

Product Security and Telecommunications Infrastructure Bill

EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Department for Digital, Culture, Media and Sport, have been ordered to be published as HL Bill 16 – EN.

EUROPEAN CONVENTION ON HUMAN RIGHTS

Lord Parkinson of Whitley Bay has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Product Security and Telecommunications Infrastructure Bill are compatible with the Convention rights.

Product Security and Telecommunications Infrastructure Bill

CONTENTS

PART 1

PRODUCT SECURITY

CHAPTER 1

SECURITY REQUIREMENTS

Security requirements relating to products

- 1 Power to specify security requirements
- 2 Further provision about regulations under section 1
- 3 Power to deem compliance with security requirements

Products to which security requirements may relate

- 4 Relevant connectable products
- 5 Types of product that may be relevant connectable products
- 6 Excepted products

Persons to whom security requirements may apply

- 7 Relevant persons

CHAPTER 2

DUTIES OF RELEVANT PERSONS, ETC

Duties of manufacturers

- 8 Duty to comply with security requirements
- 9 Statements of compliance
- 10 Duty to investigate potential compliance failures
- 11 Duties to take action in relation to compliance failure
- 12 Duty to maintain records

Duties of authorised representatives

- 13 Duties to take action in relation to manufacturer's compliance failure

Duties of importers

- 14 Duty to comply with security requirements
 15 Statements of compliance
 16 Duty not to supply products where compliance failure by manufacturer
 17 Duty to investigate potential compliance failures of importer or manufacturer
 18 Duties to take action in relation to importer's compliance failure
 19 Duties to take action in relation to manufacturer's compliance failure
 20 Duty to maintain records of investigations

Duties of distributors

- 21 Duty to comply with security requirements
 22 Statements of compliance
 23 Duty not to supply products where compliance failure by manufacturer
 24 Duties to take action in relation to distributor's compliance failures
 25 Duties to take action in relation to manufacturer's compliance failure

CHAPTER 3**ENFORCEMENT***General*

- 26 Enforcement of Part 1
 27 Delegation of enforcement functions

Enforcement notices

- 28 Compliance notices
 29 Stop notices
 30 Recall notices
 31 Power to vary or revoke enforcement notices
 32 Failure to comply with enforcement notice
 33 Appeals against enforcement notices
 34 Compensation for notices wrongly given
 35 Appeals against decisions under section 34

Monetary penalties

- 36 Monetary penalties
 37 Determining the amount of a penalty
 38 The relevant maximum
 39 Penalty notices: further provision
 40 Enforcement of penalty notices
 41 Appeals against penalty notices

Forfeiture

- 42 Forfeiture
 43 Further provision about forfeiture

44 Appeal against decision under section 42

Other enforcement powers

- 45 Power to inform public about compliance failures
- 46 Power to publish details of enforcement action taken against relevant persons
- 47 Power to recall products

Disclosure of information

- 48 Disclosure of information

Miscellaneous and supplementary

- 49 Offence of purporting to act as authorised to exercise enforcement function
- 50 Means of giving notices
- 51 Liability of authorised representatives
- 52 Offences by directors, partners etc

CHAPTER 4

SUPPLEMENTARY PROVISION

Guidance

- 53 Guidance

Interpretation

- 54 Meaning of “UK consumer connectable product”
- 55 Meaning of “supply”
- 56 Meaning of other expressions used in Part 1

PART 2

TELECOMMUNICATIONS INFRASTRUCTURE

Persons able to confer code rights

- 57 Persons able to confer code rights on operators in exclusive occupation

Rights to upgrade and share apparatus

- 58 Rights under the electronic communications code to share apparatus
- 59 Upgrading and sharing of apparatus: subsisting agreements
- 60 Upgrading and sharing of apparatus installed before 29 December 2003

Renewal of business tenancies conferring code rights

- 61 Rent under tenancies conferring code rights: England and Wales
- 62 Rent under tenancies conferring code rights: Northern Ireland
- 63 Compensation relating to code rights: England and Wales
- 64 Compensation relating to code rights: Northern Ireland
- 65 Jurisdiction of court in relation to tenancies in England and Wales

Unresponsive occupiers

- 66 Unresponsive occupiers

Interim arrangements

- 67 Arrangements pending determination of certain applications under code

Disputes under the electronic communications code

- 68 Use of alternative dispute resolution
69 Complaints relating to the conduct of operators

Proceedings relating to code disputes

- 70 Jurisdiction of First-tier Tribunal in relation to code proceedings in Wales
71 Power to impose time limits on the determination of code proceedings

Rights of network providers in relation to infrastructure

- 72 Rights of network providers in relation to infrastructure

Supplementary provision

- 73 Power to make consequential amendments
74 Meaning of “the electronic communications code”

PART 3

FINAL PROVISIONS

- 75 Power to make transitional or saving provision
76 Regulations
77 Extent
78 Commencement
79 Short title

Schedule – Unresponsive occupiers: consequential amendments

A
B I L L

TO

Make provision about the security of internet-connectable products and products capable of connecting to such products; to make provision about electronic communications infrastructure; and for connected purposes.

BE 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:—

PART 1

PRODUCT SECURITY

CHAPTER 1

SECURITY REQUIREMENTS

Security requirements relating to products 5

1 Power to specify security requirements

- (1) The Secretary of State may by regulations specify requirements (“security requirements”) for the purpose of protecting or enhancing the security of—
- (a) relevant connectable products made available to consumers in the United Kingdom; 10
 - (b) users of such products.
- (2) A security requirement is a requirement that—
- (a) relates to relevant connectable products, or relevant connectable products of a specified description, and
 - (b) applies to relevant persons, or relevant persons of a specified description. 15
- In this subsection “specified” means specified in the regulations.
- (3) See—
- section 4, for the meaning of “relevant connectable product”;

section 7, for the meaning of “relevant person”.

- (4) For provision imposing duties on relevant persons to comply with security requirements, see sections 8, 14 and 21.
- (5) Section 2 contains further provision about regulations under this section.

2	Further provision about regulations under section 1	5
(1)	A security requirement may relate to (among other things) all the relevant connectable products of –	
	(a) a relevant person, or	
	(b) a relevant person of a particular description.	
(2)	For the purposes of subsection (1), the relevant connectable products of a relevant person are –	10
	(a) in the case of a person who is a manufacturer, any relevant connectable products in respect of which the person is a manufacturer;	
	(b) in the case of a person who is an importer, any relevant connectable products in respect of which the person is an importer;	15
	(c) in the case of a person who is a distributor, any relevant connectable products in respect of which the person is a distributor.	
(3)	A security requirement may be described by reference to (among other things) –	
	(a) any software used for the purposes of, or in connection with, the operation of a relevant connectable product;	20
	(b) any software used by a person in the course of, or in connection with, using a relevant connectable product;	
	(c) any software used for the purposes of providing a service to a person by means of a relevant connectable product;	25
	and for these purposes it does not matter whether the software is installed on the product or whether the software or service is provided by a manufacturer of the product.	
(4)	A security requirement may (among other things) require a relevant person to do something in relation to a relevant connectable product, including in relation to times after a relevant connectable product has been made available in the United Kingdom.	30
(5)	Regulations under section 1 are subject to the negative resolution procedure if the only provision they make under that section is provision –	
	(a) varying any description of –	35
	(i) products to which a security requirement relates, or	
	(ii) software by reference to which a security requirement is described, or	
	(b) otherwise altering any term used in describing a security requirement without altering the effect of the security requirement or the extent to which it applies in any case.	40
(6)	Except as provided by subsection (5), regulations under section 1 are subject to the affirmative resolution procedure.	

3 Power to deem compliance with security requirements

- (1) The Secretary of State may by regulations provide that a relevant person is to be treated as having complied with a security requirement relating to a relevant connectable product if specified conditions are met.
- (2) The conditions that may be specified under subsection (1) include, among other things, the following –
 - (a) that the product conforms to a specified standard;
 - (b) that the relevant person otherwise meets any requirements imposed by a specified standard;and the standards that may be specified include standards set by a person or body outside the United Kingdom.
- (3) Regulations under subsection (1) are subject to the negative resolution procedure.
- (4) In this section “specified” means specified in the regulations.

Products to which security requirements may relate 15

4 Relevant connectable products

- (1) In this Part “relevant connectable product” means a product that meets conditions A and B.
- (2) Condition A is that the product is –
 - (a) an internet-connectable product, or
 - (b) a network-connectable product.(For the meaning of these terms, see section 5.)
- (3) Condition B is that the product is not an excepted product (see section 6).

5 Types of product that may be relevant connectable products

Internet-connectable products 25

- (1) In this Part “internet-connectable product” means a product that is capable of connecting to the internet.
- (2) The reference in subsection (1) to connecting to the internet is a reference to using a communication protocol that forms part of the Internet Protocol suite to send and receive data over the internet.

Network-connectable products

- (3) In this Part “network-connectable product” means a product that –
 - (a) is capable of both sending and receiving data by means of a transmission involving electrical or electromagnetic energy,
 - (b) is not an internet-connectable product, and
 - (c) meets the first connectability condition (see subsection (4)) or the second connectability condition (see subsection (5)).
- (4) A product meets the first connectability condition if it is capable of connecting directly to an internet-connectable product by means of a communication protocol that forms part of the Internet Protocol suite.

-
- (5) A product meets the second connectability condition if –
- (a) it is capable of connecting directly to two or more products at the same time by means of a communication protocol that does not form part of the Internet Protocol suite, and
 - (b) it is capable of connecting directly to an internet-connectable product by means of such a communication protocol (whether or not at the same time as it connects to any other product). 5
- (6) In determining whether the condition in subsection (5)(a) is met in relation to a product (“the relevant product”), any product consisting of a wire or cable that is used merely to connect the relevant product to another product is to be disregarded. 10
- (7) In a case where –
- (a) two or more products are designed to be used together for the purposes of facilitating the use of a computer,
 - (b) at least one of the products (the “linking product”) is capable of connecting directly to an internet-connectable product (whether the computer or some other product) by means of a communication protocol that does not form part of the Internet Protocol suite, and 15
 - (c) each of the products that is not a linking product (“the input products”) is capable of connecting directly to the linking product, or (where there is more than one linking product) to each linking product – 20
 - (i) wirelessly, and
 - (ii) by means of a communication protocol that does not form part of the Internet Protocol suite,

each of the input products is to be treated for the purposes of subsection (3) as meeting the second connectability condition. 25
- (8) For the purposes of subsections (4) to (7), a product is not to be prevented from being regarded as connecting directly to another product merely because the connection involves the use of a wire or cable.
- 6 Excepted products 30**
- (1) In this Part “excepted product” means a product of a description specified in regulations made by the Secretary of State.
- (2) The provision that may be made by regulations under this section includes, among other things –
- (a) provision as to whether, in a case where a product (“the secondary product”) is incorporated into or attached to, or otherwise forms part of, another product (“the primary product”), the primary product is, or is not, to be regarded as an excepted product; 35
 - (b) provision as to whether, in such a case, the secondary product is, or is not, to be regarded as an excepted product. 40
- (3) Regulations under this section are subject to the negative resolution procedure if the only provision they make under this section is provision –
- (a) varying any description of product specified in regulations under this section, or
 - (b) specifying any description of product in relation to which requirements relating to security that, in the opinion of the Secretary of State, are equivalent to those specified under this Part will apply. 45

- (4) Except as provided by subsection (3), regulations under this section are subject to the affirmative resolution procedure.

Persons to whom security requirements may apply

7 Relevant persons

- (1) This section has effect for the purposes of this Part. 5
- (2) “Relevant person”, in relation to a relevant connectable product, means any of the following –
- (a) a manufacturer of the product (see subsection (3));
 - (b) an importer of the product (see subsection (4));
 - (c) a distributor of the product (see subsection (5)). 10
- (3) “Manufacturer” means any of the following –
- (a) any person who –
 - (i) manufactures a product, or has a product designed or manufactured, and
 - (ii) markets that product under that person’s name or trade mark; 15
 - (b) any person (“P”) who markets a product manufactured by another person under P’s name or trade mark.
- (4) “Importer”, in relation to a product, means any person who –
- (a) imports the product from a country outside the United Kingdom into the United Kingdom, and 20
 - (b) is not a manufacturer of the product.
- (5) “Distributor”, in relation to a product, means any person who –
- (a) makes the product available in the United Kingdom, and
 - (b) is not a manufacturer or an importer of the product.
- (6) But a person is not to be regarded as a distributor of a product if – 25
- (a) the person makes the product available by performing a contract for the carrying out of works that consist of or include the installation of the product into a building or structure, and
 - (b) products identical to the product are or have been made available to consumers in the United Kingdom otherwise than by the performance of such a contract. 30

CHAPTER 2

DUTIES OF RELEVANT PERSONS, ETC

Duties of manufacturers

8 Duty to comply with security requirements

35

- (1) A manufacturer of a relevant connectable product must comply with any relevant security requirements relating to the product if condition A or B is met.
- (2) Condition A is that the manufacturer –

- (a) intends the product to be a UK consumer connectable product, or
 - (b) is aware, or ought to be aware, that the product will be a UK consumer connectable product.
- (3) Condition B is that –
- (a) the product is a UK consumer connectable product, and 5
 - (b) at the time it was made available by the manufacturer, condition A was met in relation to the product.
- (4) For the meaning of “UK consumer connectable product”, see section 54.

9 Statements of compliance

- (1) Subsection (2) applies if a manufacturer of a relevant connectable product – 10
- (a) intends the product to be a UK consumer connectable product, or
 - (b) is aware, or ought to be aware, that the product will be a UK consumer connectable product.
- (2) The manufacturer may not make the product available in the United Kingdom unless it is accompanied by – 15
- (a) a statement of compliance, or
 - (b) a summary of the statement of compliance that is in such form, and contains such information, as is specified in regulations made by the Secretary of State.
- (3) A “statement of compliance”, in relation to a product, is a document that – 20
- (a) is prepared by or on behalf of the manufacturer of the product,
 - (b) is in such form, and contains such information, as is specified in regulations made by the Secretary of State, and
 - (c) states that, in the opinion of the manufacturer, the manufacturer has complied with the applicable security requirements. 25
- (4) For the purposes of this section “the applicable security requirements”, in relation to a manufacturer of a product, means any relevant security requirements relating to the product, other than –
- (a) a security requirement that applies only after the product has been made available in the United Kingdom, or 30
 - (b) a security requirement that applies only when the manufacturer is making the product available to customers in the United Kingdom.
- (5) In a case where there is more than one manufacturer in relation to a product –
- (a) it is sufficient for the purposes of subsection (3)(a) if the document is prepared by or on behalf of all of the manufacturers acting jointly, and 35
 - (b) in such a case, any reference to the manufacturer in subsection (3)(c) is to be read as a reference to each of those manufacturers.
- (6) The Secretary of State may by regulations make further provision about statements of compliance, including (among other things) –
- (a) provision requiring a manufacturer of a product to take specified steps to determine for the purposes of preparing a statement of compliance whether the manufacturer has complied with the applicable security requirements; 40
 - (b) provision requiring a manufacturer of a product to retain a copy of the statement of compliance relating to the product for a specified period; 45

- (c) provision about publishing statements of compliance;
 - (d) provision about making available copies of statements of compliance.
- (7) The Secretary of State may by regulations provide that a manufacturer is to be treated as complying with subsection (2) if specified conditions are met.
- (8) In subsections (6) and (7) “specified” means specified in the regulations. 5
- (9) Regulations under this section are subject to the negative resolution procedure.

10 Duty to investigate potential compliance failures

- (1) This section applies if, at any time after a relevant connectable product has been made available in the United Kingdom –
- (a) a manufacturer of the product is informed that there is, or may be, a compliance failure in relation to the product, and 10
 - (b) the manufacturer is aware, or ought to be aware, that the product is or will be a UK consumer connectable product.
- (2) The manufacturer must take all reasonable steps to investigate whether there is a compliance failure in relation to the product. 15
- (3) In this section “compliance failure” means a failure by a manufacturer of the product to comply with a relevant security requirement relating to the product.

11 Duties to take action in relation to compliance failure

- (1) This section applies if, at any time after a relevant connectable product has been made available in the United Kingdom – 20
- (a) a manufacturer of the product becomes aware, or ought to be aware, of a compliance failure in relation to the product, and
 - (b) the manufacturer is aware, or ought to be aware, that the product is or will be a UK consumer connectable product.
- (2) The manufacturer must, as soon as is practicable, take all reasonable steps to – 25
- (a) prevent the product from being made available to customers in the United Kingdom (where it has not already been so made available);
 - (b) remedy the compliance failure.
- (3) The manufacturer must notify the persons listed in subsection (4) of the compliance failure as soon as possible. 30
This is subject to subsection (8).
- (4) The persons referred to in subsection (3) are –
- (a) the enforcement authority;
 - (b) any other manufacturer of the product of which the manufacturer is aware; 35
 - (c) any importer or distributor to whom the manufacturer supplied the product;
 - (d) in a case where specified conditions are met, any customer in the United Kingdom to whom the manufacturer supplied the product.
- (5) In subsection (4)(d) “specified” means specified in regulations made by the Secretary of State. 40
Regulations under this subsection are subject to the negative resolution procedure.

- (6) The notification under subsection (3) must include the following information –
 - (a) details of the compliance failure;
 - (b) any risks of which the manufacturer is aware that are posed by the compliance failure;
 - (c) any steps taken by the manufacturer to remedy the compliance failure and whether or not those steps have been successful. 5
- (7) When the manufacturer notifies a person within subsection (4)(b) or (c) of the compliance failure, the manufacturer must also inform the person whether or not the manufacturer has notified the enforcement authority of the compliance failure. 10
- (8) Where the manufacturer became aware of the compliance failure as a result of being contacted about it by a relevant person in accordance with this Chapter, the manufacturer does not need to notify the relevant person of the compliance failure.
- (9) In this section “compliance failure” means a failure by a manufacturer of the product to comply with a relevant security requirement relating to the product. 15

12 Duty to maintain records

- (1) A manufacturer of a relevant connectable product must maintain a record of –
 - (a) any investigations carried out by the manufacturer in relation to a compliance failure or suspected compliance failure (whether or not as a result of information received as mentioned in section 10(1)(a)); 20
 - (b) any compliance failures relating to the product.
- (2) A record of an investigation must contain the following information –
 - (a) the outcome of the investigation;
 - (b) where the manufacturer determined that there was a compliance failure, details of that compliance failure; 25
 - (c) any steps taken by the manufacturer to remedy the compliance failure and whether or not those steps were successful.
- (3) A record of a compliance failure must contain the following information –
 - (a) details of the compliance failure; 30
 - (b) any steps taken by the manufacturer to remedy the compliance failure and whether or not those steps were successful.
- (4) A record of an investigation or a compliance failure must be retained for a period of 10 years beginning with the day on which the record is made.
- (5) In a case where there is more than one manufacturer in relation to a product, the duty of each of those manufacturers to maintain a record under this section may be met by those manufacturers jointly maintaining a single record. 35
- (6) In this section “compliance failure” means a failure by a manufacturer of the product to comply with a relevant security requirement relating to the product.

Duties of authorised representatives

13 Duties to take action in relation to manufacturer’s compliance failure

- (1) This section applies if, at any time after a relevant connectable product is made available in the United Kingdom –
 - (a) an authorised representative of a manufacturer of the product is informed that there is, or may be, a compliance failure in relation to the product, and 5
 - (b) the authorised representative is aware, or ought to be aware, that the product is or will be a UK consumer connectable product.
- (2) The authorised representative must contact the manufacturer about the compliance failure (or potential compliance failure) as soon as possible. 10
- (3) The authorised representative must notify the enforcement authority of the compliance failure (or potential compliance failure) as soon as possible after the authorised representative has contacted (or attempted to contact) the manufacturer in accordance with subsection (2). 15
- (4) In this section “compliance failure” means a failure by a manufacturer of the product to comply with a relevant security requirement relating to the product.

Duties of importers

14 Duty to comply with security requirements

- (1) An importer of a relevant connectable product must comply with any relevant security requirements relating to the product if condition A or B is met. 20
- (2) Condition A is that the importer –
 - (a) intends the product to be a UK consumer connectable product, or
 - (b) is aware, or ought to be aware, that the product will be a UK consumer connectable product. 25
- (3) Condition B is that –
 - (a) the product is a UK consumer connectable product, and
 - (b) at the time it was made available by the importer, condition A was met in relation to the product.
- (4) For the meaning of “UK consumer connectable product”, see section 54. 30

15 Statements of compliance

- (1) Subsection (2) applies if an importer of a relevant connectable product –
 - (a) intends the product to be a UK consumer connectable product, or
 - (b) is aware, or ought to be aware, that the product will be a UK consumer connectable product. 35
- (2) The importer may not make the product available in the United Kingdom unless it is accompanied by –
 - (a) a statement of compliance, or
 - (b) a summary of the statement of compliance prepared in accordance with section 9(2)(b). 40

-
- (3) The importer must retain a copy of the statement of compliance, or the summary of the statement of compliance (as the case may be), for a period specified in regulations made by the Secretary of State.
- (4) The Secretary of State may by regulations require an importer of a relevant connectable product to make available the statement of compliance relating to the product, or the summary of the statement of compliance (as the case may be), in accordance with provision made by the regulations. 5
- (5) In a case where regulations made under section 9(7) provide that a manufacturer of a relevant connectable product is to be treated as complying with section 9(2) if conditions specified in the regulations are met – 10
- (a) an importer of the product who meets the condition in subsection (1)(a) or the condition in subsection (1)(b) of this section may not make the product available in the United Kingdom unless the importer is satisfied that the conditions specified in the regulations have been met, and 15
- (b) subsections (2) and (3), and any regulations made under subsection (4), do not apply.
- (6) Regulations under this section are subject to the negative resolution procedure.
- 16 Duty not to supply products where compliance failure by manufacturer**
- (1) An importer of a relevant connectable product may not make the product available in the United Kingdom if – 20
- (a) the importer –
- (i) intends the product to be a UK consumer connectable product, or
- (ii) is aware, or ought to be aware, that the product will be a UK consumer connectable product, and 25
- (b) the importer knows or believes that there is a compliance failure in relation to the product.
- (2) In this section “compliance failure” means a failure by a manufacturer of a product to comply with a relevant security requirement relating to the product. 30
- 17 Duty to investigate potential compliance failures of importer or manufacturer**
- (1) This section applies if, at any time after an importer of a relevant connectable product makes it available in the United Kingdom –
- (a) the importer is informed that there is, or may be, a compliance failure in relation to the product, and 35
- (b) the importer is aware, or ought to be aware, that the product is or will be a UK consumer connectable product.
- (2) The importer must take all reasonable steps to investigate whether there is a compliance failure in relation to the product.
- (3) In this section “compliance failure” means a failure by the importer, or by a manufacturer of the product, to comply with a relevant security requirement relating to the product. 40

18 Duties to take action in relation to importer’s compliance failure

- (1) This section applies if, at any time after an importer of a relevant connectable product makes it available to a customer in the United Kingdom—
 - (a) the importer becomes aware, or ought to be aware, of a compliance failure in relation to the product, and 5
 - (b) the importer is aware, or ought to be aware, that the product is a UK consumer connectable product.
- (2) The importer must, as soon as is practicable, take all reasonable steps to remedy the compliance failure.
- (3) The importer must notify the persons listed in subsection (4) of the compliance failure as soon as possible. 10
- (4) The persons referred to in subsection (3) are—
 - (a) the enforcement authority, and
 - (b) in a case where specified conditions are met, any customer in the United Kingdom to whom the importer supplied the product. 15
- (5) In subsection (4)(b) “specified” means specified in regulations made by the Secretary of State.
Regulations under this subsection are subject to the negative resolution procedure.
- (6) The notification under subsection (3) must include the following information— 20
 - (a) details of the compliance failure;
 - (b) any risks of which the importer is aware that are posed by the compliance failure;
 - (c) any steps that have been taken by the importer to remedy the compliance failure and whether or not those steps have been successful. 25
- (7) In this section “compliance failure” means a failure by the importer to comply with a relevant security requirement relating to the product.

19 Duties to take action in relation to manufacturer’s compliance failure

- (1) This section applies if, at any time after an importer of a relevant connectable product makes it available in the United Kingdom— 30
 - (a) the importer becomes aware, or ought to be aware, of a compliance failure in relation to the product, and
 - (b) the importer is aware, or ought to be aware, that the product is or will be a UK consumer connectable product. 35
- (2) In this section “compliance failure” means a failure by a manufacturer of the product to comply with a relevant security requirement relating to the product.
- (3) The importer must contact the manufacturer about the compliance failure as soon as possible.
This is subject to subsection (10)(b). 40
- (4) If it appears to the importer that it is unlikely that the compliance failure will be remedied in accordance with section 11(2)(b), the importer must, as soon as is practicable, take all reasonable steps to prevent the product from being made

- available to customers in the United Kingdom (where it has not already been so made available).
- (5) The importer must notify the persons listed in subsection (6) of the compliance failure as soon as possible after the importer has contacted (or attempted to contact) the manufacturer in accordance with subsection (3) (or, if subsection (10)(b) applies, as soon as possible). 5
This is subject to subsection (10)(a) and (c).
- (6) The persons referred to in subsection (5) are— 10
- (a) the enforcement authority,
 - (b) any distributor to whom the importer supplied the product, and
 - (c) in a case where specified conditions are met, any customer in the United Kingdom to whom the importer supplied the product.
- (7) In subsection (6)(c) “specified” means specified in regulations made by the Secretary of State. 15
Regulations under this subsection are subject to the negative resolution procedure.
- (8) The notification under subsection (5) must include the following information— 20
- (a) details of the compliance failure;
 - (b) any risks of which the importer is aware that are posed by the compliance failure;
 - (c) any steps of which the importer is aware that have been taken by the manufacturer to remedy the compliance failure and whether or not those steps have been successful.
- (9) When the importer notifies a person within subsection (6)(b) of the compliance failure, the importer must also inform the person whether or not— 25
- (a) the manufacturer is aware of the compliance failure;
 - (b) the enforcement authority has been notified of the compliance failure.
- (10) Where the importer became aware of the compliance failure as a result of being notified of it by a relevant person in accordance with this Chapter— 30
- (a) the importer does not need to notify the relevant person of the compliance failure, 30
 - (b) if the relevant person— 35
 - (i) is the manufacturer, or
 - (ii) informs the importer that the manufacturer is aware of the compliance failure,
the importer does not need to contact the manufacturer about the compliance failure, and
 - (c) if the relevant person informs the importer that the enforcement authority has been notified of the compliance failure, the importer does not need to notify the enforcement authority of the compliance failure. 40

20 Duty to maintain records of investigations

- (1) An importer of a relevant connectable product must maintain a record of— 45
- (a) any investigations carried out by the importer (whether or not as a result of information received as mentioned in section 17(1)(a)) in relation to a compliance failure, or suspected compliance failure, by— 45
 - (i) the importer, or

- (ii) a manufacturer of the product;
 - (b) any investigations of which the importer is aware that have been carried out by a manufacturer of the product in relation to a compliance failure, or suspected compliance failure, by the manufacturer.
- (2) A record of an investigation must contain the following information – 5
 - (a) the outcome of the investigation;
 - (b) where it was determined that there was a compliance failure, details of that compliance failure;
 - (c) any steps taken by the importer or the manufacturer (as the case may be) to remedy the compliance failure and whether or not those steps were successful. 10
- (3) An importer is not to be regarded as having failed to comply with the duty imposed by subsection (1)(b) to maintain a record of an investigation carried out by a manufacturer if – 15
 - (a) the record of the investigation does not contain all of the information required by subsection (2),
 - (b) the missing information may only be obtained from the manufacturer, and
 - (c) the importer has taken reasonable steps to obtain that information from the manufacturer. 20
- (4) A record of an investigation must be retained for a period of 10 years beginning with the day on which the record is made.
- (5) In this section “compliance failure”, in relation to a product, means a failure to comply with a relevant security requirement relating to the product.

Duties of distributors 25

21 Duty to comply with security requirements

- (1) A distributor of a relevant connectable product must comply with any relevant security requirements relating to the product if condition A or B is met.
- (2) Condition A is that the distributor – 30
 - (a) intends the product to be a UK consumer connectable product, or
 - (b) is aware, or ought to be aware, that the product will be a UK consumer connectable product.
- (3) Condition B is that – 35
 - (a) the product is a UK consumer connectable product, and
 - (b) at the time it was made available by the distributor, condition A was met in relation to the product.
- (4) For the meaning of “UK consumer connectable product”, see section 54.

22 Statements of compliance

- (1) Subsection (2) applies if a distributor of a relevant connectable product – 40
 - (a) intends the product to be a UK consumer connectable product, or
 - (b) is aware, or ought to be aware, that the product will be a UK consumer connectable product.

-
- (2) The distributor may not make the product available in the United Kingdom unless it is accompanied by –
- (a) a statement of compliance, or
 - (b) a summary of the statement of compliance prepared in accordance with section 9(2)(b). 5
- (3) In a case where regulations made under section 9(7) provide that a manufacturer of a relevant connectable product is to be treated as complying with section 9(2) if conditions specified in the regulations are met –
- (a) a distributor of the product who meets the condition in subsection (1)(a) or the condition in subsection (1)(b) of this section may not make the product available in the United Kingdom unless the distributor is satisfied that the conditions specified in the regulations have been met, and 10
 - (b) subsection (2) does not apply.
- 23 Duty not to supply products where compliance failure by manufacturer 15**
- (1) A distributor may not make a relevant connectable product available in the United Kingdom if –
- (a) the distributor –
 - (i) intends the product to be a UK consumer connectable product, or 20
 - (ii) is aware, or ought to be aware, that the product will be a UK consumer connectable product, and
 - (b) the distributor knows or believes that there is a compliance failure in relation to the product.
- (2) In this section “compliance failure” means a failure by a manufacturer of a product to comply with a relevant security requirement relating to the product. 25
- 24 Duties to take action in relation to distributor’s compliance failures**
- (1) This section applies if, at any time after a distributor of a relevant connectable product makes it available to a customer in the United Kingdom –
- (a) the distributor becomes aware, or ought to be aware, of a compliance failure in relation to the product, and 30
 - (b) the distributor is aware, or ought to be aware, that the product is a UK consumer connectable product.
- (2) The distributor must, as soon as is practicable, take all reasonable steps to remedy the compliance failure. 35
- (3) The distributor must notify the persons listed in subsection (4) of the compliance failure as soon as possible.
- (4) The persons referred to in subsection (3) are –
- (a) the enforcement authority, and
 - (b) in a case where specified conditions are met, any customer in the United Kingdom to whom the distributor supplied the product. 40
- (5) In subsection (4)(b) “specified” means specified in regulations made by the Secretary of State.
- Regulations under this subsection are subject to the negative resolution procedure. 45

- (6) The notification under subsection (3) must include the following information –
 - (a) details of the compliance failure;
 - (b) any risks of which the distributor is aware that are posed by the compliance failure;
 - (c) any steps taken by the distributor to remedy the compliance failure and whether or not those steps have been successful. 5
- (7) In this section “compliance failure” means a failure by the distributor to comply with a relevant security requirement relating to the product.

25 Duties to take action in relation to manufacturer’s compliance failure

- (1) This section applies if, at any time after a distributor of a relevant connectable product makes it available in the United Kingdom –
 - (a) the distributor becomes aware, or ought to be aware, of a compliance failure in relation to the product, and 10
 - (b) the distributor is aware, or ought to be aware, that the product is or will be a UK consumer connectable product. 15
- (2) In this section “compliance failure” means a failure by a manufacturer of the product to comply with a relevant security requirement relating to the product.
- (3) The distributor must contact the manufacturer about the compliance failure as soon as possible.
This is subject to subsection (11)(b). 20
- (4) If –
 - (a) it is not possible to contact the manufacturer as required by subsection (3), and
 - (b) a relevant person other than the manufacturer supplied the product to the distributor, 25the distributor must (unless subsection (11)(a) applies) contact that other relevant person about the compliance failure as soon as possible.
- (5) If it appears to the distributor that it is unlikely that the compliance failure will be remedied in accordance with section 11(2)(b), the distributor must take all reasonable steps to prevent the product from being made available to customers in the United Kingdom (where it has not already been so made available). 30
- (6) The distributor must notify the persons listed in subsection (7) of the compliance failure as soon as possible after the distributor has contacted (or attempted to contact) the manufacturer in accordance with subsection (3) (or, if subsection (11)(b) applies, as soon as possible). 35
This is subject to subsection (11)(a) and (c).
- (7) The persons referred to in subsection (6) are –
 - (a) the enforcement authority,
 - (b) any importer or distributor to whom the distributor supplied the product, 40
 - (c) if not already notified as a result of subsection (3) or (4), the person from whom the distributor obtained the product, and
 - (d) in a case where specified conditions are met, any customer in the United Kingdom to whom the distributor supplied the product. 45

-
- (8) In subsection (7)(d) “specified” means specified in regulations made by the Secretary of State.
 Regulations under this subsection are subject to the negative resolution procedure.
- (9) The notification under subsection (6) must include the following information – 5
- (a) details of the compliance failure;
 - (b) any risks of which the distributor is aware that are posed by the compliance failure;
 - (c) any steps of which the distributor is aware that have been taken by the manufacturer to remedy the compliance failure and whether or not those steps have been successful. 10
- (10) When the distributor notifies a person within subsection (7)(b) or (c) of the compliance failure, the distributor must also inform the person whether or not –
- (a) the manufacturer is aware of the compliance failure; 15
 - (b) the enforcement authority has been notified of the compliance failure.
- (11) Where the distributor became aware of the compliance failure as a result of being notified of it by a relevant person in accordance with this Chapter –
- (a) the distributor does not need to notify the relevant person of the compliance failure, 20
 - (b) if the relevant person –
 - (i) is the manufacturer, or
 - (ii) informs the distributor that the manufacturer is aware of the compliance failure,
 the distributor does not need to contact the manufacturer about the compliance failure, and 25
 - (c) if the relevant person informs the distributor that the enforcement authority has been notified of the compliance failure, the distributor does not need to notify the enforcement authority of the compliance failure. 30

CHAPTER 3

ENFORCEMENT

General

26 Enforcement of Part 1

- (1) The person responsible for enforcing the provisions of this Part, and of regulations made under it, is the Secretary of State (but see also section 27). 35
- (2) For the investigatory powers available to the Secretary of State, see Schedule 5 to the Consumer Rights Act 2015.
- (3) In paragraph 10 of Schedule 5 to that Act (duties and powers to which Schedule 5 applies), insert at the appropriate place – 40
- “section 26(1) of the Product Security and Telecommunications Infrastructure Act 2022;”.

- (4) Despite paragraph 13(4) of Schedule 5 to that Act, the Secretary of State may exercise the powers in Part 3 of that Schedule (powers in relation to the production of information) for any purpose relating to the enforcement of this Part (and in such a case the restriction imposed by paragraph 13(5) of that Schedule does not apply). 5
- (5) Nothing in this section authorises the Secretary of State to bring proceedings in Scotland for an offence under this Part.

27 Delegation of enforcement functions

- (1) The Secretary of State may enter into an agreement with any person authorising the person to exercise any enforcement function of the Secretary of State. 10
- (2) An agreement under this section may provide for payments to be made by the Secretary of State in respect of the performance of any enforcement function.
- (3) An agreement under this section – 15
- (a) may be cancelled by the Secretary of State at any time, and
 - (b) does not prevent the Secretary of State from performing a function to which the agreement relates.
- (4) An agreement under this section must be in writing.
- (5) In this Part “enforcement function” means – 20
- (a) any function of the Secretary of State under this Chapter;
 - (b) any function of the Secretary of State under Schedule 5 to the Consumer Rights Act 2015, so far as exercisable for the purposes of this Part.
- (6) Accordingly, in the case of the exercise of an enforcement function by a person authorised in accordance with this section to exercise that function, any reference in this Chapter or that Schedule to the Secretary of State in connection with that function is to be read as a reference to that person. 25

Enforcement notices

28 Compliance notices

- (1) If the Secretary of State has reasonable grounds to believe that a person has failed to comply with a relevant duty, the Secretary of State may give a compliance notice to the person. 30
- (2) A compliance notice is a notice under this section requiring the person to whom it is given to comply with the relevant duty specified in the notice within a specified period.
- (3) A compliance notice given to a person must – 35
- (a) set out the reasons for giving the compliance notice;
 - (b) explain what may happen if the person does not comply with it;
 - (c) explain how the person may appeal against it.
- (4) A compliance notice given to a person may – 40
- (a) require the person to take any specified steps within a specified period in order to comply with the relevant duty;

-
- (b) require the person within a specified period to provide evidence to the satisfaction of the Secretary of State that the person has complied with, or is complying with, the relevant duty.
- (5) Before giving a compliance notice to a person, the Secretary of State must— 5
- (a) notify the person that the Secretary of State intends to give a compliance notice to the person, and
- (b) give the person an opportunity to make representations about the giving of the notice.
- (6) The Secretary of State may not give a compliance notice to the person until the end of the period of 10 days beginning with the day on which the notification required by subsection (5)(a) is given. 10
- (7) A compliance notice may not be given to a person more than once in respect of the same act or omission.
- (8) In this section— 15
- “relevant duty” means a duty imposed by or under Chapter 2;
- “specified” means specified in the compliance notice.
- 29 Stop notices**
- (1) If the Secretary of State has reasonable grounds to believe that a person is carrying on, or is likely to carry on, an activity in breach of a relevant duty, the Secretary of State may give a stop notice to the person. 20
- (2) A stop notice is a notice under this section requiring the person to whom it is given to stop carrying on an activity specified in the notice within a specified period.
- (3) A stop notice given to a person must— 25
- (a) set out the reasons for giving the stop notice;
- (b) explain what may happen if the person does not comply with it;
- (c) explain how the person may appeal against it.
- (4) A stop notice given to a person may— 30
- (a) require the person to take any specified steps within a specified period for the purpose of complying with the stop notice;
- (b) require the person within a specified period to provide evidence to the satisfaction of the Secretary of State that the person is complying with the stop notice;
- (c) require the person to take steps to inform customers of any risks posed by using a product to which the notice relates; 35
- (d) provide that, if the person takes specified steps within a specified period for the purpose of complying with the relevant duty, the stop notice will be revoked;
- (e) require the person within a specified period to provide evidence to the satisfaction of the Secretary of State that the person has taken those steps. 40
- (5) Before giving a stop notice to a person, the Secretary of State must—
- (a) notify the person that the Secretary of State intends to give a stop notice to the person, and

- (b) give the person an opportunity to make representations about the giving of the notice.
- (6) The Secretary of State may not give a stop notice to the person until the end of the period of 10 days beginning with the day on which the notification required by subsection (5)(a) is given. 5
- (7) Subsections (5) and (6) do not apply if the Secretary of State considers that there is an urgent need to give a stop notice to the person.
- (8) In this section –
 - “relevant duty” means a duty imposed by or under Chapter 2;
 - “specified” means specified in the stop notice. 10

30 Recall notices

- (1) Subsection (2) applies if –
 - (a) the Secretary of State has reasonable grounds to believe that there is a compliance failure in relation to any UK consumer connectable products that have been supplied to customers, 15
 - (b) the Secretary of State considers that the action (if any) being taken by any relevant person in relation to the compliance failure is inadequate, and
 - (c) the Secretary of State considers that any action which the Secretary of State may take under section 28, 29 or 42 would not be sufficient to deal with the risks posed by the compliance failure. 20
- (2) The Secretary of State may give a recall notice to any of the following –
 - (a) in the case of a compliance failure by a manufacturer of the products –
 - (i) any manufacturer of the products;
 - (ii) an authorised representative of a manufacturer of the products; 25
 - (iii) any importer or distributor who made any of the products available in the United Kingdom;
 - (b) in the case of a compliance failure by an importer or distributor who supplied any of the products to a customer, that importer or distributor. 30
- (3) A recall notice is a notice under this section requiring the person to whom it is given (“P”) to make arrangements within a specified period for the return of the products to P or to another person specified in the notice.
- (4) A recall notice given to a person must –
 - (a) set out the reasons for giving the recall notice; 35
 - (b) explain what may happen if the person does not comply with it;
 - (c) explain how the person may appeal against it.
- (5) A recall notice given to a person may –
 - (a) require the person to take specified steps within a specified period for the purpose of complying with the recall notice; 40
 - (b) require the person within a specified period to provide evidence to the satisfaction of the Secretary of State that the person is complying with the recall notice;
 - (c) require the person to provide the Secretary of State with specified information in relation to the products, including information relating to times after the products have been returned; 45

-
- (d) require the person to take steps to inform customers of any risks posed by using the products.
- (6) Before giving a recall notice to a person, the Secretary of State must—
- (a) notify the person that the Secretary of State intends to give a recall notice to the person, and 5
- (b) give the person an opportunity to make representations about the giving of the notice.
- (7) The Secretary of State may not give a recall notice to the person until the end of the period of 10 days beginning with the day on which the notification required by subsection (6)(a) is given. 10
- (8) Subsections (6) and (7) do not apply if the Secretary of State considers that there is an urgent need to give a recall notice to the person.
- (9) In this section—
- “compliance failure”, in relation to a product, means a failure by a relevant person to comply with a relevant security requirement in relation to the product; 15
- “specified” means specified in the recall notice.
- 31 Power to vary or revoke enforcement notices**
- (1) The Secretary of State may vary or revoke an enforcement notice.
- (2) But the Secretary of State may not vary an enforcement notice in order to make it more onerous. 20
- 32 Failure to comply with enforcement notice**
- (1) It is an offence for a person to fail to comply with an enforcement notice.
- (2) It is a defence for a person (“P”) charged with an offence under this section to show that P took all reasonable steps to comply with the notice. 25
- (3) P is to be taken to have shown the fact mentioned in subsection (2) if—
- (a) sufficient evidence of the fact is adduced to raise an issue with respect to it, and
- (b) the contrary is not proved beyond reasonable doubt.
- (4) P may not rely on a defence under subsection (2) which involves a third party allegation unless P has— 30
- (a) given a notice to the prosecutor in accordance with this section, or
- (b) obtained the permission of the court.
- (5) In subsection (4) “third party allegation” means an allegation that the failure to comply with the notice was due to— 35
- (a) the act or omission of another person, or
- (b) P’s reliance on information provided by another person.
- (6) The notice under subsection (4)(a) must give any information in P’s possession which identifies, or may assist in identifying, the person mentioned in subsection (5). 40

-
- (7) In the case of proceedings in England and Wales or Northern Ireland, the notice under subsection (4)(a) must be given to the prosecutor no later than 7 clear days before the hearing of the proceedings.
- (8) In the case of proceedings in Scotland, the notice under subsection (4)(a) must be given to the prosecutor – 5
- (a) where an intermediate diet is to be held, at or before that diet;
 - (b) where such a diet is not to be held, no later than 10 clear days before the trial diet.
- (9) A person guilty of an offence under this section is liable – 10
- (a) on summary conviction in England and Wales, to a fine;
 - (b) on summary conviction in Scotland, to a fine not exceeding level 5 on the standard scale;
 - (c) on summary conviction in Northern Ireland, to a fine not exceeding level 5 on the standard scale.
- 33 Appeals against enforcement notices 15**
- (1) A person who is given an enforcement notice may appeal to the First-tier Tribunal (“the Tribunal”) against the enforcement notice or any provision of it.
- (2) An appeal under this section is to be brought before the end of the period of 28 days beginning with – 20
- (a) the day on which the notice was given, or
 - (b) if the appeal is in respect of the variation of a notice under section 31, the day on which the notice was varied.
- (3) On an appeal under this section, the Tribunal – 25
- (a) if it is satisfied that any of the grounds in subsection (4) applies, may –
 - (i) vary the notice, or
 - (ii) cancel the notice or any part of it;
 - (b) if it is not so satisfied, must confirm the notice.
- (4) The grounds referred to in subsection (3)(a) are – 30
- (a) that the decision to give the notice, or to include any provision in the notice, was based, wholly or partly, on an error of fact;
 - (b) that the decision to give the notice, or to include any provision in the notice, was wrong in law;
 - (c) that the notice, or any provision of it, was unfair or unreasonable for any other reason.
- (5) If the Tribunal cancels an enforcement notice (in whole or in part), it may refer the matter back to the person that gave the notice with a direction to reconsider and make a new decision in accordance with its ruling. 35
- (6) But the Tribunal may not direct the person that gave the notice to take any action which the person would not otherwise have the power to take.
- (7) In determining an appeal under this section, the Tribunal may – 40
- (a) review any determination of fact on which the decision to give the notice, or to include any provision in it, was based;
 - (b) take into account evidence which was not available to the person that gave the notice.

- (8) Where an appeal in respect of an enforcement notice, or the variation of an enforcement notice, is made under this section, the notice or variation (as the case may be) is of no effect until the appeal is determined or withdrawn.
- (9) Where an appeal is or may be made to the Upper Tribunal in relation to a decision of the Tribunal under this section, the Upper Tribunal may suspend the notice to which the appeal relates, or any provision of it, until the appeal is determined or withdrawn. 5

34 Compensation for notices wrongly given

- (1) This section applies if – 10
- (a) the Secretary of State gives a stop notice or a recall notice to a person,
 - (b) the relevant breach in respect of which the notice was given did not occur, and
 - (c) the decision to give the notice was not attributable to any neglect or default by the person.
- (2) The Secretary of State is liable to pay compensation to the person to whom the notice was given in respect of any loss or damage caused as a result of the giving of the notice. 15
- (3) The amount of compensation payable to a person under this section is to be determined by the Secretary of State.
- (4) In determining that amount, the Secretary of State may have regard to the extent to which the person took reasonable steps to reduce any loss or damage caused as a result of the giving of the notice. 20
- (5) A person seeking compensation under this section must make a claim to the Secretary of State.
- (6) The claim – 25
- (a) must be made in such form, and such manner, as the Secretary of State may direct;
 - (b) must contain evidence of the loss or damage in respect of which compensation is sought;
 - (c) must specify the amount of compensation which the person is seeking. 30
- (7) The Secretary of State must, before the end of the period of 45 days beginning with the day on which the Secretary of State receives the claim – 35
- (a) decide whether the person is entitled to compensation under this section and, if so, the amount of that compensation, and
 - (b) notify the person of the decision.
- (8) In this section “relevant breach” means – 40
- (a) in the case of a stop notice, a breach of a duty imposed by or under Chapter 2;
 - (b) in the case of a recall notice, a compliance failure within the meaning of section 30.

35 Appeals against decisions under section 34

- (1) A person may appeal to the First-tier Tribunal (“the Tribunal”) against –
- (a) a decision not to award compensation to the person under section 34, or

- (b) the amount of compensation awarded to the person under that section.
- (2) An appeal under this section is to be brought before the end of the period of 28 days beginning with the day on which the person is notified in accordance with section 34(7)(b).
- (3) On an appeal under this section against a decision not to award compensation under section 34, the Tribunal – 5
 - (a) if it is satisfied that the ground in subsection (6)(a) or the ground in subsection (6)(b) applies, may quash the decision;
 - (b) if it is not so satisfied, must confirm the decision.
- (4) If the Tribunal quashes a decision under subsection (3)(a), the Tribunal may – 10
 - (a) direct the Secretary of State to pay compensation of an amount determined by the Tribunal, or
 - (b) refer the matter back to the Secretary of State with a direction to reconsider and make a new decision in accordance with its ruling.
- (5) On an appeal under this section against the amount of compensation awarded under section 34, the Tribunal – 15
 - (a) if it is satisfied that any of the grounds in subsection (6) applies, may –
 - (i) vary the amount of compensation awarded, or
 - (ii) refer the matter back to the Secretary of State with a direction to reconsider and make a new decision in accordance with its ruling; 20
 - (b) if it is not so satisfied, must confirm the amount of compensation awarded.
- (6) The grounds referred to in subsections (3)(a) and (5)(a) are – 25
 - (a) that the decision appealed against was based, wholly or partly, on an error of fact;
 - (b) that the decision appealed against was wrong in law;
 - (c) that the amount of compensation awarded was unfair or unreasonable for any other reason.
- (7) In determining an appeal under this section, the Tribunal may – 30
 - (a) review any determination of fact on which the decision appealed against was based;
 - (b) take into account evidence which was not available to the Secretary of State.
- (8) The Tribunal may not direct the Secretary of State under this section to pay any compensation which the Secretary of State would not otherwise be liable to pay under section 34(2). 35

Monetary penalties

36 Monetary penalties

- (1) If the Secretary of State is satisfied on the balance of probabilities that a person has failed to comply with a relevant duty, the Secretary of State may give a penalty notice to the person. 40

-
- (2) A penalty notice is a notice under this section requiring the person to pay a penalty of a specified amount to the Secretary of State within a specified period.
- (3) A person may not be given more than one penalty notice in respect of a single relevant breach. 5
- (4) A penalty notice may not require a person to pay a penalty of an amount greater than the relevant maximum in respect of a single relevant breach. For the relevant maximum, see section 38.
- (5) A penalty notice given in respect of a relevant breach may, in addition to requiring the person to pay a penalty of a specified amount (“the fixed penalty”), require the person to pay to the Secretary of State within a specified period a further daily penalty, of a specified amount not exceeding £20,000, for each day for which the relevant breach continues after the end of the period specified for payment of the fixed penalty. 10
- (6) The amount of each such daily penalty is to be disregarded for the purposes of subsection (4). 15
- (7) A penalty notice may not specify a period for paying a penalty that is less than 28 days beginning with the day on which the notice is given.
- (8) A penalty notice may be given to a person in respect of a relevant breach whether or not the person has been given an enforcement notice in respect of the relevant breach. 20
- (9) Any penalty received by the Secretary of State in accordance with this section is to be paid into the Consolidated Fund.
- (10) In this section –
 “relevant breach” means a failure to comply with a relevant duty;
 “relevant duty” means a duty imposed by or under Chapter 2;
 “specified” means specified in the penalty notice. 25
- 37 Determining the amount of a penalty**
- (1) A penalty imposed by a penalty notice must be of an amount that the Secretary of State considers to be – 30
 (a) appropriate, and
 (b) proportionate to the relevant breach in respect of which it is imposed.
- (2) In determining the amount of a penalty to be imposed by a penalty notice on a person, the Secretary of State must take into account the following matters (among others) – 35
 (a) the effects of the relevant breach in respect of which the penalty is imposed;
 (b) any action taken by the person to remedy the relevant breach or mitigate its effects.
- (3) In this section “relevant breach” has the same meaning as in section 36. 40
- 38 The relevant maximum**
- (1) For the purposes of section 36 the relevant maximum, in relation to a person, is the greater of –

- (a) £10 million, and
 - (b) 4% of the person’s qualifying worldwide revenue for the person’s most recent complete accounting period.

This is subject to subsections (2) to (6).
- (2) Where the Secretary of State is deciding the amount of the penalty to be imposed on a person at a time when the person’s first accounting period has not yet ended, the reference in subsection (1)(b) to the person’s qualifying worldwide revenue for the person’s most recent complete accounting period is a reference to the amount that the Secretary of State estimates is likely to be the person’s qualifying worldwide revenue for that period. 5
10
- (3) For the purposes of this section, the amount of a person’s qualifying worldwide revenue for an accounting period is, in the event of a disagreement between the person and the Secretary of State, the amount determined by the Secretary of State.
- (4) In the case of an accounting period that is not a period of 12 months, the amount of the person’s qualifying worldwide revenue (or estimated qualifying worldwide revenue) for the period is to be adjusted as follows – 15
 - (a) if the accounting period is less than 12 months, the amount is to be proportionately increased;
 - (b) if the accounting period is more than 12 months, the amount is to be proportionately reduced. 20
- (5) If the person does not have an accounting period, the relevant maximum is £10 million.
- (6) The Secretary of State may by regulations provide that, where the person is a member of one or more groups, the relevant maximum is to be calculated by reference to a specified percentage of the total qualifying worldwide revenue of those groups, or of members of those groups that are of a specified description, for a specified period. 25

“Specified” means specified in the regulations.
- (7) The Secretary of State may by regulations make provision about how the qualifying worldwide revenue of a person or persons for a period is to be determined for the purposes of this section. 30
- (8) Regulations under this section are subject to the affirmative resolution procedure.
- (9) In this section – 35
 - “accounting period”, in relation to a person, means a period in respect of which accounts are prepared in relation to that person or, where that person is an individual, in relation to that person’s relevant business;
 - “group” means a parent undertaking and its subsidiary undertakings;
 - “parent undertaking” and “subsidiary undertaking” have the same meaning as they have for the purposes of the Companies Act 2006 (see section 1162 of, and Schedule 7 to, that Act); 40
 - “relevant business” means –
 - (a) in the case of a relevant person, the business of being a manufacturer, importer or distributor (as the case may be) of relevant connectable products; 45

- (b) in the case of a person who is an authorised representative, the business of acting as an authorised representative or as part of which the person is an authorised representative.

39 Penalty notices: further provision

- (1) Before giving a penalty notice to a person, the Secretary of State must – 5
 (a) notify the person of the Secretary of State’s intention to give a penalty notice to the person, and
 (b) give the person an opportunity to make representations about the giving of the notice.
- (2) The Secretary of State may not give a penalty notice to the person before the end of the period of 28 days beginning with the day on which notification under subsection (1)(a) is given. 10
- (3) A penalty notice must contain the following information – 15
 (a) the reasons for giving the penalty notice;
 (b) the amount of the penalty;
 (c) how payment may be made;
 (d) the period within which payment must be made;
 (e) how the person to whom the notice is given may appeal against the imposition of the penalty;
 (f) the consequences of failing to pay the penalty. 20
- (4) The Secretary of State may vary or revoke a penalty notice.
- (5) But the Secretary of State may not vary a penalty notice in order to make it more onerous.

40 Enforcement of penalty notices

- (1) In England and Wales, a penalty is recoverable as if it were payable under an order of the High Court. 25
- (2) In Scotland, a penalty may be enforced in the same manner as an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.
- (3) In Northern Ireland, a penalty is recoverable as if it were payable under an order of the High Court. 30
- (4) Where action is taken under this section for the recovery of a penalty, the penalty – 35
 (a) in relation to England and Wales, is to be treated for the purposes of section 98 of the Courts Act 2003 (register of judgments and orders etc) as if it were a judgment entered in the High Court;
 (b) in relation to Northern Ireland, is to be treated for the purposes of Article 116 of the Judgments Enforcement (Northern Ireland) Order 1981 (S.I. 1981/226 (N.I. 6)) (register of judgments) as if it were a judgment in respect of which an application has been accepted under Article 22 or 23(1) of that Order. 40
- (5) In this section “penalty” means a penalty imposed by a penalty notice under section 36.

41 Appeals against penalty notices

- (1) A person who is given a penalty notice may appeal to the First-tier Tribunal (“the Tribunal”) against –
 - (a) the imposition of a penalty imposed by the penalty notice;
 - (b) the amount of such a penalty; 5
 - (c) the period within which such a penalty, or any part of it, is required to be paid.

- (2) An appeal under this section is to be brought before the end of the period of 28 days beginning with –
 - (a) the day on which the penalty notice was given, or 10
 - (b) if the appeal is in respect of the variation of a notice under section 39(4), the day on which the notice was varied.

- (3) On an appeal under this section, the Tribunal –
 - (a) if it is satisfied that any of the grounds in subsection (4) applies, may –
 - (i) vary the amount of a penalty imposed by the penalty notice or the period within which such a penalty, or any part of it, is required to be paid, or 15
 - (ii) cancel any penalty imposed by the penalty notice;
 - (b) if it is not so satisfied, must confirm the penalty notice.

- (4) The grounds referred to in subsection (3)(a) are – 20
 - (a) that the decision appealed against was based, wholly or partly, on an error of fact;
 - (b) that the decision appealed against was wrong in law;
 - (c) that the decision appealed against was unfair or unreasonable for any other reason. 25

- (5) If the Tribunal cancels a penalty imposed by a penalty notice, it may refer the matter back to the person that gave the notice with a direction to reconsider and make a new decision in accordance with its ruling.

- (6) But the Tribunal may not direct the person that gave the notice to take any action which the person would not otherwise have the power to take. 30

- (7) In determining an appeal under this section, the Tribunal may –
 - (a) review any determination of fact on which the decision appealed against was based;
 - (b) take into account evidence which was not available to the person that gave the notice. 35

- (8) Where an appeal in respect of a penalty notice, or the variation of a penalty notice, is made under this section, the notice or variation (as the case may be) is of no effect until the appeal is determined or withdrawn.

- (9) Where an appeal is or may be made to the Upper Tribunal in relation to a decision of the Tribunal under this section, the Upper Tribunal may suspend the notice to which the appeal relates until the appeal is determined or withdrawn. 40

Forfeiture

42 Forfeiture

- (1) In this section “forfeitable products” means –
- (a) any relevant connectable products that –
 - (i) are in the possession or control of any manufacturer, importer or distributor of the products, 5
 - (ii) are in the possession or control of an authorised representative of a manufacturer of the products, or
 - (iii) are detained under paragraph 28 of Schedule 5 to the Consumer Rights Act 2015; 10
 - (b) any relevant connectable products that have been returned to any of the following persons as a result of a compliance failure, or suspected compliance failure, relating to the products –
 - (i) any manufacturer, importer or distributor of the products;
 - (ii) an authorised representative of a manufacturer of the products; 15
 - (iii) a person acting on behalf of a person within sub-paragraph (i) or (ii);
 - (iv) a person specified in a recall notice under section 30.
- (2) If the Secretary of State has reasonable grounds to believe that –
- (a) there is a compliance failure relating to any forfeitable products, and 20
 - (b) the products are, or (if no order is made for their forfeiture) will be, UK consumer connectable products,
- the Secretary of State may apply to the appropriate court (see subsection (11)(a)) for an order for the forfeiture of the products.
- (3) The court may, on an application under this section, make an order for the forfeiture of any forfeitable products if the court is satisfied on the balance of probabilities – 25
- (a) that the products are, or (if no order is made for their forfeiture) will be, UK consumer connectable products,
 - (b) that there is a compliance failure in relation to the products, 30
 - (c) that it is unlikely that the security requirement in respect of which the compliance failure exists will be complied with, and
 - (d) that it is proportionate to make the order.
- (4) For the purposes of this section the court may determine that there is a compliance failure in relation to any forfeitable products if it is satisfied that there is a compliance failure in relation to products that are representative of those products (whether by reason of being of the same model or design or otherwise). 35
- (5) If the court makes an order for the forfeiture of any forfeitable products, it may also order the forfeiture of any other property if it is satisfied on the balance of probabilities that the property is not readily separable from the forfeitable products. 40
- (6) An order under this section for the forfeiture of any property –
- (a) may require the property to be delivered up to –
 - (i) the Secretary of State, or 45
 - (ii) such other person as the court may direct;

- (b) may permit the Secretary of State, or such other person as the court may direct, to destroy or otherwise dispose of the property in whatever way the Secretary of State or other person considers appropriate;
 - (c) may require the property to be destroyed or otherwise disposed of in accordance with any directions of the court. 5
- (7) Subsections (8) and (9) apply in a case where the products to which the application relates have been detained under paragraph 28 of Schedule 5 to the Consumer Rights Act 2015.
- (8) If the court is not satisfied on the balance of probabilities –
 - (a) that the products are, or (if no order is made for their forfeiture) will be, UK consumer connectable products, 10
 - (b) that there is a compliance failure in relation to the products,
 - (c) that it is unlikely that the security requirement in respect of which the compliance failure exists will be complied with, or
 - (d) that it is proportionate to make an order for the forfeiture of the products, 15the court must order the products to be returned to a person entitled to them.
- (9) Where an order for the return of any products is made under subsection (8), the products (and any other property that is not readily separable from the products) may nevertheless be detained – 20
 - (a) until the end of the period within which an appeal under section 44 may be made against the order, or
 - (b) if such an appeal is made, until the time when it is determined or withdrawn.But if the Secretary of State decides before the end of the period mentioned in paragraph (a) that there is to be no appeal, the products must be returned as soon as possible after that decision is made. 25
- (10) For the purposes of this section, property is not readily separable from any forfeitable products if, in all the circumstances, it is not reasonably practicable to separate the property from the forfeitable products. 30

Those circumstances include the time and costs involved in separating the property.
- (11) For the purposes of this section –
 - (a) “the appropriate court” means – 35
 - (i) in England and Wales, a magistrates’ court;
 - (ii) in Scotland, a sheriff;
 - (iii) in Northern Ireland, a court of summary jurisdiction;
 - (b) “compliance failure”, in relation to a product, means a failure by a relevant person to comply with a relevant security requirement in relation to the product; 40
 - (c) the reference to delivery up of products is, in Scotland, a reference to delivery;
 - (d) the persons “entitled” to any products are – 45
 - (i) any person to whom they belong, and
 - (ii) in the case of products detained under paragraph 28 of Schedule 5 to the Consumer Rights Act 2015, the person from whom they were seized.

43 Further provision about forfeiture

- (1) An application under section 42 to a magistrates’ court in England and Wales is to be made by way of complaint.
- (2) An application under section 42 to a court of summary jurisdiction in Northern Ireland is to be made by way of complaint under Part 8 of the Magistrates’ Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26)). 5
- (3) In a case where proceedings have been brought in England and Wales or Northern Ireland for –
- (a) an offence under section 32 relating to a compliance failure, or
 - (b) an offence under paragraph 36(1) or (2) of Schedule 5 to the Consumer Rights Act 2015 arising out of any investigation into a compliance failure,
- an application under section 42 relating to the compliance failure may be made in those proceedings. 10
- (4) A court may not order the forfeiture of any products under section 42 unless – 15
- (a) the Secretary of State has given notice of –
 - (i) the application, and
 - (ii) the date and location of the proceedings for forfeiture, to every identifiable person having an interest in the products, or
 - (b) where the notice required by paragraph (a)(i) or (ii) has not been given to such a person, the court is satisfied that it was reasonable in the circumstances not to give notice to that person. 20
- (5) Any person having an interest in any forfeitable products is entitled to appear in proceedings under section 42 relating to the products.
- (6) No order for forfeiture under section 42 may take effect until – 25
- (a) the end of the period within which an appeal under section 44 may be made against the order, or
 - (b) if such an appeal is made, the time when it is determined or withdrawn.
- (7) In this section “compliance failure” and “forfeitable products” have the same meaning as in section 42. 30

44 Appeal against decision under section 42

- (1) Where an order for the forfeiture of any products has been made under section 42, each of the following persons may appeal against the order – 35
- (a) any party to the proceedings in which the order was made;
 - (b) any other person entitled to the products.
- (2) The Secretary of State may appeal against –
- (a) a decision not to make an order for forfeiture under section 42;
 - (b) an order under subsection (8) of that section for the return of any products.
- (3) Where – 40
- (a) the Secretary of State brings an appeal under this section, and
 - (b) no person entitled to the products in question was a party to the original proceedings,

the Secretary of State must make reasonable efforts to give notice of the appeal to every person who the Secretary of State thinks is or may be entitled to the products.

- (4) An appeal under this section is to –
 - (a) the Crown Court, in England and Wales; 5
 - (b) the Sheriff Appeal Court, in Scotland;
 - (c) a county court, in Northern Ireland.
- (5) An appeal under this section is to be brought before the end of the period of 28 days beginning with the date of the order or other decision appealed against.
- (6) Subject to subsections (7) and (8), the court hearing the appeal may make any order the court considers appropriate. 10
- (7) If an appeal brought by virtue of subsection (2) is allowed –
 - (a) the court must order the products to be forfeited, and
 - (b) sections 42(6) and 43(6) apply with the necessary adaptations.
- (8) If an appeal against an order forfeiting any products is allowed – 15
 - (a) the court must order the products to be returned to a person entitled to them, and
 - (b) section 42(9) applies with the necessary adaptations.
- (9) The persons “entitled” to any products for the purposes of this section are – 20
 - (a) any person to whom they belong, and
 - (b) in the case of products detained under paragraph 28 of Schedule 5 to the Consumer Rights Act 2015, the person from whom they were seized.

Other enforcement powers

- 45 Power to inform public about compliance failures 25**
- (1) This section applies where the Secretary of State has reasonable grounds to believe that there is a compliance failure in relation to a relevant connectable product.
 - (2) The Secretary of State may publish whatever information the Secretary of State considers appropriate for the purpose of informing members of the public about the following matters – 30
 - (a) the nature of the compliance failure;
 - (b) any risks posed by using the product;
 - (c) any steps that may be taken to mitigate the effect of any such risks.
 - (3) Information may be published under subsection (2) in whatever way the Secretary of State considers appropriate. 35
 - (4) In this section “compliance failure”, in relation to a product, means a failure by a relevant person to comply with a relevant security requirement in relation to the product.

46 Power to publish details of enforcement action taken against relevant persons

- (1) The Secretary of State may publish details of a failure by a relevant person to comply with a relevant security requirement in relation to a product.
- (2) The Secretary of State may publish details of any of the following –
 - (a) an enforcement notice given to a person; 5
 - (b) a penalty notice given to a person;
 - (c) an order made under section 42 for the forfeiture of any products.

47 Power to recall products

- (1) This section applies where conditions A and B are met.
- (2) Condition A is that the Secretary of State has reasonable grounds to believe that there is a compliance failure in relation to any UK consumer connectable products that have been supplied to customers. 10
- (3) Condition B is that –
 - (a) a person to whom a recall notice was given in relation to the compliance failure has failed to comply with it, or 15
 - (b) it is not possible to give a recall notice in relation to the compliance failure to one or more of the persons mentioned in section 30(2).
- (4) The Secretary of State may –
 - (a) make arrangements for the delivery of the products to the Secretary of State or another person; 20
 - (b) destroy or otherwise dispose of the products in whatever way the Secretary of State considers appropriate;
 - (c) permit any person to whom the products are delivered under the arrangements mentioned in paragraph (a) to destroy or otherwise dispose of them – 25
 - (i) in accordance with a direction of the Secretary of State, or
 - (ii) in whatever way the person considers appropriate.
- (5) The Secretary of State may pay such amounts as the Secretary of State considers appropriate to any customer who returns a product in accordance with arrangements made under this section 30
- (6) Where an amount is paid to a customer under subsection (5) in respect of a product, a relevant person may deduct that amount from any amount which the relevant person is required to pay to the customer (whether as a result of the exercise of the customer’s statutory rights or otherwise) in respect of the product. 35
- (7) In a case where a person to whom a recall notice was given in relation to a compliance failure failed to comply with it, the Secretary of State may recover from the person any costs or expenses reasonably incurred by the Secretary of State or another person in taking any action under this section in relation to the compliance failure. 40
- (8) In this section “compliance failure”, in relation to a product, means a failure by a relevant person to comply with a relevant security requirement in relation to the product.

Disclosure of information

48 Disclosure of information

- (1) The Secretary of State may disclose to a person any information obtained by the Secretary of State in connection with the Secretary of State’s enforcement functions if the disclosure is made for a purpose connected with an enforcement function of the Secretary of State. 5
- (2) A person may disclose any information to the Secretary of State if the disclosure is made for the purposes of enabling or assisting the Secretary of State to exercise any enforcement function.
- (3) A disclosure of information authorised by this Chapter does not breach— 10
 - (a) any obligation of confidence owed by the person making the disclosure in relation to that information, or
 - (b) any other restriction on the disclosure of information (however imposed).
- (4) But nothing in this Chapter authorises either of the following— 15
 - (a) the making of a disclosure which would contravene the data protection legislation (but in determining whether a disclosure would do so, the powers conferred by this Chapter are to be taken into account);
 - (b) the making of a disclosure which is prohibited by any of Parts 1 to 7 or Chapter 1 of Part 9 of the Investigatory Powers Act 2016. 20
- (5) In this section “the data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act).
- (6) Subsections (1) and (2) do not affect any power to disclose that exists apart from this section.
- (7) In Schedule 14 to the Enterprise Act 2002 (restrictions on disclosure of information: list of enactments under or by virtue of which information is obtained), at the appropriate place insert— 25

“Part 1 of the Product Security and Telecommunications Infrastructure Act 2022.”

Miscellaneous and supplementary 30

49 Offence of purporting to act as authorised to exercise enforcement function

- (1) A person who is not authorised to exercise a function of the Secretary of State under this Chapter commits an offence if the person purports to act as a person who is so authorised.
- (2) A person guilty of an offence under this section is liable— 35
 - (a) on summary conviction in England and Wales, to a fine;
 - (b) on summary conviction in Scotland, to a fine not exceeding level 5 on the standard scale;
 - (c) on summary conviction in Northern Ireland, to a fine not exceeding level 5 on the standard scale. 40

50 Means of giving notices

- (1) A notice under this Chapter may be given to a person by –
- (a) handing it to the person,
 - (b) leaving it at the person’s proper address,
 - (c) sending it by post to the person at that address, or
 - (d) subject to subsection (7), sending it to the person by electronic means. 5
- (2) A notice to a body corporate may be given to the secretary or clerk of that body.
- (3) A notice to a partnership may be given to a partner or a person who has the control or management of the partnership business.
- (4) For the purposes of this section and of section 7 of the Interpretation Act 1978 (service of documents by post) in its application to this section, the proper address of a person is – 10
- (a) in the case of a body corporate or its secretary or clerk, the address of the body’s registered or principal office;
 - (b) in the case of a partnership, a partner or a person having the control or management of the partnership business, the address of the principal office of the partnership; 15
 - (c) in any other case, the person’s last known address.
- (5) For the purposes of subsection (4) the principal office of a company registered outside the United Kingdom, or of a partnership carrying on business outside the United Kingdom, is its principal office within the United Kingdom. 20
- (6) If a person has specified an address in the United Kingdom, other than the person’s proper address within the meaning of subsection (4), as the one at which the person or someone on the person’s behalf will accept notices of the same description as a notice under this Chapter, that address is also treated for the purposes of this section and section 7 of the Interpretation Act 1978 as the person’s proper address. 25
- (7) A notice may be sent to a person by electronic means only if –
- (a) the person has indicated that notices of the same description as a notice under this Chapter may be given to the person by being sent to an electronic address and in an electronic form specified for that purpose, and
 - (b) the notice is sent to that address in that form. 30
- (8) A notice sent to a person by electronic means is, unless the contrary is proved, to be treated as having been given at 9 am on the working day immediately following the day on which it was sent. 35
- (9) In this section –
- “electronic address” means any number or address used for the purposes of sending or receiving documents or information by electronic means;
 - “working day” means a day other than a Saturday, a Sunday, Christmas Day, Good Friday or a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom. 40

51 Liability of authorised representatives

- (1) This section applies where a manufacturer that is not established in the United Kingdom authorises a person in the United Kingdom, with the agreement of 45

that person, to perform any of the duties listed in subsection (3) on behalf of the manufacturer.

(2) In this Part “authorised representative”, in relation to a manufacturer, means a person authorised by the manufacturer as mentioned in subsection (1).

(3) The duties referred to in subsection (1) are – 5

(a) any duties under regulations made under section 9(6) (duties relating to statements of compliance);

(b) the duties under section 11(2) and (3) (duties to take action in relation to compliance failures);

(c) the duty under section 12(1) (duty to maintain records). 10

(4) If the authorised representative fails to comply with the duty, the authorised representative may be proceeded against under this Part for failing to comply with the duty.

(5) Subsection (4) does not affect the liability of the manufacturer under this Part for a failure to comply with the duty. 15

52 Offences by directors, partners etc

(1) Where an offence under this Part has been committed by a body corporate and it is proved that the offence –

(a) has been committed with the consent or connivance of a person listed in subsection (2), or 20

(b) is attributable to any neglect on the part of such a person, that person (as well as the body corporate) is guilty of that offence and liable to be proceeded against and punished accordingly.

(2) The persons referred to in subsection (1)(a) are –

(a) a director, manager, secretary or other similar officer of the body; 25

(b) any person who was purporting to act in such a capacity.

(3) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member, in connection with that management, as if the member were a director of the body corporate.

(4) Where an offence under this Part has been committed by a Scottish partnership and it is proved that the offence – 30

(a) has been committed with the consent or connivance of a partner in the partnership or a person purporting to act as such a partner, or

(b) is attributable to any neglect on the part of such a person, that person (as well as the partnership) is guilty of that offence and liable to be proceeded against and punished accordingly. 35

CHAPTER 4

SUPPLEMENTARY PROVISION

Guidance

53 Guidance

- | | |
|---|----|
| (1) The Secretary of State may issue guidance about the effect of any provision made by or under this Part. | 5 |
| (2) The enforcement authority may issue guidance about the exercise of any of its enforcement functions. | |
| (3) A person who issues guidance under this section may from time to time revise the guidance. | 10 |
| (4) A person who issues guidance under this section must publish – | |
| (a) the guidance, and | |
| (b) any revisions of the guidance. | |

Interpretation

54 Meaning of “UK consumer connectable product”

15

- | | |
|--|----|
| (1) In this Part “UK consumer connectable product” means a relevant connectable product that meets condition A or B. | |
| (2) Condition A is that the product – | |
| (a) is or has been made available to consumers in the United Kingdom, and | |
| (b) has not been supplied by a relevant person to any customer (whether or not in the United Kingdom) at any time before being so made available. | 20 |
| (3) Condition B is that – | |
| (a) the product is or has been made available to customers in the United Kingdom who are not consumers, | 25 |
| (b) the product has not been supplied by a relevant person to any customer (whether or not in the United Kingdom) at any time before being so made available, and | |
| (c) products identical to the product meet condition A. | |
| (4) Subsections (5) to (9) apply for the purposes of subsections (2)(b) and (3)(b). | 30 |
| (5) Where – | |
| (a) a product that has been supplied to a customer (“the original customer”) is returned to a relevant person in the exercise of any right (whether statutory or otherwise) to return unwanted products, and | |
| (b) the product is subsequently made available to customers in the United Kingdom, | 35 |
| the product is not to be treated as having been supplied to the original customer. | |
| (6) Where – | |

- (a) a product that has been supplied to a customer (“the original customer”) is returned to a relevant person –
 - (i) in accordance with arrangements made for the purposes of, or in connection with, this Part, or
 - (ii) as a result of any other action taken under, or for the purposes of, this Part, and
 - (b) the product is subsequently made available to customers in the United Kingdom,
the product is not to be treated as having been supplied to the original customer.
 - (7) Where a product that has been supplied to a customer is reconditioned by or on behalf of a manufacturer of the product before being made available to customers in the United Kingdom, the product is not to be treated as having been supplied to that customer.
 - (8) The reference in subsection (7) to reconditioning a product is a reference to doing anything to the product, or its packaging, in order to prepare the product to be made available to customers.
 - (9) Where a product has been supplied to a customer (“C”) who would, in the absence of section 7(6), be a distributor of the product –
 - (a) the product is not to be treated as having been supplied to C, and
 - (b) where any of subsections (5) to (7) applies, the product is not to be treated as having been supplied to C or to any customer of C.
 - (10) The Secretary of State may by regulations –
 - (a) repeal subsection (2)(b) or (3)(b);
 - (b) make any amendments of this Part that the Secretary of State considers necessary or appropriate in consequence of such repeal.
 - (11) Regulations made under subsection (10) are subject to the affirmative resolution procedure.
- 55 Meaning of “supply”**
- (1) This section has effect for the purposes of this Part.
 - (2) Any reference to supplying a product is a reference to supplying the product in the course of business, and includes a reference to doing any of the following –
 - (a) providing the product in exchange for any non-monetary consideration;
 - (b) providing the product in, or in connection with, the performance of a statutory function;
 - (c) giving the product as a prize or otherwise making a gift of the product.
 - (3) Any reference to supplying a product does not include a reference to hiring out or lending the product, except where –
 - (a) the hiring out or lending is by a manufacturer of the product, or
 - (b) the product is supplied under a hire-purchase agreement.
 - (4) Where a product has at any time been supplied by being hired out or lent to a person, neither of the following is to be treated as a further supply of the product to that person –

-
- (a) a continuation or renewal of the hire or loan (whether on the same or different terms);
- (b) any transaction for the transfer after that time of any interest in the product to the person.
- (5) The performance of a contract for the carrying out of works that consist of or include the installation of a product into a building or structure is to be treated as a supply of the product in so far as, but only in so far as, it involves the provision of the product to a person by means of its installation into the building or structure. 5
- (6) The performance of a contract by the construction of a building or structure on land is to be treated as a supply of a product in so far as, but only in so far as, it involves the provision of the product to a person by means of its incorporation into the building or structure. 10
- (7) Any reference to supplying a product does not include a reference to any supply of a product that is effected by the creation or disposal of an interest in land, or by the performance of an agreement for the creation or disposal of such an interest, except where – 15
- (a) the product is incorporated into or contained in a building (or part of a building) constructed on the land,
- (b) the building (or part) is to be used for a particular purpose, and 20
- (c) at the time of the supply, the building (or part) has not previously been used for that purpose.
- (8) Any reference to supplying a product does not include a reference to supplying the product by a sale of the product as scrap (that is to say, for the value of materials included in the product rather than for the value of the product itself). 25
- (9) Any reference to supplying a product does not include a reference to merely providing transport services for the purposes of enabling the product to be supplied to any person.
- (10) Where a product that has been supplied to a customer is temporarily returned for any reason to a relevant person by a person (“P”) who is – 30
- (a) the customer to whom the product was supplied, or
- (b) the customer’s successor in title,
- the return of the product to P is not to be treated as a supply of the product to P.
- (11) Where a person (“the ostensible supplier”) supplies a product to another person (“the customer”) under a relevant agreement and the ostensible supplier – 35
- (a) carries on the business of financing the provision of products for others by means of relevant agreements, and
- (b) in the course of that business, acquired an interest in the product supplied to the customer as a means of financing the provision of the product for the customer by a further person (“the effective supplier”), 40
- the effective supplier and not the ostensible supplier is to be regarded as supplying the product to the customer.
- (12) In this section – 45
- “non-monetary consideration” means consideration other than money;
- “relevant agreement” means –

- (a) a conditional sale agreement (within the meaning of the Consumer Credit Act 1974);
- (b) a credit-sale agreement (within the meaning of that Act);
- (c) a hire-purchase agreement (within the meaning of that Act);
- (d) an agreement for the hiring of a product (other than a hire-purchase agreement). 5

56 Meaning of other expressions used in Part 1

- (1) In this Part—
- “authorised representative” has the meaning given by section 51(2);
 - “business” includes— 10
 - (a) any trade or profession;
 - (b) the activities of a local or public authority;
 - (c) the activities of a government department;
 - (d) the activities of a charity;
 - “compliance notice” has the meaning given by section 28(2); 15
 - “consumer” means an individual acting for purposes that are wholly or mainly outside the individual’s business;
 - “customer”, in relation to a product, means any person to whom the product is supplied, other than—
 - (a) a relevant person acting in that capacity in relation to the product, or 20
 - (b) an authorised representative of a manufacturer of the product in its capacity of acting on behalf of the manufacturer in relation to the product;
 - “distributor” has the meaning given by section 7(5); 25
 - “the enforcement authority” means—
 - (a) the Secretary of State, or
 - (b) any person authorised to exercise a function of the Secretary of State by an agreement under section 27;
 - “enforcement function” has the meaning given by section 27(5); 30
 - “enforcement notice” means—
 - (a) a compliance notice,
 - (b) a stop notice, or
 - (c) a recall notice;
 - “excepted product” has the meaning given by section 6(1); 35
 - “importer” has the meaning given by section 7(4);
 - “internet-connectable product” has the meaning given by section 5(1);
 - “manufacturer” has the meaning given by section 7(3);
 - “network-connectable product” has the meaning given by section 5(3);
 - “penalty notice” has the meaning given by section 36(2); 40
 - “recall notice” has the meaning given by section 30(3);
 - “relevant connectable product” has the meaning given by section 4;
 - “relevant person” has the meaning given by section 7(2);
 - “relevant security requirement”, in relation to a relevant person, means a security requirement applying to the relevant person; 45
 - “security requirement” is to be read in accordance with section 1(1) and (2);

“statement of compliance” has the meaning given by section 9(3);
 “stop notice” has the meaning given by section 29(2);
 “supply” is to be read in accordance with section 55;
 “UK consumer connectable product” has the meaning given by section 54.

- (2) In this Part any reference to making a product available in the United Kingdom is a reference to supplying, or offering to supply, the product to a person in the United Kingdom. 5

PART 2

TELECOMMUNICATIONS INFRASTRUCTURE

Persons able to confer code rights 10

57 **Persons able to confer code rights on operators in exclusive occupation**

- (1) The electronic communications code is amended as follows.
- (2) In paragraph 9 (persons who may confer code rights) –
- (a) the existing wording becomes sub-paragraph (1);
- (b) after that sub-paragraph insert – 15
- “(2) But where land is occupied exclusively by an operator, a code right in respect of the land may be conferred on the operator by an agreement between the operator and –
- (a) any person other than the operator who for the time being exercises powers of management or control over the land, or 20
- (b) if there is no person within paragraph (a), any person other than the operator whose interest in the land would be prejudicially affected by the exercise of the code right.” 25
- (3) In paragraph 10 (persons bound by code rights), in sub-paragraph (1), omit the words from “who” to the end.

Rights to upgrade and share apparatus

58 **Rights under the electronic communications code to share apparatus**

- (1) The electronic communications code is amended as follows. 30
- (2) In paragraph 3 (meaning of “code right”) –
- (a) the existing wording becomes sub-paragraph (1);
- (b) in sub-paragraph (1) –
- (i) after paragraph (c) insert – 35
- “(ca) to share with another operator the use of electronic communications apparatus which the first operator keeps installed on, under or over the land,”;

- (ii) after paragraph (e) insert –
 - “(ea) to carry out any works on the land for the purposes of, or in connection with, sharing with another operator the use of electronic communications apparatus which the first operator keeps installed on, under or over the land or elsewhere;” 5
- (iii) after paragraph (f) insert –
 - “(fa) to enter the land for the purposes of, or in connection with, sharing with another operator the use of electronic communications apparatus which the first operator keeps installed on, under or over the land or elsewhere;” 10
- (c) after sub-paragraph (1) insert –
 - “(2) In sub-paragraph (1), references to “the first operator” are to the operator mentioned in the opening words of that sub-paragraph.” 15
- (3) For paragraph 4 (the statutory purposes) substitute –
 - “4 (1) In this code “the statutory purposes”, in relation to an operator, means – 20
 - (a) in relation to sharing rights, the purposes of enabling the provision by other operators of their networks, and
 - (b) in relation to rights other than sharing rights –
 - (i) the purposes of providing the operator’s network, or
 - (ii) the purposes of providing an infrastructure system. 25
 - (2) In sub-paragraph (1), “sharing right” means a right within paragraph 3(1)(ca), (ea) or (fa).”
- (4) In paragraph 9 (conferral of code rights), after sub-paragraph (2) (as inserted by section 57) insert –
 - “(2) In a case where an operator (“the first operator”) has the right to share the use of electronic communications apparatus with another operator (“the second operator”) under or by virtue of an agreement under this Part, sub-paragraph (1) does not prevent the agreement from providing for the first operator to permit the second operator to exercise, in connection with the sharing, a code right conferred on the first operator by the agreement.” 30 35
- (5) In paragraph 13 (access to land) –
 - (a) in sub-paragraph (1)(a), for “paragraph 3” substitute “paragraph 3(1)”; 40
 - (b) in sub-paragraph (2), for “paragraph 3” substitute “paragraph 3(1)”.
- (6) In paragraph 38 (right of landowner or occupier of neighbouring land to require removal of electronic communications apparatus), in sub-paragraph (3), for “paragraph 3(h)” substitute “paragraph 3(1)(h)”.
- (7) The amendments made by this section do not affect any rights conferred before the coming into force of this section by an agreement under Part 2 of the electronic communications code. 45

59 Upgrading and sharing of apparatus: subsisting agreements

- (1) Schedule 2 to the Digital Economy Act 2017 (the electronic communications code: transitional provision) is amended as follows.
- (2) In the italic heading before paragraph 5, omit “, upgrading and sharing”.
- (3) In paragraph 5 (exclusion of assignment etc provisions) – 5
 - (a) in sub-paragraph (1), for the words from the beginning to “apparatus)” substitute “Paragraph 16 of the new code (assignment of code rights)”, and
 - (b) in sub-paragraph (2), for “Part 3” substitute “Paragraph 16”.
- (4) After paragraph 5 insert – 10
“Upgrading and sharing provisions
 - 5A Paragraph 17 of the new code (power for operator to upgrade or share apparatus) applies in relation to an operator who is a party to a subsisting agreement, but as if for sub-paragraphs (1) to (6) there were substituted – 15
 - “(1) This paragraph applies where –
 - (a) an operator (“the main operator”) keeps electronic communications apparatus installed under land, and
 - (b) the main operator is a party to a subsisting agreement in relation to the electronic communications apparatus. 20
 - (2) If the conditions in sub-paragraphs (3), (4) and (6) are met, the main operator may –
 - (a) upgrade the electronic communications apparatus, or
 - (b) share the use of the electronic communications apparatus with another operator. 25
 - (3) The first condition is that the upgrading or sharing has no adverse impact on the land.
 - (4) The second condition is that the upgrading or sharing imposes no burden on any person with an interest in the land.
 - (5) For the purposes of sub-paragraph (4) a burden includes anything that – 30
 - (a) has an adverse effect on the person’s enjoyment of the land, or
 - (b) causes loss, damage or expense to the person.
 - (6) The third condition is that, before the beginning of the period of 21 days ending with the day on which the main operator begins to upgrade the electronic communications apparatus or (as the case may be) share its use, the main operator attaches a notice, in a secure and durable manner, to a conspicuous object on the relevant land. 35
 - (7) A notice attached for the purposes of sub-paragraph (6) must – 40
 - (a) be attached in a position where it is reasonably legible,

- (b) state that the main operator intends to upgrade the electronic communications apparatus or (as the case may be) share its use with another operator,
 - (c) state the date on which the main operator intends to begin to upgrade the electronic communications apparatus or (as the case may be) share its use with another operator, 5
 - (d) state, in a case where the main operator intends to share the use of the electronic communications apparatus with another operator, the name of the other operator, and
 - (e) give the name of the main operator and an address in the United Kingdom at which the main operator may be contacted about the upgrading or sharing. 10
- (8) Any person giving a notice at that address in respect of that electronic communications apparatus is to be treated as having been given that address for the purposes of paragraph 91(2). 15
- (9) Any agreement under Part 2 of this code is void to the extent that—
 - (a) it prevents or limits the upgrading or sharing, in a case where the conditions mentioned in sub-paragraphs (3), (4) and (6) are met, of any electronic communications apparatus to which the agreement relates that is installed under land, or 20
 - (b) it makes upgrading or sharing of such electronic communications apparatus subject to conditions to be met by the operator (including a condition requiring the payment of money). 25
- (10) Nothing in this paragraph is to be read as conferring a right on the main operator to enter the land for the purpose of upgrading or sharing the use of the electronic communications apparatus.
- (11) References in this paragraph to sharing electronic communications apparatus include carrying out works to the electronic communications apparatus to enable such sharing to take place. 30
- (12) In this paragraph—
 - “the relevant land” means— 35
 - (a) in a case where the main operator has a right to enter the land under which the electronic communications apparatus is installed, that land;
 - (b) in any other case, the land on which works will be carried out to enable the upgrading or sharing to take place or, where there is more than one set of works, the land on which each set of works will be carried out; 40
 - “subsisting agreement” has the meaning given by paragraph 1(4) of Schedule 2 to the Digital Economy Act 2017.” 45

60 Upgrading and sharing of apparatus installed before 29 December 2003

- (1) The electronic communications code is amended as follows.

- (2) In paragraph 15 (introductory), in paragraph (b), for the words “to which such an agreement relates” substitute “which—
- (i) is electronic communications apparatus to which such an agreement relates, or
 - (ii) is electronic communications apparatus installed before 29 December 2003”. 5
- (3) After paragraph 17 insert—
- “17A(1) This paragraph applies where—
- (a) an operator (“the main operator”) keeps electronic communications apparatus installed under land, 10
 - (b) the main operator is not a party to an agreement under Part 2 of this code in relation to the electronic communications apparatus, and
 - (c) the electronic communications apparatus was installed before 29 December 2003. 15
- (2) If the conditions in sub-paragraphs (3), (4) and (6) are met, the main operator may—
- (a) upgrade the electronic communications apparatus, or
 - (b) share the use of the electronic communications apparatus with another operator. 20
- (3) The first condition is that the upgrading or sharing has no adverse impact on the land.
- (4) The second condition is that the upgrading or sharing imposes no burden on any person with an interest in the land.
- (5) For the purposes of sub-paragraph (4) a burden includes anything that— 25
- (a) has an adverse effect on the person’s enjoyment of the land, or
 - (b) causes loss, damage or expense to the person.
- (6) The third condition is that, before the beginning of the period of 21 days ending with the day on which the main operator begins to upgrade the electronic communications apparatus or (as the case may be) share its use, the main operator attaches a notice, in a secure and durable manner, to a conspicuous object on the relevant land. 30
- (7) A notice attached for the purposes of sub-paragraph (6) must— 35
- (a) be attached in a position where it is reasonably legible,
 - (b) state that the main operator intends to upgrade the electronic communications apparatus or (as the case may be) share its use with another operator,
 - (c) state the date on which the main operator intends to begin to upgrade the electronic communications apparatus or (as the case may be) share its use with another operator, 40
 - (d) state, in a case where the main operator intends to share the use of the electronic communications apparatus with another operator, the name of the other operator, and 45

- (e) give the name of the main operator and an address in the United Kingdom at which the main operator may be contacted about the upgrading or sharing.
- (8) Any person giving a notice at that address in respect of that electronic communications apparatus is to be treated as having been given that address for the purposes of paragraph 91(2). 5
- (9) Nothing in this paragraph is to be read as conferring a right on the main operator to enter the land for the purpose of upgrading or sharing the use of the electronic communications apparatus.
- (10) References in this paragraph to sharing electronic communications apparatus include carrying out works to the electronic communications apparatus to enable such sharing to take place. 10
- (11) In this paragraph “the relevant land” means –
 - (a) in a case where the main operator has a right to enter the land under which the electronic communications apparatus is installed, that land; 15
 - (b) in any other case, the land on which works will be carried out to enable the upgrading or sharing to take place or, where there is more than one set of works, the land on which each set of works will be carried out.” 20
- (4) In paragraph 24 (determination of consideration for agreement), in subparagraph (3)(b), for “and 17” substitute “, 17 and 17A”.

Renewal of business tenancies conferring code rights

61 Rent under tenancies conferring code rights: England and Wales

- (1) The Landlord and Tenant Act 1954 is amended as follows. 25
- (2) After section 34 insert –
 - “**34A Rent under new tenancy conferring code rights**
 - (1) This section applies where –
 - (a) the current tenancy is a subsisting agreement within the meaning of Schedule 2 to the Digital Economy Act 2017, and 30
 - (b) the primary purpose of the current tenancy is to confer code rights.
 - (2) In default of agreement between the landlord and the tenant as mentioned in section 34(1), the rent payable under a new tenancy granted by order of the court under this Part of this Act shall be such amount or amounts determined by the court as represent the market value of the landlord’s agreement to confer the code rights conferred by the new tenancy. 35
 - (3) For this purpose the market value of a landlord’s agreement to confer code rights is, subject to subsection (4), the amount that, at the date the market value is assessed, a willing buyer would pay a willing seller for the agreement – 40
 - (a) in a transaction at arm’s length,

- (b) on the basis that the buyer and seller were acting prudently and with full knowledge of the transaction, and
- (c) on the basis that the transaction was subject to the other provisions of the tenancy granted by order of the court.
- (4) The market value must be assessed on these assumptions – 5
- (a) that the rights to which the transaction relates do not relate to the provision or use of an electronic communications network;
- (b) that paragraphs 16, 17 and 17A of the electronic communications code (assignment, and upgrading and sharing) do not apply to the rights or any apparatus to which those rights could apply; 10
- (c) that the rights in all other respects correspond to the code rights;
- (d) that there is more than one site which the buyer could use for the purpose for which the buyer seeks the rights.
- (5) In this section – 15
- references to “code rights” are to be read –
- (a) in relation to the current tenancy, in accordance with paragraph 3 of Schedule 2 to the Digital Economy Act 2017;
- (b) in relation to a new tenancy granted by order of the court under this Part of this Act, in accordance with paragraph 3 of the electronic communications code; 20
- “the electronic communications code” means the code set out in Schedule 3A to the Communications Act 2003;
- “electronic communications network” has the meaning given by section 32(1) of that Act.” 25
- (3) In section 24C (amount of interim rent where new tenancy of whole premises granted and landlord not opposed) –
- (a) in subsection (3), in paragraph (b) – 30
- (i) after “section 34” insert “or 34A”;
- (ii) after “of this Act” insert “(as the case may be)”;
- (b) in subsection (4) –
- (i) after “section 34” insert “or 34A”;
- (ii) after “of this Act” insert “(as the case may be)”;
- (c) in subsection (7), after “of this Act” insert “, or (as the case may be) subsections (2) to (4) of section 34A of this Act,”. 35
- (4) In section 24D (amount of interim rent in any other case), in subsection (2), after “of this Act” insert “, or (as the case may be) subsections (2) to (4) of section 34A of this Act,”.
- (5) In section 34 (rent under new tenancy), after subsection (4) insert – 40
- “(5) The court’s powers under this section to determine the rent payable under a tenancy granted by order of the court under this Part of this Act do not apply where –
- (a) the current tenancy is a subsisting agreement within the meaning of Schedule 2 to the Digital Economy Act 2017, and 45
- (b) the primary purpose of the current tenancy is to confer code rights (within the meaning of paragraph 3 of that Schedule).
- (See instead section 34A.)”

62 Rent under tenancies conferring code rights: Northern Ireland

- (1) The Business Tenancies (Northern Ireland) Order 1996 (S.I. 1996/725 (N.I. 5)) is amended as follows.
- (2) In Article 18 (rent under new tenancy), after paragraph (5) insert –
 - “(6) Paragraphs (2) to (5) do not apply to a new tenancy granted in pursuance of an order of the Lands Tribunal where –
 - (a) the current tenancy is a subsisting agreement within the meaning of Schedule 2 to the Digital Economy Act 2017, and
 - (b) the primary purpose of the current tenancy is to confer code rights (within the meaning of paragraph 3 of that Schedule).
(See instead Article 18A.)”
- (3) After Article 18 insert –

“18A Rent under new tenancy conferring code rights

 - (1) This Article applies where –
 - (a) the current tenancy is a subsisting agreement within the meaning of Schedule 2 to the Digital Economy Act 2017, and
 - (b) the primary purpose of the current tenancy is to confer code rights.
 - (2) In the absence of agreement between the landlord and the tenant as mentioned in Article 18(1), the rent payable under a new tenancy granted in pursuance of an order of the Lands Tribunal shall be such amount or amounts determined by the Lands Tribunal as represent the market value of the landlord’s agreement to confer the code rights conferred by the new tenancy.
 - (3) For this purpose the market value of a landlord’s agreement to confer code rights is, subject to paragraph (4), the amount that, at the date the market value is assessed, a willing buyer would pay a willing seller for the agreement –
 - (a) in a transaction at arm’s length,
 - (b) on the basis that the buyer and seller were acting prudently and with full knowledge of the transaction, and
 - (c) on the basis that the transaction was subject to the other provisions of the tenancy granted in pursuance of the order of the Lands Tribunal.
 - (4) The market value must be assessed on these assumptions –
 - (a) that the rights to which the transaction relates do not relate to the provision or use of an electronic communications network;
 - (b) that paragraphs 16, 17 and 17A of the electronic communications code (assignment, and upgrading and sharing) do not apply to the rights or any apparatus to which those rights could apply;
 - (c) that the rights in all other respects correspond to the code rights;
 - (d) that there is more than one site which the buyer could use for the purpose for which the buyer seeks the rights.
 - (5) In this Article –
references to “code rights” are to be read –

<ul style="list-style-type: none"> <li style="margin-left: 40px;">(a) in relation to the current tenancy, in accordance with paragraph 3 of Schedule 2 to the Digital Economy Act 2017; <li style="margin-left: 40px;">(b) in relation to a new tenancy granted in pursuance of an order of the Lands Tribunal, in accordance with paragraph 3 of the electronic communications code; 	5
“the electronic communications code” means the code set out in Schedule 3A to the Communications Act 2003;	
“electronic communications network” has the meaning given by section 32(1) of that Act.”	10
63 Compensation relating to code rights: England and Wales	
After section 34A of the Landlord and Tenant Act 1954 (inserted by section 61) insert –	
“34B Compensation for exercise of code rights	
(1) This section applies where –	15
(a) the court grants a new tenancy by an order under this Part of this Act,	
(b) the primary purpose of the new tenancy is to confer code rights,	
(c) the tenancy subsisting at the time the order is made is a subsisting agreement within the meaning of Schedule 2 to the Digital Economy Act 2017, and	20
(d) the primary purpose of that tenancy was to confer code rights.	
(2) The court may order the tenant to pay compensation to the landlord for any damage or loss that has been sustained or will be sustained by the landlord as a result of the exercise of any of the code rights conferred by the new tenancy.	25
(3) An order under subsection (2) may be made –	
(a) at the time the court makes the order granting the new tenancy under this Part of this Act, or	
(b) at any time afterwards, on the application of the landlord.	30
(4) An order under subsection (2) may –	
(a) specify the amount of compensation to be paid by the tenant, or	
(b) give directions for the determination of any such amount.	
(5) Directions under subsection (4)(b) may provide –	
(a) for the amount of compensation to be agreed between the landlord and the tenant;	35
(b) for any dispute about that amount to be determined by arbitration.	
(6) An order under subsection (2) may provide for the tenant –	
(a) to make a lump sum payment,	40
(b) to make periodical payments,	
(c) to make a payment or payments on the occurrence of an event or events, or	
(d) to make a payment or payments in such form or at such other time or times as the court may direct.	45

- (7) Section 34C makes further provision about compensation in relation to the exercise of code rights conferred by a tenancy under this Part of this Act.
- (8) In this section, references to “code rights” are to be read –
 - (a) in relation to the new tenancy, in accordance with paragraph 3 of the electronic communications code set out in Schedule 3A to the Communications Act 2003; 5
 - (b) in relation to a subsisting agreement within the meaning of Schedule 2 to the Digital Economy Act 2017, in accordance with paragraph 3 of that Schedule. 10

34C Further provision about compensation under section 34B

- (1) This section applies to the court’s power to order a tenant to pay compensation to a landlord under section 34B (compensation for exercise of code rights).
- (2) Depending on the circumstances, the power of the court to order the payment of compensation for damage or loss includes power to order payment for –
 - (a) expenses (including reasonable legal and valuation expenses, subject to the provisions of any enactment about the powers of the court to award costs), 20
 - (b) diminution in the value of the land, and
 - (c) costs of reinstatement.
- (3) For the purposes of assessing such compensation for diminution in the value of land, rules (2) to (4) set out in section 5 of the Land Compensation Act 1961 apply with any necessary modifications as they apply for the purposes of assessing compensation for the compulsory purchase of any interest in land. 25
- (4) Section 10(1) to (3) of the Land Compensation Act 1973 (compensation in respect of mortgages, trusts of land and settlements) applies in relation to such compensation for diminution in the value of land as it applies in relation to compensation under Part 1 of that Act. 30
- (5) Where a landlord has a claim for compensation to which this section applies and a claim for compensation under any other provision of this Act, or any provision of the electronic communications code, in respect of the same loss, the compensation payable to the landlord must not exceed the amount of the landlord’s loss. 35
- (6) In this section “the electronic communications code” means the code set out in Schedule 3A to the Communications Act 2003.”

64 Compensation relating to code rights: Northern Ireland

- (1) The Business Tenancies (Northern Ireland) Order 1996 (S.I. 1996/725 (N.I. 5)) is amended as follows. 40
- (2) After Article 18A (inserted by section 62) insert –
 - “18B Compensation for exercise of code rights**
 - (1) This Article applies where –

-
- (a) the Lands Tribunal makes an order for the grant of a new tenancy,
- (b) the primary purpose of the new tenancy is to confer code rights,
- (c) the tenancy subsisting at the time the order is made is a subsisting agreement within the meaning of Schedule 2 to the Digital Economy Act 2017, and 5
- (d) the primary purpose of that tenancy was to confer code rights.
- (2) The Lands Tribunal may order the tenant to pay compensation to the landlord for any damage or loss that has been sustained or will be sustained by the landlord as a result of the exercise of the code rights conferred by the new tenancy. 10
- (3) An order under paragraph (2) may be made –
- (a) at the time the Lands Tribunal makes the order for the grant of the new tenancy, or
- (b) at any time afterwards, on the application of the landlord. 15
- (4) An order under paragraph (2) may –
- (a) specify the amount of compensation to be paid by the tenant, or
- (b) give directions for the determination of any such amount.
- (5) Directions under paragraph (4)(b) may provide –
- (a) for the amount of compensation to be agreed between the landlord and the tenant; 20
- (b) for any dispute about that amount to be determined by arbitration.
- (6) An order under paragraph (2) may provide for the tenant –
- (a) to make a lump sum payment, 25
- (b) to make periodical payments,
- (c) to make a payment or payments on the occurrence of an event or events, or
- (d) to make a payment or payments in such form or at such other time or times as the Lands Tribunal may direct. 30
- (7) Article 18C makes further provision about compensation in relation to the exercise of code rights conferred by a tenancy granted in pursuance of an order of the Lands Tribunal.
- (8) In this Article, references to “code rights” are to be read –
- (a) in relation to the new tenancy, in accordance with paragraph 3 of the electronic communications code set out in Schedule 3A to the Communications Act 2003; 35
- (b) in relation to a subsisting agreement within the meaning of Schedule 2 to the Digital Economy Act 2017, in accordance with paragraph 3 of that Schedule. 40
- 18C Further provision about compensation under Article 18B**
- (1) This Article applies to the Lands Tribunal’s power to order a tenant to pay compensation to a landlord under Article 18B (compensation for exercise of code rights).

- (2) Depending on the circumstances, the power of the Lands Tribunal to order the payment of compensation for damage or loss includes power to order payment for—
- (a) expenses (including reasonable legal and valuation expenses, subject to any statutory provision about the powers of the Lands Tribunal to award costs), 5
 - (b) diminution in the value of the land, and
 - (c) costs of reinstatement.
- (3) For the purposes of assessing such compensation for diminution in the value of land, rules (2) to (4) set out in Article 6(1) of the Land Compensation (Northern Ireland) Order 1982 (S.I. 1982/712 (N.I. 9)) apply with any necessary modifications as they apply for the purposes of assessing compensation for the compulsory acquisition of any interest in land. 10
- (4) Article 13(1) to (3) of the Land Acquisition and Compensation (Northern Ireland) Order 1973 (S.I. 1973/1896 (N.I. 21)) (compensation in respect of mortgages, trusts for sale and settlements) applies in relation to such compensation for diminution in the value of land as it applies in relation to compensation under Part 2 of that Order. 15
- (5) Where a landlord has a claim for compensation to which this Article applies and a claim for compensation under any other provision of this Order, or any provision of the electronic communications code, in respect of the same loss, the compensation payable to the landlord must not exceed the amount of the landlord’s loss. 20
- (6) In this Article “the electronic communications code” means the code set out in Schedule 3A to the Communications Act 2003.” 25
- (3) In Article 42 (enforcement of orders of Lands Tribunal), in paragraph (1), after “18(5),” insert “18B(2),”.

65 Jurisdiction of court in relation to tenancies in England and Wales

In section 63 of the Landlord and Tenant Act 1954 (jurisdiction of court for purposes of Parts 1 and 2), after subsection (2) insert— 30

- “(2A) The Secretary of State may by regulations—
- (a) provide for the jurisdiction of the court under Part 2 to be exercised by the First-tier Tribunal or the Upper Tribunal in a case where— 35
 - (i) the current tenancy is a subsisting agreement within the meaning of Schedule 2 to the Digital Economy Act 2017, and
 - (ii) the primary purpose of the current tenancy is to confer code rights (within the meaning of paragraph 3 of that Schedule); 40
 - (b) provide for the jurisdiction of the court under section 34B to be exercised by the First-tier Tribunal or the Upper Tribunal.
- (2B) Regulations under subsection (2A)— 45
- (a) are to be made by statutory instrument;
 - (b) may make different provision for different purposes;
 - (c) may include transitional or saving provision.

- (2C) A statutory instrument containing regulations under subsection (2A) is subject to annulment in pursuance of a resolution of either House of Parliament.”

Unresponsive occupiers

66 Unresponsive occupiers

5

- (1) In the electronic communications code, after Part 4 insert –

“PART 4ZA

CODE RIGHTS IN RESPECT OF LAND: UNRESPONSIVE OCCUPIERS

Introductory

- 27ZA This Part of this code makes provision for the court to make an order imposing an agreement which provides that code rights are exercisable by an operator in respect of relevant land for the purpose of providing an electronic communications service to premises where the occupier or another person with an interest in the relevant land has not responded to repeated notices given by the operator seeking agreement to confer or otherwise be bound by the rights. 10
15

Circumstances in which an application for an order under this Part can be made

- 27ZB(1) Paragraphs 27ZC and 27ZD apply where –
- (a) an operator intends to provide an electronic communications service to premises (“the relevant premises”), 20
 - (b) in order to provide that service, the operator –
 - (i) needs to install electronic communications apparatus under or over relevant land, and
 - (ii) does not need to install electronic communications apparatus on the relevant land, 25
 - (c) in order to install and operate that apparatus, the operator requires a person (the “required grantor”) to agree –
 - (i) to confer on the operator a code right in respect of the relevant land, or
 - (ii) otherwise to be bound by such a code right exercisable by the operator, 30
 - (d) the operator has, on or after the day on which section 66 of the Product Security and Telecommunications Infrastructure Act 2022 comes fully into force, given the required grantor a notice in accordance with paragraph 20(2) of this code seeking that agreement (the “request notice”), and 35
 - (e) the required grantor has not responded to the operator.
- (2) But paragraphs 27ZC and 27ZD do not apply where –
- (a) the relevant premises are premises within the scope of Part 4A which are occupied under a lease, and 40
 - (b) the relevant land is “connected land” within the meaning of paragraph 27B(3) in relation to the relevant premises.

-
- (3) In this Part “relevant land” means—
- (a) land that is not covered by buildings or used as a garden, park or other recreational area, or
 - (b) land that is covered by buildings or is used as a garden, park or other recreational area and is of a description specified in regulations made by the Secretary of State. 5
- (4) Before making regulations under sub-paragraph (3)(b), the Secretary of State must consult—
- (a) operators,
 - (b) persons appearing to the Secretary of State to represent owners of interests in land who are likely to be affected by the regulations, and 10
 - (c) any other persons the Secretary of State thinks appropriate.
- (5) For the purposes of this paragraph, the required grantor responds to the operator if the required grantor— 15
- (a) agrees or refuses, in writing, to confer or otherwise be bound by the code right mentioned in the request notice on the terms that the operator seeks, or
 - (b) otherwise acknowledges the request notice in writing.
- Requirements to be met before applying for an order under this Part* 20
- 27ZC(1) Before applying to the court for an order under this Part (a “Part 4ZA order”) (see paragraph 27ZE(2)) the operator must, in accordance with this paragraph, give the required grantor—
- (a) two warning notices, and
 - (b) a final notice. 25
- (2) A “warning notice” is a notice in writing which—
- (a) includes a copy of the request notice,
 - (b) states that it is the first or (as the case may be) second of three notices that, unless the required grantor responds to the operator, will allow the operator to apply for a Part 4ZA order, 30
 - (c) explains the effect of a Part 4ZA order, and
 - (d) contains any other specified information.
- (3) The first warning notice may only be given after the end of the period of 14 days beginning with the day on which the request notice was given. 35
- (4) The second warning notice may only be given after the end of the period of 14 days beginning with the day on which the first one was given.
- (5) A “final notice” is a notice in writing which— 40
- (a) includes a copy of the request notice,
 - (b) states that unless the required grantor responds to the operator before the end of the specified period, the operator intends to apply for a Part 4ZA order,
 - (c) explains the effect of a Part 4ZA order, and 45
 - (d) contains any other specified information.

- (6) A final notice may only be given within the permitted period.
- (7) The “permitted period” means the period which—
- (a) begins immediately after the end of the period of 14 days beginning with the day on which the second warning notice was given, and 5
 - (b) ends at the end of the period of 28 days beginning with the day on which the second warning notice was given.
- (8) The Secretary of State may by regulations specify other conditions that the operator must satisfy before giving the required grantor a final notice. 10
- (9) In this paragraph “specified” means specified in regulations made by the Secretary of State.
- 27ZD(1) The operator may apply to the court for a Part 4ZA order in relation to the code right mentioned in the request notice if—
- (a) no Part 4ZA order imposing an agreement between the operator and the required grantor in respect of the code right sought in the request notice has previously been made, 15
 - (b) the operator has satisfied the notice requirements set out in paragraph 27ZC,
 - (c) the period within which the required grantor must respond to the final notice has ended (see paragraph 27ZC(5)(b)), 20
 - (d) the required grantor has not responded to the operator, and
 - (e) the operator has satisfied any other specified conditions.
- (2) An application for a Part 4ZA order must be accompanied by such evidence as may be specified. 25
- (3) An application for a Part 4ZA order may not be made after the end of the specified period beginning with the day on which the final notice is given.
- (4) The operator must give the required grantor notice of an application for a Part 4ZA order. 30
- (5) For the purposes of this paragraph, the required grantor responds to the operator if the required grantor—
- (a) agrees or refuses, in writing, to confer or otherwise be bound by the code right mentioned in the request notice on the terms that the operator seeks, or 35
 - (b) otherwise acknowledges, in writing, the request notice, a warning notice or the final notice.
- (6) In this paragraph “specified” means specified in regulations made by the Secretary of State.
- When a Part 4ZA order can be made and its effect* 40
- 27ZE(1) The court may make a Part 4ZA order if (and only if) —
- (a) it is satisfied that the requirements for applying for the order have been met, and
 - (b) the required grantor has not objected to the making of the order. 45

- (2) A Part 4ZA order is an order which imposes on the operator and the required grantor an agreement between them –
- (a) by which the required grantor confers on the operator the code right identified in the request notice in respect of the relevant land so identified, or 5
 - (b) which provides for the code right identified in that notice, which is exercisable by the operator in respect of the relevant land so identified, otherwise to bind the required grantor.
- (3) In this code, a “Part 4ZA code right” means a code right which is conferred by or otherwise binds the required grantor pursuant to an agreement imposed by a Part 4ZA order. 10
- (4) The terms of an agreement imposed by a Part 4ZA order are to be those specified in regulations made by the Secretary of State.
- (5) Regulations under sub-paragraph (4) must, in particular, provide for an agreement to include terms – 15
- (a) relating to the provision by the operator to the required grantor of details of the works to be carried out in the exercise of the Part 4ZA code right (“the works”);
 - (b) relating to the obtaining by the operator of any consent, permit, licence, permission, authorisation or approval which is necessary for the works to be carried out; 20
 - (c) relating to the giving of notice by the operator to the required grantor or other specified persons before entering on the relevant land in the exercise of the Part 4ZA code right or carrying out the works; 25
 - (d) restricting the operator’s right to enter on the relevant land to specified times, except in cases of emergency;
 - (e) as to the manner in which the works are to be carried out by the operator;
 - (f) relating to the restoration by the operator of the relevant land at the end of the works, to the reasonable satisfaction of the required grantor; 30
 - (g) relating to the need for insurance cover or indemnification of the required grantor;
 - (h) prohibiting the operator from installing apparatus on the relevant land (so that the operator may only install apparatus under or over the relevant land) in the exercise of the Part 4ZA code right; 35
 - (i) relating to the maintenance or upgrading by the operator of apparatus installed under or over the relevant land (“the apparatus”); 40
 - (j) imposing requirements or restrictions on the required grantor for the purposes of – 45
 - (i) preventing damage to the apparatus,
 - (ii) facilitating access to the apparatus for the operator, or
 - (iii) otherwise preventing or minimising disruption to the operation of the apparatus;
 - (k) relating to assignment of the agreement;
 - (l) aimed at ensuring that nothing done by the operator in the exercise of the Part 4ZA code right unnecessarily prevents or 50

inhibits the provision of an electronic communications service by any other operator.

- (6) Before making regulations under sub-paragraph (4), the Secretary of State must consult –
- (a) operators, 5
 - (b) persons appearing to the Secretary of State to represent owners of interests in land who are likely to be affected by the regulations, and
 - (c) any other persons the Secretary of State thinks appropriate.
- (7) In sub-paragraph (5), “specified” means specified, or of a description specified, in the regulations. 10

Expiry of Part 4ZA code rights

- 27ZF(1) A Part 4ZA code right ceases to be conferred on the operator by, or otherwise to bind, the required grantor –
- (a) if a replacement agreement comes into effect, in accordance with that agreement, 15
 - (b) if the court decides to refuse an application by the operator for the imposition of a replacement agreement, in accordance with that decision, or
 - (c) if the right has not ceased to have that effect as mentioned in paragraph (a) or (b) before the end of the specified period beginning with the day on which the agreement imposed by the Part 4ZA order comes into effect, at the end of that period. 20
- (2) In sub-paragraph (1) a “replacement agreement”, in relation to a Part 4ZA code right, means an agreement under Part 2 by which the required grantor confers a code right on the operator, or otherwise agrees to be bound by a code right which is exercisable by the operator, where that right is in respect of the same land as the Part 4ZA code right. 25
- (3) In sub-paragraph (1)(c) “specified period” means the period, of no more than 6 years, specified in regulations made by the Secretary of State. 30
- (4) The required grantor has the right, subject to and in accordance with Part 6 of this code, to require the operator to remove any electronic communications apparatus placed under or over the relevant land in the exercise of a Part 4ZA code right which has ceased to be conferred on the operator by, or otherwise to bind, the required grantor. 35

Compensation

- 27ZG(1) This paragraph applies where the court has made a Part 4ZA order. 40
- (2) The court may, on the application of the required grantor, order the operator to pay compensation to the required grantor for any loss or damage that has been sustained or will be sustained by the required grantor as a result of the exercise by the operator of the Part 4ZA code right. 45

- (3) An application for an order under this paragraph may be made at any time after the Part 4ZA order is made (including at a time when the Part 4ZA code right has ceased to be conferred on the operator by, or otherwise to bind, the required grantor).
- (4) An order under this paragraph may – 5
 - (a) specify the amount of compensation to be paid by the operator, or
 - (b) give directions for the determination of any such amount.
- (5) Directions under sub-paragraph (4)(b) may provide – 10
 - (a) for the amount of compensation to be agreed between the operator and the required grantor;
 - (b) for any dispute about that amount to be determined by arbitration.
- (6) An order under this paragraph may provide for the operator – 15
 - (a) to make a lump sum payment,
 - (b) to make periodical payments,
 - (c) to make a payment or payments on the occurrence of an event or events, or
 - (d) to make a payment or payments in such other form or at such other time or times as the court may direct. 20
- (7) Paragraph 84 makes further provision about compensation in the case of a Part 4ZA order.

Interpretation of this Part

- 27ZH In this Part –
- “Part 4ZA order” has the meaning given by paragraph 27ZC(1); 25
 - “premises” includes a part of premises;
 - “request notice” has the meaning given by paragraph 27ZB(1)(d);
 - “required grantor” has the meaning given by paragraph 27ZB(1)(c).” 30

- (2) The Schedule contains consequential amendments.

Interim arrangements

67 Arrangements pending determination of certain applications under code

- (1) Paragraph 35 of the electronic communications code (arrangements pending determination of an application under paragraph 32 or 33) is amended as follows. 35
- (2) In sub-paragraph (2) –
 - (a) at the end of paragraph (a) insert “or”, and
 - (b) omit paragraph (c) (and the “or” preceding it).
- (3) After sub-paragraph (2) insert – 40
 - “(2A) The operator or the site provider may apply to the court for –

- (a) an order specifying the payments of consideration to be made by the operator to the site provider under the agreement relating to the existing code right until the application for an order under paragraph 32(1)(b) or 33(5) has been finally determined; 5
- (b) an order otherwise modifying the terms of that agreement until that time.
- (2B) An order under sub-paragraph (2A)(a) may provide for the order to have effect from the date of the application for the order.”
- (4) In sub-paragraph (3), for “under sub-paragraph (2)(c)” substitute “referred to in sub-paragraph (2A)(a)”. 10
- (5) After sub-paragraph (3) insert –
 - “(4) In determining whether to make an order under sub-paragraph (2A)(b), the court must have regard to all the circumstances of the case, and in particular to – 15
 - (a) the terms of the agreement relating to the existing code right,
 - (b) the operator’s business and technical needs,
 - (c) the use that the site provider is making of the land to which the agreement relates,
 - (d) any duties imposed on the site provider by an enactment, and 20
 - (e) the amount of consideration payable by the operator to the site provider under the agreement.”
- (6) In the italic heading before paragraph 35, omit “for payment”.

Disputes under the electronic communications code

- 68 Use of alternative dispute resolution** 25
- (1) The electronic communications code is amended as follows.
 - (2) In paragraph 20 (power of court to impose agreement) –
 - (a) after sub-paragraph (2) insert –
 - “(2A) The notice must also – 30
 - (a) contain information about the availability of alternative dispute resolution in the event that the operator and the relevant person are unable to reach agreement, and
 - (b) explain the possible consequences of refusing to engage in alternative dispute resolution.”; 35
 - (b) after sub-paragraph (4) insert –
 - “(5) Before applying for an order under this paragraph, the operator must, if it is reasonably practicable to do so, consider the use of one or more alternative dispute resolution procedures to reach agreement with the relevant person. 40
 - (6) The operator or the relevant person may at any time give the other a notice in writing stating that the operator or the relevant person (as the case may be) wishes to engage in

alternative dispute resolution with the other in relation to the agreement sought by the operator.”

- (3) In paragraph 32 (effect of notice to terminate an agreement) –
- (a) after sub-paragraph (3) insert –
 - “(3A) The counter-notice must also – 5
 - (a) contain information about the availability of alternative dispute resolution in the event that the operator and the site provider are unable to reach agreement, and
 - (b) explain the possible consequences of refusing to engage in alternative dispute resolution.”; 10
 - (b) after sub-paragraph (5) insert –
 - “(6) Before applying under sub-paragraph (1)(b) for an order under paragraph 34 the operator must, if it is reasonably practicable to do so, consider the use of one or more alternative dispute resolution procedures to reach agreement with the site provider. 15
 - (7) The operator or the site provider may at any time give the other party to the agreement a notice in writing stating that the operator or the site provider (as the case may be) wishes to engage in alternative dispute resolution with the other party to the agreement in relation to the site provider’s notice under paragraph 31.” 20
- (4) In paragraph 33 (modifying the terms of an expired agreement) –
- (a) after sub-paragraph (3) insert – 25
 - “(3A) Where the notice is given by an operator, it must also –
 - (a) contain information about the availability of alternative dispute resolution in the event that the operator and the site provider are unable to reach agreement, and 30
 - (b) explain the possible consequences of refusing to engage in alternative dispute resolution.”;
 - (b) after sub-paragraph (5) insert –
 - “(6) Before applying under sub-paragraph (5) for an order under paragraph 34 the operator or the site provider (as the case may be) must, if it is reasonably practicable to do so, consider the use of one or more alternative dispute resolution procedures to reach agreement with the other party. 35
 - (7) The operator or the site provider may at any time give the other party to the agreement a notice in writing stating that the operator or the site provider (as the case may be) wishes to engage in alternative dispute resolution with the other party to the agreement in relation to the notice mentioned in sub-paragraph (1).” 40
- (5) In paragraph 96 (award of costs by tribunal), in sub-paragraph (2) – 45
- (a) the wording after “in particular” becomes paragraph (a), and

- (b) at the end of that paragraph insert “, and
(b) any unreasonable refusal by a party to engage in alternative dispute resolution.”

69 Complaints relating to the conduct of operators

In paragraph 103 of the electronic communications code (duty for OFCOM to prepare code of practice), in sub-paragraph (1), after paragraph (c) insert – 5
“(ca) the handling by operators of complaints relating to the failure of operators to comply with the code of practice;”.

Proceedings relating to code disputes

70 Jurisdiction of First-tier Tribunal in relation to code proceedings in Wales 10

In paragraph 95(1) of the electronic communications code (power to confer jurisdiction on other tribunals) –

- (a) in paragraph (a), at the end insert “or the Upper Tribunal”;
(b) in paragraph (aa), for the words from “, but only” to the end substitute “or the Upper Tribunal”; 15
(c) omit paragraph (b).

71 Power to impose time limits on the determination of code proceedings

In Chapter 1 of Part 2 of the Communications Act 2003 (electronic communications networks and services), after section 119 insert –

“119A Power to impose time limits on the determination of certain proceedings 20

- (1) The Secretary of State may by regulations provide for specified proceedings falling within subsection (2) to be determined within a specified period.
- (2) The proceedings falling within this subsection are any proceedings in which there falls to be determined any question arising under, or in connection with – 25
(a) the electronic communications code as applied in any person’s case by a direction under section 106, or
(b) any restriction or condition subject to which that code applies. 30
- (3) Regulations made under subsection (1) may in particular –
(a) amend or revoke provision made by the Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), and
(b) amend or repeal any of the following provisions (which provide signposts to those regulations) – 35
(i) paragraph 2A of Schedule 3 to the New Roads and Street Works Act 1991;
(ii) section 107(1A) of this Act;
(iii) paragraph 97 of Schedule 3A to this Act; 40
(iv) section 69(5A) of the Marine and Coastal Access Act 2009;

(v) section 27(6A) of the Marine (Scotland) Act 2010.

(4) In this section “specified” means specified in the regulations.”

Rights of network providers in relation to infrastructure

72 Rights of network providers in relation to infrastructure

- (1) The Communications Act 2003 is amended as follows. 5
- (2) After section 148 (powers of local authorities in connection with networks) insert—

“Rights of network providers in relation to infrastructure

148A Rights of network providers in relation to infrastructure

- (1) The Secretary of State may by regulations make provision conferring rights on network providers in relation to relevant infrastructure for the purpose of facilitating the development of public electronic communications networks. 10
- (2) The provision that may be made by regulations under subsection (1) includes (among other things)— 15
- (a) provision requiring a person to grant network providers access to relevant infrastructure for specified purposes if specified conditions are met;
 - (b) provision requiring a person to provide network providers with information relating to relevant infrastructure, or land on, over or under which that infrastructure is installed, for specified purposes if specified conditions are met; 20
 - (c) provision in relation to the carrying out of works of a specified description;
 - (d) provision about requests by network providers for rights conferred by the regulations; 25
 - (e) provision about the treatment of information provided in accordance with the regulations;
 - (f) provision about disputes under the regulations;
 - (g) provision enabling or requiring a specified person to issue guidance relating to the regulations; 30
 - (h) provision about such guidance, including (among other things)—
 - (i) provision about the publication of guidance;
 - (ii) provision requiring specified persons, or persons of a specified description, to be consulted about the guidance; 35
 - (iii) provision about reviewing the guidance;
 - (i) provision requiring regulations under subsection (1) to be reviewed at specified intervals. 40
- (3) The provision that may be made by virtue of subsection (2)(d) includes (among other things)—
- (a) provision about the procedure by which a network provider may make a request for rights conferred by the regulations,

- including provision requiring a network provider to comply with requirements imposed by a specified person in relation to the making of such a request;
- (b) provision about the form in which a request is to be made, including provision for a specified person to make provision about the form of requests; 5
- (c) provision about the refusal of requests, including provision about the circumstances in which a request may or must be refused;
- (d) provision imposing a duty on a Minister of the Crown to give an opinion in relation to the refusal of a request; 10
- (e) provision about the effect of such an opinion, including provision for the opinion to be binding on specified persons, or persons of a specified description, in specified circumstances.
- (4) The provision that may be made by virtue of subsection (2)(f) includes (among other things) provision about – 15
- (a) the procedure for the resolution of disputes;
- (b) the appointment of a person to determine disputes;
- (c) the powers of a person when determining disputes;
- (d) time limits within which disputes must be determined; 20
- (e) appeals in respect of decisions relating to disputes.
- (5) Regulations under subsection (1) may provide for any provision of the regulations to apply in relation to land in which there subsists, or at any material time subsisted, a Crown interest as it applies in relation to land in which no such interest subsists. 25
- (6) Regulations made under subsection (1) may in particular amend or revoke any provision made by the Communications (Access to Infrastructure) Regulations 2016 (S.I. 2016/700).
- (7) Before making regulations under subsection (1) the Secretary of State must consult – 30
- (a) OFCOM;
- (b) such other persons as the Secretary of State considers appropriate.
- (8) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament. 35
- (9) In this section –
- “Crown interest” has the same meaning as in the electronic communications code (see paragraph 104(2) of the code);
- “Minister of the Crown” has the meaning given by section 8(1) of the Ministers of the Crown Act 1975; 40
- “network provider” means a person who provides, or intends to provide, a public electronic communications network;
- “public utility” means any of the following –
- (a) gas; 45
- (b) electricity;
- (c) heating;
- (d) water;

“relevant infrastructure” means infrastructure that is used for the purpose of providing any of the following –

- (a) an electronic communications network;
- (b) a service consisting of the production, transportation, transmission or distribution of a public utility; 5
- (c) a service consisting of the disposal or treatment of waste water and sewage;
- (d) drainage systems;
- (e) public lighting;
- (f) a transport service; 10

“specified” means specified in the regulations.”

- (3) In section 402 (power of Secretary of State to make orders and regulations), in subsection (2)(a), after “regulations under section” insert “148A or”.

Supplementary provision

73 Power to make consequential amendments 15

- (1) The Secretary of State may by regulations make provision that is consequential on any provision made by this Part.
- (2) The power to make regulations under this section may, in particular, be exercised by amending, repealing, revoking or otherwise modifying any provision made by or under primary legislation passed before, or in the same session of Parliament as, this Act. 20
- (3) In this section “primary legislation” means –
- (a) an Act of Parliament;
 - (b) a Measure or Act of the National Assembly for Wales or an Act of Senedd Cymru; 25
 - (c) an Act of the Scottish Parliament;
 - (d) Northern Ireland legislation.
- (4) Regulations under this section that amend or repeal any primary legislation are subject to the affirmative resolution procedure.
- (5) Any other regulations under this section are subject to the negative resolution procedure. 30

74 Meaning of “the electronic communications code”

In this Part, “the electronic communications code” means the electronic communications code set out in Schedule 3A to the Communications Act 2003.

PART 3 35

FINAL PROVISIONS

75 Power to make transitional or saving provision

- (1) The Secretary of State may by regulations make such transitional or saving provision as the Secretary of State considers appropriate in connection with the coming into force of any provision of this Act. 40

- (2) Regulations under this section may (among other things) make any adaptations of any provisions of this Act brought into force that appear to be appropriate in consequence of other provisions of this Act not yet having come into force.

76 Regulations

5

- (1) Any power of the Secretary of State to make regulations under this Act is exercisable by statutory instrument.
- (2) Regulations under this Act may –
- (a) make different provision for different purposes;
 - (b) contain supplementary, incidental, consequential, transitional or saving provision. **10**
- (3) Subsection (2) does not apply to regulations under section 78 (see instead subsection (3) of that section).
- (4) Where regulations under this Act are subject to the “negative resolution procedure” the statutory instrument containing the regulations is subject to annulment in pursuance of a resolution of either House of Parliament. **15**
- (5) Where regulations under this Act are subject to the “affirmative resolution procedure” the regulations may not be made unless a draft of the statutory instrument containing them has been laid before Parliament and approved by a resolution of each House of Parliament. **20**
- (6) Any provision that may be included in an instrument under this Act subject to the negative resolution procedure may be made by regulations subject to the affirmative resolution procedure.

77 Extent

- (1) Except as provided by subsection (2), this Act extends to England and Wales, Scotland and Northern Ireland. **25**
- (2) Any amendment or repeal made by this Act has the same extent within the United Kingdom as the provision amended or repealed.
- (3) Her Majesty may by Order in Council provide for any of the provisions of Part 1 or this Part (so far as relating to Part 1) to extend, with or without modifications, to – **30**
- (a) the Isle of Man;
 - (b) any British overseas territory.

78 Commencement

- (1) The following provisions of this Act come into force on the day on which this Act is passed – **35**
- (a) section 27;
 - (b) sections 75 to 77, this section and section 79;
 - (c) any power to make regulations under or by virtue of this Act.
- (2) The remaining provisions of this Act come into force in accordance with provision contained in regulations made by the Secretary of State. **40**

- (3) Regulations under this section may make different provision for different purposes.

79 Short title

This Act may be cited as the Product Security and Telecommunications Infrastructure Act 2022.

SCHEDULE

Section 66

UNRESPONSIVE OCCUPIERS: CONSEQUENTIAL AMENDMENTS

- 1 The Communications Act 2003 is amended as follows.
- 2 In section 402 (powers of Secretary of State to make orders and regulations),
in subsection (2A), before paragraph (a) insert – 5
- (za) regulations under paragraph 27ZB(3)(b) of Schedule 3A;
(zb) regulations under paragraph 27ZE(4) of Schedule 3A;”.
- 3 (1) Schedule 3A (the electronic communications code) is amended as follows.
- (2) In paragraph 10 (persons bound by code rights) –
- (a) in sub-paragraph (1), after “under this Part” insert “, Part 4ZA”; 10
(b) in sub-paragraph (4), after “under this Part” insert “, Part 4ZA”.
- (3) In paragraph 12(2) (exercise of code rights), after “this Part” insert “, Part 4ZA”.
- (4) In paragraph 19(a) (power of court to impose agreement), after “see also” insert “Part 4ZA and”. 15
- (5) In paragraph 21 (test to be applied by the court) –
- (a) in sub-paragraph (1), for “sub-paragraph (5)” substitute “sub-paragraphs (5) and (6)”;
(b) after sub-paragraph (5) insert –
- “(6) In deciding whether to make an order under paragraph 20 20
in circumstances where there is, or has been, an agreement
under Part 4ZA or Part 4A between the operator and the
relevant person in relation to the land to which the code
right would relate, the court must take into account any
breaches by the operator of its obligations under that 25
agreement.”
- (6) In paragraph 23(2A) (terms of an agreement imposed under paragraph 20),
after “an order under” insert “Part 4ZA or”.
- (7) In paragraph 26 (interim code rights) –
- (a) in sub-paragraph (1A), before “a relevant Part 4A agreement” insert 30
“a relevant Part 4ZA agreement or”;
- (b) for sub-paragraph (1B) substitute –
- “(1B) In sub-paragraph (1A) –
- (a) “relevant Part 4ZA agreement” means an 35
agreement imposed by an order under Part 4ZA by
which the person –
- (i) confers a Part 4ZA code right on the
operator, or

- (ii) otherwise agrees to be bound by a Part 4ZA code right which is exercisable by the operator,
where the Part 4ZA code right is in respect of the same land as the code right mentioned in sub-paragraph (1), and 5
 - (b) “relevant Part 4A agreement” means an agreement imposed by an order under Part 4A by which the person—
 - (i) confers a Part 4A code right on the operator, or 10
 - (ii) otherwise agrees to be bound by a Part 4A code right which is exercisable by the operator,
where the Part 4A code right is in respect of the same land as the code right mentioned in sub-paragraph (1).”; 15
 - (c) in sub-paragraph (8), after “placed on” insert “, under or over”.
- (8) In paragraph 27G (expiry of Part 4A code rights), in sub-paragraph (4)—
 - (a) after “placed on” insert “, under or over”; 20
 - (b) for “have effect” substitute “be conferred on the operator by”.
- (9) In paragraph 37(3) (landowner’s right to require removal of electronic communications apparatus), after paragraph (a) insert—
“(aza) as mentioned in paragraph 27ZF(1) and (4).”.
- (10) In paragraph 84(1) (compensation where agreement imposed or apparatus removed), after paragraph (a) insert—
“(aza) the power in paragraph 27ZG(2) (compensation where Part 4ZA order made).”.
- (11) In paragraph 108(1) (general interpretation), after the definition of “Part 4A code right” insert—
““Part 4ZA code right” has the meaning given by paragraph 27ZE(3).”.

Product Security and Telecommunications Infrastructure Bill

A

B I L L

To make provision about the security of internet-connectable products and products capable of connecting to such products; to make provision about electronic communications infrastructure; and for connected purposes.

Brought from the Commons on 26th May 2022

Ordered to be Printed, 26th May 2022

© Parliamentary copyright House of Lords 2022

This publication may be reproduced under the terms of the Open Parliament Licence, which is published at www.parliament.uk/site-information/copyright

PUBLISHED BY AUTHORITY OF THE HOUSE OF LORDS