

SCHEDULE 1

Amendment of other primary legislation

Communications Act 2003

11.—(1) The Communications Act 2003⁽¹⁾ is amended as follows.

(2) In section 371(2)⁽²⁾—

- (a) at the end of paragraph (a), insert “or”;
- (b) omit paragraphs (c) and (d).

(3) Paragraph 6 of Schedule 11⁽³⁾ is amended as follows.

(4) In sub-paragraph (6), at the beginning insert “Subject to paragraph 6A,”.

(5) In sub-paragraph (7)(a)—

- (a) after “European Court” insert “before exit day”, and
- (b) for “of that court” substitute “made by that court before exit day”.

(6) After sub-paragraph (7) insert—

“(7A) In sub-paragraph (7)(a), the reference to principles laid down before exit day is a reference to such principles as they have effect in EU law immediately before exit day, disregarding the effect of principles laid down, and decisions made, by the European Court on or after exit day.”.

(7) After that paragraph insert—

“**Competition tests applying to OFCOM’s decisions: EU principles etc**”

6A.—(1) Paragraph 6(6) does not require OFCOM to secure that there is no inconsistency with a principle or decision referred to in paragraph 6(7)(a)—

- (a) so far as the principle or decision is excluded from the law of England and Wales, Scotland and Northern Ireland on or after exit day, or
- (b) so far as doing so would be incompatible with OFCOM’s duty to secure that there is no inconsistency with a decision referred to in paragraph 6(7)(b).

(2) For the purposes of sub-paragraph (1)(a), a principle or decision is to be treated as not excluded from the law of England and Wales, Scotland and Northern Ireland if it is excluded only by virtue of an exclusion or revocation in the Competition (Amendment etc.) (EU Exit) Regulations 2019.

(3) Paragraph 6(6) does not require OFCOM to secure that there is no inconsistency with a principle or decision referred to in paragraph 6(7)(a) if OFCOM think that it is appropriate to act otherwise in the light of one or more of the following—

- (a) differences between the competition tests and Article 101 of the Treaty on the Functioning of the European Union as it had effect immediately before exit day;
- (b) differences between markets in the United Kingdom and markets in the European Union;
- (c) developments in forms of economic activity since the time when the principle or decision referred to in paragraph 6(7)(a) was laid down or made;

(1) 2003 c. 21.

(2) Section 371(2) was substituted by S.I. 2004/1261, and subsequently amended by paragraphs 42 and 46 of Schedule 15 to the Enterprise and Regulatory Reform Act 2013 and by S.I. 2012/1809 and S.I. 2014/892.

(3) Paragraph 6 of Schedule 11 was amended by S.I. 2012/1809 and S.I. 2014/892.

Status: *This is the original version (as it was originally made).*

- (d) generally accepted principles of competition analysis or the generally accepted application of such principles;
- (e) a principle laid down, or decision made, by the European Court on or after exit day;
- (f) the particular circumstances under consideration.”.