



General policy on information gathering

Under the Communications Act 2003, Wireless
Telegraphy Act 2006, and Postal Services Act 2011

Consultation

Publication date: 22 October 2015

Closing Date for Responses: 4 December 2015

About this document

This is a consultation on a draft statement of policy on Ofcom's approach to using its statutory information gathering powers under Part 2 of the Communications Act 2003, the Wireless Telegraphy Act 2006, and the Postal Services Act 2011.

We are required by each of those Acts to prepare and publish a statement of our general policy on the exercise of certain of our information gathering powers and our proposed use of information obtained from stakeholders under those powers.

Our existing policy on information gathering was published in March 2005 and we have confirmed in updates that it applies to information gathering powers acquired since then. Having regard to our experience since that time we are consulting on a new statement of policy.

We welcome responses to this consultation by 4 December 2015

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Section 1

Summary

- 1.1 This consultation sets out in draft a revised statement of general policy on our approach to using our statutory information gathering powers under Part 2 of the Communications Act 2003 (the 2003 Act), the Wireless Telegraphy Act 2006 (the 2006 Act), and the Postal Services Act 2011 (the 2011 Act).¹
- 1.2 We are required by each of those Acts to publish a statement of general policy on the exercise of our statutory information gathering powers and our proposed use of information obtained from stakeholders under those powers.
- 1.3 We originally published our current statement in 2005². We now have 10 years of experience of exercising our statutory information gathering powers and we consider that now is an appropriate time to ensure that our approach to the exercise of these powers is fit for purpose having regard to both the demands on Ofcom in terms of ensuring that our regulatory activities remain robust and evidenced based and the burden placed on stakeholders of locating and providing information requested. This draft guidance modifies our policy in certain respects reflecting this experience. In particular, we propose to:
- Set out in more detail how we will go about issuing notices requiring information to be provided.
 - State that we will, as a general rule, seek to obtain information using our statutory information gathering powers, and we will generally seek to use our statutory powers to confirm or verify information provided to us on a voluntary basis in order to ensure that our evidence base is robust, complete and non-biased.
 - State that Ofcom will assess on a case-by-case basis whether it is appropriate to send a statutory information request in draft form to the person holding the relevant information. Our starting presumption will be that we will not issue the request in draft form unless there is a clear benefit from doing so. We may issue sequenced information requests, first to help us identify the information we should ask for and then to ask for it.

¹ Ofcom also has statutory information gathering powers under the Competition Act 1998 in our capacity as a concurrent competition authority. This draft statement of general policy does not cover the exercise of those powers. Information on the exercise of our powers under the Competition Act 1998 can be found in our Enforcement Guidelines of 25 July 2012.

² http://stakeholders.ofcom.org.uk/binaries/consultations/info_gathering/statement/policy.pdf. Ofcom subsequently issued two unconsolidated updates confirming the relevance of this policy to information gathering powers acquired in relation to spectrum and postal services under new legislation: http://stakeholders.ofcom.org.uk/binaries/consultations/info_gathering/statement/update.pdf and <http://stakeholders.ofcom.org.uk/binaries/consultations/postal-regulation/statement/statement.pdf> (see Annex 5).

Consultation

1.4 We invite responses to this consultation by 4 December 2015.

Section 2

Introduction and background

- 2.1 In exercising our statutory functions Ofcom typically needs to obtain information held by stakeholders to develop evidence-based proposals and to regulate effectively and proportionately. To that end, Parliament has given Ofcom broad powers under statute to require stakeholders to provide information to Ofcom in the areas we regulate. Copies of the relevant legislation are annexed to this document and summarised below.
- 2.2 These statutory information gathering powers are the principal tool by which we can obtain information from stakeholders in order to carry out our functions. The importance of these powers is reflected in the seriousness of the sanctions that can be applied for non-compliance. A failure to comply with a statutory notice requesting information can result in a financial penalty or in extreme cases can result in the suspension of a stakeholder's right to provide a service. It is also a criminal offence to fail to provide information in accordance with one of these statutory requirements or to provide false or misleading information.³

Communications Act 2003

- 2.3 Under section 135 of the 2003 Act Ofcom has broad powers to require the provision of information for the purpose of carrying out its functions under Chapter 1 Part 2 of the 2003 Act. Examples are to investigate potential breaches of conditions, to carry out market reviews, and to set general conditions.
- 2.4 Section 136 of the 2003 Act gives Ofcom the power to require the provision of information for related purposes. This includes information necessary for the purposes of comparing quality and prices of communications services.
- 2.5 Ofcom also has powers to obtain information in furtherance of its dispute resolution functions in sections 185-191 of the 2003 Act. Section 191 of the 2003 Act gives Ofcom powers which include requiring information necessary to decide whether it is appropriate to handle a dispute and for the purpose of considering the substance of a dispute.
- 2.6 The 2003 Act places restrictions on Ofcom's use of these powers, which include a requirement for requests to be proportionate to the use to which the information is to be put in the carrying out of Ofcom's functions.

Wireless Telegraphy Act 2006

- 2.7 Under section 32 of the 2006 Act Ofcom has the power to require the provision of information for statistical purposes from persons who have established, installed or used radio equipment or installations.

³ See: section 144 of the Communications Act 2003, section 33 of the Wireless Telegraphy Act 2006, section 13 of Schedule 8 of the Postal Services Act 2011.

- 2.8 Under section 32A of the 2006 Act, which was added in 2011, Ofcom has a power comparable to that of section 135 of the 2003 Act to obtain all such information as we consider necessary for the purpose of carrying out our radio spectrum functions.
- 2.9 Sections 32 and 32B of the 2006 Act place restrictions on Ofcom's use of these powers, which include a requirement for requests to be proportionate to the use to which the information is to be put in the carrying out of Ofcom's functions.

Postal Services Act 2011

- 2.10 Under section 55 and Schedule 8 of the Postal Services Act 2011 (the "2011 Act") Ofcom has powers to require information to be provided for the purposes of carrying out our functions in relation to postal services or for related purposes.
- 2.11 As with the 2003 and 2006 Acts, requests must be proportionate to the use to which the information is to be put in the carrying out of Ofcom's functions.

Consultation on a statement of general policy

- 2.12 Each of the 2003, 2006 and 2011 Acts imposes an obligation on Ofcom to prepare and publish a statement of our general policy with respect to (a) the exercise of the statutory information gathering powers set out above, and (b) the uses to which we are proposing to put information obtained under those sections.⁴ Ofcom is required to have regard to its statement of policy when exercising its information gathering powers.
- 2.13 Ofcom's current policy was published in March 2005 and we have confirmed in updates that it applies to information gathering powers acquired since then.⁵ We think that now is an appropriate time to review our policy and consult on a revised statement of general policy.
- 2.14 We set out the text of our proposed statement in the next section. Some aspects of our overall proposed approach would represent a change to or a more detailed explanation of the position set out in our 2005 statement of general policy. In particular, we propose to:
- Set out in more detail how we will go about issuing notices requiring information to be provided, (for transparency).
 - State that we will, as a general rule, seek to obtain information using our statutory information gathering powers, and we will generally seek to confirm or verify information provided to us on a voluntary basis in order to ensure that our evidence base is robust, complete and non-biased. This reflects what has increasingly become our practice in light of our experience that information being provided on a voluntary basis was on

⁴ See: section 145 of the Communications Act 2003, section 34 of the Wireless Telegraphy Act 2006, and section 14 of Schedule 8 of the Postal Services Act 2011.

⁵ http://stakeholders.ofcom.org.uk/binaries/consultations/info_gathering/statement/policy.pdf. Ofcom subsequently issued two unconsolidated updates confirming the relevance of this policy to information gathering powers acquired in relation to spectrum and postal services under new legislation: http://stakeholders.ofcom.org.uk/binaries/consultations/info_gathering/statement/update.pdf and <http://stakeholders.ofcom.org.uk/binaries/consultations/postal-regulation/statement/statement.pdf> (see Annex 5).

occasion inaccurate or incomplete. Ofcom needs to be able to place weight on, for example, statements that information is not available in the context of regulatory decision-making. It is also important that stakeholders have confidence that Ofcom's evidence base is sound.

- State that Ofcom will assess on a case-by-case basis whether it is appropriate first to send a statutory information request in draft form to the person holding the relevant information. This is a change from our current policy, which states that we will ordinarily issue in draft. Our starting presumption will be that we will not issue the request in draft form unless there is a clear benefit from doing so, as our experience has sometimes been that our current policy can lead to unnecessary delays to our work. We may issue sequenced information requests, first to help us identify the information we should ask for and then to ask for it. This approach should ensure that information requests are targeted at the most useful information and reduce the burden on stakeholders in terms of providing information.

2.15 We consider that using our statutory powers in this manner set out above will better ensure that Ofcom is clear about exactly what information stakeholders hold and that it can be relied upon, backed up by the potential for statutory sanctions in the event of non-compliance. Moreover, this will promote certainty on the part of stakeholders by ensuring that they are clear as to exactly what information is required from them by Ofcom in any given set of circumstances and the purposes for which that information will be used.

2.16 We provisionally consider that our proposed changes are likely to improve the transparency, efficiency and robustness of our regulatory practices and will not create significant new burdens for our stakeholders. We do not consider that our proposals will positively or negatively affect any groups with protected characteristics under the Equality Act 2010.

Section 3

Draft general policy on information gathering

3.1 We set out below the proposed text of our general policy on information gathering.

The exercise of Ofcom's information gathering powers

1. This is Ofcom's statement of general policy on information gathering for the purposes of the Communications Act 2003 (the "2003 Act"), Wireless Telegraphy Act 2006 (the "2006 Act"), and Postal Services Act 2011 (the "2011 Act").⁶ Ofcom will have regard to it in using statutory information gathering powers. However, Ofcom reserves the right to deviate from this policy in appropriate circumstances. Where we do so, we will generally explain our reasons.
2. In order to exercise our functions under the 2003, 2006 and 2011 Acts in a way that is effective, evidenced-based and also proportionate, we need to ensure that our regulatory decisions are founded on a robust evidence base. Our experience is that the information held by stakeholders is often fundamental to a proper appreciation of the factual, economic and legal context within which we exercise our regulatory functions.
3. In that context, the statutory information gathering powers conferred on Ofcom by Parliament are the principal tool by which we can obtain information from stakeholders in support of our functions. These powers enable us to address the information asymmetry that may exist between Ofcom and operators in the sectors we regulate and to discover, obtain and use that information to take the best possible decisions. The powers also allow us to compel the provision of certain information that stakeholders might not otherwise wish to provide, for instance when considering the case for regulation in the interests of citizens and consumers or when enforcing regulatory obligations.
4. In the course of our regulatory activities we have had recourse to our statutory information gathering powers frequently and we expect that we will continue to do so. Ofcom holds a significant amount of in-house information and collects a wide range of data on various aspects of the industry. Wherever possible, Ofcom will draw from existing information sources to avoid unnecessary duplication of effort and to minimise the burden placed on those from whom information is requested. However, despite this comprehensive evidence base there will remain specific areas where it is necessary to collect additional information.
5. Statutory demands for information made by Ofcom must be proportionate and must describe the information required and state the reasons why it is required. Statutory information requests must be set out in a notice and be served on the person from whom the information is requested.⁷ We will issue information requests with a letter setting out

⁶ Ofcom also has statutory information gathering powers under the Competition Act 1998 in our capacity as a concurrent competition authority. This statement of general policy does not cover the exercise of those powers. Information on the exercise of our powers under the Competition Act 1998 can be found in our Enforcement Guidelines of 25 July 2012.

⁷ Unless the demand is for the purpose of determining who is liable to an administrative charge under section 38 of the 2003 Act (in which case other appropriate methods may be used),

this information together with information that may be useful to stakeholders, e.g. a link to the statutory framework. Unless we have agreed other arrangements with the recipient of the request under section 395 of the 2003 Act, the statutory notice containing an information request will be issued in hard copy addressed to the Company Secretary and copied to the relevant regulatory personnel. We will also ordinarily send a copy by email where such details are available to us.

6. Where our regulatory activities are dependent on information held by stakeholders, we will, as a general rule, seek to obtain that information using our statutory information gathering powers. Particularly when we are exercising enforcement and dispute resolution functions we are likely to issue information requests without engaging informally with the recipient first.
7. Beyond our enforcement and dispute resolution functions, we are responsible in a number of contexts for reviewing markets and considering the necessity of regulatory actions – for instance, in conducting market reviews under the 2003 Act, in exercising our spectrum management functions under the 2006 Act, or in considering how to carry out our functions in a manner that will secure the provision of a universal postal service under the 2011 Act. In exercising those types of functions, we often benefit from the provision of information from stakeholders on a voluntary basis and from a constructive dialogue in relation to a range of issues. We welcome that engagement from stakeholders in what are often complex, technical matters and want it to continue in future. In order to ensure that our evidence base is robust, complete and non-biased we will, however, generally seek to obtain all necessary information using our statutory powers. Where information that is potentially material to our decision making has already been provided on a voluntary basis, we will generally use our statutory powers to confirm the completeness and accuracy of that information. Further, where we have been told that such information is not available, we will generally use our statutory powers to obtain formal confirmation of this.
8. In appropriate circumstances Ofcom may first issue an information request asking for details of what information is held on a particular topic and in what form (e.g. whether it is held on particular databases). Having reviewed the response to that request, and discussed it as necessary with the relevant stakeholder, Ofcom may then subsequently issue further targeted statutory information requests to obtain the specific information required. This approach may be of particular use where Ofcom needs to understand what information is held by a stakeholder and in what form before investigating a matter further. It is likely to be of particular use, for example, at the outset of a market review (or similar exercise) when it is important to understand exactly what information might be available to aid the analysis.
9. Ofcom will assess on a case-by-case basis whether it is appropriate to send a statutory information request in draft form to the person holding the relevant information. Our starting presumption will be that we will not issue the request in draft form unless there is a clear benefit from doing so. We would expect to contact the stakeholder concerned by telephone or email to advise them to expect the request.⁸ However, there are likely to be cases where Ofcom would benefit from issuing a request in draft form in order to ensure that the

⁸ There may be circumstances where prior notice is not appropriate – for instance, in enforcement cases where there may be concerns relating to the destruction of documents.

request is appropriately worded and sufficiently clear for the recipient to respond within the period set for a response.

10. Where Ofcom issues an information request in draft, we will generally offer three working days for comment, in particular on the practicality of providing the information in the proposed timescales. In appropriate cases Ofcom would expect to discuss the draft information request with the stakeholder concerned to ensure that request is sufficiently clear and appropriately targeted. Following receipt of comments Ofcom will then confirm or amend the information request.
11. Given the tight timescales within which we are required to reach a determination under our dispute resolution functions, we may set compressed deadlines for the provision of information under section 191 of the 2003 and will not normally issue information requests in draft form.
12. Ofcom expects stakeholders to comply with the deadlines set in information requests. Ofcom will not normally agree to an extension of deadlines unless there are good reasons for doing so. In the event that there is an issue with a particular information request, however, this may be raised in writing, giving reasons, and where a change is justified the request may exceptionally be amended formally. Concerns should be raised with Ofcom sufficiently in advance of the deadline for responding.

Ofcom's use of information obtained under its statutory information gathering powers

13. The uses to which Ofcom will put information obtained under the relevant provisions of the 2003, 2006 and 2011 Acts follow from the purpose or purposes for which that information was obtained. As noted above, Ofcom's reasons for requiring the information requested must be explained in any statutory demand for information under those Acts.
 14. Where Ofcom has obtained information for a specified purpose and wishes to use that information for a different purpose, it will generally first notify the party who provided the information, explaining why it needs to use the information for the different purpose. Where the party who provided the information objects to use of the information for the different purpose, Ofcom will then normally use its statutory information gathering powers to require that the information be provided for the new purpose. There may, rarely, be circumstances where this is not possible, for example because of statutory timing constraints or because of the risk of prejudicing an ongoing investigation.
- 3.2 Ofcom is consulting on the appropriateness of the above text as a statement of our general policy on information gathering for each relevant Act.

Question 1: Respondents are invited to comment on Ofcom's proposed general policy on the use of statutory information gathering powers.

Question 2: Respondents are invited to comment on Ofcom's proposed use of the information that it will gather using its statutory powers.

Annex 1

Responding to this consultation

How to respond

- A1.1 Ofcom invites written views and comments on the issues raised in this document, to be made **by 5pm on 4 December 2015**.
- A1.2 Ofcom strongly prefers to receive responses using the online web form at <http://stakeholders.ofcom.org.uk/consultations/general-policy-on-information-gathering/>, as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response cover sheet (see Annex 3), to indicate whether or not there are confidentiality issues. This response coversheet is incorporated into the online web form questionnaire.
- A1.3 For larger consultation responses - particularly those with supporting charts, tables or other data - please email holly.tingle@ofcom.org.uk attaching your response in Microsoft Word format, together with a consultation response coversheet.
- A1.4 Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.
- Holly Tingle
Ofcom
Riverside House
2A Southwark Bridge Road
London SE1 9HA
- Fax: 020 7981 3159
- A1.5 Note that we do not need a hard copy in addition to an electronic version. Ofcom will acknowledge receipt of responses if they are submitted using the online web form but not otherwise.
- A1.6 It would be helpful if your response could include direct answers to the questions asked in this document, which are listed together at Annex 4. It would also help if you can explain why you hold your views and how Ofcom's proposals would impact on you.

Further information

- A1.7 If you want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact Holly Tingle on 020 7783 4309.

Confidentiality

- A1.8 We believe it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, www.ofcom.org.uk, ideally on receipt. If you think your response should be kept

confidential, can you please specify what part or whether all of your response should be kept confidential, and specify why. Please also place such parts in a separate annex.

- A1.9 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and will try to respect this. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A1.10 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's approach on intellectual property rights is explained further on its website at <http://www.ofcom.org.uk/terms-of-use/>

Next steps

- A1.11 Following the end of the consultation period, Ofcom intends to publish a statement of policy on information gathering early in 2016.
- A1.12 Please note that you can register to receive free mail Updates alerting you to the publications of relevant Ofcom documents. For more details please see: <http://www.ofcom.org.uk/email-updates/>

Ofcom's consultation processes

- A1.13 Ofcom seeks to ensure that responding to a consultation is easy as possible. For more information please see our consultation principles in Annex 2.
- A1.14 If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at consult@ofcom.org.uk. We would particularly welcome thoughts on how Ofcom could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, who are less likely to give their opinions through a formal consultation.
- A1.15 If you would like to discuss these issues or Ofcom's consultation processes more generally you can alternatively contact Graham Howell, Secretary to the Corporation, who is Ofcom's consultation champion:

Graham Howell
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA

Tel: 020 7981 3601

Email Graham.Howell@ofcom.org.uk

Annex 2

Ofcom's consultation principles

A2.1 Ofcom has published the following seven principles that it will follow for each public written consultation:

Before the consultation

A2.2 Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. 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

A2.3 We will be clear about who we are consulting, why, on what questions and for how long.

A2.4 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 to give us a written response. If the consultation is complicated, we may provide a shortened Plain English Guide for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.

A2.5 We will consult for up to 10 weeks depending on the potential impact of our proposals.

A2.6 A person within Ofcom will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organisations interested in the outcome of our decisions. Ofcom's 'Consultation Champion' will also be the main person to contact with views on the way we run our consultations.

A2.7 If we are not able to follow one of these principles, we will explain why.

After the consultation

A2.8 We think it is important for everyone interested in an issue to see the views of others during a consultation. We would usually publish all the responses we have received on our website. In our statement, we will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

Annex 3

Consultation response cover sheet

- A3.1 In the interests of transparency and good regulatory practice, we will publish all consultation responses in full on our website, www.ofcom.org.uk.
- A3.2 We have produced a coversheet for responses (see below) and would be very grateful if you could send one with your response (this is incorporated into the online web form if you respond in this way). This will speed up our processing of responses, and help to maintain confidentiality where appropriate.
- A3.3 The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to complete their coversheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.
- A3.4 We strongly prefer to receive responses via the online web form which incorporates the coversheet. If you are responding via email, post or fax you can download an electronic copy of this coversheet in Word or RTF format from the 'Consultations' section of our website at <http://stakeholders.ofcom.org.uk/consultations/consultation-response-coversheet/>.
- A3.5 Please put any parts of your response you consider should be kept confidential in a separate annex to your response and include your reasons why this part of your response should not be published. This can include information such as your personal background and experience. If you want your name, address, other contact details, or job title to remain confidential, please provide them in your cover sheet only, so that we don't have to edit your response.

Cover sheet for response to an Ofcom consultation

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	<input type="checkbox"/>	Name/contact details/job title	<input type="checkbox"/>
Whole response	<input type="checkbox"/>	Organisation	<input type="checkbox"/>
Part of the response	<input type="checkbox"/>	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)

Annex 4

Consultation questions

Question 1: Respondents are invited to comment on Ofcom's proposed general policy on the use of statutory information gathering powers.

Question 2: Respondents are invited to comment on Ofcom's proposed use of the information that it will gather using its statutory powers.

Annex 5

Communications Act 2003 – relevant provisions

135 Information required for purposes of Chapter 1 functions

(1) OFCOM may require a person falling within subsection (2) to provide them with all such information as they consider necessary for the purpose of carrying out their functions under this Chapter.

(2) The persons falling within this subsection are--

- (a) a communications provider;
- (b) a person who has been a communications provider;
- (c) a person who makes, or has made, any associated facilities available to others;
- (d) a person, other than a communications provider, to whom a universal service condition applies or has applied;
- (e) a person who supplies electronic communications apparatus;
- (f) a person not falling within the preceding paragraphs who appears to OFCOM to have information required by them for the purpose of carrying out their functions under this Chapter.

(3) The information that may be required by OFCOM under subsection (1) includes, in particular, information that they require for any one or more of the following purposes--

- (a) ascertaining whether a contravention of a condition or other requirement set or imposed by or under this Chapter has occurred or is occurring;
- (b) ascertaining or verifying the charges payable by a person under section 38;
- (c) ascertaining whether a provision of a condition set under section 45 which is for the time being in force continues to be effective for the purpose for which it was made;
- (d) ascertaining or verifying amounts payable by virtue of a condition falling within section 51(1)(d);
- (e) making a designation in accordance with regulations made under section 66;
- (f) carrying out a review under section 66 or 70;
- (g) identifying markets and carrying out market analyses in accordance with, or for the purposes of, any provision of this Chapter;

- (h) . . .
 - (i) considering a matter in exercise of that duty;
 - (ia) preparing a report under section 124F;
 - (ib) carrying out an assessment, taking steps or providing a report under section 124G;
 - (ic) preparing a report under section 134A;
 - (id) preparing a report under section 134C;
 - (ie) assessing the security of a public electronic communications network or a public electronic communications service;
 - (if) assessing the availability of a public electronic communications network;
 - (ig) identifying electronic communications apparatus that is suitable for shared use;
 - (j) statistical purposes connected with the carrying out of any of OFCOM's functions under this Chapter.
- (3A) The descriptions of information that a person may be required to provide under subsection (1) include, in particular--
- (a) information concerning future developments of an electronic communications network or electronic communications service that could have an impact on the wholesale services made available by the person to competitors, and
 - (b) if a market power determination made in relation to a wholesale market is in force in the person's case, accounting data relating to any retail market associated with the wholesale market.
- (4) A person required to provide information under this section must provide it in such manner and within such reasonable period as may be specified by OFCOM.
- (5) The powers in this section are subject to the limitations in section 137.

136 Information required for related purposes

- (1) OFCOM may require--
- (a) a communications provider, or
 - (b) a person who makes associated facilities available to others,
- to provide OFCOM with all such information as they consider necessary for the purpose specified in subsection (2).
- (2) That purpose is the carrying out--

- (a) with a view to publication, and
 - (b) in the interest of the end-users of public electronic communications services, of comparative overviews of the quality and prices of such services.
- (3) OFCOM may also require--
- (a) a communications provider, or
 - (b) a person who makes associated facilities available to others,
- to provide them, for use for such statistical purposes as they think fit, with information relating to any electronic communications network, electronic communications service or associated facilities.
- (4) A person required to provide information under this section must provide it in such manner and within such reasonable period as may be specified by OFCOM.
- (5) The powers in this section are subject to the limitations in section 137.

137 Restrictions on imposing information requirements

- (1) This section limits the purposes for which, and manner in which, information may be required under sections 135 and 136.
- (2) OFCOM are not to require the provision of information for the purpose of ascertaining whether a contravention of a general condition has occurred, or is occurring, unless--
- (a) the requirement is imposed for the purpose of investigating a matter about which OFCOM have received a complaint;
 - (b) the requirement is imposed for the purposes of an investigation that OFCOM have decided to carry out into whether or not the general condition in question has been complied with;
 - (c) the condition in question is one which OFCOM have reason to suspect is one that has been or is being contravened; . . .
 - (d) the condition in question is one falling within section 51(1)(d); or
 - (e) the condition in question is one relating to the effective and efficient use of telephone numbers.
- (2A) OFCOM are not to require the provision of information for a purpose specified in section 135(3)(ie) or (if) unless--
- (a) the requirement is imposed for the purpose of investigating a matter about which OFCOM have received a complaint;

- (b) the requirement is imposed for the purposes of an investigation that OFCOM have decided to carry out into whether or not an obligation under section 105A has been complied with; or
 - (c) OFCOM have reason to suspect that an obligation under section 105A has been or is being contravened.
- (3) OFCOM are not to require the provision of information under section 135 or 136 except--
- (a) by a demand for the information that describes the required information and sets out OFCOM's reasons for requiring it; and
 - (b) where the making of a demand for the information is proportionate to the use to which the information is to be put in the carrying out of OFCOM's functions.
- (4) The reasons for requiring information for statistical purposes under section 135 or 136 must set out the statistical purposes for which the information is required.
- (5) Except in the case of a demand made in the manner authorised by subsection (6), a demand for information required under section 135 or 136 must be contained in a notice served on the person from whom the information is required.
- (6) In the case of information required by OFCOM for the purpose of ascertaining who is liable to charges under section 38, the demand may--
- (a) be made by being published in such manner as OFCOM consider appropriate for bringing it to the attention of the persons who are described in the demand as the persons from whom the information is required; and
 - (b) take the form of a general demand for a person so described to provide information when specified conditions relevant to his liability to such charges are satisfied in his case.

138 Notification of contravention of information requirements

- (1) Where OFCOM determine that there are reasonable grounds for believing that a person is contravening, or has contravened, a requirement imposed under section 135 or 136, they may give that person a notification under this section.
- (2) A notification under this section is one which--
- (a) sets out the determination made by OFCOM;
 - (b) specifies the requirement and contravention in respect of which that determination has been made; . . .
 - [(c) specifies the period during which the person notified has an opportunity to make representa-tions;
 - (d) specifies the information to be provided by the person to OFCOM in order to comply with a re-quirement under section 135 or 136;

- (e) specifies any penalty which OFCOM are minded to impose in accordance with section 139; and
 - (f) where the contravention is serious, specifies any direction which OFCOM are minded to give under section 140.
- (3) ...
- (4) ...
- (5) ...
- (6) ...
- (7) ...
- (8) A notification under this section--
- (a) may be given in respect of more than one contravention; and
 - (b) if it is given in respect of a continuing contravention, may be given in respect of any period during which the contravention has continued.
- (9) Where a notification under this section has been given to a person in respect of a contravention of a requirement, OFCOM may give a further notification in respect of the same contravention of that re-quirement if, and only if--
- (a) the contravention is one occurring after the time of the giving of the earlier notification;
 - (b) the contravention is a continuing contravention and the subsequent notification is in respect of so much of a period as falls after a period to which the earlier notification relates; or
 - (c) the earlier notification has been withdrawn without a penalty having been imposed in respect of the notified contravention.
- (9A) OFCOM may not give a person a notification under this section in respect of a contravention of a requirement imposed under section 135(3)(ig) if the information required was previously provided by the person to OFCOM within the period of 6 months ending with the day on which the requirement was imposed.]
- (10) ...

139 Penalties for contravention of information requirements

- (1) This section applies where a person is given a notification under section 138 which specifies a proposed penalty.
- (2) OFCOM may specify a penalty if--
- (a) ...

- (b) . . .
 - (c) no proceedings for an offence under section 144 have been brought against the notified person in respect of the contravention.
- (3) Where a notification under section 138 relates to more than one contravention, a separate penalty may be specified in respect of each contravention.
- (4) Where such a notification relates to a continuing contravention, no more than one penalty may be specified in respect of the period of contravention specified in the notification.
- (4A) But, in relation to a continuing contravention, a penalty may be specified in respect of each day on which the contravention continues after--
- (a) the giving of a confirmation decision under section 139A(4)(c) which requires immediate action; or
 - (b) the expiry of any period specified in the confirmation decision for complying with a requirement so specified.
- (4B) The amount of a penalty under subsection (4A) is to be such amount not exceeding £500 per day as OFCOM determine to be--
- (a) appropriate; and
 - (b) proportionate to the contravention in respect of which it is imposed.
- (5) The amount of any other penalty notified under this section is to be such amount not exceeding £2,000,000 as OFCOM determine to be both--
- (a) appropriate; and
 - (b) proportionate to the contravention in respect of which it is imposed.
- (6) . . .
- (7) . . .
- (8) . . .
- (9) The Secretary of State may by order amend this section so as to substitute a different maximum penalty for the maximum penalty for the time being specified in subsection (5).
- (10) No order is to be made containing provision authorised by subsection (9) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

139A Enforcement of notification under section 138

- (1) This section applies where--
- (a) a person has been given a notification under section 138;

- (b) OFCOM have allowed the person an opportunity to make representations about the matters notified; and
 - (c) the period allowed for the making of representations has expired.
- (2) OFCOM may--
- (a) give the person a decision (a "confirmation decision") confirming the imposition of requirements on the person, or the giving of a direction to the person, or both, in accordance with the notification under section 138; or
 - (b) inform the person that they are satisfied with the person's representations and that no further action will be taken.
- (3) OFCOM may not give a confirmation decision to a person unless, after considering any representations, they are satisfied that the person has, in one or more of the respects notified, been in contravention of a requirement notified under section 138.
- (4) A confirmation decision--
- (a) must be given to the person without delay;
 - (b) must include reasons for the decision;
 - (c) may require immediate action by the person to comply with a requirement notified under section 138(2)(d), or may specify a period within which the person must comply with the requirement; and
 - (d) may require the person to pay--
 - (i) the penalty specified in the notification under section 138, or
 - (ii) such lesser penalty as OFCOM consider appropriate in the light of the person's representations or steps taken by the person to comply with the condition or remedy the consequences of the contravention,and may specify the period within which the penalty is to be paid.
- (5) It is the duty of the person to comply with any requirement imposed by a confirmation decision.
- (6) That duty is enforceable in civil proceedings by OFCOM--
- (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.

- (7) A penalty imposed by a confirmation decision--
 - (a) must be paid to OFCOM; and
 - (b) if not paid within the period specified by them, is to be recoverable by them accordingly.

139C Confirmation of direction under section 139B

- (1) As soon as reasonably practicable after giving a direction under section 139B(3), OFCOM must give the person to whom it is given--
 - (a) an opportunity to make representations to them about the grounds on which it was given and its effect; and
 - (b) an opportunity to propose steps to remedy the situation.
- (2) As soon as practicable after the period allowed by OFCOM for making those representations has ended (and in any event within 3 months beginning with the day on which the direction was given), they must determine--
 - (a) whether the contravention providing the grounds for the giving of the direction did occur; and
 - (b) whether the circumstances made it an urgent case justifying the giving of the direction.
- (3) The period of 3 months mentioned in subsection (2) may be extended by up to 3 months if OFCOM--
 - (a) require additional time to consider representations received; or
 - (b) decide that it is necessary to obtain additional information from the person in order to make a determination under subsection (2).
- (4) If OFCOM decide that the contravention did occur and that the direction was justified, they may confirm the direction.
- (5) If not, they must exercise their power to revoke it.
- (6) As soon as reasonably practicable after deciding whether to confirm the direction, OFCOM must notify the person to whom it was given of their decision.

140 Suspending service provision for information contraventions

- (1) OFCOM may give a direction under this section to a person who is a communications provider or who makes associated facilities available ("the contravening provider") if they are satisfied--
 - (a) that he is or has been in serious or repeated contravention of requirements imposed under sections 135 and 136, or either of them;

- (b) the requirements are not requirements imposed for purposes connected with the carrying out of OFCOM's functions in relation to SMP apparatus conditions;
 - (c) in the case of a repeated contravention, that an attempt, by the imposition of penalties or the giving of notifications under section 138 and confirmation decisions under section 139A, or both, or the bringing of proceedings for an offence under section 144, to secure compliance with the contravened requirements has failed; and
 - (d) that the giving of the direction is appropriate and proportionate to the contravention in respect of which it is given.
- (2) A direction under this section is--
- (a) a direction that the entitlement of the contravening provider to provide electronic communications networks or electronic communications services, or to make associated facilities available, is suspended (either generally or in relation to particular networks, services or facilities); or
 - (b) a direction that that entitlement is restricted in the respects set out in the direction.
- (3) A direction under this section--
- (a) must specify the networks, services and facilities to which it relates; and
 - (b) except so far as it otherwise provides, takes effect for an indefinite period beginning with the time at which it is notified to the person to whom it is given.
- (4) A direction under this section--
- (a) in providing for the effect of a suspension or restriction to be postponed, may provide for it to take effect only at a time determined by or in accordance with the terms of the direction; and
 - (b) in connection with the suspension or restriction contained in the direction or with the postponement of its effect, may impose such conditions on the contravening provider as appear to OFCOM to be appropriate for the purpose of protecting that provider's customers.
- (5) Those conditions may include a condition requiring the making of payments--
- (a) by way of compensation for loss or damage suffered by the contravening provider's customers as a result of the direction; or
 - (b) in respect of annoyance, inconvenience or anxiety to which they have been put in consequence of the direction.
- (6) If OFCOM consider it appropriate to do so (whether or not in consequence of any representations or proposals made to them), they may revoke a direction under this section or modify its conditions--
- (a) with effect from such time as they may direct;

- (b) subject to compliance with such requirements as they may specify; and
- (c) to such extent and in relation to such networks, services or facilities, or parts of a network, service or facility, as they may determine.

(7) For the purposes of this section there are repeated contraventions by a person of requirements imposed under sections 135 and 136, or either of them, to the extent that--

- (a) in the case of a previous notification of a contravention given to that person under section 138, OFCOM have given a confirmation decision to that person under section 139A(2) in respect of the contravention; and
- (b) in the period of 24 months following the giving of that confirmation decision, one or more further confirmation decisions have been given to the person in respect of contraventions of numbering conditions;

and for the purposes of this subsection it shall be immaterial whether the confirmation decisions related to the same contravention or to different contraventions of the same or different requirements or of re-quirements under different sections.

141 Suspending apparatus supply for information contraventions

(1) OFCOM may give a direction under this section to a person who supplies electronic communications apparatus ("the contravening supplier") if they are satisfied--

- (a) that he is or has been in serious and repeated contravention of requirements imposed under section 135;
- (b) that an attempt, by the imposition of penalties under section 139 or the bringing of proceedings for an offence under section 144, to secure compliance with the contravened requirements has failed; and
- (c) that the giving of the direction is appropriate and proportionate to the seriousness (when repeated as they have been) of the contraventions.

(2) A direction under this section is--

- (a) a direction to the contravening supplier to cease to act as a supplier of electronic communications apparatus (either generally or in relation to apparatus of a particular description); or
- (b) a direction imposing such restrictions as may be set out in the direction on the supply by that supplier of electronic communications apparatus (either generally or in relation to apparatus of a particular description).

(3) A direction under this section takes effect, except so far as it otherwise provides, for an indefinite period beginning with the time at which it is notified to the person to whom it is given.

(4) A direction under this section--

- (a) may provide for a prohibition or restriction to take effect only at a time determined by or in accordance with the terms of the direction; and
 - (b) in connection with a prohibition or restriction contained in the direction or with the postponement of its effect, may impose such conditions on the contravening supplier as appear to OFCOM to be appropriate for the purpose of protecting that supplier's customers.
- (5) Those conditions may include a condition requiring the making of payments--
- (a) by way of compensation for loss or damage suffered by the contravening supplier's customers as a result of the direction; or
 - (b) in respect of annoyance, inconvenience or anxiety to which they have been put in consequence of the direction.
- (6) If OFCOM consider it appropriate to do so (whether or not in consequence of representations or proposals made to them), they may revoke a direction under this section or modify its conditions--
- (a) with effect from such time as they may direct;
 - (b) subject to compliance with such requirements as they may specify; and
 - (c) to such extent and in relation to such apparatus or descriptions of apparatus as they may determine.
- (7) For the purposes of this section contraventions by a person of requirements imposed under section 135 are repeated contraventions if--
- (a) in the case of a previous notification given to that person under section 138, OFCOM have determined for the purposes of section 139(2) that such a contravention did occur; and
 - (b) in the period of twelve months following the day of the making of that determination, one or more further notifications have been given to that person in respect of contraventions of such requirements;

and for the purposes of this subsection it shall be immaterial whether the notifications related to the same contravention or to different contraventions of the same or different requirements.

142 Procedure for directions under ss 140 and 141

- (1) Except in an urgent case, or a case where a proposed direction has been notified to a person in accordance with section 138(2)(f)] OFCOM are not to give a direction under section 140 or 141 unless they have--
- (a) notified the contravening provider or contravening supplier of the proposed direction and of the conditions (if any) which they are proposing to impose by that direction;

- (b) provided him with an opportunity of making representations about the proposals and of proposing steps for remedying the situation; and
 - (c) considered every representation and proposal made to them during the period allowed by them for the contravening provider or the contravening supplier to take advantage of that opportunity.
- (2A) That period must be--
- (a) in relation to a direction under section 140, such reasonable period as OFCOM may determine, and
 - (b) in relation to a direction under section 141, a period ending not less than one month after the day of the giving of the notification.
- (3) As soon as practicable after giving a direction under section 140 or 141 in an urgent case, OFCOM must provide the contravening provider or contravening supplier with an opportunity of--
- (a) making representations about the effect of the direction and of any of its conditions; and
 - (b) proposing steps for remedying the situation.
- (3A) In relation to a direction under section 140 in an urgent case, as soon as practicable after the period allowed by OFCOM for making those representations has ended (and in any event within 3 months beginning with the day on which the direction was given), they must determine--
- (a) whether the contravention providing the grounds for the giving of the direction did occur; and
 - (b) whether the circumstances made it an urgent case justifying the giving of the direction.
- (3B) The period of 3 months mentioned in subsection (3A) may be extended by up to 3 months if OFCOM--
- (a) require additional time to consider representations received; or
 - (b) decide that it is necessary to obtain additional information from the person in order to make a determination under subsection (3A).
- (4) A case is an urgent case for the purposes of this section if OFCOM--
- (a) consider that it would be inappropriate, because the contraventions in question fall within sub-section (5), to allow time, before giving a direction under section 140 or 141, for the making and con-sideration of representations; and
 - (b) decide for that reason to act in accordance with subsection (3), instead of subsection (1).
- (5) The contraventions fall within this subsection if they have resulted in, or create an immediate risk of--

- (a) a serious threat to the safety of the public, to public health or to national security;
 - (b) serious economic or operational problems for persons (apart from the contravening provider or contravening supplier) who are communications providers or persons who make associated facilities available; or
 - (c) serious economic or operational problems for persons who make use of electronic communications networks, electronic communications services or associated facilities.
- (6) In this section--

"contravening provider" has the same meaning as in section 140; and

"contravening supplier" has the same meaning as in section 141.

143 Enforcement of directions under ss 140 and 141

(1) A person is guilty of an offence if he provides an electronic communications network or electronic communications service, or makes available any associated facility--

- (a) while his entitlement to do so is suspended by a direction under section 140; or
- (b) in contravention of a restriction contained in such a direction.

(2) A person is guilty of an offence if he supplies electronic communications apparatus--

- (a) while prohibited from doing so by a direction under section 141; or
- (b) in contravention of a restriction contained in such a direction.

(3) A person guilty of an offence under this section shall be liable--

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

(4) Sections 96A to 99 apply in relation to a contravention of conditions imposed by a direction under section 139B or 140 as they apply in relation to a contravention of conditions set under section 45, other than SMP apparatus conditions.

(5) Sections 94 to 96 and 97 to 99 apply in relation to a contravention of conditions imposed by a direction under section 141 as they apply in relation to a contravention of SMP apparatus conditions.

144 Offences in connection with information requirements

(1) A person who fails to provide information in accordance with a requirement of OFCOM under section 135 or 136 is guilty of an offence and shall be liable--

- (a) on summary conviction, to a fine not exceeding the statutory maximum;

- (b) on conviction on indictment, to a fine.
- (2) In proceedings against a person for an offence under subsection (1) it shall be a defence for that person to show--
- (a) that it was not reasonably practicable for him to comply with the requirement within the period specified by OFCOM; but
 - (b) that he has taken all reasonable steps to provide the required information after the end of that period.
- (3) A person is guilty of an offence if--
- (a) in pursuance of any requirement under section 135 or 136, he provides any information that is false in any material particular; and
 - (b) at the time he provides it, he either knows it to be false or is reckless as to whether or not it is false.
- (4) A person guilty of an offence under subsection (3) shall be liable--
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both.
- (5) Proceedings for an offence under subsection (1) may be brought in respect of a contravention by a person of a requirement imposed under section 135 or 136 only if--
- (a) OFCOM have given the person a notification under section 138 in respect of that contravention;
 - (b) the notification required the person to provide information, a confirmation decision has been given under section 139A in respect of that requirement and the period allowed under that decision has expired without the required information having been provided; and
 - (c) OFCOM have not imposed a financial penalty under section 139 in respect of that contravention.

145 Statement of policy on information gathering

- (1) It shall be the duty of OFCOM to prepare and publish a statement of their general policy with respect to--
- (a) the exercise of their powers under sections 135 to 136; and
 - (b) the uses to which they are proposing to put information obtained under those sections.
- (2) OFCOM may from time to time revise that statement as they think fit.

(3) Where OFCOM make or revise their statement of policy under this section, they must publish that statement or (as the case may be) the revised statement in such manner as they consider appropriate for bringing it to the attention of the persons who, in their opinion, are likely to be affected by it.

(4) It shall be the duty of OFCOM, in exercising the powers conferred on them by sections 135 to 144 to have regard to the statement for the time being in force under this section.

191 OFCOM's power to require information in connection with dispute

(1) Where a dispute has been referred or referred back to OFCOM under this Chapter, they may require any person to whom subsection (2) applies to provide them with all such information as they may require for the purpose of--

- (a) deciding whether it is appropriate for them to handle the dispute;
- (b) determining whether it is necessary for them to consult the regulatory authorities of another member State; or
- (c) considering the dispute and making a determination for resolving it.

(2) This subsection applies to--

- (a) a party to the dispute; and
- (b) a person who is not a party to the dispute but appears to OFCOM to have information that is relevant to the matters mentioned in subsection (1)(a) to (c).

(3) A person required to provide information under this section must provide it in such manner and within such reasonable period as may be specified by OFCOM.

(4) In fixing the period within which information is to be provided in accordance with a requirement under this section OFCOM must have regard, in particular, to--

- (a) their obligation to make a determination for resolving the dispute within the period specified in section 188;
- (b) the nature of the dispute; and
- (c) the information that is required.

(5) Sections 138 to 144 apply for the enforcement of a requirement under this section as they apply for the enforcement of requirements under section 135 or 136.

(6) . . .

Annex 6

Wireless Telegraphy Act 2006 – relevant provisions

32 Statistical information

(1) OFCOM may require a person who is using or has established, installed or used a wireless telegraphy station or wireless telegraphy apparatus to provide OFCOM with all such information relating to--

- (a) the establishment, installation or use of the station or apparatus, and
- (b) any related matters,

as OFCOM may require for statistical purposes.

(2) Subsection (1) has effect subject to the following provisions of this section.

(3) OFCOM may not require the provision of information under this section except--

- (a) by a demand for information that sets out OFCOM's reasons for requiring the information and the statistical purposes for which it is required; and
- (b) where the making of a demand for that information is proportionate to the use to which the information is to be put in the carrying out of OFCOM's functions.

(4) A demand for information required under this section must be contained in a notice given to the person from whom the information is required.

(5) A person required to give information under this section must provide it in such manner and within such reasonable period as may be specified by OFCOM.

[32A Information required for purposes of radio spectrum functions]

[(1) OFCOM may require a person falling within subsection (2) to provide them with all such information as they consider necessary for the purpose of carrying out their radio spectrum functions.

(2) The persons falling within this subsection are--

- (a) a person who is using, or has established, installed or used a wireless telegraphy station or wireless telegraphy apparatus, and
- (b) any other person who appears to OFCOM to have information required by them for the purposes of their radio spectrum functions.

(3) The information that may be required by OFCOM under subsection (1) includes, in particular, information that they require to ascertain whether a contravention has occurred of--

- (a) a term, provision or limitation specified in regulations under section 8, or
- (b) a term, provision or limitation of a wireless telegraphy licence.

- (4) A person required to provide information under this section must provide it in such manner and within such reasonable period as may be specified by OFCOM.
- (5) The powers in this section are subject to the limitations in section 32B.]

[32B Restrictions on imposing information requirements]

[(1) This section limits the purposes for which, and manner in which, information may be required under section 32A.

(2) OFCOM are not to require the provision of information for the purpose of ascertaining whether a contravention of a term, provision or limitation has occurred or is occurring, unless--

- (a) the requirement is imposed for the purpose of investigating a matter about which OFCOM have received a complaint;
- (b) the requirement is imposed for the purposes of an investigation that OFCOM have decided to carry out into whether or not the term, provision or limitation in question has been complied with;
- (c) the term, provision or limitation in question is one which OFCOM have reason to suspect has been or is being contravened;
- (d) the term, provision or limitation in question relates to the effective and efficient use of frequencies;
or
- (e) the term, provision or limitation in question relates to sums payable to OFCOM in respect of a wireless telegraphy licence.

(3) OFCOM are not to require the provision of information except--

- (a) by a demand for the information that describes the required information and sets out OFCOM's reasons for requiring it; and
- (b) where the making of a demand for the information is proportionate to the use to which the information is to be put in the carrying out of OFCOM's functions.

(4) A demand for information must be contained in a notice served on the person from whom the information is required.]

[32C Notification of contravention of information requirements]

[(1) Where OFCOM determine that there are reasonable grounds for believing that a person is contravening, or has contravened, a requirement imposed under section 32A, they may give that person a notification under this section.

(2) A notification under this section is one which--

- (a) sets out the determination made by OFCOM;
- (b) specifies the requirement and contravention in respect of which the determination has been made;
- (c) specifies the period during which the person notified has an opportunity to make representations;
- (d) specifies information to be provided by the person to OFCOM; and
- (e) specifies any penalty which OFCOM are minded to impose in accordance with section 32D.

- (3) A notification under this section--
- (a) may be given in respect of more than one contravention; and
 - (b) if it is given in respect of a continuing contravention, may be given in respect of any period during which the contravention has continued.
- (4) Where a notification under this section has been given to a person in respect of a contravention of a requirement, OFCOM may give a further notification in respect of the same contravention of that requirement if, and only if--
- (a) the contravention is one occurring after the time of the giving of the earlier notification;
 - (b) the contravention is a continuing contravention and the subsequent notification is in respect of so much of a period as falls after a period to which the earlier notification relates; or
 - (c) the earlier notification has been withdrawn without a penalty having been imposed in respect of the notified contravention.]

[32D Penalties for contravention of information requirements]

- [(1) This section applies where a person is given a notification under section 32C which specifies a proposed penalty.
- (2) OFCOM may specify a penalty only if no proceedings for an offence under section 33 have been brought against the person in respect of the contravention.
- (3) Where the notification relates to more than one contravention, a separate penalty may be specified in respect of each contravention.
- (4) Where the notification relates to a continuing contravention, no more than one penalty may be specified in respect of the period of contravention specified in the notification.
- (5) But, in relation to a continuing contravention, a penalty may be specified in respect of each day on which the contravention continues after--
- (a) the giving of a confirmation decision under section 32E(4)(c) which requires immediate action; or
 - (b) the expiry of any period specified in the confirmation decision for complying with a requirement so specified.
- (6) The amount of a penalty under subsection (5) is to be such amount not exceeding £20,000 per day as OFCOM determine to be--
- (a) appropriate; and
 - (b) proportionate to the contravention in respect of which it is imposed
- (7) The amount of any other penalty specified under this section is to be such amount not exceeding £2 million as OFCOM determine to be both--
- (a) appropriate; and
 - (b) proportionate to the contravention in respect of which it is imposed.]

[32E Enforcement of notification under section 32C]

- [(1) This section applies where--

- (a) a person has been given a notification under section 32C;
 - (b) OFCOM have allowed the person an opportunity to make representations about the matters notified; and
 - (c) the period allowed for the making of representations has expired.
- (2) OFCOM may--
- (a) give the person a decision (a "confirmation decision") confirming the imposition of requirements in accordance with the notification under section 32C; or
 - (b) inform the person that they are satisfied with the person's representations and that no further action will be taken.
- (3) OFCOM may not give a confirmation decision to a person unless, after considering any representations, they are satisfied that the person has, in one or more of the respects notified, been in contravention of a requirement notified under section 32C.
- (4) A confirmation decision--
- (a) must be given to the person without delay;
 - (b) must include reasons for the decision;
 - (c) may require immediate action by the person to comply with a requirement notified under section 32C, or may specify a period within which the person must comply with the requirement; and
 - (d) may require the person to pay--
 - (i) the penalty specified in the notification under section 32C, or
 - (ii) such lesser penalty as OFCOM consider appropriate in the light of the person's representations or steps taken by the person to comply with the requirement or remedy the consequences of the contravention,
- and may specify the period within which the penalty is to be paid.
- (5) It is the duty of the person to comply with any requirement imposed by a confirmation decision.
- (6) That duty is enforceable in civil proceedings by OFCOM--
- (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.
- (7) A penalty imposed by a confirmation decision--
- (a) must be paid to OFCOM; and
 - (b) if not paid within the period specified by them, is to be recoverable by them accordingly.]

33 Failure to provide information etc

- (1) A person commits an offence if he fails to provide information in accordance with a requirement of OFCOM under section 32 [or 32A].

- (2) In proceedings against a person for an offence under subsection (1) it is a defence for the person to show--
- (a) that it was not reasonably practicable for him to comply with the requirement within the period specified by OFCOM; but
 - (b) that he has taken all reasonable steps to provide the required information after the end of that period.
- (3) A person who commits an offence under subsection (1) is liable on summary conviction to[--
- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
 - (b) on conviction on indictment, to a fine].
- (4) A person commits an offence if--
- (a) in pursuance of a requirement under section 32 [or 32A], he provides information that is false in any material particular; and
 - (b) at the time he provides it, he knows it to be false or is reckless as to whether or not it is false.
- (5) A person who commits an offence under subsection (4) is liable on summary conviction to[--
- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or to a fine, or to both].
- [(6) Proceedings for an offence under this section may be brought in respect of a contravention by a person of a requirement imposed under section 32A only if OFCOM have not imposed a financial penalty under sections 32C and 32E in respect of that contravention.]

34 Statement of policy

- (1) OFCOM must prepare and publish a statement of their general policy with respect to--
- (a) the exercise of their powers under [sections 32 and 32A]; and
 - (b) the uses to which they are proposing to put information obtained under that section.
- (2) OFCOM may from time to time revise that statement as they think fit.
- (3) Where OFCOM make a statement under this section (or revise it), they must publish the statement (or the revised statement) in such manner as they consider appropriate for bringing it to the attention of persons who, in their opinion, are likely to be affected by it.
- (4) OFCOM must, in exercising their powers under [sections 32 and 32A], have regard to the statement for the time being in force under this section.

Annex 7

Postal Services Act 2011 – relevant provisions

55 Information

- (1) Schedule 8 makes provision for requiring information to be provided to OFCOM for the purpose of carrying out their functions in relation to postal services or for related purposes.
- (2) In that Schedule--
 - (a) Part 1 makes provision authorising OFCOM to require information to be provided to them,
 - (b) Part 2 makes provision for the enforcement of those requirements, and
 - (c) Part 3 contains supplementary provision.
- (3) Nothing in Schedule 7 to the Postal Services Act 2000 (disclosure of information) prevents the Postal Services Commission from disclosing information to OFCOM for the purposes of OFCOM's functions in relation to postal services.

SCHEDULE 8

INFORMATION PROVISIONS

Section 55

Part 1

Requirements to Provide Information to OFCOM

Information required for purposes of OFCOM's functions in relation to postal services

1

- (1) OFCOM may require a person falling within sub-paragraph (2) to provide them with all such information as they consider necessary for the purpose of carrying out any of their functions in relation to postal services.
- (2) The persons within this sub-paragraph are--
 - (a) a person who is, or has been, a postal operator,
 - (b) a person who provides, or has provided, access points or other facilities for use in connection with a postal service, and
 - (c) a person not falling within paragraph (a) or (b) who appears to OFCOM to have information required by them for the purpose of carrying out any of their functions in relation to postal services.
- (3) The required information may, in particular, include information required for any one or more of the following purposes--

- (a) ascertaining whether a contravention of a regulatory requirement (within the meaning of Schedule 7) has occurred or is occurring,
- (b) ascertaining whether a provision of a regulatory condition which is for the time being in force continues to be effective for the purpose for which it was made,
- (c) making a designation in accordance with regulations made under section 35,
- (d) carrying out a review under section 35 or 44,
- (e) ascertaining or verifying amounts payable by virtue of section 46,
- (f) ascertaining or verifying charges payable under Schedule 4,
- (g) identifying markets and carrying out market analyses or assessments in accordance with, or for the purposes of, any enactment relating to postal services, and
- (h) statistical purposes connected with the carrying out of any of OFCOM's functions in relation to postal services.

(4) A demand for information under this paragraph must be proportionate to the use to which the information is to be put in the carrying out of OFCOM's functions.

Restrictions on imposing requirements in case of conditions of general application

2

- (1) This paragraph limits the circumstances in which OFCOM may require the provision of information under paragraph 1 for the purpose of ascertaining whether there is, or has been, a contravention of a condition of general application.
- (2) OFCOM may require the provision of information for that purpose only if--
 - (a) the requirement is imposed for the purpose of investigating a matter about which OFCOM have received a complaint,
 - (b) the requirement is imposed for the purposes of an investigation that OFCOM have decided to carry out into whether or not the condition in question has been complied with,
 - (c) the condition in question is one which OFCOM have reason to suspect is one that has been, or is being, contravened, or
 - (d) the condition in question falls within section 42(2)(b).
- (3) A "condition of general application" means a regulatory condition other than a designated USP condition, a USP access condition or a USP accounting condition.

Information required for related purposes

3

- (1) OFCOM may require--
 - (a) a postal operator, or
 - (b) a person who provides access points or other facilities for use in connection with a postal service,

to provide OFCOM with all such information as they consider necessary to carry out comparative overviews of the quality and prices of postal services.

- (2) The overviews in question must be carried out--

- (a) with a view to publication, and
 - (b) in the interest of users of postal services.
- (3) OFCOM may also require--
- (a) a postal operator, or
 - (b) a person who provides access points or other facilities for use in connection with a postal service,

to provide OFCOM, for use for such statistical purposes as they think fit, with information relating to the provision of postal services.

(4) A demand for information under this paragraph must be proportionate to the use to which the information is to be put in the carrying out of OFCOM's functions.

Manner in which information may be required

4

- (1) A person required to provide information under paragraph 1 or 3 must provide it in such manner and within such reasonable period as may be specified by OFCOM.
- (2) OFCOM must require the provision of information under paragraph 1 or 3 by a demand which--
- (a) describes the required information, and
 - (b) sets out OFCOM's reasons for requiring it.
- (3) The reasons for requiring information for statistical purposes under paragraph 1 or 3 must set out the statistical purposes for which the information is required.
- (4) A demand for information under paragraph 1 or 3 must be contained in a notice served on the person from whom the information is required.
- (5) This is subject to an exception in the case of information required by OFCOM for the purpose of ascertaining who is liable to charges under Schedule 4.
- (6) In that case, the demand--
- (a) may be made by being published in such manner as OFCOM consider appropriate for bringing it to the attention of the persons described in the demand as the persons from whom the information is required, and
 - (b) may take the form of a general demand for a person so described to provide information when specified conditions relevant to the person's liability to the charges are satisfied.

Part 2

Enforcement

Notification of contravention of information requirements

5

- (1) OFCOM may give a person a notification under this paragraph if they determine that there are reasonable grounds for believing that the person is contravening, or has contravened, a requirement imposed under paragraph 1 or 3.
- (2) A notification under this paragraph must--
 - (a) set out the determination made by OFCOM, and
 - (b) specify the requirement and contravention in respect of which that determination has been made.
- (3) A notification under this paragraph must also specify the period during which the person notified has an opportunity--
 - (a) to make representations about the matters notified, and
 - (b) to comply with notified requirements of which the person remains in contravention.
- (4) The specified period must be at least one month beginning with the day after the day the notification is given unless--
 - (a) OFCOM and the person notified agree a shorter period, or
 - (b) OFCOM have reasonable grounds for believing that the contravention is a repeated contravention and, in those circumstances, consider a shorter period would be appropriate.
- (5) A contravention is a repeated contravention, in relation to a notification with respect to the contravention, if--
 - (a) a previous notification has been given in respect of the same contravention or in respect of another contravention of the same requirement, and
 - (b) the subsequent notification is given no more than 12 months after the day on which OFCOM determine for the purposes of paragraph 7(2) that the contravention to which the previous notification related did occur.
- (6) OFCOM may (on one or more occasions) extend the specified period.

6

- (1) A notification under paragraph 5--
 - (a) may be given in respect of more than one contravention, and
 - (b) if it is given in respect of a continuing contravention, may be given in respect of any period during which the contravention has continued.
- (2) If a notification under paragraph 5 has been given to a person in respect of a contravention of a requirement, OFCOM may give a further notification in respect of the same contravention of that requirement only if--
 - (a) the contravention occurs after the earlier notification is given,
 - (b) the contravention is a continuing one and the subsequent notification is in respect of so much of a period as falls after a period to which the earlier notification relates, or

- (c) the earlier notification has been withdrawn without a penalty having been imposed in respect of the notified contravention.

Penalties for contravention of information requirements

7

- (1) This paragraph applies if--
 - (a) a person has been given a notification under paragraph 5,
 - (b) OFCOM have allowed the person an opportunity of making representations about the matters notified, and
 - (c) the period allowed for the making of the representations has ended.

- (2) OFCOM may impose a penalty on a person if--
 - (a) they are satisfied that the person has, in one or more of the respects notified, been in contravention of a requirement specified in the notification under paragraph 5,
 - (b) the person has not, during the period allowed under that paragraph, complied with the notified requirement, and
 - (c) no proceedings for an offence under paragraph 13 have been brought against the notified person in respect of the contravention.

- (3) If a notification under paragraph 5 relates to more than one contravention, a separate penalty may be imposed in respect of each contravention.

- (4) If a notification under that paragraph relates to a continuing contravention, no more than one penalty may be imposed in respect of the period of contravention specified in the notification.

- (5) The amount of a penalty imposed under this paragraph is to be such amount as OFCOM determine to be--
 - (a) appropriate, and
 - (b) proportionate to the contravention in respect of which it is imposed.

- (6) The amount must not be more than £50,000.

- (7) In making the determination of the amount of the penalty OFCOM must have regard to--
 - (a) any representations made to them by the person, and
 - (b) any steps taken by the person towards complying with the requirements contraventions of which have been notified to the person under paragraph 5.

- (8) If OFCOM impose a penalty on a person under this paragraph, they must--
 - (a) within one week of making their decision to impose the penalty, notify that person of that decision and of their reasons for it, and
 - (b) in that notification, fix a reasonable period after it is given as the period within which the penalty is to be paid.

- (9) A penalty imposed under this paragraph--
 - (a) must be paid to OFCOM, and
 - (b) if not paid within the period fixed by them, is to be recoverable by them accordingly.

(10) The Secretary of State may by order substitute a different maximum penalty for the maximum penalty for the time being specified in sub-paragraph (6).

(11) An order under sub-paragraph (10) is subject to affirmative resolution procedure.

Suspending service provision for contravention of information requirements

8

(1) OFCOM may give a direction under this paragraph to any person who is providing one or more postal services ("the contravening person").

(2) A direction under this paragraph is a direction that the entitlement of the contravening person to provide postal services--

- (a) is suspended (either generally or in relation to particular services), or
- (b) is restricted in the respects set out in the direction.

(3) OFCOM may give a direction under this paragraph only if they are satisfied that conditions A to C are met.

(4) Condition A is that the contravening person is or has been in serious and repeated contravention of requirements imposed under paragraph 1 or 3.

(5) Condition B is that an attempt, by the imposition of penalties under paragraph 7 or the bringing of proceedings under paragraph 13, to secure compliance with the contravened requirements has failed.

(6) Condition C is that the giving of the direction is--

- (a) appropriate, and
- (b) proportionate to the seriousness (when repeated as they have been) of the contraventions.

9

(1) Unless it provides otherwise, a direction under paragraph 8 takes effect for an indefinite period beginning with the time at which it is notified to the person to whom it is given.

(2) A direction under paragraph 8--

- (a) in providing for the effect of a suspension or restriction to be postponed, may provide for it to take effect only at a time determined by or in accordance with the terms of the direction, and
- (b) in connection with the suspension or restriction contained in the direction or with the postponement of its effect, may impose such conditions on the contravening person as appear to OFCOM to be appropriate for the purpose of protecting the users of that operator's services.

(3) Those conditions may include a condition requiring the making of payments--

- (a) by way of compensation for loss or damage suffered by those users as a result of the direction, or
- (b) in respect of annoyance, inconvenience or anxiety to which those users have been put in consequence of the direction.

(4) OFCOM may revoke a direction under paragraph 8 or modify its conditions--

- (a) with effect from such time as they may direct,
- (b) subject to compliance with such requirements as they may specify, and
- (c) to such extent and in relation to such services, or parts of a service, as they may determine.

(5) For the purposes of paragraph 8 there are repeated contraventions by a person of requirements imposed under paragraph 1 or 3 to the extent that--

- (a) in the case of a previous notification given to that person under paragraph 5, OFCOM have determined for the purposes of paragraph 7(2) that a contravention did occur, and
- (b) in the period of 12 months following the day of the making of that determination, one or more further notifications have been given to that person in respect of contraventions of a requirement imposed under paragraph 1 or 3.

(6) For the purposes of sub-paragraph (5) it does not matter whether the notifications relate to the same contravention or to different contraventions of the same or different requirements or of requirements under different paragraphs.

10

(1) OFCOM are not to give a direction under paragraph 8 unless they have--

- (a) notified the contravening person of the proposed direction and of the conditions (if any) which they are proposing to impose by that direction,
- (b) provided the contravening person with an opportunity of making representations about the proposals and of proposing steps for remedying the situation, and
- (c) considered every representation and proposal made to them during the period allowed by them for the contravening person to take advantage of that opportunity.

(2) That period must be at least one month beginning with the day after the day the notification is given.

(3) This paragraph does not apply in an urgent case (as to which, see paragraph 11).

11

(1) In an urgent case, OFCOM must, as soon as reasonably practicable after giving a direction under paragraph 8, give the contravening person--

- (a) an opportunity of making representations to them about the effect of the direction and of any of its conditions, and
- (b) an opportunity of proposing steps to remedy the situation.

(2) A case is urgent for the purposes of this paragraph if OFCOM--

- (a) consider that it would be inappropriate, because the contraventions in question fall within sub-paragraph (3), to allow time, before giving the direction, for the making and consideration of representations, and
- (b) decide for that reason to act in accordance with this paragraph instead of paragraph 10.

(3) The contraventions fall within this sub-paragraph if they have resulted in or create an immediate risk of--

- (a) a serious threat to the safety of the public, to public health or to national security,
- (b) serious economic or operational problems for persons providing postal services (other than the contravening person), or
- (c) serious economic or operational problems for users of postal services.

Enforcement of directions under paragraph 8

12

- (1) A person commits an offence if the person provides any service--
- (a) while the person's entitlement to do so is suspended by a direction under paragraph 8, or
 - (b) in contravention of a restriction contained in a direction under that paragraph.
- (2) A person guilty of an offence under sub-paragraph (1) is liable--
- (a) on summary conviction, to a fine not exceeding the statutory maximum, and
 - (b) on conviction on indictment, to a fine.

Offences in connection with information requirements**13**

- (1) A person who fails to provide information in accordance with a requirement imposed under paragraph 1 or 3 commits an offence.
- (2) A person guilty of an offence under sub-paragraph (1) is liable--
- (a) on summary conviction, to a fine not exceeding the statutory maximum, and
 - (b) on conviction on indictment, to a fine.
- (3) A person does not commit an offence under sub-paragraph (1) if--
- (a) it was not reasonably practicable to comply with the requirement within the period specified by OFCOM, and
 - (b) the person has taken all reasonable steps to provide the information after the end of that period.
- (4) A person commits an offence if--
- (a) in pursuance of a requirement under paragraph 1 or 3, the person provides any information that is false in any material particular, and
 - (b) at the time the information is provided, the person knows it to be false or is reckless as to whether or not it is false.
- (5) A person guilty of an offence under sub-paragraph (4) is liable--
- (a) on summary conviction, to a fine not exceeding the statutory maximum, and
 - (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding two years or both.
- (6) Proceedings for an offence under sub-paragraph (1) may be brought in respect of a contravention by a person of a requirement imposed under paragraph 1 or 3 only if--
- (a) OFCOM have given the person a notification under paragraph 5 in respect of the contravention,
 - (b) the period allowed under that paragraph for doing the things mentioned in sub-paragraph (3) of that paragraph has ended without the required information having been provided, and
 - (c) OFCOM have not imposed a financial penalty under paragraph 7 in respect of the contravention.

Part 3

Supplementary Provisions

Statement of policy on information gathering

14

- (1) OFCOM must prepare and publish a statement of their general policy with respect to--
 - (a) the exercise of their powers under paragraph 1 or 3, and
 - (b) the uses to which they are proposing to put information obtained under those paragraphs.
- (2) OFCOM may from time to time revise the statement.
- (3) Where OFCOM make or revise a statement under this paragraph, they must publish the statement in such manner as they consider appropriate for bringing it to the attention of the persons who, in their opinion, are likely to be affected by it.
- (4) In exercising the powers conferred by this Schedule, OFCOM must have regard to the statement for the time being in force under this paragraph.

Provision of information by OFCOM

15

- (1) OFCOM must comply with a request made by a person--
 - (a) to notify the person whether or not a notification is required to be submitted by the person under regulations made under section 48,
 - (b) to notify the person whether a notification submitted for the purposes of those regulations satisfies the requirements of those regulations, or
 - (c) to provide the person with such information about the person's rights as may be necessary for the purpose of facilitating the negotiation by the person of any right to be provided with access pursuant to an access condition.
- (2) A request for the purposes of this paragraph must be made in such manner as OFCOM may require.
- (3) OFCOM do not have to comply with a request under this paragraph if (without having been asked to do so) they have already given the person the notification or information for which the person is asking.
- (4) Any notification or information which under sub-paragraph (1) must be given or provided by OFCOM must be given or provided before the end of the period of one week beginning with the day on which the request was made to them.