 45
  - (b) the determination is made as soon as practicable after that day.

- (4) The requirement under section 104AA(7) of the Broadcasting Act 1990 may be satisfied by the publication of a document before this section comes into force.

### **34 Variation of licence period following renewal**

- (1) In section 86(6) of the Broadcasting Act 1990 (variation of licence period etc), after “section 97B” (inserted by section 31) insert “, 105A”. 5
- (2) Before section 106 (but after the heading preceding that section) insert –
- “105A Variation of licence period following renewal**
- (1) This section applies if the Secretary of State –
- (a) has not nominated a date for digital switchover under section 97A for one or more relevant renewed services, or 10
- (b) has withdrawn the nomination of such a date and has not nominated another such date under that section.
- (2) The Secretary of State may give notice to OFCOM fixing a date (the “termination date”) in relation to that service or such of those services as are specified or described in the notice. 15
- (3) The Secretary of State may fix different dates for different services but may not fix a date falling before 31 December 2015.
- (4) If the period for which a licence to provide a relevant renewed service is to continue in force ends after the termination date fixed for the service, OFCOM must by notice vary the licence so that the period ends on or before that date, subject to subsection (5). 20
- (5) OFCOM may not reduce the period so that it ends on a day falling less than 2 years after the date on which they issue the notice, unless the licence holder consents to such a reduction.
- (6) If the period for which a licence to provide a relevant renewed service is to continue in force ends on or before the termination date fixed for the service, OFCOM may not vary the licence so that the period ends after that date. 25
- (7) “Relevant renewed service” means a national service provided under a licence that has been renewed under section 103B or a local service provided under a licence that has been renewed under section 104AA.” 30
- (3) In section 199(5) of that Act (publication of notices by OFCOM), after “103,” insert “105A,”.
- (4) If on 31 December 2012, in relation to a relevant renewed service (as defined in section 105A(7) of the Broadcasting Act 1990) – 35
- (a) section 105A of that Act applies, but
- (b) the Secretary of State has not given a notice under that section, the Secretary of State must, before 31 December 2013, consider whether to give a notice under that section in relation to that service.

### **35 Content and character of local sound broadcasting services** 40

- (1) In section 106(1A) of the Broadcasting Act 1990 (conditions relating to

- departures from character of licensed service), after paragraph (d) insert “; or
- (e) that, in the case of a local licence –
- (i) the departure would result from programmes included in the licensed service ceasing to be made at premises in the area or locality for which the service is provided, but
- (ii) those programmes would continue to be made wholly or partly at premises within the approved area (as defined in section 314 of the Communications Act 2003 (local content and character of services)).”
- (2) Section 314 of the Communications Act 2003 (local content and character of local sound broadcasting services) is amended as follows.
- (3) In subsection (1), in paragraph (a), omit the words from “but” to “that case”.
- (4) After that subsection insert –
- “(1A) Paragraphs (a) and (b) of subsection (1) apply in the case of each local sound broadcasting service only if and to the extent (if any) that OFCOM consider it appropriate in that case.”
- (5) In subsection (7) –
- (a) before the definition of “local material” insert –
- ““approved area”, in relation to programmes included in a local sound broadcasting service, means an area approved by OFCOM for the purposes of this section that includes the area or locality for which the service is provided;”, and
- (b) in the definition of “locally-made”, at the end insert “or, if there is an approved area for the programmes, that area”.
- (6) After subsection (8) insert –
- “(9) Before approving an area for the purposes of this section, OFCOM must publish a document specifying –
- (a) the area that they propose to approve, and
- (b) a period in which representations may be made to OFCOM about the proposals.
- (10) OFCOM may withdraw their approval of all or part of an area at any time if the holder of the licence to provide the local sound broadcasting service concerned consents.
- (11) Where OFCOM approve an area or withdraw their approval of an area, they must publish, in such manner as they consider appropriate, a notice giving details of the area.”
- (7) The requirement under section 314(9) of the Communications Act 2003 may be satisfied by the publication of a document before this section comes into force.

**36 Radio multiplex services: frequency and licensed area**

After section 54 of the Broadcasting Act 1996 insert –

**“54A Variation of radio multiplex licences: frequency or licensed area**

- (1) OFCOM may, if the requirements of subsections (3) to (5) are met, vary a national radio multiplex licence by extending the area in which the licensed service is required to be available. 5
- (2) OFCOM may, if the requirements of subsections (3) to (6) are met, vary a local radio multiplex licence by –
  - (a) varying the frequency on which the licensed service is required to be provided, 10
  - (b) reducing the area or locality in which the licensed service is required to be available, or
  - (c) extending that area or locality to include an adjoining area or locality.
- (3) OFCOM must have received an application for the variation from the licence holder. 15
- (4) The application must include a technical plan relating to the service proposed to be provided under the licence indicating, in particular –
  - (a) the area or locality which would be within the coverage area of the service, 20
  - (b) the timetable in accordance with which that coverage would be achieved, and
  - (c) the technical means by which it would be achieved.
- (5) Before deciding whether to grant the application, OFCOM must publish a notice specifying – 25
  - (a) the proposed variation of the licence, and
  - (b) a period in which representations may be made to OFCOM about the proposal.
- (6) In the case of a local radio multiplex licence, OFCOM may vary the licence in accordance with the application only if they are satisfied that doing so would not unacceptably narrow the range of programmes available by way of local digital sound programme services to persons living in the area or locality for which, before the proposed variation, the local radio multiplex service is required to be available.” 30

**37 Renewal of radio multiplex licences**

35

- (1) After section 58 of the Broadcasting Act 1996 insert –

**“58A Renewal of radio multiplex licences: supplementary**

- (1) The Secretary of State may by regulations –
  - (a) amend section 58, and
  - (b) make further provision about the renewal of radio multiplex licences. 40
- (2) The regulations may, in particular, make provision about –
  - (a) the circumstances in which OFCOM may renew a radio multiplex licence,

- (b) the period for which a licence may be renewed,
  - (c) the information that OFCOM may require an applicant for renewal of a licence to provide,
  - (d) the requirements that must be met by such an applicant,
  - (e) the grounds on which OFCOM may refuse an application for renewal of a licence, 5
  - (f) payments to be made in respect of a licence following its renewal, and
  - (g) further conditions to be included in a licence following its renewal. 10
- (3) The regulations may, in particular, amend or modify this Part of this Act.
- (4) A statutory instrument containing the regulations may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament. 15
- (5) The power to make regulations under this section may not be exercised after 31 December 2015 (but this does not affect the continuation in force of any regulations made under this section before that date)."
- (2) In section 72(1) of that Act (interpretation of Part 2), before the definition of "radio multiplex service" insert – 20
- "radio multiplex licence" means a licence to provide a radio multiplex service;".

*Regulation of television and radio services*

**38 Application of regulatory regimes to broadcasters**

In section 263 of the Communications Act 2003 (application of regulatory regimes to broadcasters), for subsection (4) substitute – 25

- "(4) The Secretary of State may by order provide for –
- (a) a condition included by virtue of this Act in a regulatory regime to be excluded from the regime;
  - (b) a condition excluded from a regulatory regime by an order under this subsection to be included in the regime again. 30
- (4A) An order under subsection (4) may, in particular, provide for a condition to be included or excluded for a period specified in the order."

*Access to electromagnetic spectrum* 35

**39 Payment for licences**

- (1) Section 12 of the Wireless Telegraphy Act 2006 (charges for grant of licence) is amended as follows.
- (2) In subsection (5) at the end insert “, but this is subject to subsection (6).”

- (3) After subsection (5) insert –
- “(6) Regulations under or for the purposes of subsection (1)(b), so far as it relates to payments during the term of a licence, may be made so as to apply in relation to a licence granted in accordance with regulations under section 14, but only in the following cases – 5
- (a) where provision included in the licence with the consent of the holder of the licence provides for the regulations to apply;
  - (b) where the licence includes terms restricting the exercise by OFCOM of their power to revoke the licence before the end of a period and that period has expired; 10
  - (c) where the licence would, but for a variation, have ceased to have effect at the end of a period and that period has expired;
  - (d) where the licence is a surrendered-spectrum licence.
- (7) Provision may not be made by virtue of subsection (6)(c) or (d) without the consent of the Secretary of State. 15
- (8) A wireless telegraphy licence is a “surrendered-spectrum licence” if –
- (a) it is granted under arrangements involving (before the grant or later) the variation, revocation or expiry of another wireless telegraphy licence;
  - (b) the arrangements are with a view to enabling the holder of that other licence to comply with a limit applying to frequencies in respect of which a person may hold licences; and 20
  - (c) it authorises the use after that variation, revocation or expiry of a frequency whose use until then was or is authorised by that other licence. 25
- (9) In relation to a surrendered-spectrum licence there may be more than one such other licence (“predecessor licence”) and a licence may be a predecessor licence to more than one surrendered-spectrum licence.”
- (4) Section 14 of the Wireless Telegraphy Act 2006 (bidding for licences) is amended as follows. 30
- (5) In subsection (5) after “those sums must” insert “, subject to subsection (5A),”.
- (6) After subsection (5) insert –
- “(5A) The regulations may, with the consent of the Secretary of State, make provision permitting or requiring a surrendered-spectrum licence to which the regulations apply to include – 35
- (a) provision requiring all or part of a sum that would otherwise be payable to OFCOM under subsection (5) to be paid to a person who was or is the holder of a predecessor licence;
  - (b) provision requiring a sum in addition to that payable to OFCOM under subsection (5) to be paid to such a person; 40
  - (c) provision specifying any such sum or part or the method for determining it.”
- (7) After subsection (8) insert –
- “(9) In subsection (5A) “surrendered-spectrum licence” and “predecessor licence” have the meaning given by section 12(8) and (9).” 45

**40 Enforcement of licence terms etc**

- (1) In Chapter 4 of Part 2 of the Wireless Telegraphy Act 2006 (enforcement of regulation of radio spectrum) after section 43 insert—

**“43A Special procedure for contraventions of certain provisions**

- (1) OFCOM may impose a penalty on a person if— 5
- (a) that person is or has been in contravention in any respect of a provision, term or limitation of a wireless telegraphy licence;
  - (b) OFCOM have notified that person that it appears to them that the provision, term or limitation has been contravened in that respect; 10
  - (c) this section applies to that contravention by virtue of provision included in the licence; and
  - (d) that contravention is not one in respect of which proceedings for an offence under this Chapter have been brought against that person. 15
- (2) A licence may provide in accordance with subsection (1)(c) that this section applies to the contravention of a provision, term or limitation only if it appears to OFCOM that a direction under section 5 requires the provision, term or limitation to be included in the licence.
- (3) Where OFCOM impose a penalty on a person under this section, they must— 20
- (a) notify that person of that decision and of their reasons for that decision; and
  - (b) in that notification, fix a reasonable period after it is given as the period within which the penalty is to be paid. 25
- (4) A penalty imposed under this section—
- (a) must be paid to OFCOM; and
  - (b) if not paid within the period fixed by them, is to be recoverable by them accordingly.
- (5) No proceedings for an offence under this Chapter may be commenced against a person in respect of a contravention in respect of which a penalty has been imposed by OFCOM under this section. 30
- (6) The amount of a penalty imposed under this section is to be such amount not exceeding 10 per cent of the relevant amount of gross revenue as OFCOM think— 35
- (a) appropriate; and
  - (b) proportionate to the contravention in respect of which it is imposed.”
- (2) In section 44 of that Act (relevant amount of gross revenue), in subsections (1) and (10), after “43” insert “or 43A”. 40
- (3) In section 400 of the Communications Act 2003 (destination of licence fees and penalties), in subsection (1)(d), after “42” insert “or 43A”.

*Video recordings***41 Classification of video games etc**

- (1) Section 2 of the Video Recordings Act 1984 (exempted video works) is amended as follows.
- (2) In subsection (1) – 5
- (a) after “video work” insert “other than a video game”,
  - (b) after paragraph (a) insert “or”, and
  - (c) omit paragraph (c) (and the word “or” before it).
- (3) After that subsection insert –
- “(1A) Subject to subsection (2) or (3) below, a video game is for the purposes of this Act an exempted work if – 10
- (a) it is, taken as a whole, designed to inform, educate or instruct;
  - (b) it is, taken as a whole, concerned with sport, religion or music; or
  - (c) it satisfies one or more of the conditions in section 2A.” 15
- (4) After subsection (3) insert –
- “(4) The Secretary of State may by regulations amend this section –
- (a) by adding or removing a case in which a video work is not an exempted work, or
  - (b) by amending a description of such a case.” 20
- (5) After section 2 of that Act insert –
- “2A Conditions relating to video games**
- (1) The conditions referred to in section 2(1A)(c) are as follows.
  - (2) The first condition is that the video game does not include any of the following – 25
    - (a) depictions of violence towards human or animal characters, whether or not the violence looks realistic and whether or not the violence results in obvious harm,
    - (b) depictions of violence towards other characters where the violence looks realistic, 30
    - (c) depictions of criminal activity that are likely, to any extent, to stimulate or encourage the commission of offences,
    - (d) depictions of activities involving illegal drugs or the misuse of drugs,
    - (e) words or images that are likely, to any extent, to stimulate or encourage the use of alcohol or tobacco, 35
    - (f) words or images that are intended to convey a sexual message,
    - (g) swearing, or
    - (h) words or images that are intended or likely, to any extent, to cause offence, whether on the grounds of race, gender, disability, religion or belief or sexual orientation or otherwise. 40
  - (3) In subsection (2) “human or animal character” means a character that is, or whose appearance is similar to that of –

- (a) a human being, or  
 (b) an animal that exists or has existed in real life,  
 but does not include a simple stick character or any equally basic representation of a human being or animal.
- (4) The second condition is that the designated authority, or a person nominated by the designated authority for the purposes of this section, has confirmed in writing that the video game is suitable for viewing by persons under the age of 12. 5
- (5) The Secretary of State may by regulations amend this section—  
 (a) by amending the first condition, or 10  
 (b) by adding a further condition (or by amending or removing such a condition).
- (6) Regulations under this section may make provision by reference to documents produced by the designated authority.”
- (6) In section 3 of that Act (exempted supplies), after subsection (8) insert— 15
- “(8A) The supply of a video recording in the form of a machine of a type designed primarily for use in an amusement arcade is an exempted supply unless the video game (or, if more than one, any of the video games) that it contains—  
 (a) depicts, to any significant extent, anything falling within section 2(2)(a), (b), (c) or (d) or (3), or 20  
 (b) is likely to any significant extent to stimulate or encourage anything falling within section 2(2)(a) or, in the case of anything falling within section 2(2)(b), is likely to any extent to do so.
- (8B) The supply of any other video recording is an exempted supply if the recording is supplied for the purpose only of its use in connection with a supply that is an exempted supply under subsection (8A).” 25
- (7) At the end of that section insert—
- “(13) The Secretary of State may by regulations amend this section and the regulations may, in particular— 30  
 (a) add a case in which the supply of a video recording is an exempted supply for the purposes of this Act, or  
 (b) repeal a provision of this section.”

## 42 Designated authority for video games etc

- (1) After section 4 of the Video Recordings Act 1984 insert— 35
- “4ZA Designated authorities for video games and other video works**
- (1) The power to designate a person by notice under section 4 includes power to designate different persons—  
 (a) as the authority responsible for making arrangements in respect of video games (“the video games authority”), and 40  
 (b) as the authority responsible for making arrangements in respect of other video works (“the video works authority”).
- (2) Where there are two designated authorities, references in this Act to the designated authority, in relation to a video work, are references to the

designated authority responsible for making arrangements in respect of the video work, taking account of any allocation in force under section 4ZB.

#### **4ZB Designated authorities: allocation of responsibility for video games**

- (1) Where there are two designated authorities, the video games authority may, with the consent of the video works authority, allocate to that authority responsibility – 5
- (a) for a class of video games, or
  - (b) for video games, or a class of video games, when (and only when) they are contained in a video recording that is described in the allocation (whether by reference to its contents, to the manner in which it is, or is to be, supplied or otherwise). 10
- (2) If an allocation is in force –
- (a) the video works authority is responsible for making arrangements under this Act in respect of the allocated video games, and 15
  - (b) the video games authority ceases to be responsible for making such arrangements.
- (3) An allocation –
- (a) must be made by a notice, and 20
  - (b) may be withdrawn at any time by a notice given by the video games authority with the consent of the video works authority.
- (4) When making or withdrawing an allocation under this section, the video games authority must have regard to any guidance issued by the Secretary of State. 25
- (5) A notice under this section must be –
- (a) sent to the Secretary of State, and
  - (b) published in such manner as the video games authority considers appropriate.
- (6) A question as to which designated authority is responsible for making arrangements in respect of a video game may be conclusively determined by the video games authority. 30

#### **4ZC Designated authorities: video works included in video games**

- (1) The video games authority may make such arrangements in respect of video works included in video games as it considers are necessary for the purposes of fulfilling its responsibilities in respect of video games. 35
- (2) Where there are two designated authorities, the arrangements made by the video games authority under section 4 must, to the extent that the video games authority considers appropriate, include either or both of the following – 40
- (a) arrangements for having regard to any classification certificate issued by the video works authority in respect of a video work included in a video game;
  - (b) arrangements for obtaining and having regard to a determination by the video works authority as to the suitability of all or part of a video work included in a video game. 45

- (3) For the purpose of determining the extent to which arrangements described in subsection (2)(a) or (b) are appropriate, the video games authority must—
- (a) consult the video works authority, and
  - (b) have regard to any guidance issued by the Secretary of State. 5
- (4) In this section, “suitability” means suitability for the issue of a classification certificate or suitability for the issue of a classification certificate of a particular description.”
- (2) Schedule 1 (which contains further amendments of the Video Recordings Act 1984) has effect. 10

*Copyright and performers’ property rights: licensing and penalties*

**43 Extension and regulation of licensing of copyright and performers’ rights**

- (1) In the Copyright, Designs and Patents Act 1988 (the “1988 Act”) after section 116 insert—

*“Additional licensing and regulation 15*

**116A Licensing of orphan works**

- (1) The Secretary of State may by regulations provide for authorising a licensing body or other person to do, or to grant licences to do, acts in relation to an orphan work which would otherwise require the consent of the missing copyright owner. 20
- (2) Where the missing copyright owner is not the sole owner of copyright in the work, an authorisation does not affect the need for consent from any other owner of copyright.
- (3) An authorisation or licence under the regulations in favour of any person must not preclude any authorisation or licence in favour of another person. 25
- (4) The regulations must provide for the treatment of royalties or other sums paid in respect of an authorisation or licence, including—
- (a) the deduction of administrative costs;
  - (b) the period for which sums must be held for the copyright owner; 30
  - (c) the treatment of sums after that period (as bona vacantia or otherwise).
- (5) The regulations may provide for determining the rights and obligations of any person if an interest in copyright ceases to be included in a register kept in accordance with section 116D(1). 35
- (6) The regulations may provide for the Secretary of State to determine whether any requirement of the regulations for a person’s becoming or remaining authorised has been met or ceased to be met.

**116B Extended licensing schemes 40**

- (1) The Secretary of State may by regulations provide for authorising a licensing body to grant copyright licences in respect of works in which

- copyright is not owned by the body or a person on whose behalf the body acts.
- (2) The regulations may not authorise the grant of a licence –
- (a) in respect of an unpublished work, unless it is a broadcast or a work included in a broadcast, or 5
  - (b) in respect of rights excluded by notice given by the copyright owner in accordance with the regulations.
- (3) The regulations must provide for the factors to be taken into account in deciding whether to authorise a licensing body to grant copyright licences in respect of works to include – 10
- (a) the likely effect of the authorisation on –
    - (i) authors of the works,
    - (ii) members of the body,
    - (iii) copyright owners on whose behalf the licensing body would be entitled to act pursuant to the authorisation, 15  
and
    - (iv) licensees and potential licensees of the aspects of copyright that would be the subject of the authorisation, and
  - (b) the extent to which the licensing body is entitled to negotiate or grant copyright licences in respect of similar works, other than under an authorisation under this section. 20
- (4) Subsections (3) to (6) of section 116A apply to regulations under this section (but subsections (4)(b) and (c) and (5) apply only in relation to an orphan work). 25
- (5) In this section –
- “copyright licences” has the same meaning as in section 116;
  - “member”, in relation to a licensing body, means –
    - (a) a copyright owner on whose behalf the body is authorised to negotiate or grant licences, other than under an authorisation under this section, and 30
    - (b) a person other than the copyright owner who is or would be entitled to royalties or other sums paid in respect of a copyright licence granted by the body.
- 116C Meaning of “orphan work”** 35
- (1) A work is an orphan work if a person –
- (a) has carried out a diligent search to find or, if necessary, to identify and find, the owner of, or of an interest in, copyright in the work, and
  - (b) has published the notice required by this section, 40  
but has not found the owner.
- (2) References to the missing copyright owner in relation to an orphan work are references to that owner.
- (3) For the purposes of subsection (1)(a) the person carrying out the search must in particular – 45

- (a) make such use as is reasonable of sources of information, including sources within subsection (4), relating to the work's apparent country of origin, and
- (b) have regard to any presumptions under section 104 or 105 that would apply in relation to the work in any proceedings. 5
- (4) The sources referred to in subsection (3)(a) are—
- (a) licensing bodies;
- (b) associations of publishers or authors;
- (c) systems for identifying works of the type concerned;
- (d) published library catalogues and indexes; 10
- (e) public databases, including public records that may indicate successors in title.
- (5) For the purposes of subsection (3)(a) a work's apparent country of origin is the country which the person carrying out the search reasonably believes is most likely to be— 15
- (a) the country of the work's first publication, or
- (b) if the work has not been published, the country with which its making is most closely connected.
- (6) The notice required by subsection (1)(b) is notice of the proposal to enter the interest concerned in a register kept in accordance with section 116D(1), published in a way designed to bring the proposal to the attention of the owner of the interest. 20
- (7) The Secretary of State may by regulations amend any of the preceding provisions of this section.
- 116D Orphan works: registration and compliance** 25
- (1) Regulations made by the Secretary of State must provide for an authorisation under section 116A or 116B to have effect in respect of an interest of a missing copyright owner only if the interest is entered in a register kept by the authorised person (an "orphan works register").
- (2) The regulations must— 30
- (a) specify the form of an orphan works register and how it is to be kept, and
- (b) provide for an orphan works register to be made available to the public.
- (3) An entry in an orphan works register must include a sufficient record of the steps taken for the purposes of section 116C(1)(a) and (b). 35
- (4) An authorised person must not enter an interest in an orphan works register unless the authorised person—
- (a) has taken the steps referred to in section 116C(1)(a) and (b) and has not found the owner of the interest, or 40
- (b) has reasonable grounds for believing that another person has taken those steps and that the owner of the interest has not been found.
- (5) If an interest is entered in an authorised person's orphan works register and the authorised person finds the owner of the interest, the authorised person must remove the entry. 45

- (6) If in relation to an interest entered in an authorised person's orphan works register, the authorised person –
- (a) is aware that any of the steps referred to in section 116C(1)(a) and (b) was not taken, or
  - (b) is aware of information that makes it no longer reasonable to rely on the steps taken,
- the authorised person must as soon as possible take those steps or remove the entry. 5
- (7) Where an interest is entered in an orphan works register, regulations under section 116A or 116B may provide for an authorisation under that section to have effect in respect of that interest despite a failure to take steps referred to in section 116C(1)(a) or (b) or to comply with any of subsections (4) to (6). 10
- (8) But a failure by an authorised person to comply with any of subsections (4) to (6) is actionable as a breach of statutory duty owed to the owner of the interest concerned (and see paragraph 4 of Schedule A1). 15
- (9) Any guidance issued by the Secretary of State must be taken into account in deciding whether a person has taken the steps referred to in section 116C(1)(a) or (b) or has complied with subsection (3).
- (10) The Secretary of State may by regulations amend any of the preceding provisions of this section. 20

#### **116E Regulation and enforcement**

Schedule A1 confers powers to provide for –

- (a) the regulation of licensing bodies, and of persons other than licensing bodies who are authorised under section 116A; 25
- (b) enforcement for the purposes of such regulation, or otherwise for the purposes of sections 116A to 116D.

#### **116F General**

- (1) Nothing in section 116B or Schedule A1 applies in relation to Crown copyright or Parliamentary copyright. 30
- (2) The powers conferred by sections 116A to 116D and Schedule A1 include in particular power –
- (a) to make incidental, supplementary or consequential provision;
  - (b) to make different provision for different purposes;
  - (c) to extend or restrict the jurisdiction of the Copyright Tribunal. 35
- (3) The power referred to in subsection (2)(a) to make consequential provision includes power to amend this Part.
- (4) Before making provision as to requirements for a person's becoming or remaining authorised under section 116A or 116B, the Secretary of State must consult the persons the Secretary of State thinks likely to be affected (or persons who represent such persons) and such other persons as the Secretary of State thinks fit. 40
- (5) The power to make regulations under sections 116A to 116D and Schedule A1 is exercisable by statutory instrument.

- (6) A statutory instrument containing such regulations is subject to annulment in pursuance of a resolution of either House of Parliament, but that is subject to subsection (7).
- (7) Subsection (8) applies to a statutory instrument containing any of the following— 5
- (a) the first regulations made under section 116A;
  - (b) the first regulations made under section 116B;
  - (c) the first regulations made under paragraph 1 of Schedule A1;
  - (d) the first regulations made under paragraph 4 of Schedule A1;
  - (e) regulations under sections 116A to 116D or Schedule A1 amending any provision of this Part. 10
- (8) The statutory instrument may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.”
- (2) Schedule 2 (which inserts Schedule A1 to the 1988 Act and makes provision in relation to performers’ property rights corresponding to provision made by this section in relation to copyright) has effect. 15
- (3) In the 1988 Act insert in the appropriate places—
- (a) in section 179 (index of defined expressions in Part 1)—
 

“missing copyright owner (in relation to an orphan work)	section 116C”;	20
“orphan work	section 116C”;	
  - (b) in section 212 (index of defined expressions in Part 2)—
 

“missing rights owner (in relation to orphan rights)	paragraph 1C of Schedule 2A”;	25
“orphan right	paragraph 1C of Schedule 2A”.	
- 44 Increase of penalties relating to infringing articles or illicit recordings**
- (1) The Copyright, Designs and Patents Act 1988 is amended as follows.
- (2) In section 107 (criminal liability for making or dealing with infringing articles etc.) in subsections (4)(a) and (4A)(a) for “the statutory maximum” substitute “£50,000”. 30
- (3) In section 198 (criminal liability for making, dealing with or using illicit recordings) in subsections (5)(a) and (5A)(a) for “the statutory maximum” substitute “£50,000”. 35

*Public lending right*

**45 Public lending right**

- (1) Section 5(2) of the Public Lending Right Act 1979 (interpretation) is amended as follows.

- (2) Before the definition of “local library authority” insert –
- ““author”, in relation to a work recorded as a sound recording, includes a producer or narrator;
- “book” includes –
- (a) a work recorded as a sound recording and consisting mainly of spoken words (an “audio-book”), and 5
- (b) a work, other than an audio-book, recorded in electronic form and consisting mainly of (or of any combination of) written or spoken words or still pictures (an “e-book”);
- “lent out” – 10
- (a) means made available to a member of the public for use away from library premises for a limited time, but
- (b) does not include being communicated by means of electronic transmission to a place other than library premises, 15
- and “loan” and “borrowed” are to be read accordingly;
- “library premises” has the meaning given in section 8(7) of the Public Libraries and Museums Act 1964;”.
- (3) After the definition of “prescribed” insert –
- ““producer” has the meaning given in section 178 of the Copyright, Designs and Patents Act 1988;” 20
- (4) At the end of the definition of “the register” omit “and”.
- (5) After the definition of “the Registrar” insert –
- ““sound recording” has the meaning given in section 5A(1) of the Copyright, Designs and Patents Act 1988.” 25
- (6) The Copyright, Designs and Patents Act 1988 is amended as follows.
- (7) In section 40A (permitted acts in relation to copyright works: lending of copies by libraries or archives), for subsection (1) substitute –
- “(1) Copyright in a work of any description is not infringed by the following acts by a public library in relation to a book within the public lending right scheme – 30
- (a) lending the book;
- (b) in relation to an audio-book or e-book, copying or issuing a copy of the book as an act incidental to lending it.
- (1A) In subsection (1) – 35
- (a) “book”, “audio-book” and “e-book” have the meanings given in section 5 of the Public Lending Right Act 1979,
- (b) “the public lending right scheme” means the scheme in force under section 1 of that Act,
- (c) a book is within the public lending right scheme if it is a book within the meaning of the provisions of the scheme relating to eligibility, whether or not it is in fact eligible, and 40
- (d) “lending” is to be read in accordance with the definition of “lent out” in section 5 of that Act (and section 18A of this Act does not apply).” 45
- (8) In Schedule 2, in paragraph 6B (permitted acts in relation to performances: lending of copies by libraries or archives) –

- (a) at the beginning insert –
- “(A1) The rights conferred by this Chapter are not infringed by the following acts by a public library in relation to a book within the public lending right scheme –
- (a) lending the book; 5
- (b) in relation to an audio-book or e-book, copying or issuing a copy of the book as an act incidental to lending it.
- (A2) Expressions used in sub-paragraph (A1) have the same meaning as in section 40A(1).”; 10
- (b) in sub-paragraph (2), for “this paragraph” substitute “sub-paragraph (1)”.

*General*

**46 Power to make consequential provision etc**

- (1) The Secretary of State may by regulations made by statutory instrument make incidental, supplementary, consequential, transitional, transitory or saving provision in connection with the amendments made by this Act. 15
- (2) The regulations may –
- (a) make different provision for different purposes,
- (b) modify an Act passed before or in the same Session as this Act or subordinate legislation made before this Act is passed, and 20
- (c) where they are made in connection with an amendment made by section 28 or by a provision listed in section 49(3), modify a provision of an Act passed, or subordinate legislation made, before the day on which that amendment comes into force. 25
- (3) A statutory instrument containing regulations under this section that amend or repeal a provision of an Act may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (4) Any other statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of either House of Parliament. 30
- (5) In this section –
- “modify” includes amend, repeal or revoke;
- “subordinate legislation” has the same meaning as in the Interpretation Act 1978. 35

**47 Repeals**

Schedule 3 (repeals) has effect.

**48 Extent**

- (1) This Act extends to England and Wales, Scotland and Northern Ireland. 40

- (2) An amendment of the following enactments that is made by this Act may be extended to any of the Channel Islands or the Isle of Man under the relevant extending power –
- (a) Part 1 of the Copyright, Designs and Patents Act 1988;
  - (b) the Broadcasting Act 1990; 5
  - (c) the Broadcasting Act 1996;
  - (d) the Communications Act 2003;
  - (e) the Wireless Telegraphy Act 2006.
- (3) “Relevant extending power” means –
- (a) in relation to amendments of Part 1 of the Copyright, Designs and Patents Act 1988, section 157(2) of that Act; 10
  - (b) in relation to amendments of the Broadcasting Act 1990, section 204(6) of that Act;
  - (c) in relation to amendments of the Broadcasting Act 1996, section 150(4) of that Act; 15
  - (d) in relation to amendments of the Communications Act 2003, section 411(6) of that Act;
  - (e) in relation to amendments of the Wireless Telegraphy Act 2006, section 118(3) of that Act.
- (4) The power conferred by section 157(2)(c) of the Copyright, Designs and Patents Act 1988 (power to extend to British overseas territories) is exercisable in relation to any amendment made by this Act to Part 1 of that Act. 20

#### 49 Commencement

- (1) This Act comes into force at the end of the period of two months beginning with the day on which it is passed, but this is subject to –
- (a) section 28(8), and
  - (b) subsections (2) and (3). 25
- (2) The following come into force on the day on which this Act is passed –
- (a) sections 6, 7, 8, 16 and 17(1),
  - (b) sections 31 to 33, and 30
  - (c) this section and sections 48 and 50.
- (3) The following come into force on such day as the Secretary of State may by order made by statutory instrument appoint –
- (a) sections 19 to 21,
  - (b) section 30 and the entries in Schedule 3 relating to sections 183A and 184 of the Broadcasting Act 1990 and Schedule 15 to the Communications Act 2003 (and section 47 so far as it relates to those entries), 35
  - (c) sections 41(2), (3), (5) and (6) and 42(1), paragraphs 2 to 4, 6 to 9 and 10(2) of Schedule 1 (and section 42(2) so far as it relates to those provisions) and the entries in Schedule 3 relating to sections 2, 4 and 22 of the Video Recordings Act 1984 (and section 47 so far as it relates to those entries), and 40
  - (d) section 45.
- (4) The Secretary of State may appoint different days for different purposes. 45

**50 Short title**

- (1) This Act may be cited as the Digital Economy Act 2010.
- (2) **Nothing in this Act shall impose any charge on the people or on public funds, or vary the amount or incidence of or otherwise alter any such charge in any manner, or affect the assessment, levying, administration or application of any money raised by any such charge.**

## SCHEDULES

### SCHEDULE 1

Section 42

#### CLASSIFICATION OF VIDEO GAMES ETC: SUPPLEMENTARY PROVISION

- |   |   |    |
|---|---|----|
| 1 | The Video Recordings Act 1984 is amended as follows.  |    |
| 2 | (1) Section 4 (authority to determine suitability of video works for classification) is amended as follows.   | 5  |
|   | (2) In subsection (1)(b) –  |    |
|   | (a) in sub-paragraph (i), after “issue” insert “or revocation”, and   |    |
|   | (b) in sub-paragraph (ii), after “issuing” insert “and revoking”.   |    |
|   | (3) After subsection (1B) insert –  | 10 |
|   | “(1C) The arrangements made under this section may require a person requesting a classification certificate for a video work to agree to comply with a code of practice, which may, in particular, include provision relating to the labelling of video recordings.”                                  |    |
|   | (4) After subsection (3) insert –   | 15 |
|   | “(3A) The Secretary of State must not make a designation under this section unless satisfied that adequate arrangements will be made for taking account of public opinion in the United Kingdom.”   |    |
|   | (5) For subsection (5) substitute –   |    |
|   | “(5) No fee is recoverable by, or in accordance with arrangements made by, the designated authority in connection with a determination in respect of a video work or the issue of a classification certificate unless the designated authority has consulted the Secretary of State about such fees.” | 20 |
|   | (6) Omit subsection (6).  | 25 |
|   | (7) After that subsection insert –  |    |
|   | “(6A) When making arrangements under this section, the designated authority must have regard to any guidance issued by the Secretary of State.  |    |
|   | (6B) The Secretary of State may not issue guidance about the matters to be taken into account when determining the suitability of a video work for the issue of a classification certificate or a classification certificate of a particular description.”  | 30 |
|   | (8) In subsection (8) –   |    |

- (a) after “Act” insert –  
 “(a) ”, and
- (b) at the end insert “, and  
 (b) references to the designated authority, in relation to a classification certificate, are references to the person or persons designated under this section when the certificate is issued,  
 (but see also section 4ZA(2)).” 5
- 3 In section 7 (classification certificates), at the end insert –  
 “(3) For the purposes of this Act, a video work is not a video work in respect of which a classification certificate has been issued if every classification certificate issued in respect of the video work has been revoked.” 10
- 4 After that section insert –  
**“7A Classification certificates for particular video recordings”** 15
- (1) A classification certificate issued in respect of a video work may be issued so as to have effect only for the purposes of a video recording that is described in the certificate (whether by reference to its contents, to the manner in which it is, or is to be, supplied or otherwise). 20
- (2) For the purposes of this Act, a video recording contains a video work in respect of which a classification certificate has been issued if (and only if) a classification certificate that has been issued in respect of the video work has effect for the purposes of the video recording.”
- 5 In section 8 (requirements as to labelling etc), omit subsections (2) and (3). 25
- 6 (1) Section 11 (supplying video recording of classified work in breach of classification) is amended as follows.
- (2) In subsection (1) –
- (a) for “containing” substitute “, or no video recording described in the certificate, that contains”, 30
- (b) for “a video recording containing that work” substitute “such a video recording”, and
- (c) after “unless” insert –  
 “(a) the video work is an exempted work, or  
 (b) ”. 35
- (3) In subsection (2), after paragraph (b) (but before “or”) insert –  
 “(ba) that the accused believed on reasonable grounds that the video work concerned or, if the video recording contained more than one work to which the charge relates, each of those works was an exempted work,”. 40
- 7 (1) Section 12 (certain video recordings only to be supplied in licensed sex shops) is amended as follows.
- (2) In subsections (1) and (3) –
- (a) for “containing” substitute “, or no video recording described in the certificate, that contains”, and 45

- (b) for “a video recording containing the work” substitute “such a video recording”.
- (3) In subsection (6) –
- (a) for “containing” substitute “, or no video recording described in the certificate, that contains”, and 5
- (b) for “a video recording containing that work” substitute “such a video recording”.
- 8 (1) Section 13 (supplying video recording not complying with requirements as to labels etc) is amended as follows.
- (2) In subsection (1), after “unless” insert – 10
- “(a) the video work is an exempted work, or
- (b) ”.
- (3) In subsection (2), before paragraph (a) insert –
- “(za) believed on reasonable grounds that the video work concerned or, if the video recording contained more than one work to which the charge relates, each of those works was an exempted work,”. 15
- 9 (1) Section 14 (supplying video recording containing false indication as to classification) is amended as follows.
- (2) In subsection (1), after “unless” insert – 20
- “(a) the video work is an exempted work, or
- (b) ”.
- (3) In subsection (2)(a), after sub-paragraph (i) (but before “or”) insert –
- “(ia) that the video work concerned or, if the video recording contained more than one work to which the charge relates, each of those works was an exempted work,”. 25
- (4) In subsection (3) –
- (a) after “unless” insert –
- “(a) the video work is an exempted work, or 30
- (b) ”.
- (5) In subsection (4)(a), before sub-paragraph (i) insert –
- “(ai) that the video work concerned or, if the video recording contained more than one work to which the charge relates, each of those works was an exempted work,”. 35
- 10 (1) Section 22 (other interpretation) is amended as follows.
- (2) In subsection (1), at the end insert –
- ““video games authority” and “video works authority” have the meaning given in section 4ZA.” 40
- (3) In subsection (2), after “Act” insert “(and subject to regulations under subsection (2A))”.

- (4) After subsection (2) insert –
- “(2A) The Secretary of State may by regulations make provision about the circumstances in which, for the purposes of this Act, a video recording does or does not contain a video work.”
- 11 After section 22 insert – 5
- “22A Regulations**
- (1) Regulations under this Act are to be made by statutory instrument.
- (2) Every power of the Secretary of State to make regulations under this Act includes –
- (a) power to make different provision for different purposes, and 10
- (b) power to make transitional or saving provision.
- (3) A statutory instrument containing regulations under section 2, 2A or 3 may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament. 15
- (4) Any other statutory instrument containing regulations under this Act is subject to annulment in pursuance of a resolution of either House of Parliament.”
- 12 Until such time as section 2A of the Video Recordings Act 1984 comes into force, section 22A(3) of that Act has effect as if the words “2A or” were omitted. 20

## SCHEDULE 2

Section 43

## LICENSING OF COPYRIGHT AND PERFORMERS’ PROPERTY RIGHTS

## PART 1

## REGULATION OF LICENSING BODIES

25

- 1 In the Copyright, Designs and Patents Act 1988 before Schedule 1 insert –

## “SCHEDULE A1

Section 116E

## REGULATION OF LICENSING BODIES

*Code of practice*

- 1 (1) The Secretary of State – 30
- (a) must, in the case of a licensing body or other person authorised under section 116A or 116B, and
- (b) may, in the case of any licensing body that appears to the Secretary of State not to have a system of self-regulation protecting the interests of copyright owners, licensees, prospective licensees or the public, 35

- by regulations require the licensing body or other person to adopt a code of practice which complies with requirements set out in the regulations.
- (2) The regulations may provide that in the case of a licensing body or other person that fails to adopt a code of practice in accordance with the regulations, a code of practice approved by the Secretary of State or by a person designated under the regulations by the Secretary of State has effect as a code of practice adopted by the body or other person. 5
- 2 The Secretary of State may by regulations make provision as to – 10
- (a) procedures to be followed before provision under paragraph 1 applies in relation to a licensing body or other person;
  - (b) where such provision applies by virtue of paragraph 1(1)(b), procedures to be followed before such provision ceases to apply in relation to a licensing body. 15
- 3 (1) Regulations under paragraph 1 must provide for a code applying to a licensing body to include provision relating to these matters –
- (a) obligations of the body to its members;
  - (b) where the body is authorised under section 116B, obligations of the body to owners of copyright in works subject to the authorisation who are not members; 20
  - (c) accounting arrangements in relation to royalties or other sums paid in respect of a licence;
  - (d) obligations of the body to licensees; 25
  - (e) control by the body of administration and marketing carried out by it or on its behalf;
  - (f) the handling of complaints against the body, including the appointment of a person to represent the interests of complainants; 30
  - (g) provision of information by the body, and other matters relating to transparency in relation to activities of the body;
  - (h) the making of reports by the body to the Secretary of State.
- (2) Regulations under paragraph 1 must provide for a code to include, in relation to works to which an authorisation under section 116A or 116B applies that are registered as orphan works, provision relating to these matters – 35
- (a) accounting arrangements in relation to royalties or other sums paid in respect of a licence;
  - (b) calculation of payments to copyright owners; 40
  - (c) arrangements for holding sums for copyright owners;
  - (d) provision of information by the authorised person.
- (3) In this paragraph “member”, in relation to a licensing body, has the same meaning as in section 116B.

*Enforcement*

- 4 (1) The Secretary of State may by regulations provide for the consequences of a failure by a licensing body or other person to comply with—
- (a) a code of practice which has effect under this Schedule in relation to the person, 5
  - (b) an authorisation given to the person under section 116A or 116B,
  - (c) any of subsections (4) to (6) of section 116D, or
  - (d) a requirement imposed under this Schedule. 10
- (2) The regulations may in particular provide for the imposition of financial penalties.
- (3) The regulations may include provision—
- (a) for determining whether there has been a failure to comply with anything mentioned in sub-paragraph (1); 15
  - (b) for determining any penalty that may be imposed in respect of the failure;
  - (c) for an appeal to the Copyright Tribunal against the imposition of any such penalty.
- (4) A penalty imposed under sub-paragraph (2) must not be greater than £50,000. 20
- (5) The regulations may provide for a determination within sub-paragraph (3)(a) or (b) to be made by the Secretary of State or by a person designated by the Secretary of State under the regulations.
- (6) The regulations may make provision for requiring a person to give the person by whom a determination within sub-paragraph (3)(a) falls to be made (the “adjudicator”) any information that the adjudicator reasonably requires for the purpose of making that determination. 25

*Fees*

30

- 5 (1) The Secretary of State may by regulations require a licensing body to which regulations under any other provision of this Schedule apply to pay fees to the Secretary of State.
- (2) The aggregate amount of fees payable under the regulations must not be more than the cost to the Secretary of State of administering the operation of regulations under this Schedule.” 35

PART 2

PERFORMERS’ PROPERTY RIGHTS

- 2 In Schedule 2A to the Copyright, Designs and Patents Act 1988 (licensing of

performers’ property rights) after paragraph 1 insert –

*“Additional licensing and regulation*

- 1A (1) The Secretary of State may by regulations provide for authorising a licensing body or other person to do, or to grant licences to do, an act to which section 182A, 182B, 182C or 182CA applies where – 5
- (a) the performer’s consent would otherwise be required under that section, but
  - (b) the right to authorise or prohibit the act is an orphan right.
- (2) Where the missing rights owner is not the sole owner of the rights concerned, an authorisation does not affect the need for consent from any other owner. 10
- (3) An authorisation or licence under the regulations in favour of any person must not preclude any authorisation or licence in favour of another person. 15
- (4) The regulations must provide for the treatment of royalties or other sums paid in respect of an authorisation or licence, including –
- (a) the deduction of administrative costs;
  - (b) the period for which sums must be held for the owner of a performer’s property rights; 20
  - (c) the treatment of sums after that period (as bona vacantia or otherwise).
- (5) The regulations may provide for determining the rights and obligations of any person if an interest in a performer’s property rights ceases to be included in a register kept in accordance with paragraph 1D(1). 25
- (6) The regulations may provide for the Secretary of State to determine whether any requirement of the regulations for a person’s becoming or remaining authorised has been met or ceased to be met. 30
- 1B (1) The Secretary of State may by regulations provide for authorising a licensing body to grant performers’ property right licences in relation to a performer’s property rights where the rights owner is not the body or a person on whose behalf the body acts. 35
- (2) The regulations may not authorise the grant of a licence –
- (a) in respect of an unpublished recording, unless it is a recording made from or included in a broadcast, or
  - (b) in respect of rights excluded by notice given by the rights owner in accordance with the regulations. 40
- (3) The regulations must provide for the factors to be taken into account in deciding whether to authorise a licensing body to grant licences in relation to a performer’s property rights to include –
- (a) the likely effect of the authorisation on – 45
    - (i) the performer,
    - (ii) members of the body,

- 
- (iii) owners of rights on whose behalf the licensing body would be entitled to act pursuant to the authorisation, and
- (iv) licensees and potential licensees of the aspects of rights that would be the subject of the authorisation, and 5
- (b) the extent to which the licensing body is entitled to negotiate or grant performers’ property right licences in relation to similar rights, other than under an authorisation under this paragraph. 10
- (4) Sub-paragraphs (3) to (6) of paragraph 1A apply to regulations under this paragraph (but sub-paragraphs (4)(b) and (c) and (5) apply only in relation to orphan rights).
- (5) In this paragraph –
- “member”, in relation to a licensing body, means – 15
- (a) an owner of a performer’s property rights on whose behalf the body is authorised to negotiate or grant licences, other than under an authorisation under this paragraph, and
- (b) a person other than the owner of a performer’s property rights who is or would be entitled to royalties or other sums paid in respect of a licence in relation to the rights granted by the body; 20
- “performers’ property right licences” has the same meaning as in paragraph 1. 25
- 1C (1) A right is an orphan right if a person –
- (a) has carried out a diligent search to find or, if necessary, to identify and find, the owner of, or of an interest in, a performer’s property rights, and
- (b) has published the notice required by this paragraph, but has not found the owner. 30
- (2) References to the missing rights owner in relation to orphan rights are references to that owner.
- (3) For the purposes of sub-paragraph (1)(a) the person carrying out the search must in particular – 35
- (a) make such use as is reasonable of sources of information, including sources within sub-paragraph (4), relating to the apparent country of origin of the recording concerned, and
- (b) have regard to any presumptions under section 105 that would apply in relation to the recording in any proceedings. 40
- (4) The sources referred to in sub-paragraph (3)(a) are –
- (a) licensing bodies;
- (b) public funding bodies;
- (c) trade unions and trade associations; 45
- (d) systems for identifying recordings of the type concerned;
- (e) published library catalogues and indexes;

- (f) public databases, including public records that may indicate successors in title.
- (5) For the purposes of sub-paragraph (3)(a) a recording’s apparent country of origin is the country which the person carrying out the search reasonably believes is most likely to be –
  - (a) the country of the recording’s first publication, or
  - (b) if the recording has not been published, the country with which its making is most closely connected.
- (6) The notice required by sub-paragraph (1)(b) is notice of the proposal to enter the interest concerned in a register kept in accordance with paragraph 1D(1), published in a way designed to bring the proposal to the attention of the owner of the interest.
- (7) The Secretary of State may by regulations amend any of the preceding provisions of this paragraph.
- 1D (1) Regulations made by the Secretary of State must provide for an authorisation under paragraph 1A or 1B to have effect in respect of an interest of a missing rights owner only if the interest is entered in a register kept by the authorised person (an “orphan rights register”).
  - (2) The regulations must –
    - (a) specify the form of an orphan rights register and how it is to be kept, and
    - (b) provide for an orphan rights register to be made available to the public.
  - (3) An entry in an orphan rights register must include a sufficient record of the steps taken for the purposes of paragraph 1C(1)(a) and (b).
  - (4) An authorised person must not enter an interest in an orphan rights register unless the authorised person –
    - (a) has taken the steps referred to in paragraph 1C(1)(a) and (b) and has not found the owner of the interest, or
    - (b) has reasonable grounds for believing that another person has taken those steps and that the owner of the interest has not been found.
  - (5) If an interest is entered in an authorised person’s orphan rights register and the authorised person finds the owner of the interest, the authorised person must remove the entry.
  - (6) If in relation to an interest entered in an authorised person’s orphan rights register, the authorised person –
    - (a) is aware that any of the steps referred to in paragraph 1C(1)(a) and (b) was not taken, or
    - (b) is aware of information that makes it no longer reasonable to rely on the steps taken,the authorised person must as soon as possible take those steps or remove the entry.
  - (7) Where an interest is entered in an orphan rights register, regulations under paragraph 1A or 1B may provide for an

- authorisation under that paragraph to have effect in respect of that interest despite a failure to take steps referred to in paragraph 1C(1)(a) or (b) or to comply with any of sub-paragraphs (4) to (6).
- (8) But a failure by an authorised person to comply with any of sub-paragraphs (4) to (6) is actionable as a breach of statutory duty owed to the owner of the interest concerned (and see paragraph 4 of Schedule A1 as it applies by virtue of paragraph 1E). 5
- (9) Any guidance issued by the Secretary of State must be taken into account in deciding whether a person has taken the steps referred to in paragraph 1C(1)(a) and (b) or has complied with sub-paragraph (3). 10
- (10) The Secretary of State may by regulations amend any of the preceding provisions of this paragraph.
- 1E Schedule A1 applies for the purposes of paragraphs 1A to 1D as it applies for the purposes of sections 116A to 116D— 15
- (a) as if references to copyright were references to performers’ property rights,
- (b) as if the reference in paragraph 3(3) to section 116B were a reference to paragraph 1B, and
- (c) as if the reference in paragraph 4(1)(c) to section 116D(4) to (6) were a reference to paragraph 1D(4) to (6); 20
- (and section 116F accordingly applies as if references to Part 1 included references to this Part).
- 1F (1) The powers conferred by paragraphs 1A to 1D include in particular power— 25
- (a) to make incidental, supplementary or consequential provision;
- (b) to make different provision for different purposes;
- (c) to extend or restrict the jurisdiction of the Copyright Tribunal. 30
- (2) The power referred to in sub-paragraph (1)(a) to make consequential provision includes power to amend this Part.
- (3) Before making provision as to requirements for a person’s becoming or remaining authorised under paragraph 1A or 1B, the Secretary of State must consult the persons the Secretary of State thinks likely to be affected (or persons who represent such persons) and such other persons as the Secretary of State thinks fit. 35
- (4) The power to make regulations under paragraphs 1A to 1D is exercisable by statutory instrument.
- (5) A statutory instrument containing such regulations is subject to annulment in pursuance of a resolution of either House of Parliament, but that is subject to sub-paragraph (6). 40
- (6) Sub-paragraph (7) applies to a statutory instrument containing any of the following—
- (a) the first regulations made under paragraph 1A; 45
- (b) the first regulations made under paragraph 1B;

- (c) regulations under paragraphs 1A to 1D amending any provision of this Part.
- (7) The statutory instrument may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.”

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SCHEDULE 3

Section 47

REPEALS

<i>Short title and chapter</i>	<i>Extent of repeal</i>	
Public Lending Right Act 1979 (c. 10)	In section 5(2), the word “and” at the end of the definition of “the register”.	10
Video Recordings Act 1984 (c. 39)	Section 2(1)(c) (and the word “or” before it). Section 4(6). Section 8(2) and (3). In section 22(1), the word “and” at the end of the definition of “business”.	15
Broadcasting Act 1990 (c. 42)	Section 14(7). In section 106(1A), the word “or” at the end of paragraph (c). Section 183A(7)(a) and (b). Section 184.	20
Communications Act 2003 (c. 21)	In section 218(7), the words after paragraph (b). Section 221. Section 224(3). In section 314(1)(a), the words from “but” to “that case”. In Schedule 15, paragraph 63 and the preceding heading.	25

# Digital Economy Bill [HL]

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## B I L L

To make provision about the functions of the Office of Communications; to make provision about the online infringement of copyright, about licensing of copyright and performers' rights and about penalties for infringement; to make provision about internet domain registries; to make provision about the functions of the Channel Four Television Corporation; to make provision about the regulation of television and radio services; to make provision about the regulation of the use of the electromagnetic spectrum; to amend the Video Recordings Act 1984; to make provision about public lending right in relation to electronic publications; and for connected purposes.

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*Brought from the Lords, 16 March 2010*

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