

ITSPA Industry Developments Group Regulatory Compliance List

About ITSPA

Founded in 2004, ITSPA is voice of the next generation communications industry. We are a UK membership-led organisation that represents companies who provide or resell business and residential customers voice services over data networks (VoIP) as well as other “over the top” applications including instant messaging and video. The membership is a mixture of network operators, service providers, resellers, suppliers and consultants involved in a sector that is diversifying rapidly from just voice services to other innovative IP applications.

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The ITSPA Industry Developments Group

The Industry Developments Group focusses on regulatory and political issues which have a direct impact on ITSPA members. The Group actively engages with Ofcom, Government departments and industry forums to represent the views of industry. Members of the Group also collaborate on consultation responses, lobby officials and parliamentarians as well as provide guidance to the wider membership on the implications of regulatory and policy developments to the industry. The Group is made up of a mixture of regulatory, legal and director level figures within the ITSPA membership. If you have employees who would gain value from being involved in this group please do contact the ITSPA team to get them involved.

Regulatory Compliance List

Outlined below is a pack of information compiled by the ITSPA Industry Developments Group which outlines relevant telecommunications specific regulations that ITSPA members will need to comply with. This is a non-exhaustive list and there are other areas of regulation that will need to be complied with. In all cases, member companies should consult with their own independent legal counsel.

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Ofcom General Conditions of Entitlement

- **General Conditions of Entitlement including the National Telephone Numbering Plan and associated Ofcom guidance which may include jurisprudence and previous Ofcom decisions.**

All Communications Providers are authorised to provide communications services and networks subject to complying with Ofcom’s General Conditions of Entitlement (and other conditons herein).

The General Conditions of Entitlement (“GCS”) apply to anyone who provides an electronic communications service or an electronic communications network.

The terms “electronic communications network” and “electronic communications service” are defined in the annexed Definitions section of the General Conditions of Entitlement and are derived from the statutory definitions in the Communications Act 2003, itself derived from the various European Directives.

General Conditions of Entitlement:

<http://stakeholders.ofcom.org.uk/telecoms/ga-scheme/general-conditions/>

Of particular note to ITSPs will be various requirements in the GCs relating to contracts (C1), a requirement to have a complaints code of conduct and be a member of an ADR scheme (C4), and measures to do with vulnerable end users (C5).

On the second point, ITSPA Associate Member Osborne Clarke LLP has produced specific guidance, available here:

- [Complaints Handling Guidance \(produced by Osborne Clarke LLP\)](#), which should be read in conjunction with
- [Draft Accessibility Statement](#)

On the final point, where it relates to uninterrupted access to the emergency services in a power cut, guidance from ITSPA will be forthcoming shortly. Where it relates to other issues, note there is a difference between the Subscriber (person including body corporate) that has the contract and End User (which means a user of the service). Business to business communications are therefore not exempt from all of the requirements.

999 and CLI presentation guidelines from Ofcom

Regulation regarding access to 999/112 emergency services and the provision of emergency location information to emergency services (i.e., information concerning the location from where a call to the emergency organisations can be made), that is provided by communications providers to emergency organisations operators as part of the handling of such a call) is contained in General Condition of Entitlement A3.

Regarding CLI presentation, from 1 October 2018 General Condition C6 on 'calling line identification facilities' will enter into force. Ofcom have also published updated guidance on the provision of CLI facilities and other related services which will also enter into force on 1 October 2018. The full guidance can be found here:

https://www.ofcom.org.uk/data/assets/pdf_file/0013/113215/annex-statement-guidelines-cli-facilities.pdf

ITSPA has its own guidance on the rules, which is available here:

- [Caller Line Identity \(CLI\) Best Practice for ITSPA Members](#)

Communications Act 2003

Ofcom's statutory duties are set out under the Communications Act 2003.

Under section 3(1) of the Act, it is the principal duty of Ofcom, in carrying out its functions to further the interests of citizens in relation to communications matters and to further the interests of consumers in relevant markets, where appropriate by promoting competition.

A communications provider's failure to comply with its obligations under the Communications Act or the General Conditions of Entitlement can result in Ofcom taking enforcement action and imposing financial penalties.

Ofcom's current penalty guidelines can be found here:

<http://www.ofcom.org.uk/about/policies-and-guidelines/penalty-guidelines/>

Under the Communications Act 2003, breach of the General Conditions of Entitlement can result in a financial penalty of up to 10% of turnover of the communications provider's relevant business for the relevant period or a

fixed sum and *in extremis* the revocation of a provider's "General Authorisation" i.e. its ability to run a network or trade in telecommunications services.

The statutory maximum penalty differs from contravention to contravention. For example, it is often the higher of a fixed sum or a percentage of the turnover or qualifying revenue of an enterprise. For some contraventions, communications providers face a fixed sum maximum penalty (e.g. £2 million for silent and abandoned calls).

Wireless Telegraphy Act 1996

It is unlawful to establish, install or use a wireless station or apparatus except under a wireless telegraphy licence granted by Ofcom. However, Ofcom may by regulation exempt the establishment, installation or use of wireless telegraphy stations or wireless telegraphy as may be specified in regulations specified by Ofcom from time to time.

It is also by reference to this Act that the lawful use of mobile numbers is made.

The General Data Protection Regulation, Data Protection Act 2018 and Privacy and Electronic Communications Regulations 2003

The General Data Protection Regulation ("GDPR") is EU legislation governing the collection, use and storage of personal data and came into effect on 25th May 2018. The GDPR constitutes the biggest change to the data protection regime in the EU since the 1995 Data Protection Directive implemented in the UK as the Data Protection Act 1998. The GDPR was implemented in the UK through the Data Protection Act 2018 ("DPA").

In addition to repealing the previous Data Protection Act, the DPA set new standards for protecting general data in accordance with the GDPR e.g., by setting the age from which parental consent is not needed to process data online at age 13, preserve existing exemptions for research, financial services, journalism and legal services and provide a framework tailored to the needs of the criminal justice agencies and national security organisations. The GDPR is not sector specific; there are no provisions that relate specifically to the communications sector

In February 2018, ITSPA launched a GDPR guidance document with Osborne Clarke LLP available exclusively for ITSPA members. This is available here: <https://www.itspa.org.uk/wp-content/uploads/ITSPA-GDPR-Guidance-Feb-2018.pdf>

The Information Commissioner's Office ("ICO") has issued the following guide to the GDPR and the Data Protection Act 2018:

<https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/>

Any security breach in relation to communications data must be reported to the ICO within 24 hours using the ICO's breach notification form:

<https://ico.org.uk/for-organisations/guide-to-pecr/communications-networks-and-services/security-breaches/>

Failure to report a breach within 24 hours can result in a fine of £1000.

Communications providers must also maintain and submit to the ICO a monthly breach log. If there have been no breaches in any month a nil return is still required to be submitted to the ICO.

Under the Data Protection (Charges and Information) Regulations 2018, individuals and organisations that process personal data must register with, and pay a data protection fee, to the Information Commissioner's Office (ICO), unless they are exempt.

The cost of registration depends on size and turnover, but for most businesses it ranges between £40 to £60. The maximum cost is £2,900 if turnover is £36 million or higher and the organisation has over 250 members of staff.

Further information on data protection and security

If you would like to learn more about how to follow best practice in relation to Data Protection and Data Security, here are some useful links.

- [Information Commissioner's Guide to Privacy & Electronic Communications Regulations](#)
- [ICO Guide to IT Security](#)
- HM Government's [Cyber Essentials](#) scheme
- Ofcom [guidance on security requirements](#) in sections 105A to D of the Communications Act 2003
- How to [report a security breach](#)
- ICO guidance on [data security breach management](#)

Competition Act 1998

Ofcom has investigation and enforcement powers derived from the Competition Act 1998 which are concurrent with the powers of the Competition and Markets Authority.

Where Ofcom has reasonable grounds for suspecting that the prohibitions in the Competition Act have been infringed, Ofcom may open an investigation into that conduct.

If, following investigation, Ofcom determines that a prohibition has been infringed, Ofcom may impose a financial penalty on the infringing party of up to 10% of the undertaking's turnover in a relevant market. In cases of urgency, Ofcom also has powers to issue appropriate directions to any person. Ofcom may only issue such directions where Ofcom considers it necessary to prevent serious and irreparable damage to a particular person or to protect the public interest.

Ofcom can initiate an investigation in response to a complaint. Ofcom can also open an investigation without a specific complaint, referred to as "own initiative" investigation where Ofcom identifies potential problems on its own initiative.

European Telecommunications Framework (Framework Directive, Authorisation Directive, Access Directive, Universal Service Directive)

The EU's regulatory framework for electronic communications is a series of rules which apply throughout the EU Member States. It encourages competition, improves the functioning of the market and guarantees basic user rights. The overall goal of the framework is for European consumers to be able to benefit from increased choice thanks to low prices, high quality and innovative services.

<https://ec.europa.eu/digital-agenda/en/telecoms-rules>

A review of the Telecoms Framework forms part of the current European Commission's Digital Single Market Package. ITSPA responded to a major consultation in December 2015 on the Framework. The general position outlined within the ITSPA response was that the Commission should focus on consumer outcomes across the board for communications services and not interfere with specific technologies. A level playing field where we all play by the same rules and adhere to the same consistent regulations; be they legacy PSTN providers or OTTs should be the objective.

Roaming Regulation

International roaming was effectively abolished within the EU from 15th June 2017. Domestic prices now apply anywhere within the EU, including deduction from bundle. So if a UK customer has unlimited SMS as part of their bundle then those SMSs can be sent and received anywhere in the EU, not just the UK.

Note that permanent roaming – buying a SIM in one country and predominantly using it elsewhere – is not permitted.

In September 2016, the Commission approved a new approach to the fair use principle and agreed that there should be no limits in terms of timing or volume imposed on consumers when using their mobile devices abroad in the EU. It is also designed to ensure there are effective safeguard mechanisms for operators against potential abuses.

This new mechanism is based on principle of residence or stable links European consumers may have with any EU Member State (frequent and substantial presence in the Member State of the roaming provider, for example).

Net Neutrality Regulation

On 30th April 2016 new EU regulations on the Open Internet came into force. ITSPA welcomed this new Regulation; we believe it is an effective remedy for anti-competitive blocking of VoIP by certain ISPs, against which ITSPA has been campaigning for years. These regulations benefit ITSPA members by:

- Establishing the principle that the internet is open – ISPs must generally provide equal access to all lawful internet sites and for all traffic types
- Blocking of any internet traffic on commercial grounds is prohibited
- Use of traffic management to achieve a competitive advantage is prohibited

BEREC followed this on 30th August 2016 by publishing new [guidance](#) on how national regulators should enforce this regulation.

Ofcom must, by law, enforce this new Regulation and in late 2017 they announced that they were investigating Three's and Vodafone's compliance with the EU Open Internet Access Regulation 2015.

ISPs retain the right to implement traffic management objectively where required to deal with congestion, but they cannot use this to achieve a commercial advantage. They are also free to implement special services which may deliver enhanced levels of quality for specific services but these must not be offered as an alternative to internet access nor must they degrade the open internet. ITSPA believes this is sensible as it permits innovation (for example for the 'internet of things', new very low latency services and terrestrial TV switch-off) so long as that innovation does not discriminate against other internet services.

ITSPA believes that these rules will, in practice, make it impossible for ISPs to use contractual terms, blocking or throttling to discriminate against VoIP operators. Ofcom is now obliged to take swift action against any offenders and this must be 'effective, proportionate and dissuasive'.

[http://europa.eu/rapid/press-release MEMO-15-5275 en.htm](http://europa.eu/rapid/press-release_MEMO-15-5275_en.htm)

If you encounter anything that appears to violate the Net Neutrality Regulation, please email team@itspa.org.uk.

VAT Domestic Reverse Charge

In early 2016, HMRC announced that all invoices sent from a telecommunications wholesaler to another wholesaler or to a reseller for call charges would have the VAT element removed. This would be accounted for instead by the receiving party. This is known in the tax world as a Domestic Reverse Charge. The change was implemented on 1st February 2016.

This sudden change in law stems from a number of cases that HMRC has been investigating where so-called Missing Trader Intra-Community (MTIC) has resulted in millions of pounds worth of tax revenue being lost through complex webs of high value, low audit trail transactions which switch VAT obligations several times in a short period, frequently across multiple European Union countries. Companies in the chain then 'go missing', keeping the VAT element of the transaction with no intention to pay it to the authorities.

ITSPA has received a full list of which telecommunications services are covered by the reverse charge and which are not. If you would like to receive this list, please email team@itspa.org.uk.

Investigatory Powers Act

The Investigatory Powers Act (IPA) received Royal Assent on 29 November 2016 and is gradually becoming law. The IPA is the current good law of the day regarding data retention, and replaced the Data Retention and Investigatory Powers Act (DRIPA) and is gradually replacing the Regulation of Investigatory Powers Act (RIPA)

The IPA covers the interception of communications, the retention and acquisition of communications data, and equipment interference.

With limited exceptions, the investigatory powers provided for in the IPA already existed. The IPA consolidates and updates powers available to the State to obtain relevant communications which were previously provided for in a number of different statutes.

This Act extends to England and Wales, Scotland and Northern Ireland.

The Act itself is subject to legal uncertainty as the Court of Justice of the European Union ("CJEU") has handed down a preliminary ruling in a referral from an appeal brought to the Court of Appeal by the Home Secretary to the High Court Judgment. Although the CJEU decision concerned DRIPA, it could affect certain aspects of the IPA, such as the collection of internet records.

ITSPA has produced a guide to the Act and data retention requirements more broadly with Preiskel & Co LLP which is available [here](#).

RIPA

The Regulation of Investigatory Powers Act 2000 and its amending instrument, Data Retention and Investigatory Powers Act 2015 relate to the rights of law enforcement and various agencies to obtain Communications Data (which has a statutory definition) from ITSPs when following a set procedure.

Each police force (and agency) has a Single Point of Contact which can identify itself (and an ITSP can verify identity through a portal) and request certain information, either over the phone for an urgent risk to life request or in writing for less urgent requests. ITSPs that have been served retention notices by the Home Secretary will have an obligation to retain certain information for a certain period of time; other ITSPs can be asked for information and have an obligation to produce it if they have it, but no obligation to retain it or produce it if they do not.

The acts also cover interception and the role of warrants in this; the Home Office has produced two sets of guidance on these issues here:

<https://www.gov.uk/government/collections/ripa-codes>

College of Policing RIPA Training Courses

Additionally, there are training courses available for those involved in information requests. These take place quarterly and are provided by the College of Policing. For further information on these, please contact team@itspa.org.uk.

Large sections of the Investigatory Powers Act will replace the old RIPA regime (including a reduction of the number of organisations who can make RIPA requests) as a means to consolidate legislation around accessing communications data, but the day to day situation on the ground for members remained the same.

Digital Economy Act

The Digital Economy Act received Royal Assent on 27th April 2017.

The Act implemented a number of digital policies which were outlined in the Conservative Party Manifesto at the 2015 General Election. The key measures contained in the Act of relevance to ITSPA are:

- The introduction of a broadband universal service obligation of 10 Mbps. The obligation will be introduced by 2020 and the Act provides Ofcom with the required powers to introduce and implement the USO.
- The Act provides Ofcom with powers to introduce a scheme of automatic compensation in the communications sector.
 - In November 2017 Ofcom [decided](#) not to take formal regulatory action and instead accepted industry proposals put together by BT, Virgin Media, Sky, TalkTalk and Zen Internet.
 - The voluntary industry proposal covers 'around 90% of landline and broadband customers in the UK', with consumers receiving compensation for the following service quality events:
 - Loss of service (service has stopped working and is not fully fixed after two full working days) - £8 per day
 - Delayed provisioning (provider promises to start a new service on a particular date but fails to do so) - £5 per day
 - Missed appointments (an engineer does not turn up for a scheduled appointment, or it is cancelled with less than 24 hours' notice) - £25 per day.
- Requiring [mobile telephony](#) providers to offer a contract cap to customers limiting monthly spending to an agreed figure.
- Providing for increased penalties for [nuisance calls](#).
- Updating the [Ofcom Electronic Communications Code](#) to make it easier for [telecommunications companies](#) to erect and extend mobile masts.

The full text of the Act is available [here](#).

The DCMS page on the Act is [here](#).