Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Open Internet Access (EU Regulation) Regulations 2016. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

STATUTORY INSTRUMENTS

2016 No. 607

ELECTRONIC COMMUNICATIONS

The Open Internet Access (EU Regulation) Regulations 2016

Made - - - -	*24th May 2016*
Laid before Parliament	*26th May 2016*
Coming into force - -	*17th June 2016*

The Secretary of State, being a Minister designated [F1] for the purposes of section 2(2) of the European Communities Act 1972 [F2] in respect of matters relating to electronic communications, in exercise of the powers conferred by that section makes the following Regulations:

F1 S.I. 2001/3495. This has been amended, but the amendments are not relevant for the purposes of these Regulations.

F2 1972 c. 68. Section 2(2) was amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c. 51) and section 3 of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7).

PART 1

PRELIMINARY

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Open Internet Access (EU Regulation) Regulations 2016 and come into force on 17th June 2016.

(2) In these Regulations—

"the EU Regulation" means Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25th November 2015 laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services and Regulation (EU) No 531/2012 on roaming on public mobile communications networks within the Union [F3];

"information requirement" has the meaning given in regulation 16; and

"OFCOM" means the Office of Communications as established by the Office of Communications Act 2002 [F4].

F3 OJ No L 310, 26.11.2015, p.1.
F4 2002 c. 11.

Service of notifications and other documents

2.—(1) This regulation applies where provision made (in whatever terms) by or under these Regulations authorises or requires—

(a) a notification to be given to any person; or

(b) a document of any other description (including a copy of a document) to be sent to any person.

(2) This regulation has effect subject to regulation 3.

(3) The notification or document may be given or sent to the person in question—

(a) by delivering it to the person;

(b) by leaving it at the person's proper address; or

(c) by sending it by post to the person at that address.

(4) The notification or document may be given or sent to a body corporate by being given or sent to the secretary or clerk of that body.

(5) The notification or document may be given or sent to a firm by being given or sent to—

(a) a partner in the firm; or

(b) a person having the control or management of the partnership business.

(6) The notification or document may be given or sent to an unincorporated body or association by being given or sent to a member of the governing body of the body or association.

(7) For the purposes of this regulation and section 7 of the Interpretation Act 1978 [F5] (service of documents by post) in its application to this regulation, the proper address of a person is—

(a) in the case of a body corporate, the address of the registered or principal office of the body;

(b) in the case of a firm, unincorporated body or association, the address of the principal office of the partnership, body or association;

(c) in the case of a person to whom the notification or other document is given or sent in reliance on any of paragraphs (4) to (6), the proper address of the body corporate, firm or (as the case may be) other body or association in question; and

(d) in any other case, the last known address of the person in question.

(8) In the case of—

(a) a company registered outside the United Kingdom,

(b) a firm carrying on business outside the United Kingdom, or

(c) an unincorporated body or association with offices outside the United Kingdom,

the references in paragraph (7) to its principal office include references to its principal office within the United Kingdom (if any).

(9) In this regulation—

"document" includes anything in writing;

"notification" includes notice; and references to giving or sending a notification or other document to a person include references to transmitting it to that person and to serving it on that person.

F5 1978 c. 30.

Notifications and documents in electronic form

3.—(1) This regulation applies where—

(a) regulation 2 applies; and

(b) the notification or other document is transmitted to the recipient—

(i) by means of an electronic communications network; or

(ii) by other means but in a form that nevertheless requires the use of apparatus by the recipient to render it intelligible.

(2) The transmission has effect for the purposes of these Regulations as a delivery of the notification or other document to the recipient, but only if the requirements imposed by or under this regulation are complied with.

(3) Where the recipient is OFCOM—

(a) they must have indicated their willingness to receive the notification or other document in a manner mentioned in paragraph (1)(b);

(b) the transmission must be made in such manner and satisfy such other conditions as they may require; and

(c) the notification or other document must take such form as they may require.

(4) Where the person making the transmission is OFCOM, they may (subject to paragraph (5)) determine—

(a) the manner in which the transmission is made; and

(b) the form in which the notification or other document is transmitted.

(5) Where the recipient is a person other than OFCOM—

(a) the recipient, or

(b) the person on whose behalf the recipient receives the notification or other document,

must have indicated to the person making the transmission the recipient's willingness to receive notifications or documents transmitted in the form and manner used.

(6) An indication to any person for the purposes of paragraph (5)—

(a) must be given to that person in such manner as that person may require;

(b) may be a general indication or one that is limited to notifications or documents of a particular description;

(c) must state the address to be used and must be accompanied by such other information as that person requires for the making of the transmission; and

(d) may be modified or withdrawn at any time by a notice given to that person in such manner as that person may require.

(7) An indication, requirement or determination given, imposed or made by OFCOM for the purposes of this regulation is to be given, imposed or made by being published in such a manner as they consider appropriate for bringing it to the attention of the persons who, in their opinion, are likely to be affected by it.

(8) Regulation 2(9) applies for the purposes of this regulation as it applies for the purposes of that regulation.

PART 2

NATIONAL REGULATORY AUTHORITY

National Regulatory Authority

4.—(1) OFCOM is the national regulatory authority for the purposes of Articles 3, 4 and 5 of the EU Regulation.

(2) References in these Regulations to OFCOM's functions under the EU Regulation should be read accordingly.

BEREC guidelines

5. In performing its functions under the EU Regulation and these Regulations, OFCOM must take due account of all applicable guidelines issued by the Body of European Regulators for Electronic Communications [F6] in accordance with Article 5(3) of the EU Regulation.

F6 As established by Regulation (EC) No 1211/2009 of the European Parliament and of the Council of 25th November 2009 establishing the Body of European Regulators for Electronic Communications (BEREC) and the Office. OJ No L 337, 18.12.2009, p.1.

Certification of monitoring mechanisms

6. OFCOM may certify one or more monitoring mechanisms to measure the performance of internet access services for the purposes of Article 4(4) of the EU Regulation.

PART 3

REQUIREMENTS

Power to impose requirements

7.—(1) OFCOM shall have the power to impose requirements for either or both of the purposes in paragraph (2).

(2) Those purposes are—

(a) to ensure compliance with Articles 3 and 4 of the EU Regulation;

(b) to ensure the continued availability of non-discriminatory internet access services at levels of quality that reflect advances in technology.

(3) OFCOM's power to impose a requirement under paragraph (1) includes the power to—

(a) impose a duty on the person or persons to whom the requirement is applied to comply with such directions with respect to the matters to which the requirement relates as may be given from time to time by OFCOM or by another person specified in the requirement;

(b) impose a duty with respect to those matters that is framed by reference to, or is conditional upon, the giving of a consent or of an approval, or on the making of a recommendation, by OFCOM or by another person so specified;

(c) confer, for the purposes of provision made by virtue of either of the preceding sub–paragraphs, a discretion exercisable from time to time by OFCOM or by another person specified in the requirement or determined in accordance with provision contained in it;

(d) impose different requirements for different cases (including different requirements in relation to different parts of the United Kingdom);

(e) revoke or modify the requirements for the time being in force.

(4) Any person to whom requirements set under paragraph (1) are applied in accordance with paragraph (5) must comply with those requirements.

(5) A requirement imposed under paragraph (1) may be applied to any provider of electronic communications to the public, including any provider of internet access services.

(6) In this regulation, "provider of electronic communications to the public" and "internet access service" have the meanings given in Article 2 of the EU Regulation.

Test for imposing, modifying or revoking requirements

8. OFCOM must not impose a requirement under regulation 7, or modify or revoke such a requirement, unless they are satisfied that to do so is—

(1) objectively justifiable in relation to the networks or services to which it relates;

(2) proportionate to what the requirement or modification is intended to achieve; and

(3) in relation to what it is intended to achieve, transparent.

Procedure for imposing, modifying or revoking requirements

9.—(1) Subject to the following provisions of these Regulations—

(a) the way in which requirements are to be imposed or modified under regulation 7 is by the publication of a notification setting out the requirements or modifications of those requirements;

(b) the way in which such a requirement is to be revoked is by the publication of a notification stating that the requirement is revoked.

(2) OFCOM must comply with the applicable requirements of regulation 10 before—

(a) imposing requirements under regulation 7; or

(b) modifying or revoking a requirement so imposed.

(3) The publication of a notification under this regulation must be in such manner as appears to OFCOM to be appropriate for bringing the contents of the notification to the attention of such persons as OFCOM consider appropriate.

Consultation for requirements

10.—(1) Subject to paragraph (2), this regulation applies where OFCOM propose to impose a requirement under regulation 7, or modify or revoke a requirement so imposed.

(2) This regulation does not apply where in OFCOM's opinion—

(a) there are exceptional circumstances; and

(b) there is an urgent need to act in order to ensure compliance with the EU Regulation.

(3) OFCOM must publish a notification—

(a) stating that they are proposing to impose, modify or revoke the requirements that are specified in the notification;

(b) setting out the effects of those requirements, modifications or revocations;

(c) giving their reasons for making the proposal; and