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## **Consultation on proposed changes to the General Conditions and Numbering Plan**

Consultation on proposed changes to the Ofcom  
General Conditions and National Telephone Numbering  
Plan arising as a result of the United Kingdom leaving  
the European Union

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### **CONSULTATION:**

**Publication Date:** 12 February 2019

**Closing Date for Responses:** 15 March 2019

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# 1. Overview

In line with the approach taken by Government departments and agencies, Ofcom is preparing for all eventualities relating to the UK's planned withdrawal from the EU.

With this in mind, we are consulting on proposed changes that would need to be made to two Ofcom regulatory instruments in the event that the United Kingdom were to leave the European Union on 29 March 2019 without a withdrawal agreement being in place.

We are proposing that in such a scenario we would amend the General Conditions and National Telephone Numbering Plan so as to change references in those documents to the 'European Union' to either the 'United Kingdom and European Union' or 'United Kingdom or European Union', so that the scope of the regulations remains the same after the United Kingdom leaves the European Union.

- 1.1 On 23 June 2016, the United Kingdom voted to leave the European Union. Under the terms of the European Union (Withdrawal) Act 2018 (the 'Withdrawal Act'), the United Kingdom will leave the European Union on 29 March 2019 at 11.00pm ('Exit Day').
- 1.2 The Withdrawal Act provides for any deficiencies in EU-related legislation arising from the United Kingdom's withdrawal from the European Union to be corrected by regulations made by the Secretary of State. Ofcom has worked with Government to identify where such deficiencies will arise in the legislation governing the sectors for which we have regulatory responsibilities. The secondary legislation needed to correct those deficiencies is currently being considered by Parliament.
- 1.3 In addition to changes to the legislation, there are a small number of changes that will need to be made to regulatory instruments made by Ofcom, so that those regulations continue to apply in the same way after Exit Day as they do today. This document sets out the changes we are proposing to make to the Ofcom General Conditions and National Telephone Numbering Plan.

## 2. Introduction and legal framework

### Introduction

- 2.1 The purpose of this document is to consult on the changes that would need to be made to Ofcom's 'General Conditions of Entitlement' (the 'GCs') and the National Telephone Numbering Plan (the 'Numbering Plan') in the event that the United Kingdom were to leave the European Union on 29 March 2019 without a withdrawal agreement being in place.
- 2.2 Our aim in proposing these modifications is to ensure that in so far as possible the regulations continue to have the same scope and effect after Exit Day as before, by making the minimum changes necessary to the text of the regulations. For example, where a regulatory condition currently applies in relation to the territory of the European Union, it would cease to apply in relation to the United Kingdom on Exit Day unless and until the condition were amended to include the United Kingdom as well as the European Union, as the United Kingdom will cease to be an EU member state on Exit Day.
- 2.3 We are not proposing to make any policy changes as a result of this consultation, or any unnecessary changes to the scope of regulatory conditions. If it may be appropriate to consider changing the scope of application of any Ofcom regulations as a result of the United Kingdom's exit from the European Union, any such changes will be considered at a later date, as and when appropriate.
- 2.4 The UK Government has negotiated a Withdrawal Agreement with the European Union.<sup>1</sup> If that agreement is approved, there will be a transition and implementation period during which the United Kingdom will from a legal perspective continue to be treated for many purposes as if it were still an EU member state. In that case, it may not be necessary to make these changes to Ofcom regulations until the end of the transition and implementation period envisaged in the withdrawal agreement and the accompanying domestic legislation. We are consulting on these changes now in case the United Kingdom leaves the European Union on Exit Day without a withdrawal agreement being in place.

### Legal framework and our duties

#### Section 3 – general duties of Ofcom

- 2.5 When considering the appropriateness of the proposals set out in this consultation document, we have had regard to our duties under the Act. Section 3(1) of the Act sets out our principal duty in carrying out our functions under the Act, which is:
- to further the interests of citizens in relation to communications matters; and

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<sup>1</sup> <https://www.gov.uk/government/publications/withdrawal-agreement-and-political-declaration>

- to further the interests of consumers in the relevant markets, where appropriate by promoting competition.
- 2.6 We have also considered, among other things, the requirements in section 3(2) of the Act and have had regard to the matters mentioned in section 3(4) of the Act. In line with section 3(3) of the Act, we have also had regard to the principles under which our regulatory activity should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed, together with our regulatory principles.

## Tests for modifying general conditions and the numbering plan

- 2.7 Under section 47 of the Act, we can modify a GC only where we are satisfied that the modification is:
- objectively justifiable in relation to the networks, services, facilities, apparatus or directories which we regulate;
  - not such as to discriminate unduly against particular persons or against a particular description of persons;
  - proportionate to what the modification is intended to achieve; and
  - in relation to what it is intended to achieve, transparent.
- 2.8 Under section 60 of the Act, we can modify the Numbering Plan only where we are satisfied that the modification is:
- objectively justifiable in relation to the networks, services, facilities, apparatus or directories which we regulate;
  - not such as to discriminate unduly against particular persons or against a particular description of persons;
  - proportionate to what the modification is intended to achieve; and
  - in relation to what it is intended to achieve, transparent.
- 2.9 In the following section, we have set out why we consider that the proposals set out in this consultation meet these tests.
- 2.10 As explained above, these proposals are not intended to implement any policy changes or changes to the scope of the conditions. It is therefore not necessary to carry out any impact assessment or equality impact assessment in relation to these proposals.

## Next steps

- 2.11 We invite stakeholders to provide any comments in response to this consultation by **5.00pm on 15 March 2019**.
- 2.12 Following this consultation period, Ofcom intends to publish a statement before the end of March 2019. The proposed changes, if implemented, will take effect on the date the United Kingdom leaves the European Union.

## 3. The proposed changes

### Modifications proposed to the General Conditions

- 3.1 The GCs are the main regulatory conditions that apply to all providers of electronic communications networks and services that operate in the United Kingdom. On 19 September 2017, we published a statement revoking the previous GCs and replacing them with a revised set of conditions which came into effect on 1 October 2018.<sup>2</sup>

#### General Condition A1 – General network access and interconnection

- 3.2 GC A1.2 requires regulated providers to negotiate interconnection with public electronic communications providers located in any part of the European Union.<sup>3</sup> We propose to amend this condition so that it refers to public electronic communications providers located in any part of the United Kingdom or European Union.
- 3.3 If we do not amend this condition, it would no longer apply in relation to communications providers located in the United Kingdom once the United Kingdom leaves the EU.
- 3.4 We have considered whether to amend this condition so that it would apply only in relation to the United Kingdom. However, this would amount to a narrowing in the scope of application of the condition. As explained above, we are not proposing to change the scope of any regulatory conditions or implement any changes of regulatory policy through this consultation.
- 3.5 The changes we are proposing to make are set out in the notification at **Annex 5** to this consultation.

#### Legal tests

- 3.6 We consider that the change we are proposing to make to GC A1 meets the test for modifying conditions set out in section 47(2) of the Communications Act 2003, in that it is:
- **objectively justifiable**, as it ensures that the condition continues to apply in respect of UK-based providers post-Exit Day
  - **not unduly discriminatory**, as the condition applies equally to all operators falling within the relevant definition of regulated providers
  - **proportionate**, as this amendment is the minimum required to ensure that the condition continues to apply after Exit Day in the same way as it applies today; and
  - **transparent**, as the scope of the amended condition is clear on its face.

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<sup>2</sup> See <https://www.ofcom.org.uk/phones-telecoms-and-internet/information-for-industry/telecoms-competition-regulation/general-conditions-of-entitlement>

<sup>3</sup> This condition implements Article 4(1) of the Access Directive (Directive 2002/19/EC).

## GC B4 – Access to numbers and services

- 3.7 GC B4.2 requires regulated providers to ensure that end-users in any part of the European Union can access all telephone numbers provided in the European Union.<sup>4</sup> We are proposing to amend this condition so that it will apply in respect of end-users in any part of the United Kingdom or European Union and all telephone numbers in the United Kingdom or European Union.
- 3.8 If we do not amend this condition, it would no longer apply in relation to end-users or telephone numbers in the United Kingdom once the United Kingdom leaves the EU.
- 3.9 We have considered whether to amend this condition so that it would apply only in relation to the United Kingdom. However, this would amount to a narrowing in the scope of application of the condition. As explained above, we are not proposing to change the scope of any regulatory conditions or implement any changes of regulatory policy through this consultation.
- 3.10 The changes we are proposing to make are set out in the notification at **Annex 5** to this consultation.

### Legal tests

- 3.11 We consider that the changes we are proposing to make to GC B4 meet the test for modifying conditions set out in section 47(2) of the Communications Act 2003, in that they are:
- **objectively justifiable**, as they ensure that the condition continues to apply in respect of UK telephone numbers and end-users in the UK post-Exit Day
  - **not unduly discriminatory**, as the condition applies equally to all operators falling within the relevant definition of regulated providers
  - **proportionate**, as this amendment is the minimum required to ensure that the condition continues to apply after Exit Day in the same way as it applies today; and
  - **transparent**, as the scope of the amended condition is clear on its face.

## Modification proposed to the Numbering Plan

- 3.12 Ofcom has a duty under section 56 of the Communications Act 2003 to publish the National Telephone Numbering Plan (the ‘Numbering Plan’), setting out which numbers are available for allocation as telephone numbers and any restrictions on the adoption or use of such numbers. Ofcom must review the Numbering Plan from time to time and make such revisions as they think fit.<sup>5</sup>

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<sup>4</sup> This condition implements Article 28(1) of the Universal Service Directive (Directive 2002/22/EC).

<sup>5</sup> See <https://www.ofcom.org.uk/phones-telecoms-and-internet/information-for-industry/numbering>

- 3.13 The Numbering Plan includes references to pan-European harmonised numbers for harmonised services of social value (116XXX numbers), which are defined as follows:

“**Harmonised number for harmonised services of social value (116XXX numbers)**’ means a Type B Access Code used to provide a service meeting a common description on the same 116XXX number throughout European Union Member States”<sup>6</sup>

- 3.14 As noted above, we are not proposing to make any policy changes immediately on Exit Day. Consequently, the pan-European harmonised 116XXX will continue to be in operation in the United Kingdom after Exit Day. We are therefore proposing to amend this definition by adding the words “and the United Kingdom” to the end of it.

- 3.15 The changes we are proposing to make to the Numbering Plan are set out in the notification at **Annex 6** to this consultation.

### Legal tests

- 3.16 We consider that the change we are proposing to make meets the test for modifying the Numbering Plan set out in section 60(2) of the Communications Act 2003, in that it is:
- **objectively justifiable**, as they make clear that harmonised social value (116xxx) numbers will continue to operate in the UK post-Exit Day
  - **not unduly discriminatory**, as the condition applies equally to all operators subject to the Numbering Plan
  - **proportionate**, as this amendment is the minimum necessary to make clear that harmonised social value (116xxx) numbers will continue to operate in the UK post-Exit Day in the same way as they do today; and
  - **transparent**, as the scope of the amended definition is clear on its face.

## Consultation questions

**Question 1:** Do you have any comments on the modifications we are proposing to make to General Conditions A1 (general network access and interconnection obligations) or B4 (access to numbers or services)?

**Question 2:** Do you have any comments on the modification we are proposing to make to the Numbering Plan?

**Question 3:** Do you consider that any other essential changes need to be made to the General Conditions or Numbering Plan as a result of the UK leaving the EU?

Please note that only changes that are essential will be considered. Amendments to the General Conditions or Numbering Plan which amount to changes in scope or policy will be considered at a later date, if appropriate.

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<sup>6</sup> This reflects Article 27a of the Universal Service Directive (Directive 2002/22/EC).



# A1. Responding to this consultation

Delete these annexes if your document is not a consultation

## How to respond

- A1.1 Ofcom would like to receive views and comments on the issues raised in this document, by 5pm on 15 March 2019.
- A1.2 You can download a response form from <https://www.ofcom.org.uk/consultations-and-statements/category-2/consultation-on-proposed-changes-to-the-general-conditions-and-numbering-plan>. You can return this by email or post to the address provided in the response form.
- A1.3 If your response has supporting charts, tables or other data, please email it to [BrexitProject@ofcom.org.uk](mailto:BrexitProject@ofcom.org.uk), as an attachment in Microsoft Word format, together with the cover sheet (<https://www.ofcom.org.uk/consultations-and-statements/consultation-response-coversheet>).
- A1.4 Responses may alternatively be posted to the address below, marked with the title of the consultation:
- Brexit Project  
Ofcom  
3<sup>rd</sup> Floor, Riverside House  
2A Southwark Bridge Road  
London SE1 9HA
- A1.5 We welcome responses in formats other than print, for example an audio recording or a British Sign Language video. To respond in BSL:
- Send us a recording of you signing your response. This should be no longer than 5 minutes. Suitable file formats are DVDs, wmv or QuickTime files. Or
  - Upload a video of you signing your response directly to YouTube (or another hosting site) and send us the link.
- A1.6 We will publish a transcript of any audio or video responses we receive (unless your response is confidential)
- A1.7 We do not need a paper copy of your response as well as an electronic version. We will acknowledge receipt if your response is submitted via the online web form, but not otherwise.
- A1.8 You do not have to answer all the questions in the consultation if you do not have a view; a short response on just one point is fine. We also welcome joint responses.
- A1.9 It would be helpful if your response could include direct answers to the questions asked in the consultation document. The questions are listed at Annex 4. It would also help if you

could explain why you hold your views, and what you think the effect of Ofcom's proposals would be.

- A1.10 If you want to discuss the issues and questions raised in this consultation, please contact Robert Wells by email at [robert.wells@ofcom.org.uk](mailto:robert.wells@ofcom.org.uk).

## Confidentiality

- A1.11 Consultations are more effective if we publish the responses before the consultation period closes. In particular, this can help people and organisations with limited resources or familiarity with the issues to respond in a more informed way. So, in the interests of transparency and good regulatory practice, and because we believe it is important that everyone who is interested in an issue can see other respondents' views, we usually publish all responses on our website, [www.ofcom.org.uk](http://www.ofcom.org.uk), as soon as we receive them.
- A1.12 If you think your response should be kept confidential, please specify which part(s) this applies to, and explain why. Please send any confidential sections as a separate annex. If you want your name, address, other contact details or job title to remain confidential, please provide them only in the cover sheet, so that we don't have to edit your response.
- A1.13 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and try to respect it. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A1.14 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's intellectual property rights are explained further at <https://www.ofcom.org.uk/about-ofcom/website/terms-of-use>.

## Next steps

- A1.15 Following this consultation period, Ofcom plans to publish a statement in March 2019.
- A1.16 If you wish, you can register to receive mail updates alerting you to new Ofcom publications; for more details please see <https://www.ofcom.org.uk/about-ofcom/latest/email-updates>

## Ofcom's consultation processes

- A1.17 Ofcom aims to make responding to a consultation as easy as possible. For more information, please see our consultation principles in Annex 2.
- A1.18 If you have any comments or suggestions on how we manage our consultations, please email us at [consult@ofcom.org.uk](mailto:consult@ofcom.org.uk). We particularly welcome ideas on how Ofcom could more effectively seek the views of groups or individuals, such as small businesses and residential consumers, who are less likely to give their opinions through a formal consultation.
- A1.19 If you would like to discuss these issues, or Ofcom's consultation processes more generally, please contact the corporation secretary:

Corporation Secretary  
Ofcom  
Riverside House  
2a Southwark Bridge Road  
London SE1 9HA  
Email: [corporationsecretary@ofcom.org.uk](mailto:corporationsecretary@ofcom.org.uk)

## A2. Ofcom's consultation principles

### **Ofcom has seven principles that it follows for every public written consultation:**

#### **Before the consultation**

- A2.1 Wherever possible, we will hold informal talks with people and organisations before announcing a big consultation, to find out whether we are thinking along the right lines. If we do not have enough time to do this, we will hold an open meeting to explain our proposals, shortly after announcing the consultation.

#### **During the consultation**

- A2.2 We will be clear about whom we are consulting, why, on what questions and for how long.
- A2.3 We will make the consultation document as short and simple as possible, with a summary of no more than two pages. We will try to make it as easy as possible for people to give us a written response. If the consultation is complicated, we may provide a short Plain English / Cymraeg Clir guide, to help smaller organisations or individuals who would not otherwise be able to spare the time to share their views.
- A2.4 We will consult for up to ten weeks, depending on the potential impact of our proposals.
- A2.5 A person within Ofcom will be in charge of making sure we follow our own guidelines and aim to reach the largest possible number of people and organisations who may be interested in the outcome of our decisions. Ofcom's Consultation Champion is the main person to contact if you have views on the way we run our consultations.
- A2.6 If we are not able to follow any of these seven principles, we will explain why.

#### **After the consultation**

- A2.7 We think it is important that everyone who is interested in an issue can see other people's views, so we usually publish all the responses on our website as soon as we receive them. After the consultation we will make our decisions and publish a statement explaining what we are going to do, and why, showing how respondents' views helped to shape these decisions.

## A3. Consultation coversheet

### BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

### CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

Nothing ☐

Name/contact details/job title ☐

Whole response ☐

Organisation ☐

Part of the response ☐

If there is no separate annex, which parts? \_\_\_\_\_

\_\_\_\_\_  
If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

### DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)

## A4. Consultation questions

### Proposed modifications to the Ofcom General Conditions and National Telephone Numbering Plan

**Question 1:** Do you have any comments on the modifications we are proposing to make to General Conditions A1 (general network access and interconnection obligations) or B4 (access to numbers or services)?

**Question 2:** Do you have any comments on the modification we are proposing to make to the Numbering Plan?

**Question 3:** Do you consider that any other essential changes need to be made to the General Conditions or Numbering Plan as a result of the UK leaving the EU?

*Please note that only changes that are essential will be considered. Amendments to the General Conditions or Numbering Plan which amount to changes in scope or policy will be considered at a later date, if appropriate.*

## A5. Notification of proposed modifications to the general conditions under section 48A(3) of the Act

### Proposal to modify the general conditions

- A5.1 Ofcom proposes to modify:
- a) General Condition A1;
  - b) General Condition B4;
- A5.2 The draft modifications are set out the Schedule to this Notification.
- A5.3 Ofcom's reasons for making these proposals, and the effect of the proposals, are set out in the accompanying consultation document.
- A5.4 Ofcom considers that the proposals comply with the requirements of sections 45 to 49C of the Act, insofar as they are applicable.
- A5.5 Ofcom considers that the proposals are not of EU significance pursuant to section 150A(2) of the Act.
- A5.6 In making these proposals, Ofcom has considered and acted in accordance with its general duties under section 3 of the Act and the six Community requirements set out in section 4 of the Act.
- A5.7 Representations may be made to Ofcom about the proposals until 5pm on 15 March 2019.
- A5.8 If implemented, the modifications shall enter into force on a date to be specified in Ofcom's final statement in relation to these proposals.
- A5.9 A copy of this Notification is being sent to the Secretary of State in accordance with section 48C(1) of the Act.
- A5.10 In this Notification:
- a) "**Act**" means the Communications Act 2003;
  - b) "**General Conditions of Entitlement**" and "**General Conditions**" means the general conditions set by Ofcom under section 45 of the Act on 19 September 2017, as amended or replaced from time to time;
  - c) "**Ofcom**" means the Office of Communications.
- A5.11 Words or expressions shall have the meaning assigned to them in this Notification, and otherwise any word or expression shall have the same meaning as it has in the Act.
- A5.12 For the purposes of interpreting this Notification:
- a) headings and titles shall be disregarded; and

b) the Interpretation Act 1978 shall apply as if this Notification were an Act of Parliament.

A5.13 The Schedule to this Notification shall form part of this Notification.

Signed by

A handwritten signature in blue ink, appearing to read 'Polly Weitzman', with a long horizontal flourish extending to the right.

Polly Weitzman

A person authorized by Ofcom under paragraph 18 of the Schedule to the Office of Communications Act 2002.

**12 February 2019**

## Schedule: Draft modifications to the general conditions

The modifications that Ofcom is proposing to make to General Conditions A1 and B4 of the General Conditions are set out below. The words marked in red text and highlighted indicate the proposed insertions.

### General Condition A1

- A1.2 Any **Regulated Provider** shall, to the extent requested by any other provider of a **Public Electronic Communications Network** in any part of the European Union **or United Kingdom**, negotiate with that provider with a view to concluding an agreement for **Interconnection** (or an amendment to an existing agreement for **Interconnection**) within a reasonable period.

### General Condition B4

- B4.2 **Regulated Providers** shall ensure, where technically and economically feasible and subject to **Condition C6.6**, that **End-Users** in any part of the **United Kingdom or** European Union are able to:
- (a) access and use those **Non-Geographic Numbers** which the **Regulated Provider Adopts**; and
  - (b) access all **Telephone Numbers** provided in the **United Kingdom or** European Union, regardless of the technological devices used by the operator, including those in the **National Telephone Numbering Plan** and Universal International Freephone Numbers (UIFN).

## A6. Notification of proposed modification to the Numbering Plan under section 60(3) of the Act

- A6.1 In accordance with section 60 of the Act, Ofcom proposes to modify the provisions of the Numbering Plan. The draft modifications to the Numbering Plan are set out in the Schedule to this Notification.
- A6.2 Ofcom's reasons for making these proposals, and the effect of the proposed modifications, are set out in the accompanying consultation document.
- A6.3 Ofcom considers that the proposed modifications comply with the requirements of section 60(2) of the Act.
- A6.4 In making these proposals, Ofcom has considered and acted in accordance with their general duty as to telephone numbering functions under section 63 of the Act, their general duties under section 3 of the Act and the six Community requirements set out in section 4 of the Act.
- A6.5 Representations may be made to Ofcom about the proposed modifications until 5pm on **15 March 2019**.
- A6.6 If implemented the modifications shall enter into force on a date to be specified in Ofcom's final statement in relation to these proposals.
- A6.7 In this Notification:
- a) "**the Act**" means the Communications Act 2003;
  - b) "**Ofcom**" means the Office of Communications; and
  - c) "**Numbering Plan**" means the National Telephone Numbering Plan published by Ofcom pursuant to section 56(1) of the Act, and amended from time to time.
- A6.8 Words or expressions shall have the meaning assigned to them in this Notification, and otherwise any word or expression shall have the same meaning as it has in the Act.
- A6.9 For the purposes of interpreting this Notification: (i) headings and titles shall be disregarded; and (ii) the Interpretation Act 1978 shall apply as if this Notification were an Act of Parliament.
- A6.10 The Schedules to this Notification shall form part of this Notification.

Signed by

A handwritten signature in blue ink, appearing to read 'Polly Weitzman', with a long horizontal flourish extending to the right.

Polly Weitzman

A person authorized by Ofcom under paragraph 18 of the Schedule to the Office of Communications Act 2002.

**12 February 2019**

## Schedule: Draft modification to the Numbering Plan

The following proposed modification to the Numbering Plan shall enter into force on the date to be specified in Ofcom's final statement in relation to these proposals.

In paragraph 1 of the "Definitions and Interpretation" section, the following amendment highlighted and marked in red text shall be made to the definition of "Harmonised number for harmonised services of social value (116XXX numbers)":

**"Harmonised number for harmonised services of social value (116XXX numbers)"** means a Type B Access Code used to provide a service meeting a common description on the same 116XXX number throughout European Union Member States **and the United Kingdom;**