Department for
Digital, Culture
Media & Sport

Security of Network and Information Systems

Call for Views on proposed legislation amending the Network and Information Systems Regulations 2018

August 2020
Department for Digital, Culture, Media and Sport

Department for
Digital, Culture
Media & Sport

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1. Contact details

This document sets out the Government's approach following the recommendations made in the 2020 Post-Implementation Review of the NIS Regulations, published in May 2020, and our proposed legislative changes based on the findings of the Review.

Responses

By Survey

Respondents are invited to provide answers to these questions using the online feedback survey tool here. Respondents are welcome to only answer questions relevant to them. Supporting evidence should be submitted directly to nis@dcms.gov.uk. Partial responses will be recorded and included in the analysis.

By Post

Hard copy responses can be sent to:

NIS Directive Team
Department for Digital, Culture, Media & Sport
4th Floor
100 Parliament Street
London
SW1A 2BQ

By Email

Alternatively, respondents can download and populate this feedback form on the main page and email responses directly to nis@dcms.gov.uk.

When responding, please clarify:

- *if you are responding on behalf of an organisation or in a personal capacity;*
- *which questions you are answering (there is no need to respond to all of the questions if they are not all relevant to you);*
- *whether you are willing to be contacted (if so, please provide contact details); and*
- *whether you prefer for your response to remain confidential and non-attributable (if so, please specify).*

All responses should be submitted in advance of the closing date for this Call for Views, which is **23:59 25 September 2020**.

2. Executive summary

The Network and Information Systems Regulations 2018 (NIS Regulations) came into force on 10 May 2018 and are aimed at improving the level of security of organisations that provide essential services to the UK, as well as some digital services. The NIS Regulations apply to operators of essential services in the transport, energy, water, health, and digital infrastructure services as well as to online marketplaces, online search engines, and cloud computing services (as digital service providers). The implementation and enforcement of the NIS Regulations is the responsibility of designated competent authorities, and this regulatory activity is further supported by the UK's national technical authority, the National Cyber Security Centre.

This work is part of the Government's £1.9 billion 2016 National Cyber Security Strategy to protect the UK in cyber space and make the UK the safest place to live and work online.

In May 2020, the Government published its first Post-Implementation Review of the NIS Regulations. The review's purpose was to evaluate how effective the NIS Regulations have been in achieving their original objective of improving security standards across critical UK sectors. The review showed that whilst it is still too early to judge the long term impact of the NIS Regulations, organisations in scope are beginning to take steps to improve the security of their network and information systems and that the NIS Regulations are having a positive effect. The Post-Implementation Review also identified several areas of improvement to the NIS Regulations requiring policy interventions from the Government, which would enhance their overall efficiency. These relate primarily to introducing an independent appeals mechanism, changes to regulatory authorities' enforcement powers, expanded information-sharing provisions, amendments to the designation thresholds, refining the application of penalties, and other technical and operability changes.

The Government has worked to develop these proposals to improve the functioning of the NIS Regulations and this Call for Views is seeking feedback from industry, particularly from organisations in scope of the NIS Regulations, on the initial draft of the legislation.

PLEASE NOTE: This consultation is limited to how the UK proposes to introduce further amendments to the NIS Regulations; the Government already consulted more widely on other aspects of the implementation of the NIS Regulations (see section below).

Previous consultations

The UK held a public consultation from August to September 2017 on its proposals to implement the NIS Directive. This consultation covered six main topics:

- how to identify essential services;
- a national framework to manage implementation;
- the security requirements for operators of essential services;
- the incident reporting requirements for operators of essential services;
- the requirements on Digital Service Providers; and
- the proposed penalty regime.

The Government received over 350 responses to its consultation. These responses showed that there was broad support for the Government's approach, and for the decision to continue to apply the NIS Regulations after the UK's exit from the EU. The Government's response to the public consultation was published on 29 January 2018.

Subsequent to the Government's response, the European Commission adopted an Implementing Act (as required under Article 16(8) of the NIS Directive), which was published in the Official Journal of the European Union on 30 January 2018 (and entered into force 20 days later). It can be found on the EUR-LEX website.

In March 2018, the Government published a targeted consultation on the implementation of the NIS Regulations for digital service providers. The consultation covered six main topics:

- definitions of digital service providers;
- security measures;
- incident reporting;
- digital service providers that serve operators of essential services;
- digital service providers that are also operators of essential services; and
- costs.

These responses indicated there was support for the Government's overall approach towards digital service providers, but there continues to be uncertainty over exactly who is in scope, and greater clarification was needed on the subject of cost recovery. The Government's response to the targeted consultation was published on 31 August 2018.

In March 2019, the Government published an open call for views that sought comments on an amendment to the NIS Regulations to include a new requirement following the UK's departure from the EU. Under this requirement, a digital service provider whose head office is not in the UK but which offers services in the UK will have to designate a representative in the UK and comply with our domestic NIS framework. This requirement mirrors a requirement in the NIS Directive that affects digital service providers established in the UK but which offer services in the EU.

The Statutory Instrument[1] which introduces this requirement has been made and laid, and will come into effect twenty days after the end of the Transition Period. The Government's response to the call for views was published on 24 July 2019.

[1] SI 2019/1444, accessible on legislation.gov.uk.

3. Government's proposal

The Government is proposing to lay a Statutory Instrument to amend the NIS Regulations; the draft is available in this consultation document at Section 4: Draft Legislation. A Keeling Schedule (an example of the final legislation with all changes incorporated) has been provided to help identify the new proposals and visualise the legislation.

This Statutory Instrument will implement various changes as a result of the Government's findings from the Post-Implementation Review. The Government considers that these policy interventions will help strengthen the application of the NIS Regulations and allow competent authorities to carry out their implementation duties more effectively while improving clarity and transparency for organisations in scope.

In the longer term, the Government considers that these amendments will bring improvements to the UK's overall cyber resilience (as much as it is covered by the present framework) and strengthen confidence in the regulations.

The Government has identified several policy areas which we are proposing to amend. Please note these below, including with references to where these changes are proposed in the text of the instrument.

Each section contains the exact provision these changes refer to, in the following format: *regulation [...] of the draft Statutory Instrument, amending regulation [...] of the NIS Regulations 2018.*

We encourage participants to review the Call for Views, draft legislation, and Keeling Schedule in full before answering any of the questions posed in Section 4 as not all proposed amendments (e.g. technical or operational drafting changes) have questions attached to them.

3.1. Information-sharing powers

- *regulation 4 amending regulation 6 (information sharing - enforcement authorities)*

Competent authorities have an obligation to cooperate with other competent authorities and with law enforcement authorities. In order to clarify how information will be shared, this Statutory Instrument introduces information-sharing provisions, providing further clarification as to how competent authorities can share information with each other and with law enforcement authorities for regulatory and national security purposes, and for the purpose of criminal proceedings and investigations.

These provisions will ensure that information is shared in a manner that is appropriate and proportionate for the implementation of the NIS Regulations.

3.2 Amendments to the provision of Information Notices

- *regulation 11 amending regulation 15 (information notices)*

Competent authorities use incident reports to identify priority areas to ensure that the Government is focusing its resources and support in the most impactful way. For this reason, operators of essential services and relevant digital service providers are encouraged to report incidents voluntarily either to the competent authorities or to the National Cyber Security Centre.

In order to ensure that competent authorities have access to information needed to understand the threats affecting their sector, this Statutory Instrument will expand the grounds for information notices to establish whether there have been any events that had an adverse effect on networks or information systems.

This amendment will allow competent authorities to have more effective tools to address regulatory requirements for each sector. Expanding the grounds for information notices will also allow competent authorities to identify failures to comply with the duties in the NIS regulations and is needed to ensure that they have access to relevant information in relation to breaches, in order to make informed decisions before proceeding to enforcement or penalty action.

The primary purpose of this provision will be to obtain information that is reasonably required for competent authorities to carry out different aspects of their role under the NIS Regulations (e.g. focusing on breaches that have already materialised as opposed to potential breaches). These amendments maintain the original policy intention of the information notice but expand its application to support the wider regulatory regime.

3.3 Powers of Inspection

- *regulation 12 amending regulation 16 (power of inspection)*

The Government proposes the above amendments to regulation 16 to improve and provide further clarification and transparency to NIS inspections, in addition to setting out more clearly what powers are available to inspectors.

These proposals are tailored to the NIS Regulations but remain consistent in their intention and application with other similar legislation; they are aimed at both ensuring that inspectors have appropriate and proportionate powers to carry out NIS functions but also that all parties involved benefit from more explicit provisions setting out how inspections may function. Finally, these changes include the addition of powers to conduct tests that would be required to make informed assessments as to an operator of essential services / relevant digital service provider’s levels of security of network and information systems.

3.4. Strengthening the enforcement regime

- *regulation 13 amending regulation 17 (enforcement for breach of duties)*
- *regulation 16 introducing regulation A20 (enforcement by civil proceedings)*

Competent authorities must have a diverse toolset at their disposal to implement the NIS Regulations, accounting for the diversity in the sectors in scope. The use of financial penalties might not be an appropriate solution in every situation or the most effective lever to drive desired behaviours. For this reason, this Statutory Instrument introduces new provisions that will allow competent authorities to initiate civil proceedings to ensure compliance with enforcement notices served under regulation 17, expanding the toolset available to competent authorities and moving away from using penalties as the ultimate measure to drive change.

The intention of the NIS Regulations is to ensure that operators of essential services and relevant digital service providers are cyber-resilient, which is why it is important for competent authorities to be able to ensure compliance with enforcement notices. To this end, the Statutory Instrument further clarifies that operators of essential services and relevant digital service providers must comply with enforcement notices; this is also regardless of whether they have complied with any imposed penalty notice.

The Statutory Instrument also clarifies an existing provision that competent authorities may serve multiple enforcement notices in scenarios where it would be appropriate to serve more than one (e.g. when the competent authority needs to address more than one breach simultaneously). This is to ensure clarity and avoid possible misinterpretation. Moreover, the grounds for which an enforcement notice may be served have been expanded to reflect the new requirements introduced by this Statutory Instrument.

Finally, this amendment ensures that other additions throughout the Statutory Instrument are operable (e.g. including the new Regulation 8A within the grounds for serving an enforcement notice) so that the regulations remain functional and appropriate.

3.5. Amendments to the penalty regime

- *regulation 14 amending regulation 18 (penalties)*

The objective of the NIS Regulations is not to punish organisations that have suffered an incident, but to ensure that operators of essential services and relevant digital service providers are cyber-resilient. For this reason, the penalty bands (as described in regulation 18(6)) have been revised to reflect the seriousness of different categories of breaches. The revised penalty bands also allow competent authorities the discretion to issue penalties that are more appropriate for each sector.

The Statutory Instrument will also clarify that penalty notices would not necessarily be linked to enforcement notices (e.g. it will not necessarily require one to be issued beforehand); this will allow for penalties to be issued when they are warranted, having regard to all the facts

and circumstances of the case, and maintaining the principles of reasonableness and proportionality in regulation 23.

In addition to this, the Government proposes to introduce a two-step process where competent authorities may serve a notice of intention to impose a penalty before making their final decision through a penalty notice. This process will allow operators of essential services and relevant digital service providers to submit representations on the proposed penalty decision before the competent authority issues a formal penalty notice; it is vital that penalties are served with as much awareness of the facts as possible, and this new provision supports operators of essential services and digital service providers by adding an additional layer of scrutiny before a final penalty decision is made.

This section also reflects necessary changes due to the amendments to other parts of the NIS Regulations (e.g. reflecting the move towards a statutory appeal mechanism under regulation 19 or mirroring the explicit clarification that multiple penalty notices may be served at once, as required following the changes to the enforcement notices).

3.6. Introducing a statutory appeal route via the First-Tier Tribunal

- *regulation 3 amending regulation 1 (interpretation)*
- *regulation 15, omitting regulation 19 (independent review)*
- *regulation 16, inserting regulations 19A and 19B (appeal by an operator of essential services or relevant digital service providers)*
- *regulation 17, amending regulation 20 (enforcement of penalty notices)*
- *regulation 21 (transitional and saving provisions)*

Regulation 19 of the NIS Regulations currently includes a requirement for competent authorities to appoint an independent reviewer at the request of an operator of essential services / relevant digital service provider to review either designation decisions or penalty notices.[2] The Government proposes to improve the current framework to ensure there is consistency across sectors on the application of this regulation and to limit the burden on both operators of essential services / relevant digital service providers and competent authorities.

The proposed approach is to omit regulation 19 entirely and replace it with new regulations 19A and 19B, which provide for a statutory appeals process, with appeals heard by an existing tribunal, the General Regulatory Chamber of the First-tier Tribunal. The General Regulatory Chamber's jurisdiction already extends to General Data Protection Regulation disputes and has a wide-ranging portfolio of sectors, including information rights and electronic communications. The General Regulatory Chamber of the First-tier Tribunal is considered a suitable chamber destination for appeals under the NIS Regulations by the competent authorities and the Ministry of Justice.

In order to be compatible with the rules of procedure of the General Regulatory Chamber (the General Regulatory Chamber Rules), there is a need to amend the NIS Regulations to

[2] Regulations 19(1) and (2) of the NIS Regulations 2018.

remain operable within the new jurisdiction; changes must also take into account any applicable provisions in the Regulator's Code and other wider Ministry of Justice policy on tribunal procedures.

A summary of the Rules, as they would apply, is available below, but respondents are encouraged to explore the entirety of the Rules as well:

- The appellant must provide to the tribunal their notice of appeal so that it is received within 28 days of the date on which the competent authority sent the notice of the decision to them;
- Following lodging of the notice of appeal, the competent authority must then submit its response to the notice of appeal and the reasons for its decision within 28 days;
- The appellant may provide a written submission and further documents in reply to a response from the competent authority within 14 days after the date on which the respondent or the Tribunal sent the response to the appellant;
- The appellant may submit a written application for the Tribunal to decide whether the substantive decisions should be stayed (or sisted in Scotland) or suspended;
- The appellant may give notice of withdrawal of their appeal at any time, either by written notice, or orally at a hearing, and this will be effective if the Tribunal consents;
- The Tribunal will make its decision and provide to each party as soon as reasonably practicable: a decision notice stating the decision, written reasons and notification of any right of appeal including the time within which it may be exercised;
- In the General Regulatory Chamber, the costs do not usually follow the event, however, the Tribunal may award costs where it finds that a party has acted unreasonably in bringing, defending or conducting the appeal (or make an order in relation to wasted costs);
- Either party can make a written application asking for permission to appeal against the decision of the tribunal but only on a point of law. Such an application for permission must be received by the tribunal within 28 days.

We believe that the General Regulatory Chamber Rules, as generally applicable, are suitable for the processing of appeals in relation to the NIS Regulations and that there is no need to consider any further special provisions or rule changes through this Statutory Instrument.

We are also proposing a number of other changes to the approach taken currently in regulation 19 in the new Regulation 19A and 19B to improve the application of appeals. These include:

- extending the list of appealable matters to include enforcement notices and revocation notices of operators of essential services, in addition to designation notices (for operators of essential services only) and penalty notices, giving operators

of essential services / relevant digital service providers more flexibility and power to raise appropriate appeals;

- explicitly laying out the grounds for appeals for operators of essential services / relevant digital service providers. These grounds are aligned with other regulations which use the General Regulatory Chamber for an appeals mechanism and clearly identify what basis appellants are able challenge a decision made against them and allow the Tribunal to dismiss vexatious or unmeritorious cases aimed at frustrating enforcement;

- allowing the General Regulatory Chamber to have the power to uphold or quash the whole, or part, of a decision and, in doing so, remitting the decision back to the competent authority with a direction to reconsider its original decision.

3.7. Timelines for Post-Implementation Reviews

- *regulation 19, amending regulation 25 (review and report)*

In order to fully evaluate these new amendments and the longer term impact of the Regulations, the Government proposes to extend the timeframe to carry out future post-implementation reviews, set out in regulation 25, to the more well-established time-frame of 5 years, starting after the end of the next Post-Implementation Review in 2022.

3.8. Sectoral amendments to Schedule 2 and non-UK operators of essential services offering services in UK

- *regulation 20 amending Schedule 2 (essential services and threshold requirements)*
- *regulation 6 inserting regulation 8A (Nomination by an operator of essential services of a person to act on its behalf in the United Kingdom)*
- *regulation 5 inserting regulation 8(7A) and new regulation (7B) (identification of operators of essential services)*

The Post-Implementation Review expressed a clear need to ensure that the NIS Regulations remain flexible and adapt to the changing technological circumstances in order to remain effective. They must also ensure that all the right organisations are within the scope of the Regulations in order to secure relevant essential services. One method of ensuring this is to consistently review the organisations in scope and the methodology of identifying what is essential and must be in scope of the regulations.

The changes to Schedule 2 are tailored to the energy and digital infrastructure sectors. The amendments to the thresholds in the energy sector are aimed at reducing ambiguity by providing further information and definitions, whereas the amendments to the digital infrastructure sector expand on the thresholds themselves and ensure that the right organisations are in scope of the NIS Regulations.

Revocation of a designation of 'Operator of Essential Services'

Following the designation process, an organisation's size and structure may change in such a way that it would render it outside of the criteria for the NIS Regulations. The introduction of regulations 8(7A) and 8(7B) sets out the requirement for an operator of essential service to notify the competent authority in writing, alongside supporting evidence, should they believe they no longer meet these criteria. This activity is currently heavily reliant on competent authorities requesting information as there is no requirement for operators of essential services to proactively raise changes in circumstances which are both impractical and resource intensive.

Requirement for operators of essential services outside the UK to designate a nominated person in the UK (new Regulation 8A)

Some operators of essential services in scope of the NIS Regulations are headquartered outside of the UK and might not necessarily have a physical presence in the UK due to the nature of networks and information systems and the services they provide. This could potentially create challenges when competent authorities need to reach out to them for regulatory purposes.

For this reason, the Government is proposing to introduce a requirement for operators of essential services established outside of the UK to nominate a person in the UK to act on their behalf for the purpose of the NIS Regulations. The intention is to ensure that competent authorities are able to support all operators of essential services in complying with the NIS Regulations and to protect the essential services they provide.

The requirement in new Regulation 8A is not related to the UK's membership of the EU; it is intended to address a broader issue regarding operators of essential services based in third countries that has been raised by competent authorities. This requirement is similar, but unrelated to that established by SI 2019/1444, which will come into effect twenty days after the end of the Transition Period, and introduces a requirement for Relevant Digital Service Providers established outside the UK to designate a representative in the UK.

4. Questions

1) Are you responding as an individual or on behalf of an organisation?
   a) *Individual*
   b) *Organisation*

2) If you answered 'b)' to question '1)', is your organisation in scope of the NIS Regulations?
   YES/NO

3) To what extent do you agree or disagree with our proposals to improve the **Information sharing provisions** in the Regulations?

   - Strongly agree / agree / neither agree or disagree/ disagree / strongly disagree / don't know

4) To what extent do you agree or disagree with our proposals to **clarify information notices?**

   - Strongly agree / agree / neither agree or disagree/ disagree / strongly disagree / don't know

5) To what extent do you agree or disagree with our proposals to **amend the powers of inspection?**

   - Strongly agree / agree / neither agree or disagree/ disagree / strongly disagree / don't know

6) To what extent do you agree or disagree with our proposal in regards to **strengthening the enforcement regime**?

   - Strongly agree / agree / neither agree or disagree/ disagree / strongly disagree / don't know

7) To what extent do you agree or disagree with the changes proposed to the **penalty regime**?

   - Strongly agree / agree / neither agree or disagree/ disagree / strongly disagree / don't know

8) Are the General Regulatory Chamber Rules suitable for the handling of appeals against decisions by the competent authorities?

   - Yes / No / Don't know

9) To what extent do you agree or disagree with our approach to i**ntroducing a statutory appeal route via the First-tier Tribunal**?

   - Strongly agree / agree / neither agree or disagree/ disagree / strongly disagree / don't know

10) To what extent do you agree or disagree with changes to the **timeline for post-implementation reviews**?

- Strongly agree / agree / neither agree or disagree/ disagree / strongly disagree / don’t know

11) To what extent do you agree or disagree with the proposed changes to **Schedule 2 of the NIS Regulations**?

- Strongly agree / agree / neither agree or disagree/ disagree / strongly disagree / don’t know

12) Please provide any other thoughts or feedback on the proposed legislative changes that you would like for us to note
Open text answer

Department for
Digital, Culture
Media & Sport

5. Draft Legislation

A copy of the draft Statutory Instrument containing all of the aforementioned provisions is provided below:

S T A T U T O R Y I N S T R U M E N T S

2020 No.

ELECTRONIC COMMUNICATIONS

The Network and Information Systems (Amendment and Transitional Provision etc.) Regulations 2020

Made - - - -	***
Laid before Parliament	***
Coming into force - -	***

The Secretary of State is a Minister designated(**3**) for the purposes of section 2(2) of the European Communities Act 1972(**4**) ("the 1972 Act") in relation to electronic communications.

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 2(2) of the 1972 Act.

Citation, commencement, application and interpretation

1.—These Regulations may be cited as the Network and Information Systems (Amendment and Transitional Provision etc.) Regulations 2020 and come into force on [***] 2020.

(1) These Regulations apply to—

(a) the United Kingdom, including its internal waters;

(b) the territorial sea adjacent to the United Kingdom;

(c) the sea (including the seabed and subsoil) in any area designated under section 1(7) of the Continental Shelf Act 1964(**5**).

(2) In these Regulations, "the 2018 Regulations" means the Network and Information Systems Regulations 2018(**6**).

(**3**) S.I. 2001/3495. See article 2 of, and Schedule 1 to, these Regulations. There are amendments not relevant to these Regulations.
(**4**) 1972 c. 68. Section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51) and by Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c. 7). In so far as these Regulations deal with matters that are within the devolved competence of Scottish Ministers, the power of the Secretary of State to make regulations in relation to those matters in or as regards Scotland is preserved by section 57(1) of the Scotland Act 1998 (c. 46).
(**5**) 1964 c. 29. Section 1(7) of the Continental Shelf Act 1964 was amended by section 37 of, and Schedule 3 to, the Oil and Gas (Enterprise) Act 1982 (c. 23), and section 103 of the Energy Act 2011 (c. 16).
(**6**) S.I. 2018/506. This instrument was amended by S.I. 2018/629.

Amendment of the 2018 Regulations

2. The 2018 Regulations are amended in accordance with regulations 3 to 20.

Amendment to regulation 1 (interpretation)

3. In regulation 1(2), after the definition of "essential service" insert—

""First-tier Tribunal" has the meaning given by section 3(1) of the Tribunals, Courts and Enforcement Act 2007(**7**);".

Amendment to regulation 6 (information sharing - enforcement authorities)

4. In regulation 6(1)—

(a) in the opening text, after "with" insert "each other, relevant law-enforcement authorities,";

(b) for sub-paragraph (a) substitute—

"(a) necessary for—

(i) the purposes of facilitating the performance of any functions of a NIS enforcement authority under or by virtue of these Regulations or any other enactment;

(ii) national security purposes; or

(iii) purposes related to the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution;".

Amendment to regulation 8 (identification of operators of essential services)

5. In regulation 8—

(a) in paragraph (2), after "authority" insert "in writing";

(b) after paragraph (7) insert—

"(7A) If a person has reasonable grounds to believe that it no longer meets the conditions for deemed designation under paragraph (1) or designation under paragraph (3), it must notify in writing, and provide evidence in writing supporting that belief to, the designated competent authority as soon as practicable.

(7B) A competent authority which receives from a person a notification and supporting evidence referred to in paragraph (7A) must have regard to that notification and evidence in considering whether to revoke that person's designation under regulation 9(1) or (2) (whichever is relevant).".

[Insertion of regulation 8A

6. After regulation 8, insert—

"**Nomination by an OES of a person to act on its behalf in the United Kingdom**

8A.—(1) This regulation applies to any OES(**8**) which has its head office outside the United Kingdom and—

(a) provides an essential service of a kind referred to in one or more of paragraphs 1, 2, 3 and 10 of Schedule 2 (in the energy or digital infrastructure sector) within the United Kingdom; or

(b) provides an essential service of a kind referred to in one or more of paragraphs 4 to 9 of Schedule 2 (in the transport, health or drinking water supply and distribution sector) within the United Kingdom and falls within paragraph (2).

(**7**) 2007 c. 15.
(**8**) An OES is an operator of an essential service as defined in regulation 1(2) of the 2018 Regulations.

(2) An OES falls within this paragraph if the designated competent authority for the OES has required by notice in writing to the OES that the OES must comply with the requirements of this regulation.

(3) An OES to which this regulation applies must—

(a) nominate in writing a person in the United Kingdom with the authority to act on its behalf under these Regulations, including for the service of documents under regulation 24 (a "nominated person");

(b) before the relevant date, notify the designated competent authority in writing of—

(i) its name;

(ii) the name and address of the nominated person; and

(iii) up-to-date contact details of the nominated person (including email addresses and telephone numbers).

(4) The OES must notify the designated competent authority for the OES of any changes to the information notified under paragraph (3) as soon as practicable and in any event within seven days beginning with the day on which the change took effect.

(5) The designated competent authority for the OES and GCHQ may, for the purposes of carrying out their responsibilities under these Regulations, contact the nominated person instead of or in addition to the OES.

(6) A nomination under paragraph (3) is without prejudice to any legal action which could be initiated against the OES.

(7) In this regulation, "relevant date" means the date three months after and beginning with the first day on which the OES was deemed to be designated as an OES under regulation 8(1) or with the day on which it was designated as an OES under regulation 8(3).".].

Amendment to regulation 9 (revocation)

7. In regulation 9, in each of paragraphs (1) and (2), after "notice" insert "in writing".

Amendment to regulation 11 (duty to notify incidents)

8. In regulation 11(1), after "authority" insert "in writing".

Amendment to regulation 12 (relevant digital service providers)

9. In regulation 12—

(a) in paragraph (3), after "Commissioner" insert "in writing";

(b) in paragraph (9)—

(i) after "authority" insert "in writing";

(ii) for "as soon as it occurs" substitute "without undue delay".

Amendment to regulation 14 (registration with the Information Commissioner)

10. In regulation 14(3), after "Commissioner" insert "in writing".

Amendment to regulation 15 (information notices)

11. In regulation 15—

(a) in paragraph (1)—

(aa) after "notice" insert "in writing";

(bb) for "information that" substitute "all such information as";

(b) in paragraph (2)—

(i) in the opening text—

(aa) after "notice" insert "in writing";

(bb) for "that person" substitute "the OES";

(cc) for "information that" substitute "all such information as";

(dd) for "to assess" substitute "for one or more of the following purposes";

(ii) for sub-paragraphs (a) and (b) substitute—

"(a) to assess the security of an OES's network and information systems;

(b) to establish whether there have been any events that had an adverse effect on the security of network and information systems, and the nature and impact of those events;

(c) [to identify any failure of an OES to comply with any duty set out in these Regulations;]

(d) to assess the implementation of an OES's security policies, including any about inspections conducted under regulation 16 and any underlying evidence in relation to such an inspection;

(e) to carry out its other functions under these Regulations.";

(c) in paragraph (3), in the opening text—

(i) after "notice" insert "in writing";

(ii)]for "information that" substitute "all such information as";

(d) omit paragraph (4);

(e) after paragraph (5) insert—

"(5A) A person upon whom an information notice has been served under this regulation must comply with the requirements of the notice.".

Amendment to regulation 16 (power of inspection)

12. In regulation 16—

(1) in each of paragraphs (1) and (2)—

(a) after sub-paragraph (b) omit "or";

(b) after sub-paragraph (c) omit the closing text;

(2) in paragraph (3)—

(a) at the end of sub-paragraph (a) insert "if so required by the designated competent authority";

(b) in sub-paragraph (b), for the words from "person" to the end substitute "inspector and the designated competent authority or the Information Commissioner, as the case may be";

(c) after sub-paragraph (d) omit "and";

(d) after sub-paragraph (e) insert—

"(f) not intentionally obstruct an inspector performing their functions under these Regulations; and

(g) comply with any direction made by, or requirement of, an inspector performing their functions under these Regulations.";

(3) after paragraph (4) insert—

"(5) The inspector may—

(a) require the OES or RDSP to leave undisturbed and not to dispose of, render inaccessible or alter in any way any material, document, information, in whatever form and wherever it is held (including where it is held remotely), or equipment which is, or which the inspector considers to be, relevant for such period as the inspector may specify;

(b) require the OES or RDSP to produce and provide the inspector with access to, for the purposes of the inspection, any such material, document, information or equipment immediately or within such period as the inspector may specify;

(c) require the inspection, printing, copying or removal of any document or information, and the inspection or removal of any material or equipment (including for the purposes of printing or copying any document or information);

(d) take statements from any person;

(e) [conduct tests;]

(f) [at any reasonable time enter any premises (except any premises used wholly or mainly as a private dwelling) if the inspector has reasonable grounds to believe that access to those premises may be necessary or helpful for the purpose of the inspection;] and

(g) take any other action relevant to the inspection.

(6) In this regulation—

(a) a reference to a test is a reference to any process employed to uncover, assess or measure the existence or extent of any weakness or vulnerability in, or in the management of, a network or information system;

(b) "inspection" means—

(i) any activity carried out for the purpose of checking and promoting compliance with the requirements of these Regulations, including any necessary follow-up; or

(ii) any activity carried out for the purpose of assessing or gathering evidence of alleged failures, including any necessary follow-up;

(c) "inspector" means the person conducting an inspection in accordance with paragraph (1) or (2).".

Amendment to regulation 17 (enforcement for breach of duties)

13. In regulation 17—

(a) in the heading, after "enforcement" insert "notices";

(b) in paragraph (1), before sub-paragraph (a) insert—

"(za) notify the competent authority under regulation 8(2);

(zb) notify the competent authority under regulation 8(7A);

(zc) comply with the requirements stipulated in regulation 8A;";

(c) in paragraph (2), after sub-paragraph (d) insert—

"(da) comply with the requirements stipulated in regulation 14A;";

(d) in paragraph (3)(a), for "reasons" substitute "grounds";

(e) after paragraph (3) insert—

"(3A) An OES or RDSP([9]) upon whom an enforcement notice has been served under paragraph (1) or (2) must comply with the requirements, if any, of the notice regardless of whether the OES or RDSP has paid any penalty imposed on it under regulation 18.".

Amendment to regulation 18 (penalties)

14. In regulation 18—

(a) in paragraph (1), for the words from "penalty", in the opening text, to the end of the paragraph substitute—

"notice of intention to impose a penalty on that OES if—

(9) A RDSP is a relevant digital service provider as defined in regulation 1(3)(e) of the 2018 Regulations.

(a) the OES was served with an enforcement notice under regulation 17(1) and the OES—

(i) was required under that notice to take steps to rectify a failure within a period stipulated in the notice but failed to take, or adequately take, one or more of those steps within that period; or

(ii) the competent authority is not satisfied with the representations submitted by the OES in accordance with regulation 17(3)(d); or

(b) (whether or not the OES was served with an enforcement notice) the competent authority is satisfied that the OES has failed to comply with a duty set out in regulation 17(1) and considers that a penalty is warranted having regard to all the facts and circumstances of the case.";

(b) in paragraph (2), for the words from "penalty", in the opening text, to the end of the paragraph substitute—

"notice of intention to impose a penalty on that RDSP if—

(a) the RDSP was served with an enforcement notice under regulation 17(2) and the RDSP—

(i) was required under that notice to take steps to rectify a failure within a period stipulated in the notice but failed to take, or adequately take, one or more of those steps within that period; or

(ii) the Commissioner is not satisfied with the representations submitted by the RDSP in accordance with regulation 17(3)(d); or

(b) (whether or not the RDSP was served with an enforcement notice) the Commissioner is satisfied that the RDSP has failed to comply with a duty set out in regulation 17(2) and considers that a penalty is warranted having regard to all the facts and circumstances of the case.";

(c) in paragraph (3)—

(i) in the opening text, for "penalty notice" substitute "notice of intention to impose a penalty";

(ii) for sub-paragraph (d) substitute—

"(d) the period within which the penalty must be paid which must be at least 30 days beginning with the date of the final decision to impose a penalty ("the payment period");";

(iii) omit sub-paragraph (e) and "and" after it;

(iv) before sub-paragraph (f), insert—

"(ei) that the penalty notice and payment of the penalty is without prejudice to the requirements, if any, of the enforcement notice (see regulation 17(3A));";

(v) after sub-paragraph (f) insert—

"; and

(g) how and when representations may be made about the content of the notice and any related matters.";

(d) after paragraph (3), insert—

"(3A) The relevant competent authority or Information Commissioner may, after considering any representations, serve a penalty notice on the OES or RDSP with a final penalty decision.

(3B) A penalty notice—

(a) must be given in writing to the OES or RDSP;

(b) must include reasons for the final penalty decision;

(c) may require the OES or RDSP to pay—

(i) the penalty specified in the notice under paragraph (1) or (2); or

(ii) such penalty as the relevant competent authority or Information Commissioner considers appropriate in light of any representations made by the OES or RDSP and any

steps taken by the OES or RDSP to rectify the failure or to do one or more of the things set out in regulation 17(1) or (2);

(d) must specify the period within which the penalty must be paid; and

(e) must provide details of the appeal processes under regulation 19A.

(3C) It is the duty of the OES or RDSP to comply with any requirement imposed by a penalty notice.
”;

(e) in paragraph (5), in the opening text, after “under” insert “a notice of intention to serve a penalty notice or a”;

(f) [in paragraph (6)—

(i) in the opening text, after “a” insert “notice of intention to serve a penalty notice or a”;

(ii) in sub-paragraph (a), for “could not cause a NIS incident” substitute “was not a material contravention”;

(iii) omit sub-paragraph (b);

(iv) in sub-paragraph (c), for the words from “has caused” to the end substitute “does not meet the criteria set out in sub-paragraph (d)”;

(v) in sub-paragraph (d), for the words from “has caused” to the end substitute “has [or could have] created a significant risk to, or significant impact on, service provision by the OES or RDSP.”;]

(g) in paragraph (7)(a)—

(i) for paragraph (i) substitute—

“(i) a failure to take, or adequately take, one or more of the steps required under an enforcement notice within the period stipulated in that notice to rectify a failure described in one or more of—

(aa) sub-paragraphs (a) to (d) of regulation 17(1); or

(bb) sub-paragraphs (a) to (d) of regulation 17(2);”;

(ii) in paragraph (ii), for the words from “a” to the end and the comma immediately preceding “a” substitute “under an enforcement notice, a failure described in one or more of—

(aa) sub-paragraphs (a) to (d) of regulation 17(1); or

(bb) sub-paragraphs (a) to (d) of regulation 17(2).”.

Omission of regulation 19 (independent review of designation decisions and penalty decisions)

15. Omit regulation 19.

Insertion of new regulations 19A, 19B and A20

16. Before regulation 20 insert—

“**Appeal by an OES or RDSP to the First-tier Tribunal**

19A.—(1) An OES may appeal to the First-tier Tribunal against one or more of the following decisions of a competent authority on one or more of the grounds specified in paragraph (4)—

(a) a decision under regulation 8(3) to designate that person as an OES;

(b) a decision under regulation 9(1) or (2) to revoke the designation of a person as an OES;

(c) a decision under regulation 17(1) to serve an enforcement notice upon the OES;

(d) a decision under regulation 18(3A) to serve a penalty notice.

(2) A RDSP may appeal to the First-Tier Tribunal against one or both of the following decisions of the Information Commissioner on one or more of the grounds specified in paragraph (4)—

(a) a decision under regulation 17(2) to serve an enforcement notice upon the RDSP;

(b) a decision under regulation 18(3A) to serve a penalty notice.

(3) The period within which an OES or RDSP may bring such an appeal is 28 days beginning with the day on which notice of the decision to which the proceedings relate was sent to the OES or RDSP (see rule 22 of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009(**10**)).

(4) The grounds of appeal referred to in paragraphs (1) and (2) are—

(a) that a decision to serve an enforcement notice or to serve a penalty notice was based on a material error as to the facts;

(b) that any of the procedural requirements under these Regulations in relation to a decision mentioned in paragraph (1)(a) to (d) or (2)(a) or (b) have not been complied with and the interests of the OES or RDSP have been substantially prejudiced by the non-compliance;

(c) that any such decision was wrong in law;

(d) that there was some other material illegality, including unreasonableness or lack of proportionality, which has substantially prejudiced the OES or RDSP.

(5) Except as provided by this regulation, the validity of a decision mentioned in paragraph (1) or (2) shall not be questioned by any legal proceedings.

Decision of the First-tier Tribunal

19B.—(1) The First-tier Tribunal must determine the appeal after considering the grounds of appeal referred to in regulation 19A(4) and by applying the same principles as would be applied by a court on an application for judicial review.

(2) The Tribunal may, until it has determined the appeal in accordance with paragraph (1) and unless the appeal is withdrawn, suspend the effect of the whole or part of any of the following decisions to which the appeal relates—

(a) a decision under regulation 8(3) to designate a person

(b) a decision under regulation 9(1) or (2) to revoke the designation of a person as an OES)

(c) a decision under regulation 17(1) or (2) to serve an enforcement notice; or

(d) a decision under regulation 18(3A).to serve a penalty notice.

(3) The Tribunal may—

(a) confirm any decision to which the appeal relates;

(b) quash the whole or part of any decision to which the appeal relates.

(4) Where the Tribunal quashes the whole or part of a decision to which the appeal relates, it must remit the matter back to the competent authority or, as the case may be, Information Commissioner, with a direction to that authority or the Commissioner to reconsider the matter and make a new decision having regard to the ruling of the Tribunal.

(5) The competent authority or, as the case may be, Information Commissioner, must have regard to a direction under paragraph (4).

(6) Where the competent authority or, as the case may be, Information Commissioner makes a new decision in accordance with a direction under paragraph (4), this decision is to be considered final.

Enforcement by civil proceedings

A20.—(1) This regulation applies where—

(a) a designated competent authority for an OES has reasonable grounds to believe that the OES has failed to comply with regulation 17(3A); or

(**10**) S.I. 2009/1976 (L. 20), amended by S.I. 2018/1053 (L. 10); there are other amending instruments but none is relevant.

(b) the Information Commissioner has reasonable grounds to believe that a RDSP has failed to comply with regulation 17(3A).

(2) This regulation applies irrespective of whether the OES or RDSP has appealed to the First-tier Tribunal under regulation 19A except that it does not apply where the OES or RDSP has so appealed to the extent that the Tribunal has granted a suspension of the effect of the whole or part of the relevant decision under regulation 19B(2).

(3) Where paragraph (1)(a) applies, the relevant competent authority may commence civil proceedings against the OES—

(a) for an injunction;

(b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988(**11**); or

(c) for any other appropriate remedy or relief.

(4) Where paragraph (1)(b) applies, the Information Commissioner may commence civil proceedings against the RDSP—

(a) for an injunction;

(b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988; or

(c) for any other appropriate remedy or relief.

(5) No proceedings may be commenced under this regulation until after the expiry of a 28-day period beginning with the day on which the last enforcement notice to which the proceedings relate was served on the OES or, as the case may be, RDSP.”.

Amendment to regulation 20 (enforcement of penalty notices)

17. In regulation 20, omit paragraph (6).

Amendment to regulation 23 (enforcement action – general considerations)

18. In regulation 23(1), for “or 18” substitute “, 18 or A20,”.

Amendment to regulation 25 (review and report)

19. In regulation 25(2)—

(a) after “2020” insert, “, the second report must be published on or before 9th May 2022”;

(b) for “biennial intervals” substitute “intervals not exceeding five years”.

Amendment to Schedule 2 (essential services and threshold requirements)

20. In Schedule 2—

(a) in paragraph 2 (the oil subsector)—

(i) in sub-paragraph (3)—

(aa) in paragraph (a), omit “capacity” and at the end insert “not including transmission of crude oil”;

(bb) in paragraph (b), omit “capacity”;

(ii) in sub-paragraph (4)—

(aa) in paragraph (a), after “facility,” insert “an operator of a facility with a throughput of more than 3,000,000 tonnes of oil equivalent per year,”;

(**11**) 1988 c. 36.

(bb) in paragraph ((b) after "facility," insert "an operator of a pipeline with a throughput of more than 3,000,000 tonnes of oil equivalent per year.";

(cc) omit the closing text.

(iii) in sub-paragraph (5), in the opening text—

(aa) for "oil" substitute "crude oil based fuel";

(bb) for "treatment," substitute "onshore";

(iv) in sub-paragraph (6)—

(aa) in paragraph (i), for the words from "(other" to the end substitute ", an operator of an installation with a throughput of more than 3,000,000 tonnes of oil equivalent per year,";

(bb) in paragraph (ii), after "installation," insert "an operator of a pipeline with a throughput of more than 3,000,000 tonnes of oil equivalent per year";

(cc) omit the closing text.

(v) in sub-paragraph (8)—

(aa) in paragraph (c), for the words from "any" to the end substitute "substances derived from crude oil, not including crude oil itself;";

(bb) for paragraph (e) substitute—

"(e) "gas processing facility" has the meaning given by section 12(6) of the Gas Act 1995(**12**);";

(cc) after paragraph (j) insert—

"(ja) "operator" means—

(i) in relation to a pipeline—

(aa) the person who is to have or (once fluid or any mixture of fluids is conveyed) has control over the conveyance of fluid or any mixture of fluids in the pipeline;

(bb) until that person is known, the person who is to commission or (where commissioning has started) commissions the design and construction of the pipeline; or

(cc) when a pipeline is no longer used or is not for the time being used, the person last having control over the conveyance of fluid or any mixture of fluids in it;

(ii) in relation to a production installation—

(aa) the person appointed by the licensee to manage and control directly or by any other person the execution of the main functions of a production installation; or

(bb) the licensee where it is not clear to the designated competent authority that one person has been appointed to perform the functions described in paragraph (aa) or, in the opinion of that authority, any person appointed to perform the functions described in that paragraph is incapable of performing those functions satisfactorily;";

(dd) after paragraph (n) insert—

"(na) "production installation" has the meaning given by regulation 2(1) of the Offshore Installations (Safety Case) Regulations 2005(**13**);"

(vi) in sub-paragraph (10)(c), after "sea" insert "(including the seabed and subsoil)";

(vii) after sub-paragraph (10), insert—

"(11) In this paragraph, "Great Britain" includes—

(**12**) 1995 c. 45. Section 12(6) was amended by section 76(7) of the Utilities Act 2000 (2000 c. 27) and section 92(1) and (11)(a) of the Energy Act 2011 (2011 c. 16).

(**13**) S.I. 2005/3117. This definition was amended by paragraphs 33 and 34(1) and (3) of Schedule 13 to S.I. 2015/398. Regulation 2(1) also defines "installation", which is referred to in the definition of "production installation", to mean an offshore installation within the meaning of regulation 3 of the Management Regulations, separately defined as the Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995 (S.I. 1995/738). That regulation 3 was amended by regulation 2(2)(a) to (c) of S.I. 2002/2175 and paragraphs 8 and 10(1), (2)(a) and (b) and (3) of Schedule 13 to S.I. 2015/398.

(a) Great Britain;

(b) the territorial sea adjacent to Great Britain; and

(c) the sea (including the seabed and subsoil) in any area designated under section 1(7) of the Continental Shelf Act 1964(**14**).”.

(b) in paragraph 3 (the gas subsector)—

(i) in sub-paragraph (7), for paragraphs (a) and (b) substitute—

“(a) an operator of a relevant gas processing facility, an operator of a facility with a throughput of more than 3,000,000 tonnes of oil equivalent per year; or

(b) a relevant upstream pipeline and associated infrastructure that is connected to and operated from such a facility, and critical to the continued operation of that facility, an operator of a pipeline with a throughput of more than 3,000,000 tonnes of oil equivalent per year.”;

(ii) in sub-paragraph (10)—

(aa) after paragraph (o) insert—

“(oa) “operator” means—

(i) in relation to a pipeline—

(aa) the person who is to have or (once fluid or any mixture of fluids is conveyed) has control over the conveyance of fluid or any mixture of fluids in the pipeline;

(bb) until that person is known, the person who is to commission or (where commissioning has started) commissions the design and construction of the pipeline; or

(cc) when a pipeline is no longer used or is not for the time being used, the person last having control over the conveyance of fluid or any mixture of fluids in it;

(ii) in relation to a production installation—

(aa) the person appointed by the licensee to manage and control directly or by any other person the execution of the main functions of a production installation; or

(bb) the licensee where it is not clear to the designated competent authority that one person has been appointed to perform the functions described in paragraph (aa) or, in the opinion of that authority, any person appointed to perform the functions described in that paragraph is incapable of performing those functions satisfactorily;”;

(bb) after paragraph (s) insert—

“(sa) “production installation” has the meaning given by regulation 2(1) of the Offshore Installations (Safety Case) Regulations 2005”;

(iii) in sub-paragraph (12)(c), after “sea” insert “(including the seabed and subsoil)”;

(iv) after sub-paragraph (12) insert—

“(13) In this paragraph, “Great Britain” includes—

(a) Great Britain;

(b) the territorial sea adjacent to Great Britain; and

(c) the sea (including the seabed and subsoil) in any area designated under section 1(7) of the Continental Shelf Act 1964;”;

(c) in paragraph 10 (the digital infrastructure subsector)—

(i) for sub-paragraphs (2) to (4) substitute—

“(2) For the essential service of a TLD Name Registry, irrespective of its place of establishment (whether within, or outside of, the United Kingdom), the threshold in the United Kingdom is a TLD

(**14**) 1964 c. 29. Section 1(7) of the Continental Shelf Act 1964 was amended by section 37 of, and paragraph 1 of Schedule 3 to, the Oil and Gas (Enterprise) Act 1982 (c. 23) and section 103 of the Energy Act 2011.

Name Registry which services 14 billion or more queries from any devices located within the United Kingdom in any consecutive 168-hour period for domains registered within the Internet Corporation for Assigned Names and Numbers ("ICANN").

(3) For the essential service of a DNS resolver service provided by a DNS service provider, irrespective of its place of establishment (whether within, or outside of, the United Kingdom), the threshold in the United Kingdom is a DNS resolver service which services 500,000 or more different Internet Protocol addresses used by persons in the United Kingdom in any consecutive 168-hour period.

(3A) For the essential service of a DNS authoritative hosting service provided by a DNS service provider, irrespective of its place of establishment (whether within, or outside of, the United Kingdom), the threshold in the United Kingdom is a DNS authoritative hosting service which services 100,000 or more domains registered to persons with an address in the United Kingdom.

(4) For the essential service of an IXP provided by an IXP operator, irrespective of its place of establishment (whether within, or outside of, the United Kingdom), the threshold in the United Kingdom is an IXP operator which has 30% or more market share amongst IXP operators in the United Kingdom, in terms of interconnected autonomous systems.".

(ii) in sub-paragraph (5)—

(aa) in paragraph (a) for ""domain name system"" substitute ""Domain Name System"" and for the words from "in" to the end substitute "which processes and responds to queries for DNS resolution";

(bb) in paragraph (b), for "domain name system" substitute "Domain Name System" and for "on" substitute "accessible via".

Transitional and saving provisions

21.— The 2018 Regulations as they were in force immediately before [*coming into force date of these Regulations*] ("the pre-amendment Regulations") continue to apply in respect of a request under regulation 19(1) or (2) of the pre-amendment Regulations where—

(a) the request was made before that date, and

(b) the reviewer has not before that date made any decision in relation to the request under regulation 19(9) of the pre-commencement Regulations.

(2) Where the pre-commencement Regulations continue to apply in accordance with paragraph (1) of this regulation and the reviewer upholds a designation decision or penalty decision or both those decisions in relation to an OES under regulation 19(9) of those Regulations—

(a) the relevant competent authority must—

(i) notify the OES that the OES may appeal to the First-tier Tribunal against the designation decision or penalty decision or, as the case may be, both those decisions, and

(ii) explain to the OES the permitted grounds and procedure (including time limit) for bringing such an appeal; and

(b) the OES may appeal to the First-tier Tribunal against the designation decision or penalty decision or, as the case may be, both those decisions on one or more of the following grounds—

(i) that the decision was based on a material error as to the facts;

(ii) that any of the procedural requirements under these Regulations in relation to the decision have not been complied with and the interests of the OES have been substantially prejudiced by the non-compliance;

(iii) that the decision was wrong in law;

(iv) that there was some other material illegality, including unreasonableness or lack of proportionality, which has substantially prejudiced the OES.

(3) Where the pre-commencement Regulations continue to apply in accordance with paragraph (1) of this regulation and the reviewer upholds a penalty decision in relation to a RDSP under regulation 19(9) of those Regulations—

(a) the Information Commissioner must—

(i) notify the RDSP that the RDSP may appeal to the First-tier Tribunal against the penalty decision, and

(ii) explain to the RDSP the permitted grounds and procedure (including time limit) for bringing such an appeal; and

(b) the RDSP may appeal to the First-tier Tribunal against the penalty decision on one or more of the following grounds—

(i) that the decision was based on a material error as to the facts;

(ii) that any of the procedural requirements under these Regulations in relation to the decision have not been complied with and the interests of the RDSP have been substantially prejudiced by the non-compliance;

(iii) that the decision was wrong in law;

(iv) that there was some other material illegality, including unreasonableness or lack of proportionality, which has substantially prejudiced the RDSP.

(4) For the purposes of rule 22(1)(b) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009—

(a) in the case of an appeal under paragraph (2)(b) of this regulation, the notice of the decision to which the proceedings relate is the notice referred to in paragraph (2)(a)(i) of this regulation;

(b) in the case of an appeal under paragraph (3)(b) of this regulation, the notice of the decision to which the proceedings relate is the notice referred to in paragraph (3)(a)(i) of this regulation.

(5) The Tribunal must determine the appeal after considering the grounds of appeal referred to in paragraph (2)(b) or or (3)(b) (as the case may be) and by applying the same principles as would be applied by a court in an application for judicial review.

(6) The Tribunal may, until the appeal is withdrawn, or, where it is not withdrawn, until it has determined the appeal in accordance with paragraph (5), suspend the effect of—

(a) a designation decision to which the appeal relates;

(b) a penalty decision to which the appeal relates.

(7) The Tribunal may—

(a) confirm one or, as the case may be, both of the decisions to which the appeal relates;

(b) quash the whole or part of one or, as the case may be, both of the decisions to which the appeal relates.

(8) Where the Tribunal quashes the whole or part of a decision to which the appeal relates, it must remit the matter back to the competent authority or, as the case may be, Information Commissioner, with a direction to that authority or the Commissioner to reconsider the matter and make a new decision having regard to the ruling of the Tribunal.

(9) The competent authority or, as the case may be, Information Commissioner, must have regard to a direction under paragraph (8).

(10) Where the competent authority or, as the case may be, Information Commissioner makes a new decision in accordance with a direction under paragraph (8), this decision is to be considered final.

(11) Words and expressions used but not defined in this regulation that are also used in the 2018 Regulations have the same meanings as in the 2018 Regulations.

Matt Warman
Parliamentary Under Secretary of State
Department for Digital, Culture, Media and Sport

Date

Department for
Digital, Culture
Media & Sport

6. Privacy Notice

The following is to explain your rights and give you the information you are entitled to under the Data Protection Act 2018 and the General Data Protection Regulation ("the Data Protection Legislation"). This notice only refers to your personal data (e.g. your name, email address, and anything that could be used to identify you personally) not the content of your response to the survey.

1. The identity of the data controller and contact details of our Data Protection Officer

The Department for Digital, Culture, Media and Sport ("DCMS") is the data controller. The Data Protection Officer can be contacted at dcmsdataprotection@dcms.gov.uk .

You can find out about how DCMS uses and protects your data here.

2. Why your personal data is being collected

Your personal data is being collected as an essential part of the consultation process, so that the government can contact you regarding your response and for statistical purposes such as to ensure individuals cannot complete the survey more than once.

3. The legal basis for processing personal data

The Data Protection Legislation states that, as a government department, the department may process personal data as necessary for the effective performance of a task carried out in the public interest. (i.e. a Call for Views).

4. How will your personal data be shared

Copies of responses may be published after the survey closes. If we do so, we will ensure that neither you nor the organisation you represent are identifiable, and any responses used to illustrate findings will be anonymised.

If you want the information that you provide to be treated as confidential, please contact foi@dcms.gov.uk. Please be aware that, under the Freedom of Information Act (FOIA), there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this, it would be helpful if you could explain why you regard the information you have provided as confidential. If the government receives a request for disclosure of the information, the government will take full account of your explanation, but cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

5. How long will your personal data be kept for?

Your personal data will be held for two years after the survey is closed. This is so that the department is able to contact you regarding the result of the survey following analysis of the responses.

6. Your rights in relation to access, rectification and erasure of data

The data we are collecting is your personal data, and you have considerable say over what happens to it. You have the right:

- to see what data we have about you;
- to ask us to stop using your data, but keep it on record;
- to have all or some of your data deleted or corrected, in certain circumstances;
- to lodge a complaint with the independent Information Commissioner if you think we are not handling your data fairly or in accordance with the law.

You can contact the Information Commissioner at https://ico.org.uk/, or telephone 0303 123 1113. Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF.

7. Additional information

Further to the above, you should also be aware of the following:

- *Your personal data will not be sent overseas.*
- *Your personal data will not be used for any automated decision making.*
- *Your personal data will be stored in a secure government IT system.*