

Communications Act 2003

2003 CHAPTER 21

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An Act to confer functions on the Office of Communications; to make provision about the regulation of the provision of electronic communications networks and services and of the use of the electro-magnetic spectrum; to make provision about the regulation of broadcasting and of the provision of television and radio services; to make provision about mergers involving newspaper and other media enterprises and, in that connection, to amend the Enterprise Act 2002; and for connected purposes.

[17th July 2003]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Extent

Preamble: United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

PART 1

FUNCTIONS OF OFCOM

Transferred and assigned functions

✓ Law In Force

1 Functions and general powers of OFCOM

(1) The Office of Communications (“OFCOM”) shall have the following functions—

- (a) the functions transferred to OFCOM under section 2; and
 - (b) such other functions as may be conferred on OFCOM by or under any enactment (including this Act).
- (2) OFCOM shall also have any functions in relation to telephone numbers that are conferred on them by the law of the Isle of Man or of any of the Channel Islands.
- (3) OFCOM may do anything which appears to them to be incidental or conducive to the carrying out of their functions, including borrow money.
- (4) OFCOM are not to borrow money except with the consent of the Secretary of State, or in accordance with a general authorisation given by him.
- (5) OFCOM's powers under subsection (3) include, in particular—
- (a) power to undertake research and development work in connection with any matter in relation to which they have functions;
 - (b) power to promote the carrying out of such research and development by others, or otherwise to arrange for it to be carried out by others;
 - (c) power to institute and carry on criminal proceedings in England and Wales or Northern Ireland for an offence relating to a matter in relation to which they have functions; and
 - (d) power, in such cases and in such circumstances as they may think fit, to make payments (where no legal liability arises) to persons adversely affected by the carrying out by OFCOM of any of their functions.
- (6) In exercise of their powers under subsection (3), OFCOM must establish and maintain separate offices in each of the following parts of the United Kingdom—
- (a) England;
 - (b) Wales;
 - (c) Scotland; and
 - (d) Northern Ireland.
- (7) Part 2 of the Deregulation and Contracting Out Act 1994 (c. 40) (contracting out) is to have effect in relation to the functions conferred on OFCOM by or under any enactment as if—
- (a) OFCOM were an office holder within the meaning of that Part; and
 - (b) a power of OFCOM to make subordinate legislation were excluded from section 69 of that Act to the extent only that it is exercisable by statutory instrument.
- (8) In this section “telephone numbers” has the same meaning as in Chapter 1 of Part 2.

Commencement

Pt 1 s. 1(1)-(2), (4), (5)(a)-(5)(b), (5)(d)-(8): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Pt 1 s. 1(3), (5)(c): July 25, 2003 for purposes specified in SI 2003/1900 Sch.1 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2); December 29, 2003 otherwise (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(1), art. 3(2), Sch. 1 para. 1)

Pt 1 s. 1(5): July 25, 2003

Extent

Pt 1 s. 1(1)-(8): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6

with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

✓ Law In Force

2 Transfer of functions of pre-commencement regulators

(1) As from such date as the Secretary of State may appoint for the coming into force of this section, the functions that are set out in Schedule 1 (functions of the Secretary of State and of the pre-commencement regulators) shall become functions of OFCOM in accordance with that Schedule.

(2) References in any enactment to a person who is a person from whom functions are transferred by virtue of this section are to have effect, so far as necessary for the purposes of the transfers, as references to OFCOM.

(3) The functions of OFCOM are to include the carrying out of the transferred functions, at times after the time when they become functions of OFCOM, in relation to anything occurring before that time.

(4) The provisions of this section have effect subject to—

- (a) the modifications made by this Act of the enactments relating to the transferred functions; and
- (b) any express transitional or consequential provisions made by or under this Act in relation to those enactments.

Commencement

Pt 1 s. 2(1)-(4)(b): December 29, 2003 as specified in SI 2003/3142 art.3(3) subject to 2003 c.21 Sch.18 para.1; April 1, 2004 otherwise (SI 2003/3142 art. 3(1), art. 4(2), Sch. 1 para. 1, Sch. 2 para. 1; 2003 c. 21 Sch. 18 para. 1)

Extent

Pt 1 s. 2-(4)(b): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

[Strategic priorities]¹

Notes

¹ Added by Digital Economy Act 2017 c. 30 Pt 6 s.98(1) (July 31, 2017)



Law In Force

[2A Statement of strategic priorities

- (1) The Secretary of State may designate a statement for the purposes of this section if the requirements set out in section 2C (consultation and parliamentary procedure) are satisfied.
- (2) The statement is a statement prepared by the Secretary of State that sets out strategic priorities of Her Majesty's Government in the United Kingdom relating to—
- (a) telecommunications,
 - (b) the management of the radio spectrum, and
 - (c) postal services.
- (3) The statement may, among other things, set out particular outcomes identified with a view to achieving the strategic priorities.
- (4) This section does not restrict the Secretary of State's powers under any other provision of this Act or any other enactment.
- (5) A statement designated under subsection (1) must be published in such manner as the Secretary of State considers appropriate.
- (6) A statement designated under subsection (1) may be amended (including by replacing the whole or a part of the statement with new content) by a subsequent statement designated under that subsection, and this section and sections 2B and 2C apply in relation to any such subsequent statement as in relation to the original statement.
- (7) Except as provided by subsection (8), no amendment may be made under subsection (6) within the period of 5 years beginning with the day on which a statement was most recently designated under subsection (1).
- (8) An earlier amendment may be made under subsection (6) if—
- (a) since that day—
 - (i) a Parliamentary general election has taken place, or
 - (ii) there has been a significant change in the policy of Her Majesty's government affecting any matter mentioned in subsection (2)(a), (b) or (c), or
 - (b) the Secretary of State considers that the statement, or any part of it, conflicts with any of OFCOM's general duties (within the meaning of section 3).

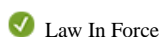
] ¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Pt 6 s.98(1) (July 31, 2017)

Extent

Pt 1 s. 2A(1)-(8)(b): (extent not available)



Law In Force

[2B Duties of OFCOM in relation to strategic priorities

- (1) This section applies where a statement has been designated under section 2A(1).

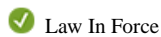
- (2) OFCOM must have regard to the statement when carrying out—
- (a) their functions relating to telecommunications,
 - (b) their functions under the enactments relating to the management of the radio spectrum, and
 - (c) their functions relating to postal services.
- (3) OFCOM must within the period of 40 days beginning with the day on which the statement is designated, or such longer period as the Secretary of State may allow—
- (a) explain in writing what they propose to do in consequence of the statement, and
 - (b) publish a copy of that explanation in such manner as OFCOM consider appropriate.
- (4) OFCOM must, as soon as practicable after the end of—
- (a) the period of 12 months beginning with the day on which the first statement is designated under section 2A(1), and
 - (b) every subsequent period of 12 months,
- publish a review of what they have done during the period in question in consequence of the statement.
-] ¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Pt 6 s.98(1) (July 31, 2017)

Extent

Pt 1 s. 2B(1)-(4)(b): (extent not available)



Law In Force

[2C Consultation and parliamentary procedure

- (1) This section sets out the requirements that must be satisfied in relation to a statement before the Secretary of State may designate it under section 2A.
- (2) The Secretary of State must consult the following on a draft of the statement—
- (a) OFCOM, and
 - (b) such other persons as the Secretary of State considers appropriate.
- (3) The Secretary of State must allow OFCOM a period of at least 40 days to respond to any consultation under subsection (2)(a).
- (4) After that period has ended the Secretary of State—
- (a) must make any changes to the draft that appear to the Secretary of State to be necessary in view of responses to the consultation, and
 - (b) must then lay the draft before Parliament.
- (5) The Secretary of State must then wait until the end of the 40-day period and may not designate the statement if, within that period, either House of Parliament resolves not to approve it.
- (6) "The 40-day period" is the period of 40 days beginning with the day on which the draft is laid before Parliament (or, if it is not laid before each House on the same day, the later of the days on which it is laid).

(7) When calculating the 40-day period, ignore any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days.

]¹

Notes

¹ Added by Digital Economy Act 2017 c. 30 Pt 6 s.98(1) (July 31, 2017)

Extent

Pt 1 s. 2C(1)-(7): (extent not available)

General duties in carrying out functions

✓ Law In Force

3 General duties of OFCOM

- (1) It shall be the principal duty of OFCOM, in carrying out their functions—
- (a) to further the interests of citizens in relation to communications matters; and
 - (b) to further the interests of consumers in relevant markets, where appropriate by promoting competition.
- (2) The things which, by virtue of subsection (1), OFCOM are required to secure in the carrying out of their functions include, in particular, each of the following—
- (a) the optimal use for wireless telegraphy of the electro-magnetic spectrum;
 - (b) the availability throughout the United Kingdom of a wide range of electronic communications services;
 - (c) the availability throughout the United Kingdom of a wide range of television and radio services which (taken as a whole) are both of high quality and calculated to appeal to a variety of tastes and interests;
 - (d) the maintenance of a sufficient plurality of providers of different television and radio services;
 - (e) the application, in the case of all television and radio services, of standards that provide adequate protection to members of the public from the inclusion of offensive and harmful material in such services;
 - (f) the application, in the case of all television and radio services, of standards that provide adequate protection to members of the public and all other persons from both—
 - (i) unfair treatment in programmes included in such services; and
 - (ii) unwarranted infringements of privacy resulting from activities carried on for the purposes of such services.
- (3) In performing their duties under subsection (1), OFCOM must have regard, in all cases, to—
- (a) the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed; and
 - (b) any other principles appearing to OFCOM to represent the best regulatory practice.

(4) OFCOM must also have regard, in performing those duties, to such of the following as appear to them to be relevant in the circumstances—

- (a) the desirability of promoting the fulfilment of the purposes of public service television broadcasting in the United Kingdom;
- (b) the desirability of promoting competition in relevant markets;
- (c) the desirability of promoting and facilitating the development and use of effective forms of self-regulation;
- (d) the desirability of encouraging investment and innovation in relevant markets;
- (e) the desirability of encouraging the availability and use of high speed data transfer services throughout the United Kingdom;
- [(ea) the desirability of ensuring the security and availability of public electronic communications networks and public electronic communications services;]¹
- [(eb) the desirability of ensuring that relevant markets facilitate end-to-end connectivity in the interests of consumers in those markets;]²
- (f) the different needs and interests, so far as the use of the electro-magnetic spectrum for wireless telegraphy is concerned, of all persons who may wish to make use of it;
- (g) the need to secure that the application in the case of television and radio services of standards falling within subsection (2)(e) and (f) is in the manner that best guarantees an appropriate level of freedom of expression;
- (h) the vulnerability of children and of others whose circumstances appear to OFCOM to put them in need of special protection;
- (i) the needs of persons with disabilities, of the elderly and of those on low incomes;
- (j) the desirability of preventing crime and disorder;
- (k) the opinions of consumers in relevant markets and of members of the public generally;
- (l) the different interests of persons in the different parts of the United Kingdom, of the different ethnic communities within the United Kingdom and of persons living in rural and in urban areas;
- (m) the extent to which, in the circumstances of the case, the furthering or securing of the matters mentioned in subsections (1) and (2) is reasonably practicable.

(5) In performing their duty under this section of furthering the interests of consumers, OFCOM must have regard, in particular, to the interests of those consumers in respect of choice, price, quality of service and value for money.

(6) Where it appears to OFCOM, in relation to the carrying out of any of the functions mentioned in section 4(1), that any of their general duties conflict with one or more of their duties under sections 4, 24 and 25, priority must be given to their duties under those sections.

[(6A) Where it appears to OFCOM, in relation to the carrying out of any of their functions in relation to postal services, that any of their general duties conflict with their duty under section 29 of the Postal Services Act 2011 (duty to secure provision of universal postal service), priority must be given to their duty under that section.]³

(7) Where it appears to OFCOM that any of their general duties conflict with each other in a particular case, they must secure that the conflict is resolved in the manner they think best in the circumstances.

(8) Where OFCOM resolve a conflict in an important case between their duties under paragraphs

(a) and (b) of subsection (1), they must publish a statement setting out—

- (a) the nature of the conflict;

- (b) the manner in which they have decided to resolve it; and
 - (c) the reasons for their decision to resolve it in that manner.
- (9) Where OFCOM are required to publish a statement under subsection (8), they must—
- (a) publish it as soon as possible after making their decision but not while they would (apart from a statutory requirement to publish) be subject to an obligation not to publish a matter that needs to be included in the statement; and
 - (b) so publish it in such manner as they consider appropriate for bringing it to the attention of the persons who, in OFCOM's opinion, are likely to be affected by the matters to which the decision relates.
- (10) Every report under paragraph 12 of the Schedule to the Office of Communications Act 2002 (c. 11) (OFCOM's annual report) for a financial year must contain a summary of the manner in which, in that year, OFCOM resolved conflicts arising in important cases between their general duties.
- (11) A case is an important case for the purposes of subsection (8) or (10) only if—
- (a) it involved one or more of the matters mentioned in subsection (12); or
 - (b) it otherwise appears to OFCOM to have been of unusual importance.
- (12) Those matters are—
- (a) a major change in the activities carried on by OFCOM;
 - (b) matters likely to have a significant impact on persons carrying on businesses in any of the relevant markets; or
 - (c) matters likely to have a significant impact on the general public in the United Kingdom or in a part of the United Kingdom.
- (13) This section is subject to sections 370(11) and 371(11) of this Act and to section 119A(4) of the Enterprise Act 2002 (c. 40) (which applies to functions conferred on OFCOM by Chapter 2 of Part 5 of this Act).
- (14) In this section—
- “citizens” means all members of the public in the United Kingdom;
 - “communications matters” means the matters in relation to which OFCOM have functions;
 - [“end-to-end connectivity” has the meaning given by section 74(3);]⁴
 - “general duties”, in relation to OFCOM, means—
 - (a) their duties under subsections (1) to (5); and
 - (b) the duty which, under section 107(5), is to rank equally for the purposes of subsections (6) and (7) with their duties under this section;
 - “relevant markets” means markets for any of the services, facilities, apparatus or directories in relation to which OFCOM have functions.

Notes

- ¹ Added by Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019/246 Sch.1(1) para.2 (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))
- ² Added by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.2(2) (December 21, 2020)
- ³ Added by Postal Services Act 2011 c. 5 Sch.12(2) para.57 (October 1, 2011)
- ⁴ Definition inserted by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.2(3) (December 21, 2020)

Commencement

Pt 1 s. 3(1)-(13): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Extent

Pt 1 s. 3-(6), (7)-(13): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

Pt 1 s. 3(6A): United Kingdom

✓ Law In Force

4 Duties [in relation to certain regulatory functions] ¹

(1) This section applies to the following functions of OFCOM—

- (a) their functions under Chapter 1 of Part 2;
- (b) their functions under the enactments relating to the management of the radio spectrum;
- (c) their functions under Chapter 3 of Part 2 in relation to disputes referred to them under section 185;
- (d) their functions under sections 24 and 25 so far as they relate to information required for purposes connected with matters in relation to which functions specified in this subsection are conferred on OFCOM; and
- (e) their functions under section 26 so far as they are carried out for the purpose of making information available to persons mentioned in subsection (2)(a) to (c) of that section.

(2) It shall be the duty of OFCOM, in carrying out any of those functions, to act in accordance with the [six requirements set out in the following provisions of this section] ².

(3) The first [...] ³ requirement is a requirement to promote competition—

- (a) in relation to the provision of electronic communications networks and electronic communications services;
- (b) in relation to the provision and making available of services and facilities that are provided or made available in association with the provision of electronic communications networks or electronic communications services; and
- (c) in relation to the supply of directories capable of being used in connection with the use of electronic communications networks or electronic communications services.

(4) [...] ⁴

(5) The [second] ⁵ requirement is a requirement to promote the interests of all [members of the public in the United Kingdom] ⁶.

(6) The [third] ⁷ requirement is a requirement to take account of the desirability of OFCOM's carrying out their functions in a manner which, so far as practicable, does not favour—

- (a) one form of electronic communications network, electronic communications service or associated facility; or
- (b) one means of providing or making available such a network, service or facility,

over another.

[(6A) The [third] ⁷ requirement does not apply to—

- (a) the imposition, in relation to a wireless telegraphy licence, of a limitation of a kind falling within section 9ZA(1) of the Wireless Telegraphy Act 2006; or
- (b) the review, variation or removal of such a limitation.

] ⁸

(7) The [fourth] ⁹ requirement is a requirement to encourage, to such extent as OFCOM consider appropriate for the purpose mentioned in subsection (8), the provision of network access and service interoperability.

(8) That purpose is the purpose of securing—

- (a) efficiency and sustainable competition [...] ¹⁰ ; [...] ¹¹
[(aa) efficient investment and innovation; and] ¹¹
- (b) the maximum benefit for the persons who are customers of communications providers and of persons who make [associated facilities] ¹² available.

(9) The [fifth] ¹³ requirement is a requirement to encourage such compliance with the standards mentioned in subsection (10) as is necessary for—

- (a) facilitating service interoperability; [...] ¹⁴
[(aa) facilitating end-to-end connectivity;
(ab) facilitating the changing by end-users of their communications provider;
(ac) facilitating the retention by end-users of their telephone numbers after a change of communications provider; and] ¹⁴
- (b) securing freedom of choice for the customers of communications providers.

(10) Those standards are—

- (a) standards or specifications from time to time drawn up and published [by the European Commission] ¹⁵ in accordance with Article 17 of the Framework Directive [or Article 39 of the EECC Directive] ¹⁶ [(whether before or after IP completion day)] ¹⁷ ;
- (b) the standards and specifications from time to time adopted by—
 - (i) the European Committee for Standardisation;
 - (ii) the European Committee for Electrotechnical Standardisation; [and] ¹⁸
 - (iii) the European Telecommunications Standards Institute; and
- (c) the international standards and recommendations from time to time adopted by—
 - (i) the International Telecommunication Union;
 - (ii) the International Organisation for Standardisation; [...] ¹⁹
[(iia) the European Conference of Postal and Telecommunications Administrations; and] ¹⁹
 - (iii) the International Electrotechnical Committee.

[(10A) The [sixth] ²¹ requirement is a requirement to promote connectivity and access to very high capacity networks by members of the public and businesses in the United Kingdom.] ²⁰

(11) Where it appears to OFCOM that any of the [six requirements in this section] ²² conflict with each other, they must secure that the conflict is resolved in the manner they think best in the circumstances.

(12) In this section—

["end-to-end connectivity" has the meaning given by section 74(3);] ²³

[...] ²⁴

“network access” and “service interoperability” each has the same meaning as in Chapter 1 of Part 2 [;] ²⁵

["telephone number" has the meaning given by section 56(5).]²⁵

[(12A) In this Act "very high capacity network" means an electronic communications network which—

- (a) consists wholly of optical fibre elements at least up to the distribution point at the serving location; or
- (b) is capable of delivering, under usual peak-time conditions, network performance that, in OFCOM's opinion, is similar, in terms of available downlink and uplink bandwidth, resilience, error-related parameters and latency and its variation, to the network performance of a network falling within paragraph (a).

(12B) For the purposes of subsection (12A)(b), network performance can be considered similar regardless of whether the end-user experience varies due to the inherently different characteristics of the medium by which the network ultimately connects with the network termination point.]²⁶

[(13) In this section and sections 4A and 5, "the Framework Directive" means Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services, as amended by Directive 2009/140/EC of the European Parliament and of the Council.]²⁷

Notes

- ¹ Words substituted by Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019/246 Sch.1(1) para.3(11) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))
- ² Substituted by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(2) para.67(2) (December 31, 2020: shall come into force on IP completion day)
- ³ Word repealed by Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019/246 Sch.1(1) para.3(3) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))
- ⁴ Repealed by Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019/246 Sch.1(1) para.3(4) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))
- ⁵ Words substituted by Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019/246 Sch.1(1) para.3(5)(a) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))
- ⁶ Words substituted by Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019/246 Sch.1(1) para.3(5)(b) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))
- ⁷ Words substituted by Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019/246 Sch.1(1) para.3(6) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))
- ⁸ Added by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.5(a) (May 26, 2011)
- ⁹ Words substituted by Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019/246 Sch.1(1) para.3(7) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))
- ¹⁰ Words repealed by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.5(b)(i) (May 26, 2011)
- ¹¹ Added by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.5(b)(ii) (May 26, 2011)

- ¹² Words substituted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.5(b)(iii) (May 26, 2011)
- ¹³ Words substituted by Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019/246 Sch.1(1) para.3(8) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))
- ¹⁴ S.4(9)(aa)-(ac) substituted for word by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.3(3) (December 21, 2020)
- ¹⁵ Words inserted by Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019/246 Sch.1(1) para.3(9) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))
- ¹⁶ Words inserted by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.3(4) (December 21, 2020)
- ¹⁷ Words inserted by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(2) para.67(3) (December 31, 2020: shall come into force on IP completion day)
- ¹⁸ Word substituted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.5(c)(i) (May 26, 2011)
- ¹⁹ Added by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.5(c)(ii) (May 26, 2011)
- ²⁰ Added by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.3(5) (December 21, 2020)
- ²¹ Words substituted by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(2) para.67(4) (December 31, 2020: shall come into force on IP completion day)
- ²² Words substituted by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(2) para.67(5) (December 31, 2020: shall come into force on IP completion day)
- ²³ Definition inserted by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.3(6)(a) (December 21, 2020)
- ²⁴ Definition repealed by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.5(d) (May 26, 2011)
- ²⁵ Definition inserted by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.3(6)(b) (December 21, 2020)
- ²⁶ Added by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.3(7) (December 21, 2020)
- ²⁷ Substituted by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.3(8) (December 21, 2020)

Commencement

Pt 1 s. 4(1)-(12) definition of "the Framework Directive": July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 1 s. 4-(6)(b), (7)-(8)(a), (8)(b)-(10)(c)(ii), (10)(c)(iii)-(12B): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

Pt 1 s. 4(6A)-(6A)(b), (8)(aa), (10)(c)(ia), (13): United Kingdom

✓ Law In Force

[4A.— [...] ² European Commission recommendations for harmonisation

(1) This section applies to the following functions of OFCOM—

- (a) their functions under Chapter 1 of Part 2;
- (b) their functions under the enactments relating to the management of the radio spectrum;
- (c) their functions under Chapter 3 of Part 2 in relation to disputes referred to them under section 185;
- (d) their functions under sections 24 and 25 so far as they relate to information required for purposes connected with matters in relation to which functions specified in this subsection are conferred on OFCOM; and
- (e) their functions under section 26 so far as they are carried out for the purpose of making information available to persons mentioned in subsection (2)(a) to (c) of that section.

[(2) In carrying out those functions, OFCOM may take account of recommendations issued by the European Commission under Article 19(1) of the Framework Directive or Article 38(1) of the EECC Directive (including recommendations issued before the coming into force of this section or after IP completion day) if the recommendations appear to OFCOM to be relevant to those functions.] ³

(3) [...] ⁴
] ¹

Notes

- ¹ Added by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.6 (May 26, 2011)
- ² Words repealed by Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019/246 Sch.1(1) para.4(4) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))
- ³ Substituted by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(2) para.68 (December 31, 2020: shall come into force on IP completion day)
- ⁴ Repealed by Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019/246 Sch.1(1) para.4(3) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))

Extent

Pt 1 s. 4A(1)-(3): United Kingdom

ⓘ Partially In Force

5 Directions in respect of networks and spectrum functions

(1) This section applies to the following functions of OFCOM—

- (a) their functions under Part 2; and

(b) their functions under the enactments relating to the management of the radio spectrum that are not contained in that Part.

(2) It shall be the duty of OFCOM to carry out those functions in accordance with such general or specific directions as may be given to them by the Secretary of State.

(3) The Secretary of State's power to give directions under this section shall be confined to a power to give directions for one or more of the following purposes—

- (a) in the interests of national security;
- (b) in the interests of relations with the government of a country or territory outside the United Kingdom;
- (c) for the purpose of securing compliance with international obligations of the United Kingdom;
- (d) in the interests of the safety of the public or of public health.

[(3A) The Secretary of State may not give a direction under this section in respect of a function that Article 3(3a) of the Framework Directive [would have required]² OFCOM to exercise without seeking or taking instructions from any other body.]¹

(4) The Secretary of State is not entitled by virtue of any provision of this section to direct OFCOM to suspend or restrict—

- (a) a person's entitlement to provide an electronic communications network or electronic communications service; or
- (b) a person's entitlement to make available associated facilities.

[(4A) Before giving a direction under this section, the Secretary of State must take due account of the desirability of not favouring—

- (a) one form of electronic communications network, electronic communications service or associated facility, or
- (b) one means of providing or making available such a network, service or facility,

over another.

] ³

(5) The Secretary of State must publish a direction under this section in such manner as appears to him to be appropriate for bringing it to the attention of the persons who, in his opinion, are likely to be affected by it.

(6) The Secretary of State is not required by subsection (5) to publish a direction, and he may exclude matter from a direction he does publish, if he considers the publication of the direction or matter to be—

- (a) against the interests of national security; or
- (b) against the interests of relations with the government of a country or territory outside the United Kingdom.

(7) Subsection (4) does not affect the Secretary of State's powers under section 132.

Notes

¹ Added by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.7(a) (May 26, 2011)

² Word substituted by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.5 (December 21, 2020)

- ³ Added by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.7(b) (May 26, 2011)

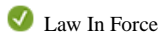
Commencement

Pt 1 s. 5(1)-(7): July 25, 2003 for purposes specified in SI 2003/1900 Sch.1 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 for purposes specified in SI 2003/1900 Sch.1 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2); not yet in force otherwise (SI 2003/1900 art. 2(1), art. 2(2), art. 3(1), Sch. 1 para. 1, Sch. 2 para. 1)

Extent

Pt 1 s. 5-(3)(d), (4)-(4)(b), (5)-(7): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

Pt 1 s. 5(3A), (4A)-(4A)(b): United Kingdom



Law In Force

6 Duties to review regulatory burdens

(1) OFCOM must keep the carrying out of their functions under review with a view to securing that regulation by OFCOM does not involve—

- (a) the imposition of burdens which are unnecessary; or
- (b) the maintenance of burdens which have become unnecessary.

(2) In reviewing their functions under this section it shall be the duty of OFCOM—

- (a) to have regard to the extent to which the matters which they are required under section 3 to further or to secure are already furthered or secured, or are likely to be furthered or secured, by effective self-regulation; and
- (b) in the light of that, to consider to what extent it would be appropriate to remove or reduce regulatory burdens imposed by OFCOM.

(3) In determining for the purposes of this section whether procedures for self-regulation are effective OFCOM must consider, in particular—

- (a) whether those procedures are administered by a person who is sufficiently independent of the persons who may be subjected to the procedures; and
- (b) whether adequate arrangements are in force for funding the activities of that person in relation to those procedures.

(4) OFCOM must, from time to time, publish a statement setting out how they propose, during the period for which the statement is made, to secure that regulation by OFCOM does not involve the imposition or maintenance of unnecessary burdens.

(5) The first statement to be published under this section—

- (a) must be published as soon as practicable after the commencement of this section; and
- (b) shall be a statement for the period of twelve months beginning with the day of its publication.

(6) A subsequent statement—

- (a) must be published during the period to which the previous statement related; and

(b) must be a statement for the period of twelve months beginning with the end of the previous period.

(7) It shall be the duty of OFCOM, in carrying out their functions at times during a period for which a statement is in force under this section, to have regard to that statement.

(8) OFCOM may, if they think fit, revise a statement under this section at any time before or during the period for which it is made.

(9) Where OFCOM revise a statement, they must publish the revision as soon as practicable.

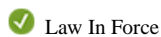
(10) The publication under this section of a statement, or of a revision of a statement, must be in such manner as OFCOM consider appropriate for bringing it to the attention of the persons who, in their opinion, are likely to be affected by the matters to which it relates.

Commencement

Pt 1 s. 6(1)-(10): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Extent

Pt 1 s. 6-(10): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)



Law In Force

7 Duty to carry out impact assessments

(1) This section applies where—

(a) OFCOM are proposing to do anything for the purposes of, or in connection with, the carrying out of their functions; and

(b) it appears to them that the proposal is important;

but this section does not apply if it appears to OFCOM that the urgency of the matter makes it impracticable or inappropriate for them to comply with the requirements of this section.

(2) A proposal is important for the purposes of this section only if its implementation would be likely to do one or more of the following—

(a) to involve a major change in the activities carried on by OFCOM;

(b) to have a significant impact on persons carrying on businesses in the markets for any of the services, facilities, apparatus or directories in relation to which OFCOM have functions; or

(c) to have a significant impact on the general public in the United Kingdom or in a part of the United Kingdom.

(3) Before implementing their proposal, OFCOM must either—

(a) carry out and publish an assessment of the likely impact of implementing the proposal; or

(b) publish a statement setting out their reasons for thinking that it is unnecessary for them to carry out an assessment.

(4) An assessment under subsection (3)(a) must set out how, in OFCOM's opinion, the performance of their general duties (within the meaning of section 3) is secured or furthered by or in relation to what they propose.

(5) An assessment carried out under this section—

- (a) may take such form, and
- (b) must relate to such matters,

as OFCOM consider appropriate.

(6) In determining the matters to which an assessment under this section should relate, OFCOM must have regard to such general guidance relating to the carrying out of impact assessments as they consider appropriate.

(7) Where OFCOM publish an assessment under this section—

- (a) they must provide an opportunity of making representations to them about their proposal to members of the public and other persons who, in OFCOM's opinion, are likely to be affected to a significant extent by its implementation;
- (b) the published assessment must be accompanied by a statement setting out how representations may be made; and
- (c) OFCOM are not to implement their proposal unless the period for making representations about it has expired and they have considered all the representations that were made in that period.

(8) Where OFCOM are required (apart from this section)—

- (a) to consult about a proposal to which this section applies, or
- (b) to give a person an opportunity of making representations about it,

the requirements of this section are in addition to, but may be performed contemporaneously with, the other requirements.

(9) Every report under paragraph 12 of the Schedule to the Office of Communications Act 2002

(c. 11) (OFCOM's annual report) must set out—

- (a) a list of the assessments under this section carried out during the financial year to which the report relates; and
- (b) a summary of the decisions taken during that year in relation to proposals to which assessments carried out in that year or previous financial years relate.

(10) The publication of anything under this section must be in such manner as OFCOM consider appropriate for bringing it to the attention of the persons who, in OFCOM's opinion, are likely to be affected if their proposal is implemented.

Commencement

Pt 1 s. 7(1)-(10): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Extent

Pt 1 s. 7-(10): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)



Law In Force

8 Duty to publish and meet promptness standards

(1) It shall be the duty of OFCOM to publish a statement setting out the standards they are proposing to meet with respect to promptness in—

- (a) the carrying out of their different functions; and
- (b) the transaction of business for purposes connected with the carrying out of those functions.

(2) This section does not require standards to be set out with respect to anything which (apart from this section) is required to be done by a time, or within a period, provided for by or under an enactment.

(3) OFCOM may, if they think fit, at any time revise the statement for the time being in force under this section.

(4) It shall be the duty of OFCOM—

- (a) in carrying out their functions, and
- (b) in transacting business for purposes connected with the carrying out of their functions, to have regard to the statement for the time being in force under this section.

(5) Where OFCOM revise a statement under this section, they must publish the revision as soon as practicable.

(6) The publication under this section of a statement, or of a revision of a statement, must be in such manner as OFCOM consider appropriate for bringing it to the attention of the persons who, in their opinion, are likely to be affected by the matters to which it relates.

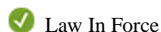
(7) OFCOM's report under paragraph 12 of the Schedule to the Office of Communications Act 2002 (c. 11) (annual report) for each financial year must contain a statement by OFCOM summarising the extent to which they have complied during that year with the standards set out under this section.

Commencement

Pt 1 s. 8(1)-(7): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Extent

Pt 1 s. 8-(7): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)



Law In Force

9 Secretary of State's powers in relation to promptness standards

(1) Where the Secretary of State considers that the statement published by OFCOM under section 8 is not adequate for securing that they meet satisfactory promptness standards, he may give them a notification to that effect.

- (2) If the period of three months after the date of the giving of a notification under subsection (1) expires without OFCOM taking steps which the Secretary of State is satisfied remedy the situation, he may give them a direction under this section.
- (3) A direction under this section is one requiring OFCOM to issue a new or revised statement under section 8 in accordance with the direction.
- (4) Before giving a direction under this section, the Secretary of State must—
- (a) give OFCOM an opportunity of making representations to him about his proposed direction; and
 - (b) have regard to any representations made to him by them.
- (5) Where the Secretary of State gives a direction to OFCOM under this section, he must publish a copy of it in such manner as he considers appropriate for bringing it to the attention of persons who, in his opinion, are likely to be affected by OFCOM's promptness standards.
- (6) It shall be the duty of OFCOM to revise their statement under section 8 in accordance with any direction of the Secretary of State under this section.
- (7) In this section “promptness standards” means standards of promptness in—
- (a) the carrying out by OFCOM of their different functions; and
 - (b) the transaction by them of business for purposes connected with the carrying out of those functions.
- (8) No notification is to be given under subsection (1) at any time in the period of twelve months beginning with the commencement of section 8.

Commencement

Pt 1 s. 9(1)-(8): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Extent

Pt 1 s. 9-(8): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

Accessible domestic communications apparatus

 Law In Force

10 Duty to encourage availability of easily usable apparatus

- (1) It shall be the duty of OFCOM to take such steps, and to enter into such arrangements, as appear to them calculated to encourage others to secure—
- (a) that domestic electronic communications apparatus is developed which is capable of being used with ease, and without modification, by the widest possible range of individuals (including those with disabilities); and

(b) that domestic electronic communications apparatus which is capable of being so used is as widely available as possible for acquisition by those wishing to use it.

(2) It shall be the duty of OFCOM from time to time to review whether they need to take further steps, or to enter into further arrangements, for the purpose of performing their duty under this section.

(3) OFCOM must not do anything under this section that would be inconsistent with the [...] ¹ requirements set out in section 4.

(4) In this section “electronic communications apparatus” means apparatus that is designed or adapted for a use which consists of or includes the sending or receiving of communications or other signals that are transmitted by means of an electronic communications network.

(5) For the purposes of this section electronic communications apparatus is domestic electronic communications apparatus except to the extent that it is designed or adapted for use solely for the purposes of, or in connection with, a business.

(6) In this section “signal” includes—

- (a) anything comprising speech, music, sounds, visual images or communications or data of any description; and
- (b) signals serving for the impartation of anything between persons, between a person and a thing or between things, or for the actuation or control of apparatus.

Notes

- ¹ Word repealed by Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019/246 Sch.1(1) para.6 (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))

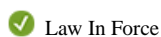
Commencement

Pt 1 s. 10(1)-(6)(b): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Extent

Pt 1 s. 10-(6)(b): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

Media literacy



Law In Force

11 Duty to promote media literacy

(1) It shall be the duty of OFCOM to take such steps, and to enter into such arrangements, as appear to them calculated—

- (a) to bring about, or to encourage others to bring about, a better public understanding of the nature and characteristics of material published by means of the electronic media;

- (b) to bring about, or to encourage others to bring about, a better public awareness and understanding of the processes by which such material is selected, or made available, for publication by such means;
- (c) to bring about, or to encourage others to bring about, the development of a better public awareness of the available systems by which access to material published by means of the electronic media is or can be regulated;
- (d) to bring about, or to encourage others to bring about, the development of a better public awareness of the available systems by which persons to whom such material is made available may control what is received and of the uses to which such systems may be put; and
- (e) to encourage the development and use of technologies and systems for regulating access to such material, and for facilitating control over what material is received, that are both effective and easy to use.

(2) In this section, references to the publication of anything by means of the electronic media are references to its being—

- (a) broadcast so as to be available for reception by members of the public or of a section of the public; or
- (b) distributed by means of an electronic communications network to members of the public or of a section of the public.

Commencement

Pt 1 s. 11(1)-(2)(b): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Extent

Pt 1 s. 11-(2)(b): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

OFCOM's Content Board

✓ Law In Force

12 Duty to establish and maintain Content Board

(1) It shall be the duty of OFCOM, in accordance with the following provisions of this section, to exercise their powers under paragraph 14 of the Schedule to the Office of Communications Act 2002 (c. 11) (committees of OFCOM) to establish and maintain a committee to be known as “the Content Board”.

(2) The Content Board shall consist of—

- (a) a chairman appointed by OFCOM; and
- (b) such number of other members appointed by OFCOM as OFCOM think fit.

(3) The chairman of the Content Board must be a non-executive member of OFCOM but is not to be the chairman of OFCOM.

(4) At least one of the other members of the Content Board must also be a non-executive member of OFCOM other than the chairman of OFCOM.

(5) In appointing persons to be members of the Content Board, OFCOM must secure that, for each of the following parts of the United Kingdom—

- (a) England,
- (b) Scotland,
- (c) Wales, and
- (d) Northern Ireland,

there is a different member of the Board capable of representing the interests and opinions of persons living in that part of the United Kingdom.

(6) In appointing a person for the purposes of subsection (5)(a), OFCOM must have regard to the desirability of ensuring that the person appointed is able to represent the interests and opinions of persons living in all the different regions of England.

(7) The validity of any proceedings of the Content Board shall not be affected by any failure by OFCOM to comply with subsection (5) or (6).

(8) It shall be the duty of OFCOM when appointing members of the Content Board to secure, so far as practicable, that a majority of the members of the Board (counting the chairman) consists of persons who are neither members nor employees of OFCOM.

(9) The following shall be disqualified from being the chairman or another member of the Content Board—

- (a) governors and employees of the BBC;
- (b) members and employees of the Welsh Authority; and
- (c) members and employees of C4C.

(10) Before appointing a person to be the chairman or another member of the Content Board, OFCOM must satisfy themselves that he will not have any financial or other interest which would be likely prejudicially to affect the carrying out by him of any of his functions as chairman or member of the Content Board.

(11) A person is not to be taken to have such an interest by reason only that he is or will be a member or employee of OFCOM.

(12) Every person whom OFCOM propose to appoint to be the chairman or another member of the Content Board, shall, whenever requested to do so by OFCOM, furnish OFCOM with any information they consider necessary for the performance of their duty under subsection (10).

(13) In addition to paying remuneration and expenses under paragraph 14(4) of the Schedule to the Office of Communications Act 2002 (c. 11), OFCOM may—

- (a) pay to, or in respect of, any member of the Content Board who is not a member or employee of OFCOM, such sums by way of pensions, allowances or gratuities as OFCOM may determine; and
- (b) provide for the making of such payments to or in respect of any such member of the Content Board.

(14) In subsection (13)—

- (a) the reference to pensions, allowances and gratuities includes a reference to similar benefits payable on death or retirement; and

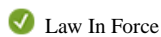
(b) the reference to providing for the payment of a pension, allowance or gratuity to, or in respect of, a person includes a reference to the making of payments towards the provision or payment of a pension, allowance or gratuity, or of any such similar benefits, to or in respect of that person.

Commencement

Pt 1 s. 12(1)-(14)(b): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Extent

Pt 1 s. 12-(14)(b): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)



Law In Force

13 Functions of the Content Board

(1) The Content Board shall have such functions as OFCOM, in exercise of their powers under the Schedule to the Office of Communications Act 2002 (c. 11), may confer on the Board.

(2) The functions conferred on the Board must include, to such extent and subject to such restrictions and approvals as OFCOM may determine, the carrying out on OFCOM's behalf of—

- (a) functions in relation to matters that concern the contents of anything which is or may be broadcast or otherwise transmitted by means of electronic communications networks; and
- (b) functions in relation to the promotion of public understanding or awareness of matters relating to the publication of matter by means of the electronic media.

(3) In determining what functions to confer on the Content Board, OFCOM must have particular regard to the desirability of securing that the Board have at least a significant influence on decisions which—

- (a) relate to the matters mentioned in subsection (2); and
- (b) involve the consideration of different interests and other factors as respects different parts of the United Kingdom.

(4) It shall be the duty of the Content Board to ensure, in relation to—

- (a) the carrying out of OFCOM's functions under Part 3 of this Act, Parts 1 and 3 of the 1990 Act and Parts 1 and 2 of the 1996 Act,
- (b) the matters with respect to which functions are conferred on the Board, and
- (c) such other matters mentioned in subsection (2) as OFCOM may determine,

that OFCOM are aware of the different interests and other factors which, in the Board's opinion, need to be taken into account as respects the different parts of the United Kingdom in relation to the carrying out of OFCOM's functions.

(5) The power of OFCOM to determine the Content Board's functions includes power to authorise the Board to establish committees and panels to advise the Board on the carrying out of some or all of the Board's functions.

(6) The power of OFCOM to authorise the establishment of a committee or panel by the Content Board includes power to authorise the establishment of a committee or panel that includes persons who are not members of the Board.

(7) In this section references to the publication of anything by means of the electronic media are references to its being—

- (a) broadcast so as to be available for reception by members of the public or of a section of the public; or
- (b) distributed by means of an electronic communications network to members of the public or of a section of the public.

Commencement

Pt 1 s. 13(1)-(7)(b): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Extent

Pt 1 s. 13-(7)(b): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

Functions for the protection of consumers

✓ Law In Force

14 Consumer research

(1) OFCOM must make arrangements for ascertaining—

- (a) the state of public opinion from time to time about the manner in which electronic communications networks and electronic communications services are provided;
- (b) the state of public opinion from time to time about the manner in which associated facilities are made available;
- (c) the experiences of consumers in the markets for electronic communications services and associated facilities, in relation to the manner in which electronic communications networks and electronic communications services are provided and associated facilities made available;
- (d) the experiences of such consumers in relation to the handling, by communications providers and by persons making such facilities available, of complaints made to them by such consumers;
- (e) the experiences of such consumers in relation to the resolution of disputes with communications providers or with persons making associated facilities available; and
- (f) the interests and experiences of such consumers in relation to other matters that are incidental to, or are otherwise connected with, their experiences of the provision of electronic communications networks and electronic communications services or of the availability of associated facilities.

(2) The matters to which the arrangements must relate do not include the incidence or investigation of interference (within the meaning of [the Wireless Telegraphy Act 2006]¹) with wireless telegraphy.

(3) The matters to which the arrangements must relate do not (except so far as authorised or required by subsections (4) to (6)) include public opinion with respect to—

- (a) the contents of anything broadcast or otherwise published by means of an electronic communications network; or
- (b) the experiences or interests of consumers in any market for electronic communications services with respect to anything so broadcast or published.

(4) OFCOM must make arrangements for ascertaining—

- (a) the state of public opinion from time to time concerning programmes included in television and radio services;
- (b) any effects of such programmes, or of other material published by means of the electronic media, on the attitudes or behaviour of persons who watch, listen to or receive the programmes or material; and
- (c) so far as necessary for the purpose mentioned in subsection (5), the types of programmes that members of the public would like to see included in television and radio services.

(5) That purpose is the carrying out by OFCOM of their functions under Chapter 4 of Part 3 of this Act.

(6) OFCOM must make arrangements for the carrying out of research into the following—

- (a) the matters mentioned in section 11(1);
- (b) matters relating to, or connected with, the setting of standards under section 319 of this Act;
- (c) matters relating to, or connected with, the observance of those standards by persons providing television and radio services;
- (d) matters relating to, or connected with, the prevention of unjust or unfair treatment in programmes included in such services; and
- (e) matters relating to, or connected with, the prevention of unwarranted infringements of privacy resulting from activities carried on for the purposes of such services.

[(6A) OFCOM must make arrangements for ascertaining—

- (a) the state of public opinion from time to time about the way in which postal services are provided;
- (b) the experiences of consumers in the markets for postal services, in relation to the way in which those services are provided;
- (c) the experiences of such consumers in relation to the handling, by persons providing postal services, of complaints made to them by such consumers;
- (d) the experiences of such consumers in relation to the resolution of disputes with persons providing postal services;
- (e) the interests and experiences of such consumers in relation to matters that are incidental to or otherwise connected with their experiences of the provision of postal services.

]²

(7) Arrangements made by OFCOM for the purposes of this section may include arrangements for the carrying out of research in one or more of the following ways—

- (a) by members or employees of OFCOM;
- (b) by the Content Board;

- (c) in accordance with arrangements made by that Board;
- (d) by persons who are neither members nor employees of OFCOM.

(8) In this section references to the publication of anything by means of the electronic media are references to its being—

- (a) broadcast so as to be available for reception by members of the public or of a section of the public; or
- (b) distributed by means of an electronic communications network to members of the public or of a section of the public.

(9) This section does not restrict OFCOM's power to make any arrangements they consider to be incidental or conducive to the carrying out of any of their functions.

Notes

- ¹ Words substituted by Wireless Telegraphy Act 2006 c. 36 Sch.7 para.26 (February 8, 2007)
- ² Added by Postal Services Act 2011 c. 5 Sch.12(2) para.58 (October 1, 2011)

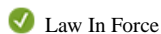
Commencement

Pt 1 s. 14(1)-(9): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Extent

Pt 1 s. 14-(6)(e), (7)-(9): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

Pt 1 s. 14(6A)-(6A)(e): United Kingdom



Law In Force

15 Duty to publish and take account of research

(1) It shall be the duty of OFCOM—

- (a) to publish the results of any research carried out by them or on their behalf under section 14; and
- (b) to consider and, to such extent as they think fit, to take account of the results of such research in the carrying out of their functions.

(2) OFCOM are not required under this section—

- (a) to publish any matter that is confidential in accordance with subsection (3) or (4); or
- (b) to publish anything that it would not be reasonably practicable to publish without disclosing such a matter.

(3) A matter is confidential under this subsection if—

- (a) it relates specifically to the affairs of a particular body; and
- (b) publication of that matter would or might, in OFCOM's opinion, seriously and prejudicially affect the interests of that body.

(4) A matter is confidential under this subsection if—

- (a) it relates to the private affairs of an individual; and

(b) publication of that matter would or might, in OFCOM's opinion, seriously and prejudicially affect the interests of that individual.

(5) The publication of research under this section must be in such manner as OFCOM consider appropriate.

Commencement

Pt 1 s. 15(1)-(5): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Extent

Pt 1 s. 15-(5): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

✓ Law In Force

16 Consumer consultation

(1) It shall be the duty of OFCOM to establish and maintain effective arrangements for consultation about the carrying out of their functions with—

- (a) consumers in the markets for the services and facilities in relation to which OFCOM have functions;
- (b) consumers in the markets for apparatus used in connection with any such services or facilities [(other than postal services)]¹ ;
- (c) consumers in the markets for directories capable of being used in connection with the use of an electronic communications network or electronic communications service.

(2) The arrangements must include the establishment and maintenance of a panel of persons (in this Act referred to as “the Consumer Panel”) with the function of advising both—

- (a) OFCOM; and
- (b) such other persons as the Panel think fit.

(3) The arrangements must secure that the matters about which the Consumer Panel are able to give advice include the interests of domestic and small business consumers in relation to the following matters—

- (a) the provision of electronic communications networks;
- (b) the provision and making available of the services and facilities mentioned in subsection (4);
- (c) the supply of apparatus designed or adapted for use in connection with [a service or facility mentioned in subsection (4)(a) to (e)]² ;
- (d) the supply of directories capable of being used in connection with the use of an electronic communications network or electronic communications service;
- (e) the financial and other terms on which [services or facilities mentioned in subsection (4)]³ are provided or made available, or on which such apparatus or such a directory is supplied;
- (f) standards of service, quality and safety for such services, facilities, apparatus and directories;

- (g) the handling of complaints made by persons who are consumers in the markets for such services, facilities, apparatus or directories to the persons who provide the services or make the facilities available, or who are suppliers of the apparatus or directories;
 - (h) the resolution of disputes between such consumers and the persons who provide such services or make such facilities available, or who are suppliers of such apparatus or directories;
 - (i) the provision of remedies and redress in respect of matters that form the subject-matter of such complaints or disputes;
 - (j) the information about service standards and the rights of consumers that is made available by persons who provide or make available such services or facilities, or who are suppliers of such apparatus or directories;
 - (k) any other matter appearing to the Panel to be necessary for securing effective protection for persons who are consumers in the markets for any such services, facilities, apparatus or directories.
- (4) Those services and facilities are—
- (a) electronic communications services;
 - (b) associated facilities;
 - (c) directory enquiry facilities;
 - (d) a service consisting in the supply of information for use in responding to directory enquiries or of an electronic programme guide; [...]⁴
 - (e) every service or facility not falling within any of the preceding paragraphs which is provided or made available to members of the public—
 - (i) by means of an electronic communications network; and
 - (ii) in pursuance of agreements entered into between the person by whom the service or facility is provided or made available and each of those members of the public [; and]⁵
 - [(f) postal services.]⁵
- (5) The matters about which the Consumer Panel are to be able to give advice do not include any matter that concerns the contents of anything which is or may be broadcast or otherwise transmitted by means of electronic communications networks.
- (6) The arrangements made by OFCOM under this section must also secure that the Consumer Panel are able, in addition to giving advice on the matters mentioned in subsection (3), to do each of the following—
- (a) at the request of OFCOM, to carry out research for OFCOM in relation to any of the matters in relation to which OFCOM have functions under section 14;
 - (b) to make arrangements for the carrying out of research into such other matters appearing to the Panel to be relevant to the carrying out of the Panel's functions as they think fit;
 - (c) to give advice to OFCOM in relation to any matter referred to the Panel by OFCOM for advice;
 - (d) to publish such information as the Panel think fit about the advice they give, about the carrying out of the Panel's other functions and about the results of research carried out by them or on their behalf.
- (7) It shall be the duty of OFCOM, in the carrying out of their functions, to consider and, to such extent as they think appropriate, to have regard to—
- (a) any advice given to OFCOM by the Consumer Panel; and

- (b) any results notified to OFCOM of any research undertaken by that Panel.
- (8) It shall also be the duty of OFCOM (subject to subsection (9))—
- (a) to provide the Consumer Panel with all such information as, having regard, in particular, to the need to preserve commercial confidentiality, OFCOM consider appropriate to disclose to the Panel for the purpose of enabling the Panel to carry out their functions; and
 - (b) to provide the Panel with all such further information as the Panel may require.
- (9) OFCOM are not required to provide information by virtue of subsection (8)(b) if, having regard to—
- (a) the need to preserve commercial confidentiality, and
 - (b) any other matters that appear to OFCOM to be relevant,
- it is reasonable for OFCOM to refuse to disclose it to the Panel.
- (10) It shall be the duty of OFCOM, in the case of any advice or opinion received from and published by the Panel which OFCOM propose to disregard in whole or in part, or with which OFCOM disagree in whole or in part—
- (a) to ensure that the Panel know OFCOM's reasons for disregarding or disagreeing with the advice or opinion; and
 - (b) to ensure that those reasons are or have been published in such manner as OFCOM consider appropriate for bringing them to the attention of persons who are aware of the Panel's advice or opinion.
- (11) The Consumer Panel must—
- (a) as soon as practicable after the end of the period of twelve months beginning with the commencement of this section, and
 - (b) as soon as practicable after the end of each subsequent period of twelve months,
- prepare a report on the carrying out of their functions in that period.
- (12) The Consumer Panel must publish each report—
- (a) as soon as practicable after its preparation is complete; and
 - (b) in such manner as they consider appropriate.
- (13) In this section—
- “domestic and small business consumer” means a person who—
- (a) is a consumer in the market for services or facilities mentioned in subsection (4) or for apparatus designed or adapted for use in connection with [a service or facility mentioned in subsection (4)(a) to (e)]⁶ ; but
 - (b) is neither—
 - (i) a communications provider or a person who makes associated facilities available; nor
 - (ii) a person who is a consumer in the market in respect of an undertaking carried on by him for which more than ten individuals work (whether as employees or volunteers or otherwise);
- “electronic programme guide” means a service which consists of—
- (a) the listing or promotion, or both the listing and the promotion, of some or all of the programmes included in any one or more programme services the providers of which are or include persons other than the provider of the guide; and
 - (b) a facility for obtaining access, in whole or in part, to the programme service or services listed or promoted in the guide.

Notes

- ¹ Words inserted by Postal Services Act 2011 c. 5 Sch.12(2) para.59(2) (October 1, 2011)
- ² Words substituted by Postal Services Act 2011 c. 5 Sch.12(2) para.59(3)(a) (October 1, 2011)
- ³ Words substituted by Postal Services Act 2011 c. 5 Sch.12(2) para.59(3)(b) (October 1, 2011)
- ⁴ Word repealed by Postal Services Act 2011 c. 5 Sch.12(2) para.59(4)(a) (October 1, 2011)
- ⁵ Added by Postal Services Act 2011 c. 5 Sch.12(2) para.59(4)(b) (October 1, 2011)
- ⁶ Words substituted by Postal Services Act 2011 c. 5 Sch.12(2) para.59(5) (October 1, 2011)

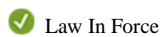
Commencement

Pt 1 s. 16(1)-(13) definition of "electronic programme guide" (b): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Extent

Pt 1 s. 16-(4)(e)(ii), (5)-(13) definition of "electronic programme guide" (b): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

Pt 1 s. 16(4)(f): United Kingdom



Law In Force

17 Membership etc. of the Consumer Panel

(1) The members of the Consumer Panel shall be appointed by OFCOM and shall comprise a chairman and such other members as OFCOM may determine.

(2) The approval of the Secretary of State is required for the appointment of a person to be the chairman or to be another member of the Panel.

(3) In appointing persons to be members of the Consumer Panel, OFCOM must secure that, for each of the following parts of the United Kingdom—

- (a) England,
- (b) Scotland,
- (c) Wales, and
- (d) Northern Ireland,

there is a different member of the Panel capable of representing the interests and opinions of persons living in that part of the United Kingdom.

(4) In appointing persons to be members of the Consumer Panel, OFCOM must secure, so far as practicable, that the Panel are able to give informed advice about matters referable to each of the following—

- (a) the interests of persons living in rural areas;
- (b) the interests of persons living in urban areas;
- (c) the interests of small businesses;
- (d) the interests of disadvantaged persons, persons with low incomes and persons with disabilities; and
- (e) the interests of the elderly.

[(4A) The Secretary of State may direct OFCOM to appoint as a member of the Consumer Panel a person specified by the Secretary of State who—

- [(a) is an employee of the National Association of Citizens Advice Bureaux (“Citizens Advice”), and
- (b) is nominated for the purposes of this subsection by Citizens Advice after consultation with OFCOM.]²

(4B) Only one person may, at any time, be a member of the Consumer Panel appointed in accordance with a direction under subsection (4A); but that does not prevent OFCOM appointing as a member of the Consumer Panel any person who is also [an employee of Citizens Advice]³.

[(4BA) The Secretary of State may direct OFCOM to appoint as a member of the Consumer Panel a person specified by the Secretary of State who—

- (a) is an employee of the Scottish Association of Citizens Advice Bureaux (“Citizens Advice Scotland”) Citizens Advice Scotland, and
- (b) is nominated for the purposes of this subsection by Citizens Advice Scotland after consultation with OFCOM.

(4BB) Only one person may, at any time, be a member of the Consumer Panel appointed in accordance with a direction under subsection (4BA); but that does not prevent OFCOM appointing as a member of the Consumer Panel any person who is also an employee of Citizens Advice Scotland.]⁴

[(4C) A person appointed in accordance with a direction under subsection (4A) or (4BA) ceases to be a member of the Consumer Panel—

- (a) on ceasing to be an employee of Citizens Advice or, as the case may be, Citizens Advice Scotland, or
- (b) if Citizens Advice or, as the case may be, Citizens Advice Scotland decide that the person is no longer to be on the Consumer Panel.

] ⁵

] ¹

(5) The validity of any proceedings of the Consumer Panel shall not be affected by any failure by OFCOM to comply with [subsections (3) to (4A)]⁶ [and (4BA)]⁷.

(6) It shall be the duty of the Consumer Panel, in carrying out their functions, to have regard to the following interests—

- (a) the interests of persons from the different parts of the United Kingdom; and
- (b) the interests specified in subsection (4).

(7) A person shall be disqualified from being the chairman or a member of the Consumer Panel if he is a member or employee of OFCOM.

(8) The chairman and every member of the Consumer Panel—

- (a) shall be appointed for a fixed period specified in the terms of his appointment but shall be eligible for re-appointment at the end of that period; and
- (b) may at any time be removed from the Panel by a notice given by OFCOM with the approval of the Secretary of State.

(9) OFCOM may pay to the chairman and to any other member of the Consumer Panel such remuneration and allowances as OFCOM consider appropriate.

Notes

- ¹ Added by Consumers, Estate Agents and Redress Act 2007 c. 17 Pt 1 s.40(a) (December 21, 2007)
- ² Substituted by Public Bodies (Abolition of the National Consumer Council and Transfer of the Office of Fair Trading's Functions in relation to Estate Agents etc) Order 2014/631 Sch.1(1) para.11(2)(a) (April 1, 2014: substitution has effect subject to transitional provisions specified in SI 2014/631 Sch.1 para.28)
- ³ Words substituted by Public Bodies (Abolition of the National Consumer Council and Transfer of the Office of Fair Trading's Functions in relation to Estate Agents etc) Order 2014/631 Sch.1(1) para.11(2)(b) (April 1, 2014: substitution has effect subject to transitional provisions specified in SI 2014/631 Sch.1 para.28)
- ⁴ Added by Public Bodies (Abolition of the National Consumer Council and Transfer of the Office of Fair Trading's Functions in relation to Estate Agents etc) Order 2014/631 Sch.1(1) para.11(2)(c) (April 1, 2014: insertion has effect subject to transitional provisions specified in SI 2014/631 Sch.1 para.28)
- ⁵ Substituted by Public Bodies (Abolition of the National Consumer Council and Transfer of the Office of Fair Trading's Functions in relation to Estate Agents etc) Order 2014/631 Sch.1(1) para.11(2)(d) (April 1, 2014: substitution has effect subject to transitional provisions specified in SI 2014/631 Sch.1 para.28)
- ⁶ Words substituted by Consumers, Estate Agents and Redress Act 2007 c. 17 Pt 1 s.40(b) (December 21, 2007)
- ⁷ Words inserted by Public Bodies (Abolition of the National Consumer Council and Transfer of the Office of Fair Trading's Functions in relation to Estate Agents etc) Order 2014/631 Sch.1(1) para.11(2)(e) (April 1, 2014: insertion has effect subject to transitional provisions specified in SI 2014/631 Sch.1 para.28)

Commencement

Pt 1 s. 17(1)-(9): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Extent

Pt 1 s. 17-(4)(e), (5)-(9): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

Pt 1 s. 17(4A)-(4C)(b): United Kingdom

 Law In Force

18 Committees and other procedure of the Consumer Panel

- (1) The Consumer Panel may make such arrangements as they think fit for committees established by the Panel to give advice to them about matters relating to the carrying out of the Panel's functions.
- (2) The Consumer Panel may make such other arrangements for regulating their own procedure, and for regulating the procedure of the committees established by them, as they think fit.
- (3) Those arrangements may include arrangements as to quorums and as to the making of decisions by a majority.
- (4) The committees established by the Panel may include committees the membership of which includes persons (including persons constituting a majority of the committee) who are not members of the Panel.
- (5) The membership of every committee established by the Consumer Panel must contain at least one person who is a member of the Panel.

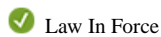
(6) Where a person who is not a member of the Consumer Panel is a member of a committee established by the Panel, OFCOM may pay to that person such remuneration and expenses as OFCOM may determine.

Commencement

Pt 1 s. 18(1)-(6): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Extent

Pt 1 s. 18(6): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)



Law In Force

19 Power to amend remit of Consumer Panel

(1) The Secretary of State may by order modify subsection (3) of section 16 so as to add to the matters about which the Consumer Panel are required to be able to give advice.

(2) Before making an order under this section the Secretary of State must consult OFCOM and such other persons as he thinks fit.

(3) No order is to be made containing provision authorised by this section unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

(4) The power to amend or revoke an order under this section does not include power to provide for a matter to cease to be a matter about which the Consumer Panel are required to be able to give advice.

Commencement

Pt 1 s. 19(1)-(4): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Extent

Pt 1 s. 19(4): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

Advisory committees



Law In Force

20 Advisory committees for different parts of the United Kingdom

(1) It shall be the duty of OFCOM, in accordance with the following provisions of this section, to exercise their powers under paragraph 14 of the Schedule to the Office of Communications Act 2002 (c. 11) (committees of OFCOM) to establish and maintain a committee for each of the following parts of the United Kingdom—

- (a) England;
- (b) Wales;
- (c) Scotland; and
- (d) Northern Ireland.

(2) Each committee shall consist of—

- (a) a chairman appointed by OFCOM; and
- (b) such number of other members appointed by OFCOM as OFCOM think fit.

(3) In appointing a person in accordance with this section to be a member of a committee, OFCOM must have regard to the desirability of ensuring that the person appointed is able to represent the interests and opinions, in relation to communications matters, of persons living in the part of the United Kingdom for which the committee has been established.

(4) The function of each committee shall be to provide advice to OFCOM (including other committees established by OFCOM) about the interests and opinions, in relation to communications matters, of persons living in the part of the United Kingdom for which the committee has been established.

(5) A committee established under this section may also, at the request of the Consumer Panel, provide advice about those interests and opinions to the Consumer Panel.

(6) The consent of OFCOM is required for the giving of advice under subsection (5).

(7) In this section “communications matters” has the same meaning as in section 3.

Commencement

Pt 1 s. 20(1)-(7): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Extent

Pt 1 s. 20-(7): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)



Law In Force

21 Advisory committee on elderly and disabled persons

(1) It shall be the duty of OFCOM, in accordance with the following provisions of this section, to exercise their powers under paragraph 14 of the Schedule to the Office of Communications Act 2002 (c. 11) (committees of OFCOM) to establish and maintain a committee to provide the advice specified in this section.

- (2) The committee shall consist of—
- (a) a chairman appointed by OFCOM; and
 - (b) such number of other members appointed by OFCOM as OFCOM think fit.
- (3) In appointing persons to be members of the committee, OFCOM must have regard to the desirability of ensuring that the members of the committee include—
- (a) persons who are familiar with the needs of the elderly; and
 - (b) persons who are familiar with the needs of persons with disabilities.
- (4) The function of the committee shall be to provide advice to OFCOM (including other committees established by OFCOM) about the interests, in relation to communications matters, of—
- (a) the elderly; and
 - (b) persons with disabilities.
- (5) The committee may also, at the request of the Consumer Panel, provide advice about those interests to the Consumer Panel.
- (6) The consent of OFCOM is required for the giving of advice under subsection (5).
- (7) In this section “communications matters” has the same meaning as in section 3.

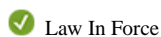
Commencement

Pt 1 s. 21(1)-(7): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Extent

Pt 1 s. 21-(7): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

International matters



Law In Force

22 Representation on international and other bodies

- (1) It shall be the duty of OFCOM to do, as respects the United Kingdom, such of the following things as they are required to do by the Secretary of State—
- (a) provide representation on behalf of Her Majesty's Government in the United Kingdom on international and other bodies having communications functions;
 - (b) become or serve as a member of an international or other body having such functions;
 - (c) subscribe to such a body;
 - (d) provide representation on behalf of Her Majesty's Government in the United Kingdom at international meetings about communications.
- (2) OFCOM shall also have the power, if requested to do so by the Secretary of State, to do one or more of those things as respects any of the Channel Islands, the Isle of Man or a British overseas territory.

(3) It shall be the duty of OFCOM to carry out their functions under this section in accordance with such general or specific directions as may be given to them by the Secretary of State.

(4) The Secretary of State—

- (a) is not entitled to direct OFCOM to comply with a request made under subsection (2); but
- (b) may give directions about how OFCOM are to carry out any representative role that they undertake in accordance with such a request.

(5) In this section—

“communications functions” means—

- (a) functions relating to the use of the electro-magnetic spectrum for wireless telegraphy;
- (b) functions relating to the regulation of television or radio broadcasting or the provision of television and radio services; [...]¹
- [(ba) functions relating to postal services; and]¹
- (c) any other function which relates to, or is connected with, a matter in respect of which OFCOM have functions;

“international meetings about communications” means international meetings relating to, or to matters connected with, one or more of the following—

- (a) the use of the electro-magnetic spectrum for wireless telegraphy;
- (b) the regulation of television or radio broadcasting or of the provision of television and radio services;
- [(ba) the regulation of postal services;]²
- (c) any other matter in respect of which OFCOM have functions.

(6) In relation to—

- (a) a part of the British Islands outside the United Kingdom, or
- (b) a British overseas territory,

the references in subsection (5) to matters in respect of which OFCOM have functions include references to matters corresponding, in the case of that part of those Islands or of that territory, to matters in respect of which OFCOM's functions are confined to the United Kingdom.

(7) In subsection (5) “television or radio broadcasting” includes the provision by means other than broadcasting of services similar to those provided by television or radio broadcasts.

Notes

¹ Added by Postal Services Act 2011 c. 5 Sch.12(2) para.60(2) (October 1, 2011)

² Added by Postal Services Act 2011 c. 5 Sch.12(2) para.60(3) (October 1, 2011)

Commencement

Pt 1 s. 22(1)-(7): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Extent

Pt 1 s. 22-(5) definition of "communications functions" (b), (5) definition of "communications functions" (c)-(5) definition of "international meetings about communic" (b), (5) definition of "international meetings about communic" (c)-(7): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the

modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

Pt 1 s. 22(5) definition of "communications functions" (ba), (5) definition of "international meetings about communic" (ba): United Kingdom

✓ Law In Force

23 Directions for international purposes in respect of broadcasting functions

(1) This section applies to—

- (a) OFCOM's functions under the enactments relating to broadcasting; and
- (b) the matters in relation to which those functions are conferred.

(2) It shall be the duty of OFCOM—

- (a) to carry out those functions in accordance with any general or specific directions given to them by the Secretary of State for the purpose mentioned in subsection (3); and
- (b) to carry out such other functions in relation to the matters to which this section applies as they are required to carry out by any general or specific directions so given.

(3) The Secretary of State is not to give a direction under this section except for the purpose of securing compliance, in relation to a matter to which this section applies, with an international obligation of the United Kingdom.

(4) A direction under this section must be contained in an order made by the Secretary of State.

(5) In this section “the enactments relating to broadcasting” means—

- (a) the 1990 Act;
- (b) the 1996 Act;
- (c) Part 3 of this Act; and
- (d) the other provisions of this Act so far as relating to the 1990 Act, the 1996 Act or that Part.

Commencement

Pt 1 s. 23(1)-(5)(d): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Extent

Pt 1 s. 23-(5)(d): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

General information functions

✓ Law In Force

24 Provision of information to the Secretary of State

(1) It shall be the duty of OFCOM to comply with a direction by the Secretary of State to provide him with information falling within subsection (2).

(2) The information that may be the subject of a direction under this section is any information reasonably required by the Secretary of State for the purpose of enabling him to secure compliance with an international obligation of the United Kingdom.

(3) Information that is required to be provided by a direction under this section must be provided in such manner and at such times as may be required by the direction.

Commencement

Pt 1 s. 24(1)-(3): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 1 s. 24-(3): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

✓ Law In Force

[24A Provision of information before publication

(1) OFCOM must provide the Secretary of State, at least 24 hours before publication, with any information that they propose to publish.

(2) If exceptional circumstances make it impracticable to provide the information to the Secretary of State 24 hours before publication it must instead be provided to the Secretary of State as long before publication as is practicable.

(3) Subsections (1) and (2) have effect in any particular case subject to any agreement made between the Secretary of State and OFCOM in that case.

(4) The Secretary of State may by regulations specify descriptions of information in relation to which the duty under subsection (1) does not apply.

(5) Before making regulations under subsection (4), the Secretary of State must consult OFCOM.

(6) Information provided to the Secretary of State under this section may not be disclosed by the Secretary of State during the protected period, except to another Minister of the Crown.

(7) A Minister of the Crown to whom the information is disclosed under subsection (6) may not disclose the information during the protected period to any other person.

(8) A Minister of the Crown may not make any representations to OFCOM during the protected period that specify or describe changes that the Minister considers should be made to information that has been provided under this section when it is published.

(9) In this section—

"the protected period", in relation to information provided to the Secretary of State under this section, means the period beginning with the provision of the information and ending when either of the following occurs—

- (a) OFCOM publish the information;
- (b) OFCOM inform the Secretary of State that they consent to the disclosure of the information;

"Minister of the Crown" has the same meaning as in the Ministers of the Crown Act 1975.

] ¹

Notes

¹ Added by Digital Economy Act 2017 c. 30 Pt 6 s.98(2) (July 31, 2017)

Extent

Pt 1 s. 24A(1)-(9) definition of "Minister of the Crown": (extent not available)



Law In Force With Amendments Pending

[24B Provision of information to assist in formulation of policy

(1) OFCOM may provide the Secretary of State with any information that they consider may assist the Secretary of State in the formulation of policy.

(2) Information with respect to a particular business that has been obtained in the exercise of a power conferred by—

- (a) this Act,
- (b) the 1990 Act,
- (c) the 1996 Act,
- (d) the Wireless Telegraphy Act 2006, or
- (e) Part 3 of the Postal Services Act 2011,

is not, so long as the business continues to be carried on, to be provided to the Secretary of State under this section without the consent of the person for the time being carrying on that business.

] ¹

Notes

¹ Added by Digital Economy Act 2017 c. 30 Pt 6 s.98(2) (July 31, 2017)

Proposed Draft Amendments

Pt 1 s. 24B(3): added by Telecommunications (Security) Bill 2019-21 (HC Bill 246) s. 12(2) (Commons' Committee Stage, January 26, 2021) (date to be appointed)

Extent

Pt 1 s. 24B(1)-(2)(e): (extent not available)



25 Information requested by EU bodies¹

(1) This section applies if—

- (a) the European [Commission or BEREC requests]² OFCOM to provide it with information for the purpose of enabling it to perform any of its functions in relation to electronic communications networks, electronic communications services or associated facilities; and
- (b) the information is information obtained by OFCOM in the course of carrying out any of their functions under—
 - (i) Part 2 ; [...]³
 - (ii) the enactments relating to the management of the radio spectrum that are not contained in that Part [; or]⁴
 - [(iii) any other enactment relating to the regulation of electronic communications networks and electronic communications services.]⁵

[(2) OFCOM may comply with the request if and to the extent that—

- (a) they consider it appropriate to do so in connection with their functions, and
- (b) in the case of information relating to a particular business, they are satisfied that arrangements exist for preserving confidentiality.

] ⁶

(3) If information provided to the European Commission [or BEREC]⁷ under this section has been obtained by OFCOM from a person who is or, at the time the information was obtained from him, was—

- (a) a communications provider, or
- (b) a person making associated facilities available,

OFCOM must notify him that they have provided the information to the Commission [or, as the case may be, to BEREC]⁸ .

(4) It shall be for OFCOM to determine the manner in which a notification is given under subsection (3).

Notes

- ¹ Heading substituted by Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019/246 Sch.1(1) para.7(5) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))
- ² Words substituted by Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019/246 Sch.1(1) para.7(2)(a) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))
- ³ Word repealed by Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019/246 Sch.1(1) para.7(2)(b)(i) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))
- ⁴ Word inserted by Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019/246 Sch.1(1) para.7(2)(b)(ii) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))
- ⁵ Added by Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019/246 Sch.1(1) para.7(2)(b)(iii) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))

- ⁶ Substituted by Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019/246 Sch.1(1) para.7(3) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))
- ⁷ Words inserted by Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019/246 Sch.1(1) para.7(4)(a) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))
- ⁸ Words inserted by Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019/246 Sch.1(1) para.7(4)(b) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))

Commencement

Pt 1 s. 25(1)-(4): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 1 s. 25-(4): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

✓ Law In Force

26 Publication of information and advice for consumers etc.

(1) OFCOM [must]¹ arrange for the publication of such information and advice about matters in relation to which they have functions as it appears to them to be appropriate to make available to the persons mentioned in subsection (2).

(2) Those persons are—

- (a) the customers of communications providers;
- (b) the customers of persons who make associated facilities available;
[(ba) any person affected by the application of the electronic communications code (within the meaning of section 106(1));]²
- (c) persons who use electronic communications networks, electronic communications services or associated facilities; [...] ³
- (d) persons to whom radio and television services are provided or who are otherwise able or likely to take advantage of any of those services [; and] ⁴
- [(e) the customers of persons who provide postal services.] ⁴

[(2A) In subsection (2)(e) the reference to customers of persons who provide postal services includes—

- (a) persons who wish to be provided with such services,
- (b) persons who are likely to seek to be provided with such services, and
- (c) addressees.

] ⁵

(3) In arranging for the publication of information or advice under this section, OFCOM must have regard to the need to exclude from publication, so far as that is practicable, the matters which are confidential in accordance with subsections (4) and (5).

- (4) A matter is confidential under this subsection if—
- (a) it relates specifically to the affairs of a particular body; and
 - (b) publication of that matter would or might, in OFCOM's opinion, seriously and prejudicially affect the interests of that body.
- (5) A matter is confidential under this subsection if—
- (a) it relates to the private affairs of an individual; and
 - (b) publication of that matter would or might, in OFCOM's opinion, seriously and prejudicially affect the interests of that individual.
- (6) The publication of information or advice under this section must be in such manner as OFCOM consider appropriate.

Notes

- ¹ Word substituted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.8(a) (May 26, 2011)
- ² Added by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.8(b) (May 26, 2011)
- ³ Word repealed by Postal Services Act 2011 c. 5 Sch.12(2) para.61(2)(a) (October 1, 2011)
- ⁴ Added by Postal Services Act 2011 c. 5 Sch.12(2) para.61(2)(b) (October 1, 2011)
- ⁵ Added by Postal Services Act 2011 c. 5 Sch.12(2) para.61(3) (October 1, 2011)

Commencement

Pt 1 s. 26(1), (2)(a)-(2)(c), (3)-(6): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Pt 1 s. 26(2): July 25, 2003


Pt 1 s. 26(2)(d): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Extent

Pt 1 s. 26(1)-(2)(b), (2)(c)-(2)(d), (3)-(6): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

Pt 1 s. 26(2)(ba), (2)(e)-(2A)(c): United Kingdom

Employment in broadcasting

 Law In Force

27 Training and equality of opportunity

- (1) It shall be the duty of OFCOM to take all such steps as they consider appropriate for promoting the development of opportunities for the training and retraining of persons—
- (a) for employment by persons providing television and radio services; and
 - (b) for work in connection with the provision of such services otherwise than as an employee.

(2) It shall be the duty of OFCOM to take all such steps as they consider appropriate for promoting equality of opportunity in relation to both—

- (a) employment by those providing television and radio services; and
- (b) the training and retraining of persons for such employment.

(3) It shall also be the duty of OFCOM, in relation to such employment, training and retraining, to take all such steps as they consider appropriate for promoting the equalisation of opportunities for disabled persons.

(4) The reference in subsection (2) to equality of opportunity is a reference to equality of opportunity—

- (a) between men and women; and
- (b) between persons of different racial groups.

(5) In this section—

“disabled” has the same meaning as in [the Equality Act 2010 or, in Northern Ireland,]¹ the Disability Discrimination Act 1995 (c. 50);

“racial group” has the same meaning as in the [Equality Act 2010]² or, in Northern Ireland, the Race Relations (Northern Ireland) Order 1997 (S.I. 1997/869 (N.I. 6)).

(6) The Secretary of State may by order amend subsection (4) by adding any other form of equality of opportunity that he considers appropriate.

(7) No order is to be made containing provision authorised by subsection (6) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

Notes

¹ Words inserted by Equality Act 2010 c. 15 Sch.26(1) para.54(a) (October 1, 2010: commenced by an amendment; insertion has effect subject to savings and transitional provisions specified in SI 2010/2317 arts 5-22 and Schs 1-7)

² Words substituted by Equality Act 2010 c. 15 Sch.26(1) para.54(b) (October 1, 2010: commenced by an amendment; substitution has effect subject to savings and transitional provisions specified in SI 2010/2317 arts 5-22 and Schs 1-7)

Commencement

Pt 1 s. 27(1)-(7): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Extent

Pt 1 s. 27-(7): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

Charging



Law In Force

28 General power to charge for services

- (1) OFCOM may provide a service to which this section applies to any person on such terms as to the making of payments to OFCOM—
- (a) as they may determine in advance; or
 - (b) as may be agreed between that person and OFCOM.
- (2) This section applies to a service which is provided by OFCOM to a person in the course of carrying out their functions and is neither—
- (a) a service which OFCOM are under a duty to provide to that person; nor
 - (b) one in respect of which express provision is made by or under an enactment for authorising or forbidding the payment of fees or charges.
- (3) In this section references to providing a service to a person include references to a service consisting in—
- (a) the giving of advice to that person;
 - (b) the entry of his particulars in a register or other record kept by OFCOM otherwise than in pursuance of an express statutory duty to keep the register or record; or
 - (c) the taking of steps for the purposes of determining whether to grant an application for an entry in a register or record so kept.

Commencement

Pt 1 s. 28(1)-(3)(c): September 18, 2003 (SI 2003/1900 art. 2(2), Sch. 2 para. 1)

Extent

Pt 1 s. 28-(3)(c): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)



Law In Force

[28A International recognition of satellite frequency assignments: power to charge fees

- (1) This section applies where functions conferred on OFCOM under section 22 include functions of the administration of the United Kingdom under the ITU Radio Regulations.
- (2) OFCOM may require any person to pay them a fee for doing satellite filing work at the request of that person.
- (3) In this section "satellite filing work" means anything connected with obtaining or maintaining international recognition under the ITU Radio Regulations of assignments (or changes in assignments) of radio frequencies to stations in satellite systems or satellite networks.
- (4) OFCOM may vary from time to time the amount of any fee set by them under this section.
- (5) OFCOM may not require a person to pay a fee under this section unless they have taken such steps as they consider appropriate to bring the fact that they charge the fee, and the amount of the fee, to the attention of those persons who, in their opinion, are likely to be required to pay it.

(6) As soon as reasonably practicable after the end of each reporting year, OFCOM must publish a statement setting out—

- (a) the aggregate amount of the fees charged under this section that have been received by OFCOM during that year;
- (b) the aggregate amount of the fees charged under this section during that year which remain outstanding and are likely to be paid or recovered; and
- (c) the total cost to OFCOM of doing the requested satellite filing work they have done during that year.

(7) If the total of the amounts set out in a statement under subsection (6)(a) and (b) exceeds the total cost set out under subsection (6)(c), OFCOM must take this into account with a view to securing that the aggregate amount of fees charged under this section in the following reporting year does not exceed the likely total cost to them of doing requested satellite filing work during that year.

(8) In this section—

"administration" , "assignment" (of a radio frequency), "station" , "satellite system" and "satellite network" have the same meanings as in the ITU Radio Regulations;

"reporting year" means—

- (a) the period beginning with the coming into force of this section and ending with the next 31st March, or
- (b) any subsequent period of twelve months beginning with 1st April;

"the ITU Radio Regulations" means the radio regulations of the International Telecommunication Union.

] ¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Pt 6 s.101(2) (July 31, 2017: insertion has effect subject to the transitional provision specified in 2017 c.30 s.101(4))

Extent

Pt 1 s. 28A(1)-(8) definition of "the ITU Radio Regulations": United Kingdom

Guarantees

 Law In Force

29 Secretary of State guarantees for OFCOM borrowing

(1) The Secretary of State may guarantee—

- (a) the repayment of the principal of any borrowing by OFCOM;
- (b) the payment of interest on any such borrowing; and
- (c) the discharge of other financial obligations incurred by OFCOM in connection with any such borrowing.

(2) The power of the Secretary of State to give a guarantee under this section is a power (subject to subsection (3)) to give it in such manner and on such conditions as he thinks fit.

- (3) The Secretary of State must not give a guarantee under this section if the aggregate of—
- (a) the amounts that he may be required to pay for fulfilling that guarantee, and
 - (b) the amounts that he may be required to pay for fulfilling other guarantees previously given under this section and still in force,
- exceeds £5 million.
- (4) The Secretary of State may by order substitute another amount for the amount for the time being specified in subsection (3).
- (5) No order is to be made containing provision authorised by subsection (4) unless a draft of the order has been laid before Parliament and approved by a resolution of the House of Commons.
- (6) Immediately after a guarantee is given under this section, the Secretary of State must lay a statement of the guarantee before each House of Parliament.
- (7) Where any sum is paid by the Secretary of State under a guarantee given under this section, he must lay a statement relating to that sum before each House of Parliament as soon as practicable after the end of each of the financial years—
- (a) beginning with the one in which the sum is paid; and
 - (b) ending with the one in which OFCOM's liabilities under subsection (8) in respect of that sum are finally discharged.
- (8) If sums are paid by the Secretary of State in fulfilment of a guarantee given under this section OFCOM must pay him—
- (a) such amounts in or towards the repayment to him of those sums as he may direct; and
 - (b) interest, at such rates as he may determine, on amounts outstanding under this subsection.
- (9) Payments to the Secretary of State under subsection (8) must be made at such times and in such manner as he may determine.

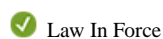
Commencement

Pt 1 s. 29(1)-(9): September 18, 2003 (SI 2003/1900 art. 2(2), Sch. 2 para. 1)

Extent

Pt 1 s. 29-(9): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

Provisions supplemental to transfer of functions



Law In Force

30 Transfers of property etc. from pre-commencement regulators

- (1) The Secretary of State may, by a direction to any of the pre-commencement regulators, require that regulator to make one or more schemes for the transfer from that regulator to OFCOM of such of the regulator's property, rights and liabilities as may be specified or described in the direction.

- (2) Where a pre-commencement regulator is required to make a scheme, the scheme must be made by such date as may be specified in the direction.
- (3) Before making a scheme in pursuance of a direction under subsection (1), a pre-commencement regulator must consult OFCOM.
- (4) A pre-commencement regulator who makes a scheme in pursuance of a direction under subsection (1) shall submit that scheme to the Secretary of State for approval.
- (5) A scheme that is required to be so submitted shall have effect only if, and to the extent that, it is approved by the Secretary of State.
- (6) The Secretary of State, in approving a scheme, may do so subject to such modifications as he thinks fit.
- (7) Where the Secretary of State approves a scheme subject to modifications specified by him, it shall have effect with those modifications.
- (8) A scheme approved by the Secretary of State under this section shall come into force either—
(a) if no time is appointed under paragraph (b), at the time when the approval is given; or
(b) if the Secretary of State appoints a later time for the coming into force of the scheme (whether when approving the scheme or by subsequently varying a time appointed under this paragraph), at that later time.
- (9) Where a scheme is submitted to the Secretary of State under this section, he must—
(a) consult OFCOM about any proposal of his to approve the scheme; and
(b) consult both OFCOM and the pre-commencement regulator in question about any modifications subject to which he proposes to give his approval, or about any proposal of his to refuse approval.
- (10) The Secretary of State may, after consulting OFCOM, himself make a scheme for the transfer of property, rights and liabilities—
(a) from a pre-commencement regulator to OFCOM; or
(b) from himself to OFCOM;
and such a scheme shall come into force on such day as the Secretary of State may appoint (whether in the scheme or subsequently).
- (11) The Secretary of State is not to make a scheme for the transfer of property, rights and liabilities from a pre-commencement regulator to OFCOM unless—
(a) that regulator has failed to comply with a direction under subsection (1); or
(b) that regulator has complied with such a direction by submitting a scheme to the Secretary of State that he has decided not to approve (with or without modifications).
- (12) Schedule 2 (which makes further provision about schemes under this section) shall have effect.

Commencement

Pt 1 s. 30(1)-(12): September 18, 2003 (SI 2003/1900 art. 2(2), Sch. 2 para. 1)

Extent

Pt 1 s. 30(12): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6)

with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

✓ Law In Force

31 Transitional functions and abolition of pre-commencement regulators

(1) It shall be the duty of the pre-commencement regulators to take all such steps as are necessary or expedient for ensuring that OFCOM are able effectively to carry out OFCOM's functions from the time when they are vested in OFCOM.

(2) The pre-commencement regulators, in taking those steps, must comply with every direction given to them by the Secretary of State.

(3) The pre-commencement regulators and OFCOM shall each have a duty to provide the Secretary of State with all such information and assistance as he may require for the purposes of, or in connection with—

- (a) his power to give directions under subsection (1) of section 30; and
- (b) his powers and duties in relation to the approval and making of schemes under that section.

(4) On such day as the Secretary of State may by order appoint—

- (a) the office of the Director General of Telecommunications shall be abolished; and
- (b) the Broadcasting Standards Commission, the Independent Television Commission and the Radio Authority shall cease to exist.

(5) Section 54 of the Telecommunications Act 1984 (c. 12) (which provides for the establishment of advisory bodies) shall cease to have effect; and each of the bodies established under that section shall cease to exist on such day as the Secretary of State may by order appoint.

(6) Different days may be appointed under this section for the Director General of Telecommunications and for each of the different bodies mentioned in subsections (4)(b) and (5).

Commencement

Pt 1 s. 31(1)-(4)(b), (6): July 17, 2003 (2003 c. 21 Pt 6 s. 411(3))

Pt 1 s. 31(5): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

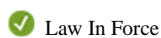
Extent

Pt 1 s. 31(1)-(6): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

PART 2
NETWORKS, SERVICES AND THE RADIO SPECTRUM

CHAPTER 1
ELECTRONIC COMMUNICATIONS NETWORKS AND SERVICES

Preliminary



Law In Force

32 Meaning of electronic communications networks and services

(1) In this Act “electronic communications network” means—

- (a) a transmission system for the conveyance, by the use of electrical, magnetic or electro-magnetic energy, of signals of any description; and
- (b) such of the following as are used, by the person providing the system and in association with it, for the conveyance of the signals—
 - (i) apparatus comprised in the system;
 - (ii) apparatus used for the switching or routing of the signals; [...] ¹
 - (iii) software and stored data [; and] ²
 - [(iv) (except for the purposes of sections 125 to 127) other resources, including network elements which are not active.] ²

[(2) In this Act "electronic communications service" means a service of any of the types specified in subsection (2A) provided by means of an electronic communications network, except so far as it is a content service.

(2A) Those types of service are—

- (a) an internet access service;
- (b) a number-based interpersonal communications service; and
- (c) any other service consisting in, or having as its principal feature, the conveyance of signals, such as a transmission service used for machine-to-machine services or for broadcasting.

(2B) In subsection (2A)(a) "internet access service" means a service that provides access to the internet and thereby connectivity to virtually all end points of the internet, irrespective of the network technology and terminal equipment used.] ³

[(3) In this Act “associated facility” means a facility, element or service which is available for use, or has the potential to be used, in association with the use of an electronic communications network or electronic communications service (whether or not one provided by the person making the facility, element or service available) for the purpose of—

- (a) making the provision of that network or service possible;

- (b) making possible the provision of other services provided by means of that network or service; or
- (c) supporting the provision of such other services.

] ⁴

(4) In this Act—

- (a) references to the provision of an electronic communications network include references to its establishment, maintenance or operation;
- (b) references, where one or more persons are employed or engaged to provide the network or service under the direction or control of another person, to the person by whom an electronic communications network or electronic communications service is provided are confined to references to that other person; and
- (c) references, where one or more persons are employed or engaged to make facilities available under the direction or control of another person, to the person by whom any associated facilities are made available are confined to references to that other person.

(5) Paragraphs (a) and (b) of subsection (4) apply in relation to references in subsection (1) to the provision of a transmission system as they apply in relation to references in this Act to the provision of an electronic communications network.

(6) The reference in subsection (1) to a transmission system includes a reference to a transmission system consisting of no more than a transmitter used for the conveyance of signals.

(7) In subsection (2) “a content service” means so much of any service as consists in one or both of the following—

- (a) the provision of material with a view to its being comprised in signals conveyed by means of an electronic communications network;
- (b) the exercise of editorial control over the contents of signals conveyed by means of a such a network.

(8) In this section references to the conveyance of signals include references to the transmission or routing of signals or of parts of signals and to the broadcasting of signals for general reception.

(9) For the purposes of this section the cases in which software and stored data are to be taken as being used for a particular purpose include cases in which they—

- (a) have been installed or stored in order to be used for that purpose; and
- (b) are available to be so used.

(10) In this section “signal” includes—

- (a) anything comprising speech, music, sounds, visual images or communications or data of any description; and
- (b) signals serving for the impartation of anything between persons, between a person and a thing or between things, or for the actuation or control of apparatus.

Notes

¹ Word repealed by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.9(a)(i) (May 26, 2011: repeal has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 para.2)

² Added by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.9(a)(ii) (May 26, 2011: insertion has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 para.2)

- ³ S.32(2)-(2B) substituted for s.32(2) by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.6 (December 21, 2020)
- ⁴ Substituted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.9(b) (May 26, 2011: substitution has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 para.2)

Commencement

Pt 2 c. 1 s. 32(1)-(10)(b): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 32-(1)(b)(iii), (2)-(3)(b)(iii), (4)-(10)(b): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

Pt 2 c. 1 s. 32(1)(b)(iv), (3)(c): United Kingdom



Law In Force

[32A Meaning of number-based interpersonal communications service

(1) In this Chapter "number-based interpersonal communications service" means an interpersonal communications service which—

- (a) connects with publicly assigned numbering resources, namely a number or numbers in a national or international numbering plan, or
- (b) enables communication with a number or numbers in a national or international numbering plan.

(2) In subsection (1), "interpersonal communications service" means a service which enables direct interpersonal and interactive exchange of information by means of electronic communications networks between a finite number of persons, where the persons initiating or participating in the communication determine its recipient.

] ¹

Notes

- ¹ Added by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.7 (December 21, 2020)

Extent

Pt 2 c. 1 s. 32A(1)-(2): United Kingdom

Notification by providers



Law In Force

33 Advance notification to OFCOM

(1) A person shall not—

- (a) provide a designated electronic communications network,
- (b) provide a designated electronic communications service, or
- (c) make available a designated associated facility,

unless, before beginning to provide it or to make it available, he has given a notification to OFCOM of his intention to provide that network or service, or to make that facility available.

(2) An electronic communications network, electronic communications service or associated facility is designated for the purposes of this section if it is of a description of networks, services or facilities that is for the time being designated by OFCOM as a description of networks, services or facilities for which notification under this section is required.

(3) A person who has given a notification for the purposes of subsection (1) must, before—

- (a) providing or making available the notified network, service or facility with any significant differences, or
- (b) ceasing to provide it or to make it available,

give a notification to OFCOM of the differences or (as the case may be) of his intention to cease to provide the network or service or to make the facility available.

(4) A notification for the purposes of this section must—

- (a) be sent to OFCOM in such manner as OFCOM may require; and
- (b) contain all such information as OFCOM may require.

(5) The only information OFCOM may require a notification to contain is—

- (a) a declaration of the relevant proposal of the person giving the notification [, including a short description of the network, service or facility]¹ ;
- (b) the time when it is intended that effect should be given to the relevant proposal;
- (c) particulars identifying the person giving the notification [, including the person's legal status and, in the case of a body corporate, details of its incorporation]² ;
- [(ca) the address of the person's main establishment and, if that is outside the United Kingdom, of any secondary establishment in the United Kingdom;
- (cb) the person's website address, where applicable, associated with the provision of electronic communications networks or services;]³
- (d) particulars identifying one or more persons with addresses in the United Kingdom who, for the purposes of matters relating to the notified network, service or facility, are authorised to accept service at an address in the United Kingdom on behalf of the person giving the notification;
- (e) [...] ⁴
- (f) addresses and other particulars necessary for effecting service on or contacting each of the persons mentioned in paragraphs (c) [and (d)] ⁵ .

(6) The declaration of the relevant proposal that may be required under subsection (5) is whichever of the following is appropriate in the case of the person giving the notification—

- (a) a declaration of his proposal to provide the network or service described in the notification or to make available the facility so described;
- (b) a declaration of his proposal to make the modifications that are so described of the network, service or facility specified in the notification; or

(c) a declaration of his proposal to cease to provide the network or service so specified or to cease to make available the facility so specified.

(7)-(8) [...] ⁶

(9) The reference in subsection (3) to providing or making available a notified network, service or facility with significant differences is a reference to continuing to provide it, or to make it available, after a change in whatever falling within subsection (5)(a) to (f) was last notified to OFCOM under this section.

(10) References in this section to accepting service at an address are references—

(a) to accepting service of documents or process at that address; or

(b) otherwise to receiving notifications at that address [.] ⁷

[...] ⁷

(11) Where a description of electronic communications network, electronic communications service or associated facility is designated for the purposes of this section at a time when a network, service or facility of that description is already being provided or made available by a person—

(a) that person's obligation under this section to give a notification before beginning to provide or make available that network, service or facility shall have effect as an obligation to give a notification within such period after the coming into force of the designation as may be specified in the notice in which the designation is contained; and

(b) that notification is to be one stating that that person is already providing the network or service, or making the facility available (rather than that it is his intention to do so).

(12) Subsection (11) has effect subject to any transitional provision—

(a) which is contained in the notification setting out the designation; and

(b) treats a person as having given the notification required by that subsection.

Notes

¹ Words inserted by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.8(a) (December 21, 2020)

² Words inserted by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.8(b) (December 21, 2020)

³ Added by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.8(c) (December 21, 2020)

⁴ Repealed by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.8(d) (December 21, 2020)

⁵ Words substituted by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.8(e) (December 21, 2020)

⁶ Repealed by Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019/246 Sch.1(1) para.8(2) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))

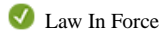
⁷ Words repealed by Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019/246 Sch.1(1) para.8(3) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))

Commencement

Pt 2 c. 1 s. 33(1)-(12)(b): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 33-(12)(b): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)



Law In Force

34 Designations and requirements for the purposes of s. 33

(1) Before—

- (a) making or withdrawing a designation for the purposes of section 33, or
- (b) imposing or modifying a requirement under subsection (4) of that section,

OFCOM must consult such of the persons who, in their opinion, are likely to be affected by it as they think fit.

(2) Before making or withdrawing a designation for the purposes of section 33 OFCOM must also consult the Secretary of State.

(3) The way in which a designation for the purposes of section 33 or a requirement under subsection (4) of that section—

- (a) is to be made or imposed, or
- (b) may be withdrawn or modified,

is by a notice published in such manner as OFCOM consider appropriate for bringing the designation, requirement, withdrawal or modification to the attention of the persons who, in their opinion, are likely to be affected by it.

(4) A designation for the purposes of section 33 may be framed by reference to any such description of networks, services or facilities, or such other factors, as OFCOM think fit.

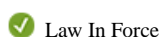
(5) Requirements imposed under section 33(4) may make different provision for different cases.

Commencement

Pt 2 c. 1 s. 34(1)-(5): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 34-(5): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)



Law In Force

35 Notification of contraventions of s. 33

(1) Where OFCOM determine that there are reasonable grounds for believing that a person has contravened section 33, they may give him a notification under this section.

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

- (a) sets out the determination made by OFCOM; [...]¹
- [(b) specifies the 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 35A.]²

(3)-(7) [...]³

(8) A notification under this section—

- (a) may be given in respect of more than one contravention of section 33; 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 section 33, OFCOM may give a further notification in respect of the same contravention if, and only if—

- (a) the subsequent notification is in respect of so much of a period during which the contravention in question was continuing as falls after a period to which the earlier notification relates; or
- (b) the earlier notification has been withdrawn without a penalty having been imposed by reference to the notified contravention.

(10) [...]³

Notes

¹ Word repealed by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.10(a) (May 26, 2011: repeal has effect subject to transitional and saving provisions specified in SI 2011/1210 Sch.3 paras 2 and 3)

² S.35(2)(b)-(e) substituted for s.35(2)(b) by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.10(a) (May 26, 2011: substitution has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 3)

³ Repealed by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.10(b) (May 26, 2011: repeal has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 3)

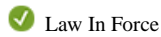
Commencement

Pt 2 c. 1 s. 35(1)-(10)(b): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 35-(2)(b), (3)-(10)(b): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

Pt 2 c. 1 s. 35(2)(c)-(2)(e): United Kingdom



Law In Force

[35A.— Penalties for contravention of section 33

- (1) This section applies where a person is given a notification under section 35 which specifies a proposed penalty.
- (2) Where the notification relates to more than one contravention, a separate penalty may be specified in respect of each contravention.
- (3) 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.
- (4) 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 36(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.
- (5) The amount of a penalty under subsection (4) is to be such amount not exceeding £100 per day as OFCOM determine to be—
- (a) appropriate; and
 - (b) proportionate to the contravention in respect of which it is imposed.
- (6) The amount of any other penalty specified in a notification under section 35 is to be such amount not exceeding £10,000 as OFCOM determine to be—
- (a) appropriate, and
 - (b) proportionate to the contravention in respect of which it is imposed.
- (7) 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 (6).
- (8) No order is to be made containing provision authorised by subsection (7) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

]¹

Notes

- ¹ Added by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.11 (May 26, 2011: insertion has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 3)

Extent

Pt 2 c. 1 s. 35A(1)-(8): United Kingdom



Law In Force

36 [Confirmation decision]¹ for contravention of s. 33

- (1) This section applies where—
- (a) a person (“the notified provider”) has been given a notification under section 35;

- (b) OFCOM have allowed the notified provider an opportunity of making representations about the notified determination; and
- (c) the period allowed for the making of the representations has expired.

[(2) OFCOM may—

- (a) give the notified provider a decision (a “confirmation decision”) confirming the imposition of requirements in accordance with the notification under section 35; or
- (b) inform the notified provider that they are satisfied with the notified provider's representations and that no further action will be taken.

(3) OFCOM may not give a confirmation decision to the notified provider unless, after considering any representations, they are satisfied that the notified provider has, in one or more of the respects notified, been in contravention of section 33.]²

[(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 requirements imposed by virtue of section 35(2)(d), or may specify a period within which the person must comply with those requirements; and
- (d) may require the person to pay—
 - (i) the penalty specified in the notification under section 35, 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, andmay specify the period within which the penalty is to be paid.

] ³

(5) It shall be the duty of a person to whom [a confirmation decision]⁴ has been given to comply with [any requirement imposed by it]⁵ .

(6) That duty shall be 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 (c. 36); 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.

] ⁶

Notes

- ¹ Words substituted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.12(e) (May 26, 2011: substitution has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 3)
- ² Substituted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.12(a) (May 26, 2011: substitution has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 3)
- ³ Substituted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.12(b) (May 26, 2011: substitution has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 3)

- ⁴ Words substituted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.12(c)(i) (May 26, 2011: substitution has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 3)
- ⁵ Word substituted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.12(c)(ii) (May 26, 2011: substitution has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 3)
- ⁶ Added by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.12(d) (May 26, 2011: insertion has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 3)

Commencement

Pt 2 c. 1 s. 36(1)-(6)(c): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 36-(4)(b), (5)-(6)(c): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

Pt 2 c. 1 s. 36(4)(c)-(4)(d)(ii), (7)-(7)(b): United Kingdom



Repealed

37 [...]¹

Notes

- ¹ Repealed by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.13 (May 26, 2011: repeal has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 3)

Administrative charges imposed on providers



Law In Force With Amendments Pending

38 Fixing of charges

- (1) A person who, at any time in a charging year, is a person to whom this section applies shall—
- (a) in respect of the network, service or facility provided or made available by him,
 - (b) in respect of the application to him of a universal service condition relating to matters mentioned in section 66(3),
 - (c) in respect of the application to him of an SMP apparatus condition, or
 - (d) in respect of the application of the electronic communications code in his case,
- pay to OFCOM the administrative charge (if any) that is fixed by them for the case that is applicable to him.

- (2) This section applies to a person at a time if, at that time, he is—
- (a) providing an electronic communications network of a description which is, at that time, designated for the purposes of this section;
 - (b) providing an electronic communications service of a description which is, at that time, so designated;
 - (c) making available an associated facility of a description which is, at that time, so designated;
 - (d) a person who without being a communications provider is designated in accordance with regulations under section 66;
 - (e) a supplier of apparatus to whom an SMP apparatus condition applies; or
 - (f) a person in whose case the electronic communications code applies by virtue of a direction given under section 106 otherwise than for the purposes of the provision by him of an electronic communications network of a designated description.
- (3) OFCOM are not to fix the administrative charge for a charging year unless—
- (a) at the time the charge is fixed there is in force a statement by OFCOM of the principles that OFCOM are proposing to apply in fixing charges under this section for that year; and
 - (b) the charge is fixed in accordance with those charging principles.
- (4) Those principles must be such as appear to OFCOM to be likely to secure, on the basis of such estimates of the likely costs as it is practicable for them to make—
- (a) that, on a year by year basis, the aggregate amount of the charges payable to OFCOM is sufficient to meet, but does not exceed, the annual cost to OFCOM of carrying out the functions mentioned in subsection (5);
 - (b) that the cost of carrying out those functions is met by the imposition of charges that are objectively justifiable and proportionate to the matters in respect of which they are imposed;
 - (c) that the relationship between meeting the cost of carrying out those functions and the amounts of the charges is transparent;
 - (d) that the charges fixed for persons who are liable to charges by reason only of being persons to whom SMP apparatus conditions apply are referable only to things done in, or in connection with, the setting, modification or enforcement of SMP apparatus conditions or the carrying out of the functions mentioned in subsection (6)(l); and
 - (e) that the charges fixed for persons who are liable to charges by reason only of being persons falling within subsection (2)(f), are referable only to costs incurred in, or in connection with, the carrying out of the functions mentioned in subsection (6)(g) and (l).
- (5) Those functions are—
- (a) the relevant Chapter 1 functions;
 - (b) the carrying out for a Chapter 1 purpose of any research by OFCOM or the Consumer Panel into any of the matters mentioned in section 14(1)(c) to (f);
 - (c) the publication under section 26 of any information or advice that it appears to OFCOM to be appropriate to make available to the persons mentioned in subsection (2)(a) to (c) of that section; and
 - (d) the function of taking any steps that OFCOM consider it necessary to take—
 - (i) in preparation for the carrying out of any of the functions mentioned in paragraphs (a) to (c) of this subsection; or
 - (ii) for the purpose of facilitating the carrying out of those functions or otherwise in connection with carrying them out.

(6) The relevant Chapter 1 functions are—

- (a) OFCOM's functions under sections 33 to 37 and 44;
- (b) the setting, modification and enforcement of conditions under section 45;
- (c) the supervision, as respects the requirements of sections 33 to 37 and of any such conditions, of communications providers and of persons who make associated facilities available;
- (d) the monitoring of compliance with those requirements and with any such conditions;
- (e) the functions conferred on OFCOM by or under section 55;
- [(ea) their functions under sections 93A to 93D;
- (eb) the monitoring of compliance with commitments that are made binding by a commitments decision;
- (ec) their functions under sections 105A to 105D;]¹
- (f) [...] ²
- (g) their functions under sections 106 to 119;
- (h) their functions under sections 185 to 191;
- (i) securing international co-operation in relation to the regulation of electronic communications networks, electronic communications services and associated facilities;
- (j) securing the harmonisation and standardisation of the regulation of electronic communications networks, electronic communications services and associated facilities;
- (k) market analysis and any monitoring of the controls operating in the markets for electronic communications networks, electronic communications services and associated facilities;
- (l) OFCOM's functions under this section and sections 39 to 43.

(7) A purpose is a Chapter 1 purpose for the purposes of subsection (5)(b) if it is the purpose of ascertaining the effectiveness of one or more of the following—

- (a) the regulation of the provision of electronic communications networks or electronic communications services;
- (b) the regulation of the making available of associated facilities;
- (c) the mechanisms in place for the handling, by communications providers and by persons making such facilities available, of complaints made to them by consumers in markets for such services or facilities;
- (d) the mechanisms in place for resolving disputes between such consumers and communications providers or persons who make such facilities available.

(8) OFCOM's power to fix charges for a particular case includes—

- (a) power to provide that the charges in that case are to be equal to the amounts produced by a computation made in the manner, and by reference to the factors, specified by them;
- (b) power to provide for different charges to be imposed in that case on different descriptions of persons; and
- (c) power to provide for particular descriptions of persons falling within subsection (2)(d) to (f) to be excluded from the liability to pay charges in that case.

(9) As soon as reasonably practicable after the end of each charging year, OFCOM must publish a statement setting out, in respect of that year—

- (a) the aggregate amounts of the administrative charges for that year that have been received by OFCOM;
- (b) the aggregate amount of the administrative charges for that year that remain outstanding and are likely to be paid or recovered; and
- (c) the cost to OFCOM of carrying out the functions mentioned in subsection (5).

(10) Any deficit or surplus shown (after applying this subsection for all previous years) by a statement under subsection (9) shall be carried forward and taken into account in determining what is required to satisfy the requirement imposed by virtue of subsection (4)(a) in relation to the following year.

(11) Section 34 applies in relation to the making and withdrawal of a designation for the purposes of this section as it applies to the making and withdrawal of a designation for the purposes of section 33.

[(11A) For the purposes of this section, the cost to OFCOM of carrying out the functions mentioned in subsection (5) does not include the cost to OFCOM of doing anything for which they charge a fee under section 28A.]³

(12) In this section “charging year” means—

- (a) the period beginning with the commencement of this section and ending with the next 31st March; or
- (b) any subsequent period of twelve months beginning with 1st April.

Notes

¹ Added by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.9 (December 21, 2020)

² Repealed by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.14 (May 26, 2011: repeal has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 para.2)

³ Added by Digital Economy Act 2017 c. 30 Pt 6 s.101(3) (July 31, 2017)

Proposed Draft Amendments

Pt 2 c. 1 s. 38(6)(ec): repealed by Telecommunications (Security) Bill 2019-21 (HC Bill 246) s. 25(2) (Commons' Committee Stage, January 26, 2021) (date to be appointed)

Commencement

Pt 2 c. 1 s. 38(1)-(12)(b): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 38-(11), (12)-(12)(b): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

Pt 2 c. 1 s. 38(11A): (extent not available)

 Law In Force

39 Supplemental provision about fixing charges

(1) OFCOM's power to fix a charge under section 38—

- (a) is to be exercisable only by the publication or giving of such notification as they consider appropriate for bringing the charge to the attention of the persons who, in their opinion, are likely to be affected by it; and


- (b) includes power, by setting it out in that notification, to fix the time at which the charge is to become due to OFCOM.
- (2) A charge fixed under section 38 for a charging year may be fixed in terms providing for a deduction from the charge on a proportionate basis to be made for a part of the year during which—
- (a) the network, service or facility in respect of which it is fixed is not provided or made available by the person otherwise liable to the charge;
 - (b) the universal service condition in respect of which it is fixed does not apply in that person's case;
 - (c) the SMP apparatus condition in respect of which it is fixed does not apply in that person's case; or
 - (d) the electronic communications code does not apply in that person's case.
- (3) Such a charge may also be fixed (subject to subsection (4)) so that it is referable, in whole or in part—
- (a) to the provision or making available of a network, service or facility during a part of the year falling before the fixing of the charge;
 - (b) to the application of a universal service condition to a person for a part of the year so falling;
 - (c) to a person's being a person to whom an SMP apparatus condition applies for a part of the year so falling; or
 - (d) to the application of the electronic communications code in a person's case during a part of the year so falling.
- (4) A charge may be fixed so as to be referable to a time before it is fixed to the extent only that both—
- (a) the imposition of the charge, and
 - (b) the amount of the charge,
- are required by, and consistent with, the statement of charging principles in force at the beginning of the charging year.
- (5) Before making or revising a statement of charging principles, OFCOM must consult such of the persons who, in OFCOM's opinion, are likely to be affected by those principles as they think fit.
- (6) The way in which a statement of charging principles must be made or may be revised is by the publication of the statement or revised statement in such manner as OFCOM consider appropriate for bringing it to the attention of the persons who, in their opinion, are likely to be affected by it.
- (7) References in this section to a statement of charging principles are references to a statement by OFCOM of the principles that they are proposing to apply in fixing charges under section 38 for a charging year.
- (8) In this section “charging year” has the same meaning as in section 38.

Commencement

Pt 2 c. 1 s. 39(1)-(8): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 39(8): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

 Law In Force

40 Notification of non-payment of charges

(1) OFCOM are not entitled to bring proceedings for the recovery from a person of an administrative charge fixed for any year under section 38 unless they have given that person a notification under this section with respect to the amount they are seeking to recover.

(2) Where OFCOM determine that there are reasonable grounds for believing that a person is in contravention (whether in respect of the whole or a part of a charge) of a requirement to pay such an administrative charge, they may give him a notification under this section.

(3) A notification under this section is one which—

- (a) sets out the determination made by OFCOM; and
- (b) specifies the period during which the person notified has an opportunity of [making representations about the notified determination]¹.

(4)-(8) [...] ²

(9) A notification under this section—

- (a) may be given in respect of contraventions of more than one requirement to pay an administrative charge; 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.

(10) Where a notification under this section has been given to a person in respect of an amount outstanding, OFCOM may give a further notification in respect of the whole or a part of that amount if, and only if—

- (a) the subsequent notification is in respect of so much of a period during which that amount was outstanding as falls after a period to which the earlier notification relates; or
- (b) the earlier notification has been withdrawn without a penalty having been imposed in respect of the matters notified.

(11) [...] ²

Notes

¹ Words substituted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.15(a) (May 26, 2011: substitution has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 4)

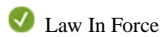
- ² Repealed by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.15(b) (May 26, 2011: repeal has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 4)

Commencement

Pt 2 c. 1 s. 40(1)-(11)(b): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 40-(11)(b): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)



Law In Force

41 Penalties for non-payment of charges

(1) This section applies where—

- (a) a person (“the notified charge payer”) has been given a notification under section 40;
- (b) OFCOM have allowed the notified charge payer an opportunity of making representations about the notified determination; and
- (c) the period allowed for the making of the representations has expired.

(2) OFCOM may impose a penalty on the notified charge payer if he—

- (a) has, in one or more of the respects notified, been in contravention of a requirement to pay an administrative charge fixed under section 38[.]¹
- (b) [...] ¹

(3) Where a notification under section 40 relates to more than one contravention, a separate penalty may be imposed in respect of each contravention.

(4) Where such a notification 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 section is to be such amount, not exceeding twice the amount of the charge fixed for the relevant year, as OFCOM determine to be—

- (a) appropriate; and
- (b) proportionate to the contravention in respect of which it is imposed.

(6) In making that determination OFCOM must have regard to—

- (a) any representations made to them by the notified charge payer; and
- (b) any steps taken by him towards paying the amounts that he was notified under section 40 were outstanding.

(7) Where OFCOM impose a penalty on a person under this section, they shall—

- (a) [without delay,] ² notify that person of that decision and of their reasons for that decision; and
- (b) in that notification, fix a reasonable period after it is given as the period within which the penalty is to be paid.

(8) A penalty imposed under this section—

(a) must be paid to OFCOM; and

(b) if not paid within the period fixed by them, is to be recoverable by them accordingly.

(9) In this section “the relevant year”, in relation to a contravention of a requirement to pay the whole or a part of the administrative charge fixed for any year, means that year.

(10) The provisions of this section do not affect OFCOM's power, apart from those provisions, to bring proceedings (whether before or after the imposition of a penalty under this section) for the recovery of the whole or part of an amount due to them under section 38(1).

Notes

¹ Repealed by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.16(a) (May 26, 2011: repeal has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 4)


² Words substituted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.16(b) (May 26, 2011: substitution has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 4)

Commencement

Pt 2 c. 1 s. 41(1)-(10): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 41-(10): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

 Law In Force

42 Suspending service provision for non-payment

(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]¹ contravention of requirements to pay administrative charges fixed under section 38 (whether in respect of the whole or a part of the charges);

(b) that the contraventions are not contraventions relating only to charges in respect of the application to the contravening provider of SMP apparatus conditions;

[(ba) that, in the case of a single serious contravention, a notification has been given to the contravening provider under section 40 and the period for making representations under that section has expired;]²

(c) that [, in the case of a repeated contravention,]³ the bringing of proceedings for the recovery of the amounts outstanding has failed to secure complete compliance by the contravening provider with the requirements to pay the charges fixed in his case, or has no reasonable prospect of securing such compliance;

(d) that [, in the case of a repeated contravention,]⁴ an attempt, by the imposition of penalties under section 41, to secure such compliance has failed; and
[(e) that the giving of the direction is appropriate and proportionate to the contravention in respect of which it is given.]⁵

(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) OFCOM are not to give a direction under this section unless they have—

- (a) notified the contravening provider 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 to take advantage of that opportunity.

[(7) That period is such reasonable period as OFCOM may specify, beginning with the day of the giving of the notification.]⁶

(8) 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.

(9) For the purposes of this section there are repeated contraventions by a person of requirements to pay administrative charges to the extent that—

- (a) in the case of a previous notification given to that person under section 40, OFCOM have determined for the purposes of section 41(2) that such a contravention did occur; and
- (b) in the period of [24]⁷ months following the day of the making of that determination, one or more further notifications have been given to that person in respect of the same or different failures to pay administrative charges.

Notes

- ¹ Words substituted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.17(a)(i) (May 26, 2011: substitution has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 4)
- ² Added by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.17(a)(ii) (May 26, 2011: insertion has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 4)
- ³ Words inserted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.17(a)(iii) (May 26, 2011: insertion has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 4)
- ⁴ Words inserted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.17(a)(iv) (May 26, 2011: insertion has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 4)
- ⁵ Substituted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.17(a)(v) (May 26, 2011: substitution has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 4)
- ⁶ Substituted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.17(b) (May 26, 2011: substitution has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 4)
- ⁷ Word substituted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.17(c) (May 26, 2011: substitution has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2, 4 and 5)

Commencement

Pt 2 c. 1 s. 42(1)-(9)(b): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 42-(1)(b), (1)(c)-(9)(b): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

Pt 2 c. 1 s. 42(1)(ba): United Kingdom

 Law In Force

43 Enforcement of directions under s. 42

(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 42; or
- (b) in contravention of a restriction contained in such a direction.

- (2) A person guilty of an offence under subsection (1) shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to a fine.
- (3) The duty of a person to comply with a condition of a direction under section 42 shall be a duty owed to every person who may be affected by a contravention of the condition.
- (4) Where a duty is owed by virtue of subsection (3) to a person—
- (a) a breach of the duty that causes that person to sustain loss or damage, and
 - (b) an act which—
 - (i) by inducing a breach of the duty or interfering with its performance, causes that person to sustain loss or damage, and
 - (ii) is done wholly or partly for achieving that result,
- shall be actionable at the suit or instance of that person.
- (5) In proceedings brought against a person by virtue of subsection (4)(a) it shall be a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid contravening the condition in question.
- (6) [Sections 96A to 99]¹ apply in relation to a contravention of conditions imposed by a direction under section 42 as they apply in relation to a contravention of conditions set under section 45.

Notes

- ¹ Word substituted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.18 (May 26, 2011: substitution has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 4)

Commencement

Pt 2 c. 1 s. 43(1)-(6): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 43-(6): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

Register of providers required to notify or to pay charges

 Law In Force

44 Duty of OFCOM to keep publicly accessible register

- (1) It shall be the duty of OFCOM to establish and maintain a register for the purposes of section 33.
- (2) OFCOM must record in the register—
- (a) every designation by them for the purposes of section 33 or 38;

- (b) every withdrawal by them of such a designation;
 - (c) every notification given to them under section 33; and
 - (d) every notification treated as given to them under that section by a transitional provision made under subsection (12) of that section.
- (3) Information recorded in the register must be so recorded in such manner as OFCOM consider appropriate.
- (4) It shall be the duty of OFCOM to publish a notification setting out—
- (a) the times at which the register is for the time being available for public inspection; and
 - (b) the fees that must be paid for, or in connection with, an inspection of the register.
- (5) The publication of a notification under subsection (4) must be in such manner as OFCOM consider appropriate for bringing it to the attention of the persons who, in their opinion, are likely to be affected by it.
- (6) OFCOM must make the register available for public inspection—
- (a) during such hours, and
 - (b) on payment of such fees,
- as are set out in the notification for the time being in force under subsection (4).

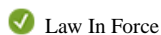
Commencement

Pt 2 c. 1 s. 44(1)-(6)(b): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 44-(6)(b): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

Conditions of entitlement to provide network or service etc.



Law In Force

45 Power of OFCOM to set conditions

- (1) OFCOM shall have the power to set conditions under this section binding the persons to whom they are applied in accordance with section 46.
- (2) A condition set by OFCOM under this section must be either—
- (a) a general condition; or
 - (b) a condition of one of the following descriptions—
 - (i) a universal service condition;
 - [(ia) a social tariff condition;]¹
 - (ii) an access-related condition;
 - (iii) a privileged supplier condition;

(iv) a significant market power condition (an “SMP condition”).

(3) A general condition is a condition which contains only provisions authorised or required by one or more of sections 51, 52, 57, 58 or 64.

(4) A universal service condition is a condition which contains only provisions authorised or required by section 67.

[(4A) A social tariff condition is a condition which contains only provision authorised by section 72F.]²

(5) An access-related condition is a condition which contains only provisions authorised by section 73.

(6) A privileged supplier condition is a condition which contains only the provision required by section 77.

(7) An SMP condition is either—

- (a) an SMP services condition; or
- (b) an SMP apparatus condition.

(8) An SMP services condition is a condition which contains only provisions which—

- (a) are authorised or required by one or more of [sections 87 to 91]³; or
- (b) in the case of a condition applying to a person falling within section 46(8)(b), correspond to provision authorised or required by one or more of [sections 87 to 89A]⁴.

(9) An SMP apparatus condition is a condition containing only provisions authorised by section 93.

(10) OFCOM's power to set a condition under this section making provision authorised or required by this Chapter includes each of the following—

- (a) power to impose a requirement on the person or persons to whom the condition is applied to comply with such directions with respect to the matters to which the condition relates as may be given from time to time by OFCOM or by another person specified in the condition;
- (b) power to impose an obligation with respect to those matters that is framed by reference to, or is conditional upon, the giving of a consent or of an approval, or on the making of a recommendation, by OFCOM or by another person so specified;
- (c) power, for the purposes of provision made by virtue of either of the preceding paragraphs, to confer a discretion exercisable from time to time by OFCOM or by another person specified in the condition or determined in accordance with provision contained in it;
- (d) power (subject to section 51(3)) to set different conditions for different cases (including different conditions in relation to different parts of the United Kingdom); and
- (e) power to revoke or modify the conditions for the time being in force.

(11) The directions that may be authorised by virtue of subsection (10) do not include directions withdrawing, suspending or restricting a person's entitlement—

- (a) to provide, in whole or in part, any electronic communications network or electronic communications service; or
- (b) to make available, in whole or in part, any associated facilities.

Notes

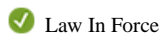
- ¹ Added by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.10(2) (December 21, 2020)
- ² Added by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.10(3) (December 21, 2020)
- ³ Word substituted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.19(a) (May 26, 2011: substitution has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 para.2)
- ⁴ Word substituted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.19(b) (May 26, 2011: substitution has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 para.2)

Commencement

Pt 2 c. 1 s. 45(1)-(11)(b): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 45-(11)(b): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)



Law In Force

46 Persons to whom conditions may apply

- (1) A condition set under section 45 is not to be applied to a person except in accordance with the following provisions of this section.
- (2) A general condition may be applied generally—
 - (a) to every person providing an electronic communications network or electronic communications service; or
 - (b) to every person providing such a network or service of a particular description specified in the condition.
- (3) A universal service condition, access-related condition, privileged supplier condition or SMP condition may be applied to a particular person specified in the condition.
- (4) A privileged supplier condition may also be applied generally—
 - (a) to every person to whom such a condition is required to apply under section 77; or
 - (b) to every such person who is of a particular description specified in the condition.
- (5) The particular person to whom a universal service condition is applied—
 - (a) except in the case of a condition relating to matters mentioned in subsection (3) of section 66, must be a communications provider designated in accordance with regulations under that section; and

(b) in that excepted case, must be a communications provider so designated or a person who is not such a provider but who is so designated for the purposes only of conditions relating to those matters.

[(5A) A social tariff condition may be applied—

- (a) generally to every person providing a public electronic communications service;
- (b) generally to every person providing such a service of a particular description specified in the condition; or
- (c) to a particular person specified in the condition.

] ¹

(6) The particular person to whom an access-related condition is applied—

- (a) in the case of a condition falling within section 74(1) , may be any person whatever;
- [(aa) in the case of a condition falling within section 74(2A), must be—
 - (i) a person providing a public electronic communications network; or
 - (ii) the owner of a line or associated facility;
- (ab) in the case of a condition falling within section 74A, must be a person who provides an electronic communications network; and] ²
- (b) in any other case, must be a person who provides an electronic communications network or makes associated facilities available.

(7) The particular person to whom an SMP services condition is applied must—

- (a) be a communications provider or a person who makes associated facilities available; and
- (b) fall within subsection (8).

(8) A person falls within this subsection if—

- (a) he is a person whom OFCOM have determined to be a person having significant market power in a specific market for electronic communications networks, electronic communications services or associated facilities (a “services market”); or
- (b) it appears to OFCOM that he is a person on whom it is necessary, for the purpose of securing compliance with an international obligation of the United Kingdom, to impose a condition containing provision that corresponds to provision which, in the case of a person falling within paragraph (a), must be made (or may be made) under any of [sections 87 to 89A] ³.

[(8A) A person whom OFCOM have previously determined to be a person having significant market power in a services market but whom OFCOM determine no longer to be a person having significant market power in that market is to be treated as continuing to fall within subsection (8) for so long as OFCOM consider necessary to ensure a sustainable transition for those benefitting from obligations imposed on that person as a result of the previous determination.] ⁴

(9) The particular person to whom an SMP apparatus condition is applied must be—

- (a) a person who supplies electronic communications apparatus; and
- (b) a person whom OFCOM have determined to be a person having significant market power in a specific market for electronic communications apparatus (an “apparatus market”).

Notes

¹ Added by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.11(2) (December 21, 2020)


- ² S.46(6)(aa) and (ab) substituted for word by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.11(3) (December 21, 2020)
- ³ Word substituted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.20 (May 26, 2011: substitution has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 para.2)
- ⁴ Added by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.11(4) (December 21, 2020)

Commencement

Pt 2 c. 1 s. 46(1)-(9)(b): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 46-(9)(b): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

 Law In Force

47 Test for setting or modifying conditions

(1) OFCOM must not, in exercise or performance of any power or duty under this Chapter—

- (a) set a condition under section 45, or
- (b) modify such a condition,

unless they are satisfied that the condition or (as the case may be) the modification satisfies the test in subsection (2).

(2) That test is that the condition or modification is—

- (a) objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates [(but this paragraph is subject to subsection (3))]¹ ;
- (b) not such as to discriminate unduly against particular persons or against a particular description of persons;
- (c) proportionate to what the condition or modification is intended to achieve; and
- (d) in relation to what it is intended to achieve, transparent.

[(3) Subsection (2)(a) does not apply in relation to the setting of a general condition.]²

[(4) This section does not apply in relation to the setting or modification of a social tariff condition in accordance with a direction under section 72D(7).]³

Notes

¹ Words inserted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.21(a) (May 26, 2011: insertion has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 para.2)

² Added by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.21(b) (May 26, 2011: insertion has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 para.2)

- ³ Added by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.12 (December 21, 2020)

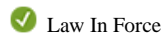
Commencement

Pt 2 c. 1 s. 47(1)-(2)(d): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 47-(2)(d), (4): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

Pt 2 c. 1 s. 47(3): United Kingdom



Law In Force

48 Procedure for setting, modifying and revoking conditions

(1) Subject to the following provisions of this Chapter—

- (a) the way in which conditions are to be set or modified under section 45 is by the publication of a notification setting out the conditions or modifications; and
- (b) the way in which such a condition is to be revoked is by the publication of a notification stating that the condition is revoked.

[(2) Where section 48A applies, OFCOM must comply with the applicable requirements of that section [...] ² —

- (a) setting conditions under section 45; or
- (b) modifying or revoking a condition so set.

(2A) Where section 48A does not apply to the setting, modification or revocation of conditions because of subsection (2) of that section—

- (a) the conditions, or their modification or revocation, must be temporary; and
- (b) the notification published under subsection (1) of this section must state the period for which the conditions, or their modification or revocation, are to have effect.

(2B) Where OFCOM propose to extend or make permanent any such temporary conditions, modification or revocation—

- (a) [section 48A does] ³ not apply in relation to the proposal [.] ⁴
- (b) [...] ⁴

] ¹

(4) In the case of a [proposal by OFCOM] ⁵ with respect to an SMP condition, the applicable requirements of sections 79 to 86 must also be complied with.

(5) [...] ⁶

(6) The publication of a notification under this section [or section 48A] ⁷ must be in such manner as appears to OFCOM to be appropriate for bringing the contents of the notification—

- (a) in the case of a notification setting general conditions, to the attention of such persons as OFCOM consider appropriate; and
- (b) in any other case, to the attention of the persons who, in OFCOM's opinion, are likely to be affected by the contents of the notification.

(7) Nothing in the following provisions of this Chapter imposing a duty on OFCOM to set or modify a condition shall be taken as dispensing with any of the requirements of this section [or section 48A]⁸ .

Notes

- ¹ S.48(2)-(2B) substituted for s.48(2) and (3) by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.22(a) (May 26, 2011: substitution has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 6)
- ² Words repealed by Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019/246 Sch.1(1) para.9(2) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))
- ³ Words substituted by Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019/246 Sch.1(1) para.9(3)(a) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))
- ⁴ Repealed by Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019/246 Sch.1(1) para.9(3)(b) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))
- ⁵ Words substituted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.22(b) (May 26, 2011: substitution has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 6)
- ⁶ Repealed by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.22(c) (May 26, 2011: repeal has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 6)
- ⁷ Words inserted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.22(d) (May 26, 2011: insertion has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 6)
- ⁸ Words substituted by Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019/246 Sch.1(1) para.9(4) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))

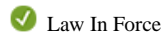
Commencement

Pt 2 c. 1 s. 48(1)-(7): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 48-(2)(d), (3), (4)-(7): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

Pt 2 c. 1 s. 48(2A)-(2B), (2B)(a)-(2B)(b): United Kingdom



[48A.— [Consultation]² for section 45 conditions

- (1) This section applies where OFCOM propose to set, modify or revoke—
- (a) SMP apparatus conditions; or
 - (b) any other conditions set under section 45 where what is proposed would, in OFCOM's opinion, have a significant impact on a market for any of the services, facilities, apparatus or directories in relation to which they have functions under this Chapter.
- (2) But this section does not apply where [...] ³ in OFCOM's opinion—
- (a) there are exceptional circumstances; and
 - (b) there is an urgent need to act in order to safeguard competition and to protect the interests of consumers.

[(2A) This section also does not apply to the proposed setting, modification or revocation of a social tariff condition.] ⁴

- (3) OFCOM must publish a notification—
- (a) stating that they are proposing to set, modify or revoke the conditions that are specified in the notification;
 - (b) setting out the effect of those conditions, modifications or revocations;
 - (c) giving their reasons for making the proposal; and
 - (d) specifying the period within which representations may be made to OFCOM about their proposal.
- (4) That period must end no less than [30 days] ⁵ after the day of the publication of the notification.
- (5) But where OFCOM are satisfied that there are exceptional circumstances justifying the use of a shorter period, the period specified as the period for making representations may be whatever shorter period OFCOM consider reasonable in those circumstances.
- (6) OFCOM must—
- (a) consider every representation about the proposal made to them during the period specified in the notification; and
 - (b) have regard to every international obligation of the United Kingdom (if any) which has been notified to them for the purposes of this paragraph by the Secretary of State.
- (7) [...] ⁶ OFCOM may then give effect to [the proposal] ⁷ , with any modifications that appear to OFCOM to be appropriate.
-] ¹

Notes

¹ Added by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.23 (May 26, 2011: insertion has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 6)

² Words substituted by Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019/246 Sch.1(1) para.10(4) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))

³ Words repealed by Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019/246 Sch.1(1) para.10(2) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))

⁴ Added by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.13(2) (December 21, 2020)

- ⁵ Words substituted by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.13(3) (December 21, 2020)
- ⁶ Words repealed by Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019/246 Sch.1(1) para.10(3)(a) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))
- ⁷ Word substituted by Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019/246 Sch.1(1) para.10(3)(b) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))

Extent

Pt 2 c. 1 s. 48A(1)-(7): United Kingdom



Repealed

48B.— [...]¹

Notes

- ¹ Repealed by Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019/246 Sch.1(1) para.11 (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))



Law In Force

[48C.— Delivery of copies of notifications etc. in respect of section 45 conditions

(1) OFCOM must send to the Secretary of State a copy of every notification published under section 48(1) or 48A(3).

(2)-(4) [...]²
]¹

Notes

- ¹ Added by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.23 (May 26, 2011: insertion has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 6)
- ² Repealed by Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019/246 Sch.1(1) para.12 (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))

Extent

Pt 2 c. 1 s. 48C(2)-(4)(c): United Kingdom



Law In Force

49 Directions and approvals for the purposes of a s. 45 condition

(1) This section applies where—

- (a) a condition set under section 45 has effect by reference to directions, approvals or consents given by a person (whether OFCOM themselves or another); and
- (b) that person [(referred to in this section and sections 49A to 49C as “the responsible person”)]¹ is proposing to give a direction, approval or consent that affects the operation of that condition or to modify or withdraw a direction, approval or consent so as to affect the condition's operation.

(2) [The responsible person]² must not give, modify or withdraw the direction, approval or consent unless he is satisfied that to do so is—

- (a) objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates [(but this paragraph is subject to subsection (2A))]³ ;
- (b) not such as to discriminate unduly against particular persons or against a particular description of persons;
- (c) proportionate to what it is intended to achieve; and
- (d) in relation to what it is intended to achieve, transparent.

[(2A) Subsection (2)(a) does not apply in relation to a direction, approval or consent affecting a general condition.]⁴

(3) [Where the responsible person is a person other than OFCOM, that person shall in giving, modifying or withdrawing the direction]⁵ be under the same duty as OFCOM to act in accordance with the [six]⁶ requirements set out in section 4.

[(4) Where section 49A applies, the applicable requirements of that section [...]]⁸ must be complied with before the direction, approval or consent is given, modified or withdrawn.

(4A) Where section 49A does not apply because of subsection (2) of that section—

- (a) the direction, approval or consent given, or its modification or withdrawal, must be temporary; and
- (b) the instrument that gives, modifies or withdraws the direction, approval or consent must state the period for which it is to have effect.

(4B) Where it is proposed to extend or make permanent any such temporary direction, approval or consent, or modification or withdrawal—

- (a) [section 49A does]⁹ not apply in relation to the proposal [.]¹⁰
- (b) [...]]¹⁰

(4C) Where the responsible person is a person other than OFCOM, that person must refer to OFCOM such of the following questions as are relevant in the case in question—

- (a) whether OFCOM is of the opinion mentioned in section 49A(1)(b); [and]¹¹
- (b) whether OFCOM is of the opinion mentioned in section 49A(2) ; [...]]¹²
- (c) [...]]¹²

(4D) OFCOM must immediately determine any question so referred to them.]⁷

Notes

¹ Words inserted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.24(a) (May 26, 2011: insertion has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 7)

² Words substituted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.24(b)(i) (May 26, 2011: substitution has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 7)

- ³ Words inserted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.24(b)(ii) (May 26, 2011: insertion has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 7)
- ⁴ Added by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.24(c) (May 26, 2011: insertion has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 7)
- ⁵ Words substituted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.24(d) (May 26, 2011: substitution has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 7)
- ⁶ Words substituted by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(2) para.69 (December 31, 2020: shall come into force on IP completion day)
- ⁷ S.49(4)-(4D) substituted for s.49(4)-(10) by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.24(e) (May 26, 2011: substitution has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 7)
- ⁸ Words repealed by Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019/246 Sch.1(1) para.13(3) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))
- ⁹ Words substituted by Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019/246 Sch.1(1) para.13(4)(a) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))
- ¹⁰ Repealed by Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019/246 Sch.1(1) para.13(4)(b) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))
- ¹¹ Word inserted by Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019/246 Sch.1(1) para.13(5)(a) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))
- ¹² Repealed by Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019/246 Sch.1(1) para.13(5)(b) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))

Commencement

Pt 2 c. 1 s. 49(1)-(10): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 49-(2)(d), (3)-(4)(f), (5)-(10): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

Pt 2 c. 1 s. 49(2A), (4A)-(4D): United Kingdom



[49A.— [Consultation]² for directions, approvals and consents

(1) This section applies where the responsible person is proposing to give, modify or withdraw a direction, approval or consent for the purposes of—

- (a) an SMP apparatus condition; or

- (b) any other condition set under section 45 where what is proposed would, in OFCOM's opinion, have a significant impact on a market for any of the services, facilities, apparatus or directories in relation to which they have functions under this Chapter.
- (2) But this section does not apply where [...] ³ in OFCOM's opinion—
- (a) there are exceptional circumstances; and
 - (b) there is an urgent need to act in order to safeguard competition and to protect the interests of consumers.
- (3) The responsible person must publish a notification—
- (a) stating that there is a proposal to give, modify or withdraw the direction, approval or consent;
 - (b) identifying the responsible person;
 - (c) setting out the direction, approval or consent to which the proposal relates;
 - (d) setting out the effect of the direction, approval or consent or of its proposed modification or withdrawal;
 - (e) giving reasons for the making of the proposal; and
 - (f) specifying the period within which representations may be made about the proposal to the responsible person.
- (4) That period must be one ending not less than [30 days] ⁴ after the day of the publication of the notification.
- (5) But where the responsible person is satisfied that there are exceptional circumstances justifying the use of a shorter period, the period specified as the period for making representations may be whatever shorter period that person considers reasonable in those circumstances.
- (6) The responsible person must—
- (a) consider every representation about the proposal made to that person during the period specified in the notification; and
 - (b) have regard to every international obligation of the United Kingdom (if any) which has been notified to OFCOM for the purposes of this paragraph by the Secretary of State.
- (7) [The] ⁵ responsible person may then give effect to the proposal, with any modifications that appear to that person to be appropriate.
- (8) The publication of a notification under this section must be in such manner as appears to the responsible person to be appropriate for bringing the contents of the notification to the attention of such persons as that person considers appropriate.

] ¹

Notes

- ¹ Added by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.25 (May 26, 2011: insertion has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 7)
- ² Words substituted by Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019/246 Sch.1(1) para.14(4) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))
- ³ Words repealed by Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019/246 Sch.1(1) para.14(2) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))

- ⁴ Words substituted by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.16 (December 21, 2020)
- ⁵ Words repealed by Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019/246 Sch.1(1) para.14(3) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))

Extent


Pt 2 c. 1 s. 49A(1)-(8): United Kingdom

 Repealed

49B.— [...]¹

Notes

- ¹ Repealed by Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019/246 Sch.1(1) para.15 (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))

 Law In Force

[49C.— Delivery of copies of notifications etc. in respect of directions, approvals and consents

- (1) The responsible person must send to the Secretary of State—
- (a) a copy of every notification published under section 49A(3);
 - (b) a copy of every direction, approval or consent given for the purposes of a condition set under section 45; and
 - (c) a copy of every instrument modifying or withdrawing such a direction, approval or consent.
- (2)-(3) [...]²
- (4) In a case in which the responsible person is a person other than OFCOM, the responsible person must send to OFCOM—
- (a) a copy of every notification published under section 49A(3);
 - (b) a copy of every direction, approval or consent given for the purposes of a condition set under section 45;
 - (c) a copy of every instrument modifying or withdrawing such a direction, approval or consent [.]³
 - (d)-(g) [...]³
- (5)-(6) [...]⁴
-]¹

Notes

- ¹ Added by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.25 (May 26, 2011: insertion has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 7)

- ² Repealed by Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019/246 Sch.1(1) para.16(2) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))
- ³ Repealed by Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019/246 Sch.1(1) para.16(3) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))
- ⁴ Repealed by Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019/246 Sch.1(1) para.16(4) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))

Extent

Pt 2 c. 1 s. 49C(1)-(6): United Kingdom


 Repealed

50 [...]¹

Notes

- ¹ Repealed by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.26 (May 26, 2011: repeal has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 8)

General conditions: subject-matter

 Law In Force

51 Matters to which general conditions may relate

(1) Subject to sections 52 to 64, the only conditions that may be set under section 45 as general conditions are conditions falling within one or more of the following paragraphs—

- (a) conditions making such provision as OFCOM consider appropriate for protecting the interests of the end-users of public electronic communications services;
- (b) conditions making such provision as OFCOM consider appropriate for securing service interoperability and for securing, or otherwise relating to, network access;
- (c) conditions making such provision as OFCOM consider appropriate for securing the proper and effective functioning of public electronic communications networks;
- (d) conditions for giving effect to determinations or regulations made under [section 71 or 72H]¹;
- (e) conditions requiring [...] ² the provision, availability and use, in the event of a disaster, of electronic communications networks, electronic communications services and associated facilities;
- (f) conditions making such provision as OFCOM consider appropriate for securing the protection of public health by the prevention or avoidance of the exposure of individuals to electro-magnetic fields created in connection with the operation of electronic communications networks;

(g) conditions requiring compliance with relevant international standards.

(2) The power under subsection (1)(a) to set conditions for protecting the interests of the end-users of public electronic communications services includes power to set conditions for that purpose which—

(a) relate to the supply, provision or making available of goods, services or facilities in association with the provision of public electronic communications services; [...]³

[(b) provide protection for such end-users that is the same as, or similar to, any protection that was, immediately before IP completion day, required by Title 3 of Part 3 of the EECC Directive (end-user rights);]⁴

[(ba) relate to any of the elements of a bundled contract;]⁵

[(c) specify requirements in relation to the provision of services to disabled end-users;

(d) require the provision, free of charge, of specified information, or information of a specified kind, to end-users;

[(da) require a communications provider to pay compensation to an end-user on failing to meet a specified standard or obligation;]⁷

(e) in order to prevent the degradation of service and the hindering or slowing down of traffic over networks, impose minimum requirements in relation to the quality of public electronic communications networks;

(f) require a communications provider, in specified circumstances, to block access to telephone numbers or services in order to prevent fraud or misuse, and enable them to withhold fees payable to another communications provider in those circumstances;

(g) impose a limit on the duration of a contract between an end-user and a communications provider; [...]⁸

(h) ensure that conditions and procedures for the termination of a contract do not act as a disincentive to an end-user changing communications provider [;]⁹ ⁶

[(i) specify requirements in relation to arrangements that enable an end-user to change communications provider on request.]⁹

(2A) [...]¹⁰

[(2B) The power to set general conditions falling within subsection (1)(b) includes power to require negotiations relating to service interoperability or network access to be conducted through an intermediary who—

(a) is independent of the parties; and

(b) is either appointed by the parties with the approval of OFCOM or appointed by OFCOM.

] ¹¹

(3) The power to set general conditions in relation to a description of electronic communications network or electronic communications service does not include power—

(a) to set conditions that are made applicable according to the identity of the provider of a network or service; or

(b) to set conditions that differ according to the identity of the provider of the networks or services to which they relate.

(4) The power to set general conditions falling within subsection (1)(b) does not include power to set conditions containing provision which under—

(a) section 73, or

(b) any of [sections 87 to 91] ¹²,

must be or may be included, in a case in which it appears to OFCOM to be appropriate to do so, in an access-related condition or SMP condition.

(5) The conditions falling within subsection (1)(c) include conditions making such provision as OFCOM consider appropriate for the purpose [...] ¹³ of preventing or restricting electro-magnetic interference—

- (a) with the provision of an electronic communications network or electronic communications service; or
- (b) with, or with the receipt of, anything conveyed or provided by means of such a network or service.

(6) In this section “electro-magnetic interference” means interference by means of the emission or reflection of electro-magnetic energy in the course of, or in connection with, the provision any electronic communications network or electronic communications service.

(7) In this section “disaster” includes any major incident having a significant effect on the general public; and for this purpose a major incident includes any incident of contamination involving radioactive substances or other toxic materials.

[(8) In this Chapter “bundled contract” means a contract, or two or more closely related or linked contracts, between the provider of a public electronic communications service and a qualifying end-user, which—

- (a) relates, or together relate, to the provision of at least one of the following—
 - (i) an internet access service; and
 - (ii) a number-based interpersonal communications service; and
- (b) also relates, or together also relate, to the provision of at least one of the following—
 - (i) another service falling within paragraph (a)(i) or (ii);
 - (ii) any other public electronic communications service;
 - (iii) an information society service;
 - (iv) a content service; and
 - (v) terminal equipment.

(9) In subsection (8)—

“content service” has the meaning given by section 32(7);

“information society service” is to be read in accordance with Article 1(1)(b) of Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (codification);

“internet access service” has the meaning given by section 32(2B);

“qualifying end-user” means an end-user who is—

- (a) an individual acting for purposes other than those of a business;
- (b) acting in the course of a business which is carried on by the end-user, and for which no more than 10 individuals work, whether as employees or volunteers or otherwise;
- (c) a not-for-profit body for which no more than 10 individuals work, whether as employees or otherwise but excluding volunteers.

¹⁴

Notes

- ¹ Words inserted by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.19(2) (December 21, 2020)
- ² Words repealed by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.27(a) (May 26, 2011: repeal has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 para.2)
- ³ Word repealed by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.27(b)(i) (May 26, 2011: repeal has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 para.2)
- ⁴ Substituted by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(2) para.70 (December 31, 2020: shall come into force on IP completion day)
- ⁵ Added by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.19(3) (December 21, 2020)
- ⁶ Added by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.27(b)(ii) (May 26, 2011: insertion has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 para.2)
- ⁷ Added by Digital Economy Act 2017 c. 30 Pt 1 s.3 (June 27, 2017)
- ⁸ Word repealed by Digital Economy Act 2017 c. 30 Pt 1 s.2(2) (June 27, 2017)
- ⁹ Added by Digital Economy Act 2017 c. 30 Pt 1 s.2(3) (June 27, 2017)
- ¹⁰ Repealed by Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019/246 Sch.1(1) para.17(3) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))
- ¹¹ Added by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.19(4) (December 21, 2020)
- ¹² Word substituted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.27(d) (May 26, 2011: substitution has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 para.2)
- ¹³ Words repealed by Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019/246 Sch.1(1) para.17(4) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))
- ¹⁴ Added by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.19(5) (December 21, 2020)

Commencement

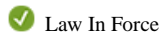
Pt 2 c. 1 s. 51(1)-(7): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 51-(2)(ba), (2B), (2B)(a), (2B)(b)-(9) definition of "qualifying end user" (c): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

Pt 2 c. 1 s. 51(2)(c)-(2)(d), (2)(e)-(2)(h), (2A), (2A)(a), (2A)(b): United Kingdom

Pt 2 c. 1 s. 51(2)(da), (2)(i): (extent not available)

General conditions: customer interests

Law In Force

52 Conditions relating to customer interests

(1) It shall be the duty of OFCOM to set such general conditions (if any) as they consider appropriate for securing that—

(a) public communications providers, or
(b) such descriptions of them as OFCOM consider appropriate,
establish and maintain procedures, standards and policies with respect to the matters mentioned in subsection (2).

(2) Those matters are—

(a) the handling of complaints made to public communications providers by any of their domestic and small business customers [, where the complaint relates to contractual conditions, or to the performance of a contract for the supply of an electronic communications network or service]¹ ;

(b) the resolution of disputes between such providers and any of their domestic and small business customers [, where the complaint relates to contractual conditions, or to the performance of a contract for the supply of an electronic communications network or service]² ;

(c) the provision of remedies and redress in respect of matters that form the subject-matter of such complaints or disputes;

[(ca) the payment of compensation to a person in respect of delay in porting a number to another public communications provider, or abuse of the process for porting a number;]³

(d) the information about service standards and about the rights of domestic and small business customers that is to be made available to those customers by public communications providers;

(e) any other matter appearing to OFCOM to be necessary for securing effective protection for the domestic and small business customers of such providers.

(3) It shall be the duty of OFCOM, in setting conditions in accordance with subsection (1), to secure so far as they consider appropriate—

(a) that the procedures established and maintained for the handling of complaints and the resolution of disputes are easy to use, transparent [, non-discriminatory]⁴ and effective;

(b) that domestic and small business customers have the right to use those procedures free of charge; and

(c) that where public communications providers are in contravention of conditions set in accordance with the preceding provisions of this section, the providers follow such procedures as may be required by the general conditions.

(4) Subject to section 55, OFCOM's duties under subsections (1) and (3) so far as relating to procedures for the handling of complaints are to be performed, to such extent as they consider appropriate, by the setting of general conditions requiring public communications providers to establish and maintain procedures that conform with a code of practice which is—

(a) applicable to the providers to whom the conditions apply; and

(b) for the time being approved by OFCOM for the purposes of this subsection.

(5) Subject to section 55, OFCOM's duties under subsections (1) and (3) so far as relating to procedures for resolving disputes are to be performed, to such extent as they consider appropriate, by the setting of general conditions requiring public communications providers—

- (a) to establish and maintain procedures for resolving disputes; and
- (b) to secure that those procedures are, and continue to be, approved by OFCOM.

(6) In this section “domestic and small business customer”, in relation to a public communications provider, means a customer of that provider who is neither—

- (a) himself a communications provider; nor
- (b) a person who is such a customer in respect of an undertaking carried on by him for which more than ten individuals work (whether as employees or volunteers or otherwise).

Notes

- ¹ Words inserted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.28(a) (May 26, 2011: insertion has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 para.2)
- ² Words inserted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.28(b) (May 26, 2011: insertion has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 para.2)
- ³ Added by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.28(c) (May 26, 2011: insertion has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 para.2)
- ⁴ Word inserted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.28(d) (May 26, 2011: insertion has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 para.2)

Commencement

Pt 2 c. 1 s. 52(1)-(6)(b): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 52-(2)(c), (2)(d)-(6)(b): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

Pt 2 c. 1 s. 52(2)(ca): United Kingdom



Law In Force

53 Approval of codes of practice for the purposes of s. 52

(1) Where a code of practice is submitted to OFCOM for approval, they shall approve that code if and only if, in their opinion, it makes all such provision as they consider necessary in relation to the matters dealt with in the code for the protection of the domestic and small business customers of the public communications providers to whom the code applies.

(2) It shall be the duty of OFCOM to keep under review the codes of practice for the time being approved by them.

(3) OFCOM may at any time, by a notification given or published in such manner as they consider appropriate—

- (a) approve modifications that have been made to an approved code;
- (b) withdraw their approval from a code; or
- (c) give notice that the withdrawal of their approval will take effect from such time as may be specified in the notification unless such modifications of the code as are specified in the notification are made before that time.

(4) In considering—

- (a) whether to approve a code of practice, or
- (b) whether or in what manner to exercise their powers under subsections (2) and (3) of this section,

OFCOM must have regard to the matters mentioned in subsection (5).

(5) Those matters are—

- (a) the need to secure that customers are able readily to comprehend the procedures that are provided for by an approved code of practice;
- (b) the need to secure that there is consistency between the different codes for the time being approved by OFCOM; and
- (c) the need to secure that the number of different codes so approved is kept to a minimum.

(6) In this section—

“approval” means approval for the purposes of section 52(4) and “approve” and “approved” are to be construed accordingly; and

“domestic and small business customer” has the same meaning as in section 52.

Commencement

Pt 2 c. 1 s. 53(1)-(6) definition of "domestic and small business customer": July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 53-(6) definition of "domestic and small business customer": United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)



Law In Force

54 Approval of dispute procedures for the purposes of s. 52

(1) Before giving their approval to any dispute procedures, OFCOM must consult the Secretary of State.

(2) OFCOM are not to approve dispute procedures unless they are satisfied that the arrangements under which the procedures have effect—

- (a) are administered by person who is for practical purposes independent (so far as decisions in relation to disputes are concerned) of both OFCOM and the communications providers to whom the arrangements apply;
 - (b) give effect to procedures that are easy to use, transparent [, non-discriminatory]¹ and effective;
 - (c) give, in the case of every communications provider to whom the arrangements apply, a right to each of his domestic and small business customers to use the procedures free of charge;
 - (d) ensure that all information necessary for giving effect to the procedures is obtained;
 - (e) ensure that disputes are effectively investigated;
 - (f) include provision conferring power to make awards of appropriate compensation; and
 - (g) are such as to enable awards of compensation to be properly enforced.
- (3) OFCOM may approve dispute procedures subject to such conditions (including conditions as to the provision of information to OFCOM) as they may think fit.
- (4) It shall be the duty of OFCOM to keep under review the dispute procedures for the time being approved by them.
- (5) OFCOM may at any time, by a notification given or published in such manner as they consider appropriate—
- (a) modify the conditions of their approval of any dispute procedures or withdraw such an approval; or
 - (b) give notice that the modification of those conditions, or the withdrawal of such an approval, will take effect from such time as may be specified in the notification unless the procedures (or the arrangements under which they have effect) are modified before that time in the manner required by the notification.
- (6) In considering—
- (a) whether to approve dispute procedures, or
 - (b) whether or in what manner to exercise their powers under subsections (3) to (5),
- OFCOM must have regard to the matters mentioned in subsection (7).
- (7) Those matters are—
- (a) the need to secure that customers are able readily to comprehend dispute procedures;
 - (b) the need to secure that there is consistency between the different procedures for the time being approved by OFCOM; and
 - (c) the need to secure that the number of different sets of procedures so approved is kept to a minimum.
- (8) In this section—
- “approval” means approval for the purposes of subsection (5) of section 52 and “approve” and “approved” are to be construed accordingly;
 - “dispute procedures” means any such procedures as may fall to be approved for the purposes of that subsection; and
 - “domestic and small business customer” has the same meaning as in section 52.

Notes

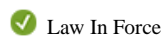
¹ Word inserted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.29 (May 26, 2011: insertion has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 para.2)

Commencement

Pt 2 c. 1 s. 54(1)-(8) definition of "domestic and small business customer": July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 54-(8) definition of "domestic and small business customer": United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)



Law In Force

55 Orders by OFCOM in the absence of conditions under s. 52

(1) OFCOM may make an order under this section if, at any time, they consider in relation to any one or more public communications providers—

- (a) that it is not practicable, or at least not appropriate, for OFCOM's duties under subsections (1) and (3) of section 52 to be performed in a particular respect by the setting of general conditions; and
- (b) that it is necessary to make the order for the purpose—
 - (i) of securing the necessary protection for the customers of that provider or of those providers [.]¹
 - (ii) [...] ¹

(2) An order under this section may make such of the following provisions as OFCOM think fit—

- (a) provision imposing requirements with respect to the complaints and disputes mentioned in section 52(2);
- (b) provision for the enforcement of those requirements;
- (c) provision making other arrangements for the purposes of those requirements.

(3) The power to make provision by an order under this section includes, in particular—

- (a) power to establish a body corporate with the capacity to make its own rules and to establish its own procedures;
- (b) power to determine the jurisdiction of a body established by such an order or, for the purposes of the order, of any other person;
- (c) power to confer jurisdiction with respect to any matter on OFCOM themselves;
- (d) power to provide for a person on whom jurisdiction is conferred by the arrangements to make awards of compensation, to direct the reimbursement of costs or expenses, or to do both;
- (e) power to provide for such a person to enforce, or to participate in the enforcement of, any awards or directions made under such an order; and
- (f) power to make such other provision as OFCOM think fit for the enforcement of such awards and directions.

(4) An order under this section may require such public communications providers as may be determined by or under the order to make payments to OFCOM in respect of expenditure incurred by OFCOM in connection with—

- (a) the establishment and maintenance, in accordance with such an order, of a body corporate or of a procedure; or
- (b) the making of any other arrangements for the purposes of the requirements of such an order.

(5) The consent of the Secretary of State is required for the making by OFCOM of an order under this section.

(6) Section 403 applies to the power of OFCOM to make an order under this section.

(7) A statutory instrument containing an order made by OFCOM under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Notes

- ¹ Repealed by Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019/246 Sch.1(1) para.18 (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))

Commencement

Pt 2 c. 1 s. 55(1)-(7): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 55-(7): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

General conditions: telephone numbers



Law In Force

56 The National Telephone Numbering Plan

(1) It shall be the duty of OFCOM to publish a document (to be known as “the National Telephone Numbering Plan”) setting out—

- (a) the numbers that they have determined to be available for allocation by them as telephone numbers;
- (b) such restrictions as they consider appropriate on the adoption of numbers available for allocation in accordance with the plan; [...] ¹
 [(ba) such requirements as they consider appropriate, for the purpose of protecting consumers, in relation to the tariff principles and maximum prices applicable to numbers so adopted or available for allocation; and] ¹
- (c) such restrictions as they consider appropriate on the other uses to which numbers available for allocation in accordance with the plan may be put.

(2) It shall be OFCOM's duty—

(a) from time to time to review the National Telephone Numbering Plan; and
(b) to make any revision of that plan that they think fit in consequence of such a review;
but this duty must be performed in compliance with the requirements, so far as applicable, of section 60.

(3) OFCOM must also keep such day to day records as they consider appropriate of the telephone numbers allocated by them in accordance with the National Telephone Numbering Plan.

(4) The publication of the National Telephone Numbering Plan, or of a revision of it, must be in such manner as appears to OFCOM to be appropriate for bringing the contents of the Plan, or of the revised Plan, to the attention of such persons as OFCOM consider appropriate.

(5) In this Chapter references to a telephone number are (subject to subsection (7)) references to any number that is used (whether or not in connection with telephony) for any one or more of the following purposes—

- (a) identifying the destination for, or recipient of, an electronic communication;
- (b) identifying the origin, or sender, of an electronic communication;
- (c) identifying the route for an electronic communication;
- (d) identifying the source from which an electronic communication or electronic communications service may be obtained or accessed;
- (e) selecting the service that is to be obtained or accessed, or required elements or characteristics of that service; or
- (f) identifying the communications provider by means of whose network or service an electronic communication is to be transmitted, or treated as transmitted.

(6) In this Chapter references to the adoption of a telephone number by a communications provider are references to his doing any of the following in relation to a number allocated (whether or not to that provider) by OFCOM—

- (a) allocating or transferring that number to a particular customer or piece of apparatus;
- (b) using that number for identifying a service or route used by that provider or by any of his customers;
- (c) using that number for identifying a communication as one to be transmitted by that provider;
- (d) designating that number for use in selecting a service or the required elements or characteristics of a service;
- (e) authorising the use of that number by others for any of the purposes mentioned in subsection (5).

(7) The Secretary of State may by order exclude such numbers as may be described in the order from the numbers that are to be treated as telephone numbers for the purposes of this Chapter.

(8) No order is to be made containing provision authorised by subsection (7) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

(9) References in this section to the allocation of a number are references to its allocation for the purposes of general conditions under section 58 or in accordance with conditions under section 59.

(10) In this section—

- “electronic communication” means a communication for transmission by means of an electronic communications network; and
- “number” includes data of any description.

Notes

- ¹ Added by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.30 (May 26, 2011: insertion has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 para.2)

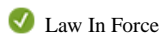
Commencement

Pt 2 c. 1 s. 56(1)-(10) definition of "number": July 25, 2003 except for purposes specified in SI 2003/1900 Sch.1 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2); December 29, 2003 otherwise (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(1), art. 3(2), Sch. 1 para. 1)

Extent

Pt 2 c. 1 s. 56-(1)(b), (1)(c)-(10) definition of "number": United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

Pt 2 c. 1 s. 56(1)(ba): United Kingdom



Law In Force

[56A.— Conditions for limitations on allocation of telephone numbers

(1) When OFCOM allocate telephone numbers in accordance with the National Telephone Numbering Plan, they must specify whether an allocation may be transferred from one person to another, and may set out the conditions under which the allocation may be transferred.

(2) If OFCOM allocate telephone numbers for a limited period of time, the limitation must be objectively justifiable in relation to the services to which it relates, taking account of the need to allow for an appropriate period of investment amortisation.

]¹

Notes

- ¹ Added by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.31 (May 26, 2011: insertion has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 para.2)

Extent

Pt 2 c. 1 s. 56A(1)-(2): United Kingdom



Law In Force

57 Conditions to secure access to telephone numbers

(1) General conditions may impose such requirements as OFCOM consider appropriate for securing that every end-user of a public electronic communications service is able, by means of that service—

- (a) to make calls or otherwise transmit electronic communications to every normal telephone number; and

(b) to receive every call or other electronic communication that is made or transmitted to him using such a service from apparatus identified by a normal telephone number.

(2) A normal telephone number is one which—

(a) has been made available, in accordance with the National Telephone Numbering Plan, as a number to be used for the purpose of identifying the destination for, or the recipient of, electronic communications; and

(b) is for the time being—

(i) a number adopted by a communications provider to be used for such a purpose; or

(ii) a number in use for such a purpose by a person other than a communications provider to whom it has been allocated in accordance with conditions under section 59.

(3) In this section “electronic communication” has the same meaning as in section 56.

Commencement

Pt 2 c. 1 s. 57(1)-(3): July 25, 2003 except for purposes specified in SI 2003/1900 Sch.1 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2); December 29, 2003 otherwise (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(1), art. 3(2), Sch. 1 para. 1)

Extent

Pt 2 c. 1 s. 57-(3): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

✓ Law In Force

58 Conditions about allocation and adoption of numbers

(1) General conditions may include conditions which—

(a) prohibit the adoption of telephone numbers by a communications provider except in cases where the numbers have been allocated by OFCOM to a person;

[(aa) impose tariff principles and maximum prices for the purpose of protecting consumers in relation to the provision of an electronic communications service by means of telephone numbers adopted or available for use;]¹

(b) regulate the use by a communications provider, for the purpose of providing an electronic communications network or electronic communications service, of telephone numbers not allocated to that provider;

(c) impose restrictions on the adoption of telephone numbers by a communications provider, and on other practices by communications providers in relation to telephone numbers allocated to them;

(d) impose requirements on a communications provider in connection with the adoption by him of telephone numbers;

(e) require an allocation of particular telephone numbers to be transferred from one communications provider to another in the circumstances provided for in the conditions;

- (f) impose such requirements and restrictions on a communications provider from whom an allocation is required to be transferred as may be provided for, in relation to the transfer, in the conditions;
- (g) require payments of such amounts as may be determined by OFCOM to be made to them by a person in respect of the allocation to him of telephone numbers;
- (h) require payments of such amounts as may be determined by OFCOM to be made to them by a person in respect of transfers of allocations from one person to another; and
- (i) require communications providers to secure compliance with such rules relating to the use of telephone numbers by their customers as OFCOM may set out in general conditions or determine in accordance with provision made by the general conditions.

(2) General conditions may also—

- (a) provide for the procedure to be followed on the making of applications to OFCOM for the allocation of telephone numbers;
- (b) provide for the information that must accompany such applications and for the handling of such applications;
- (c) provide a procedure for telephone numbers to be reserved pending the making and disposal of an application for their allocation;
- (d) provide for the procedure to be followed on the making of applications for telephone numbers to be reserved, and for the handling of such applications;
- (e) regulate the procedures to be followed, the system to be applied and the charges to be imposed for the purposes of, or in connection with, the adoption by a communications provider of telephone numbers allocated to that provider;
- (f) regulate the procedures to be followed, the system to be applied and the charges to be imposed for the purposes of, or in connection with, the transfer of an allocation from one person to another.

[(2A) General conditions may also require a communications provider to whom telephone numbers have been allocated—

- (a) to provide OFCOM with any information that was not required to accompany the application for allocation of the numbers when it was made but which is now required to accompany such applications;
- (b) to inform OFCOM of any changes to information that accompanied the application for allocation of the numbers or that has been provided in accordance with a condition set under paragraph (a);
- (c) to inform OFCOM of any proposal by the provider to cease to provide an electronic communications network or electronic communications service;
- (d) to inform OFCOM of any circumstances or events of a description specified in the condition.

]²

(3) The conditions that may be set under subsection (1)(d) include conditions imposing requirements with respect to the provision of information for purposes connected with—

- (a) the compilation of directories; and
- (b) the provision of directory enquiry facilities.

(4) The procedure to be followed on the making of an application for the allocation of numbers that are available for allocation in accordance with the National Telephone Numbering Plan must require OFCOM's determination of the application to be made—

- (a) in the case of an application made in response to an invitation in accordance with subsection (5), before the end of six weeks after the day on which the application is received; and
 - (b) in any other case, before the end of three weeks after that day.
- (5) Where OFCOM are proposing to allocate any telephone numbers, they may—
- (a) invite persons to indicate the payments each would be willing to make to OFCOM if allocated the numbers; and
 - (b) make the allocation according to the amounts indicated.
- (6) General conditions providing for payments to be made to OFCOM in respect of anything mentioned in subsection (1)(g) or (h)—
- (a) must set out the principles according to which the amounts of the payments are to be determined;
 - (b) may provide for the payments to consist of a lump sum in respect of a particular allocation or transfer or of sums payable periodically while an allocation remains in force, or of both;
 - (c) may provide for the amounts to be determined by reference to—
 - (i) any indication according to which the allocation has been made as mentioned in subsection (5); or
 - (ii) any other factors (including the costs incurred by OFCOM in connection with the carrying out of their functions by virtue of section 56 and this section) as OFCOM think fit.
- (7) General conditions may—
- (a) make modifications from time to time of, or of the method of determining, the amounts of periodic payments falling to be made by virtue of conditions containing provision authorised by this section; and
 - (b) make different provision in relation to different descriptions of communications provider and different descriptions of telephone number.
- (8) Nothing in subsection (7) authorises the modification, after it has been fixed, of the amount of a periodic payment fixed in accordance with arrangements made in relation to numbers allocated as mentioned in subsection (5)(b).
- (9) Payments that are required to be made to OFCOM in respect of anything mentioned in subsection (1)(g) or (h)—
- (a) must be paid to them as soon as they become due in accordance with the conditions imposing the obligation to pay; and
 - (b) if not so paid, are to be recoverable by them accordingly.

Notes

¹ Added by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.32 (May 26, 2011: insertion has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 para.2)

² Added by Digital Economy Act 2017 c. 30 Pt 6 s.84 (June 27, 2017)

Commencement

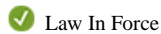
Pt 2 c. 1 s. 58(1)-(9)(b): July 25, 2003 except for purposes specified in SI 2003/1900 Sch.1 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2); December 29, 2003 otherwise (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(1), art. 3(2), Sch. 1 para. 1)

Extent

Pt 2 c. 1 s. 58-(1)(a), (1)(b)-(2)(f), (3)-(9)(b): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

Pt 2 c. 1 s. 58(1)(aa): United Kingdom

Pt 2 c. 1 s. 58(2A)-(2A)(d): (extent not available)



Law In Force

59 Telephone numbering conditions binding non-providers

(1) OFCOM may set conditions under this section that apply to persons other than communications providers and relate to—

- (a) the allocation of telephone numbers to such persons;
- (b) the transfer of allocations to and from such persons; and
- (c) the use of telephone numbers by such persons.

(2) The conditions that may be set under this section include conditions imposing obligations corresponding to any of the obligations that may be imposed on communications providers by general conditions making provision for, or in connection with—

- (a) the allocation of telephone numbers;
- (b) the transfer of allocations; or
- (c) the use of telephone numbers.

(3) Subsection (10) of section 45 applies to OFCOM's power to set a condition under this section as it applies to their power to set a condition under that section.

(4) Sections 47 to 49 apply in relation to—

- (a) the setting of conditions under this section and the modification and revocation of such conditions; and
- (b) the giving, modification or withdrawal of any direction, approval or consent for the purposes of a condition under this section,

as they apply in the case of general conditions and in the case of directions, approvals and consents given for the purposes of general conditions.

(5) It shall be the duty of a person who—

- (a) is not a communications provider, but
- (b) applies for the allocation of a telephone number, or is allocated such a number,

to comply with any conditions set under this section.

(6) That duty shall be 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 (c. 36); or
- (c) for any other appropriate remedy or relief.

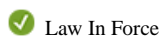
(7) Subsection (6) does not apply in the case of a person against whom the obligations contained in the condition in question are enforceable (by virtue of his having become a communications provider) as obligations imposed by general conditions.

Commencement

Pt 2 c. 1 s. 59(1)-(7): July 25, 2003 except for purposes specified in SI 2003/1900 Sch.1 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2); December 29, 2003 otherwise (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(1), art. 3(2), Sch. 1 para. 1)

Extent

Pt 2 c. 1 s. 59-(7): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)



Law In Force

60 Modification of documents referred to in numbering conditions

(1) This section applies where numbering conditions for the time being have effect by reference to provisions, as they have effect from time to time, of—

- (a) the National Telephone Numbering Plan; or
- (b) another document published by OFCOM.

(2) OFCOM must not revise or otherwise modify the relevant provisions unless they are satisfied that the revision or modification is—

- (a) objectively justifiable in relation to the matters to which it relates;
- (b) not such as to discriminate unduly against particular persons or against a particular description of persons;
- (c) proportionate to what the modification is intended to achieve; and
- (d) in relation to what it is intended to achieve, transparent.

(3) Before revising or otherwise modifying the relevant provisions, OFCOM must publish a notification—

- (a) stating that they are proposing to do so;
- (b) specifying the Plan or other document that they are proposing to revise or modify;
- (c) setting out the effect of their proposed revisions or modifications;
- (d) giving their reasons for making the proposal; and
- (e) specifying the period within which representations may be made to OFCOM about their proposal.

(4) That period must be one ending not less than [30 days]¹ after the day of the publication of the notification.

(5) OFCOM may give effect, with or without modifications, to a proposal with respect to which they have published a notification under subsection (3) only if—

- (a) they have considered every representation about the proposal that is made to them within the period specified in the notification; and
- (b) they have had regard to every international obligation of the United Kingdom (if any) which has been notified to them for the purposes of this paragraph by the Secretary of State.

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

(7) In this section—

“numbering conditions” means—

- (a) general conditions the making of which is authorised by section 57 or 58;
- (b) conditions set under section 59;

“the relevant provisions”, in relation to the Plan or document, means the provisions of the Plan or document by reference to which (as they have effect from time to time) the numbering conditions in question have effect.

Notes

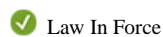
- ¹ Words substituted by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.20 (December 21, 2020)

Commencement

Pt 2 c. 1 s. 60(1)-(7) definition of "the relevant provisions": July 25, 2003 except for purposes specified in SI 2003/1900 Sch.1 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2); December 29, 2003 otherwise (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(1), art. 3(2), Sch. 1 para. 1)

Extent

Pt 2 c. 1 s. 60-(7) definition of "the relevant provisions": United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)



Law In Force

61 Withdrawal of telephone number allocations

(1) Where OFCOM have allocated telephone numbers for the purposes of any numbering conditions, they may withdraw that allocation if, and only if, the case is one in which the withdrawal of an allocation is authorised by this section.

(2) The withdrawal of an allocation is authorised (subject to section 62) if—

- (a) consent to the withdrawal is given by the person to whom the numbers are for the time being allocated;
- (b) the withdrawal is made for the purposes of a transfer of the allocation required by numbering conditions;
- (c) the withdrawal is made for the purposes of a numbering reorganisation applicable to a particular series of telephone numbers;
- (d) the withdrawal is made in circumstances specified in the numbering conditions and for the purpose of securing that what appears to OFCOM to be the best and most efficient use is made of the numbers and other data that are appropriate for use as telephone numbers;
- (e) the allocated numbers are numbers that have not been adopted during such period after their allocation as may be specified in the numbering conditions; or

- (f) the allocated numbers are comprised in a series of numbers which have not to a significant extent been adopted or used during such period as may be so specified.
- (3) The withdrawal of an allocation is also authorised where—
- (a) there have been [serious or repeated]¹ contraventions, by the person to whom the allocation is for the time being allocated, of the numbering conditions; and
 - (b) it appears to OFCOM that the taking of other steps in respect of the contraventions is likely to prove ineffective for securing future compliance.
- (4) The withdrawal of an allocation is also authorised where—
- (a) the person to whom the allocation is for the time being allocated is not a communications provider; and
 - (b) it appears to OFCOM that contraventions by that person of numbering conditions makes the withdrawal of the allocation appropriate.
- (5) OFCOM's power to set conditions specifying circumstances for the purposes of subsection (2)(d), and their power to withdraw an allocation in the specified circumstances, are each exercisable only in a manner that does not discriminate unduly—
- (a) against particular communications providers;
 - (b) against particular users of the allocated numbers; or
 - (c) against a particular description of such providers or users;
- and the purposes for which those powers may be exercised do not include the carrying out of a numbering reorganisation of the sort mentioned in subsection (2)(c).
- (6) Where OFCOM are proposing to withdraw an allocation in exercise of the power conferred by virtue of subsection (2)(e) or (f), they must—
- (a) give a notification of their proposal;
 - (b) consider any representations made to them about the proposal within the period of [30 days]² following the day on which the notification is given; and
 - (c) ensure that the withdrawal (if OFCOM decide to proceed with it after considering those representations) does not take effect until the end of the three months beginning with the end of the period mentioned in paragraph (b).
- (7) A notification for the purposes of subsection (6) must be given in such manner as OFCOM consider appropriate for bringing it to the attention of—
- (a) the person to whom the numbers to which the proposed withdrawal relates are for the time being allocated;
 - (b) every person appearing to OFCOM to be a person to whom communications are or may be transmitted using one of those numbers for identifying the destination or route;
 - (c) every person who uses one or more of those numbers for obtaining access to services or for communication; and
 - (d) every other person who, in OFCOM's opinion, is likely to be affected by the proposal.
- (8) For the purposes of this section there are repeated contraventions by a person of numbering conditions to the extent that—
- [(a) in the case of a previous notification of a contravention given to that person under section 96A, OFCOM have given a confirmation decision to that person under section 96C(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;]³

and for the purposes of this subsection it shall be immaterial whether the [confirmation decisions]⁴ related to the same contravention or to different contraventions of the same or different conditions.

(9) In this section “numbering conditions” means—

- (a) general conditions the making of which is authorised by section 58; or
- (b) conditions set under section 59.

Notes

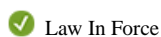
- ¹ Words substituted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.33(a) (May 26, 2011: substitution has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 9)
- ² Words substituted by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.21 (December 21, 2020)
- ³ Substituted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.33(b)(i) (May 26, 2011: substitution has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 9)
- ⁴ Word substituted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.33(b)(ii) (May 26, 2011: substitution has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 9)

Commencement

Pt 2 c. 1 s. 61(1)-(9)(b): July 25, 2003 except for purposes specified in SI 2003/1900 Sch.1 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2); December 29, 2003 otherwise (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(1), art. 3(2), Sch. 1 para. 1)

Extent

Pt 2 c. 1 s. 61-(9)(b): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)



Law In Force

62 Numbering reorganisations

(1) This section applies to the withdrawal of an allocation for the purposes of a numbering reorganisation that is applicable to a particular series of telephone numbers.

(2) The allocation is to be withdrawn only if the reorganisation, so far as it relates to numbers of any description, is not such as to discriminate unduly—

- (a) against particular communications providers;
- (b) against particular users of the allocated numbers; or
- (c) against a particular description of such providers or users.

(3) The allocation must not be withdrawn if the reorganisation fails to provide for withdrawn allocations to be replaced by allocations of telephone numbers so nearly resembling the numbers to which the withdrawal relates as the purpose of the reorganisation allows.

(4) Where a replacement allocation is made for the purposes of the re-organisation—

- (a) no payment is to be made to OFCOM in respect of the making of the replacement allocation; but
- (b) subsection (5) is to apply.

(5) Where this subsection applies—

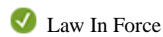
- (a) a provision for the making of periodic payments in respect of the withdrawn allocation is to be treated, to the extent that OFCOM determine that it should, as a provision requiring the making of periodic payments in respect of the replacement allocation; and
- (b) OFCOM may, if they think fit, make such repayments or adjustments of a provision for payment as appear to them to be appropriate in consequence of differences between—
 - (i) the numbers to which the withdrawn allocation relates; and
 - (ii) the numbers to which the replacement allocation relates.

Commencement

Pt 2 c. 1 s. 62(1)-(5)(b)(ii): July 25, 2003 except for purposes specified in SI 2003/1900 Sch.1 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2); December 29, 2003 otherwise (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(1), art. 3(2), Sch. 1 para. 1)

Extent

Pt 2 c. 1 s. 62-(5)(b)(ii): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)



Law In Force

63 General duty as to telephone numbering functions

- (1) It shall be the duty of OFCOM, in the carrying out of their functions under sections 56 to 62—
 - (a) to secure that what appears to them to be the best use is made of the numbers that are appropriate for use as telephone numbers; and
 - (b) to encourage efficiency and innovation for that purpose.
- (2) It shall also be the duty of OFCOM, in carrying out those functions, to secure that there is no undue discrimination by communications providers against other communications providers in relation to the adoption of telephone numbers for purposes connected with the use by one communications provider, or his customers, of an electronic communications network or electronic communications service provided by another.
- (3) In this section “number” has the same meaning as in section 56.

Commencement

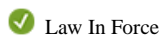
Pt 2 c. 1 s. 63(1)-(3): July 25, 2003 except for purposes specified in SI 2003/1900 Sch.1 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to

have effect as specified in SI 2003/3142 art.3(2); December 29, 2003 otherwise (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(1), art. 3(2), Sch. 1 para. 1)

Extent

Pt 2 c. 1 s. 63-(3): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

General conditions: must-carry obligations



Law In Force

64 Must-carry obligations

(1) General conditions may include conditions making any provision that OFCOM consider appropriate for securing that particular services are broadcast or otherwise transmitted by means of the electronic communications networks described in the conditions.

(2) A general condition containing provision authorised by this section is not (subject to subsection (4)) to require a service to be broadcast or otherwise transmitted by means of an electronic communications network unless—

- (a) the service is included in the list of must-carry services; and
- (b) the effect of the requirement is confined to networks by means of which public electronic communications services are provided that are used by a significant number of end-users as their principal means of receiving television programmes.

(3) That list is as follows—

- (a) any service of television programmes provided by the BBC so far as it is provided in digital form and is a service in relation to which OFCOM have functions;
- (b) the Channel 3 services so far as provided in digital form;
- (c) Channel 4 so far as provided in digital form;
- (d) Channel 5 so far as provided in digital form;
- (e) S4C Digital;
- (f) the digital public teletext service.

(4) General conditions making provision authorised by this section in relation to a listed service must, to such extent as OFCOM consider appropriate (and subject to subsection (5))—

- (a) apply the requirement to broadcast or otherwise transmit that service to every service which is an ancillary service by reference to the listed service [(including, but not limited to, a service enabling access for disabled end-users)]¹ ; and
- (b) provide for the listed service to be treated for the purposes of the conditions as constituting such other services comprised in or provided with that service as may be determined by OFCOM.

(5) General conditions making provision authorised by this section must also comply with all such restrictions (if any) as may be imposed by order made by the Secretary of State as to the maximum and minimum amounts, or proportions, of available capacity that are to be required by such

conditions to be used in the case of a network for the broadcasting or other transmission of particular services, or descriptions of service.

(6) In making an order under subsection (5) the Secretary of State must have regard to—

- (a) the objective of securing that services included in the list of must-carry services, and the other services to which conditions set in accordance with this section are likely to be applied by virtue of subsection (4), are available for reception by as many members of the public in the United Kingdom as practicable; and
- (b) the need to secure that the amount of capacity available in the case of every network for making other services available is reasonable and, accordingly, that the burden of complying with conditions set in accordance with this section is proportionate to the public benefit to be secured by that objective.

(7) It shall be the duty of the Secretary of State from time to time to review—

- (a) the list of must-carry services; and
- (b) any requirements for the time being in force under this section with respect to the terms on which services must be broadcast or otherwise transmitted.

(8) Where the Secretary of State carries out such a review, he must consult the following about the matters under review—

- (a) OFCOM; and
- (b) such persons who, in his opinion, are likely to be affected by a modification of the list of must-carry services, or who represent any of those persons, as he thinks fit.

(9) If, on such a review, he considers it appropriate to do so, the Secretary of State may by order modify the list of must-carry services.

(10) In determining whether it is appropriate for the purposes of subsection (9) to add a service to the list of must-carry services or to remove it, the Secretary of State must have regard, in particular, to—

- (a) the public benefit to be secured by the addition of the service to the list, or by its retention in the list;
- (b) the extent to which the service (if it were not included in the list) would nevertheless be made available to an acceptable technical standard by means of the networks to which conditions set in accordance with this section apply;
- (c) the capacity left available, after the requirements of those conditions have been complied with, for the broadcasting or other transmission of material by means of each of those networks; and
- (d) the need to secure that the burden of complying with conditions so set is proportionate to the objective of securing that the services in the list of must-carry services, and the other services to which conditions set in accordance with this section are likely to be applied by virtue of subsection (4), are available for reception by as many members of the public in the United Kingdom as practicable.

(11) The Secretary of State may also, if (whether on such a review or in any other circumstances) he considers it appropriate to do so, by order make provision imposing requirements as to what, as between—

- (a) the person providing a must-carry service, and
- (b) the person providing a network by means of which it is to be provided,

are to be the terms on which the service is to be broadcast or otherwise transmitted, in pursuance of general conditions set in accordance with this section, by means of that network.

(12) An order under subsection (11) may provide for the terms to be determined by OFCOM in accordance with the provisions of the order.

(13) Before making an order under subsection (5), and before making an order under subsection (11) in a case in which there has been no review under subsection (7), the Secretary of State must consult—

- (a) OFCOM, and
- (b) such persons who, in his opinion, are likely to be affected by the order, or who represent any of those persons, as he thinks fit.

(14) Section 362 applies for construing this section as it applies for the purposes of Part 3.

Notes

- ¹ Words inserted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.34 (May 26, 2011: insertion has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 para.2)

Commencement

Pt 2 c. 1 s. 64(1)-(14): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 64-(14): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

Universal service conditions



Law In Force

65 Obligations to be secured by universal service conditions

(1) The Secretary of State must by order [...] ¹ set out the extent to which the things falling within subsection (2) must [...] ² be provided, made available or supplied throughout the United Kingdom.

(2) Those things are—

- (a) electronic communications networks and electronic communications services; [and] ³
- (b) facilities capable of being made available as part of or in connection with an electronic communications service [.] ⁴
- (c)-(e) [...] ⁴

[(2A) The provision made under subsection (1) is referred to as “the universal service order”.

(2B) The universal service order may in particular say that broadband connections and services [at a fixed location] ⁶ must be provided to any extent, but may not do so unless—

- (a) it specifies the minimum download speed that must be provided by those connections and services, and

(b) the speed so specified is at least 10 megabits per second.

[(2BA) The universal service order may in particular say that mobile services must be provided to any extent, but may not do so unless this appears to the Secretary of State necessary to ensure the full social and economic participation in society of qualifying end-users.

(2BB) In subsection (2BA)—

(a) "mobile services" means—

- (i) broadband services provided otherwise than at a fixed location; and
- (ii) telephone services provided otherwise than at a fixed location;

(b) "qualifying end-user" means an end-user who is—

- (i) an individual acting for purposes other than those of a business;
- (ii) a micro, small or medium-sized enterprise, as defined by Article 2(1) of the Annex to Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises; or
- (iii) a not-for-profit body.

(2BC) The universal service order may continue to contain provision setting out the extent to which any of the following things must be provided, made available or supplied throughout the United Kingdom—

- (a) public pay telephone or other public voice telephony access points;
- (b) particular methods of billing for electronic communications services or of accepting payment for them;
- (c) directories capable of being used in connection with the use of an electronic communications network or electronic communications service;
- (d) directory enquiry facilities capable of being used for purposes connected with the use of such a network or service;
- (e) publicly available telephone services capable of allowing end-users to send and receive facsimile.

] ⁷

(2C) The universal service order may contain—

- (a) guidance about matters relating to the speed or other characteristics of broadband connections or services that it says must be provided (as well as or, except in the case of the minimum download speed [to be provided by broadband connections or services at a fixed location] ⁸ , instead of setting out any of those characteristics); and
- (b) guidance about any other matters relating to those connections or services.

] ⁵

(3) The universal service order may contain guidance about matters relating to the pricing of things that the order says must be provided, made available or supplied [, other than matters relating only to social tariffs as defined by section 72F(2)] ⁹ .

(4) Before making or varying the universal service order, the Secretary of State must consult OFCOM and such other persons as he considers appropriate.

[(5) Before making or varying the universal service order, the Secretary of State must take due account of the desirability of not favouring—

- (a) one form of electronic communications network, electronic communications service or associated facility, or
- (b) one means of providing or making available such a network, service or facility,

over another.

] ¹⁰

[(6) In this section "public pay telephone" means a telephone available to the general public, for the use of which the means of payment may include one or more of the following—

- (a) coins;
- (b) credit or debit cards; and
- (c) pre-payment cards, including cards for use with dialling codes.

] ¹¹

Notes

- ¹ Words repealed by Digital Economy Act 2017 c. 30 Pt 1 s.1(3) (June 27, 2017)
- ² Words repealed by Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019/246 Sch.1(1) para.19 (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))
- ³ Word inserted by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.22(2)(a) (December 21, 2020)
- ⁴ Repealed by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.22(2)(b) (December 21, 2020)
- ⁵ Added by Digital Economy Act 2017 c. 30 Pt 1 s.1(4) (June 27, 2017)
- ⁶ Words inserted by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.22(3) (December 21, 2020)
- ⁷ Added by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.22(4) (December 21, 2020)
- ⁸ Words inserted by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.22(5) (December 21, 2020: insertion has effect subject to saving specified in SI 2020/1419 reg.6)
- ⁹ Words inserted by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.22(6) (December 21, 2020)
- ¹⁰ Added by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.35 (May 26, 2011: insertion has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 para.2)
- ¹¹ Added by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.22(7) (December 21, 2020)

Commencement

Pt 2 c. 1 s. 65(1)-(4): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 65-(2A), (2BA)-(2C), (4), (6)-(6)(c): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

Pt 2 c. 1 s. 65(2B)-(2B)(b), (2C)(a)-(2C)(b), (5)-(5)(b): United Kingdom



66 Designation of universal service providers

- (1) OFCOM may by regulations make provision for the designation of the persons to whom universal service conditions are to be applicable.
- (2) Subject to subsection (3), those regulations are not to authorise the designation of a person other than a communications provider.
- (3) The regulations may provide for a person other than a communications provider to be designated for the purposes only of conditions relating to—
- (a) the supply of directories capable of being used in connection with the use of an electronic communications network or electronic communications service; and
 - (b) the making available of directory enquiry facilities capable of being used for purposes connected with the use of such a network or service.
- (4) OFCOM may from time to time—
- (a) review the designations for the time being in force in accordance with regulations under this section; and
 - (b) on such a review, consider what (if any) universal service conditions should continue to apply to each of the designated persons.
- (5) The procedure to be followed in the case of every such review must be the procedure provided for in regulations made by OFCOM.
- (6) Regulations made by OFCOM under this section must provide for a person's designation as a person to whom universal service conditions are to be applicable to cease to have effect where, in any such case as may be described in the regulations, the universal service conditions applied to him are all revoked.
- (7) Regulations made by OFCOM under this section providing a procedure for the designation of persons, or for the conduct of a review under subsection (4), must not provide for any procedure other than one appearing to OFCOM—
- (a) to be efficient, objective and transparent; and
 - (b) not to involve, or to tend to give rise to, any undue discrimination against any person or description of persons.
- (8)-(9) [...] ¹
- [(9A) In making any regulations under this section, OFCOM must have regard to any guidance that is contained in the universal service order.] ²
- (10) Section 403 applies to the power of OFCOM to make regulations under this section.

Notes

- ¹ Repealed by Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019/246 Sch.1(1) para.20 (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))
- ² Added by Digital Economy Act 2017 c. 30 Pt 1 s.1(5) (June 27, 2017)

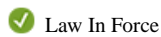
Commencement

Pt 2 c. 1 s. 66(1)-(9): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 66-(8), (8)(a)-(9): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

Pt 2 c. 1 s. 66(9A): (extent not available)



Law In Force

67 Subject-matter of universal service conditions

(1) OFCOM may set any such universal service conditions as they consider appropriate for securing compliance with the obligations set out in the universal service order.

[(1A) OFCOM may also set universal service conditions which apply to a designated universal service provider who proposes to make a disposal to another person of a substantial part or all of the designated universal service provider's local access network assets.

(1B) But subsection (1A) does not apply where the disposal is made by a company to a connected company (within the meaning given by section 1122(2) of the Corporation Tax Act 2010).]¹

(2) Universal service conditions applied to a person must include a condition requiring him to publish information about his performance in complying with the universal service conditions that apply to him.

(3) A condition set in accordance with subsection (2) must contain provision which—

(a) requires information published in accordance with it to be updated from time to time and published again; [and]²

(b) requires information so published to satisfy the requirements that OFCOM consider appropriate for securing that it is adequate [.]³

(c) [...] ³

[(3A) A condition set in accordance with that subsection may require the information published in accordance with it to be framed by reference to such international standards specified in the condition as OFCOM consider appropriate.]⁴

(4) A condition set in accordance with that subsection may impose requirements as to—

(a) the times at which information published in accordance with it is to be published; and

(b) the manner in which that information is to be published.

(5) Universal service conditions may impose an obligation on a person to whom they apply to do one or both of the following, if required to do so by OFCOM—

(a) to make facilities available for enabling information published in pursuance of a condition applied to that person under subsection (2) to be independently audited;

(b) to meet the costs of any independent auditing of that information that is required by OFCOM.

(6) The reference in subsection (5) to the independent auditing of information is a reference to its being audited by a qualified auditor—

(a) for accuracy; and

(b) for its usefulness in the making of comparisons with information published by other designated universal service providers.

(7) Universal service conditions may impose performance targets on designated universal service providers with respect to any of the matters in relation to which obligations may be imposed by such conditions.

(8) In setting a universal service condition, OFCOM must have regard to any guidance [...] ⁵ that is contained in the universal service order.

[(9) In this section “qualified auditor” means a person who—

(a) is eligible for appointment as a statutory auditor under Part 42 of the Companies Act 2006, and

(b) if the appointment to carry out such auditing as is mentioned in subsection (5) were an appointment as a statutory auditor, would not be prohibited from acting by section 1214 of that Act (independence requirement).

] ⁶

Notes

¹ Added by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.36 (May 26, 2011: insertion has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 para.2)

² Word inserted by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.23(a) (December 21, 2020)

³ Repealed by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.23(b) (December 21, 2020)

⁴ Added by Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019/246 Sch.1(1) para.21(3) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))

⁵ Words repealed by Digital Economy Act 2017 c. 30 Pt 1 s.1(6) (June 27, 2017)

⁶ Substituted subject to savings specified in SI 2008/948 arts 11 and 12 by Companies Act 2006 (Consequential Amendments etc) Order 2008/948 Sch.1(1) para.30(2) (April 6, 2008)

Commencement

Pt 2 c. 1 s. 67(1)-(9): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 67-(1), (2)-(9): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

Pt 2 c. 1 s. 67(1A)-(1B), (9)(a)-(9)(b): United Kingdom



Law In Force

68 Tariffs etc. for universal services

(1) It shall be the duty of OFCOM—

- (a) to keep under review universal service tariffs; and
 - (b) to monitor changes to those tariffs.
- (2) Universal service conditions may require one or more of the following—
- (a) the use of a common tariff, or of common tariffs, in relation to anything mentioned in section 65(2);
 - (b) the use, in such cases as may be specified or described in the conditions, of such special tariffs in relation to anything so mentioned as may be so specified or described;
 - (c) the fixing of tariffs used in accordance with the conditions by the use of such methods, and by reference to such methods of computing costs, as may be so specified or described.
- [(2A) The special tariffs that may be required by virtue of subsection (2)(b) do not include social tariffs as defined by section 72F(2).]¹
- (3) Universal service conditions must secure that the terms on which a person is provided with anything required by the universal service order do not require him—
- (a) to pay for an unnecessary additional service; or
 - (b) to pay, in respect of anything required by the order, any amount that is attributable to the provision to him of such a service.
- (4) The references in subsection (3), in relation to a person, to an unnecessary additional service are references to anything the provision of which—
- (a) he has to accept by reason of his being provided, at his request, with something required by the order (“the requested service”); and
 - (b) is not necessary for the purpose of providing him with the requested service.
- (5) It shall be the duty of OFCOM, in setting a universal service condition about universal service tariffs, to have regard to anything ascertained by them in the performance of their duty under subsection (1).
- (6) References in this section to a universal service tariff are references to any of the tariffs used by designated universal service providers [or, where there is no designated universal service provider, by other persons,]² in relation to the things for the time being required by the universal service order.
- (7) References in this section to providing a person with anything include references to making it available or supplying it to him.
- (8) In this section “tariff” includes a pricing structure.

Notes

¹ Added by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.24 (December 21, 2020: insertion has effect subject to saving specified in Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations (draft) 2020 reg.6)

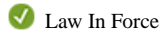
² Words inserted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.37 (May 26, 2011: insertion has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 para.2)

Commencement

Pt 2 c. 1 s. 68(1)-(8): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 68-(8): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)



Law In Force

69 Directories and directory enquiry facilities

(1) This section applies where universal service conditions require a designated universal service provider—

- (a) to supply a directory capable of being used in connection with the use of an electronic communications network or electronic communications service; or
- (b) to make available directory enquiry facilities capable of being used for purposes connected with use of such a network or service.

(2) The universal service conditions applied to the provider must include the conditions that OFCOM consider appropriate for securing that the provider does not unduly discriminate against a source of relevant information—

- (a) in the compiling of the directory or the answering of directory enquiries; or
- (b) in the treatment in the directory, or for the purposes of the facilities, of any relevant information from that source.

(3) In this section—

- (a) references to relevant information are references to information provided for inclusion in the directory or for use in the answering of directory enquiries; and
- (b) references to a source of relevant information are references to a communications provider or designated universal service provider who provides relevant information.

Commencement

Pt 2 c. 1 s. 69(1)-(3)(b): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 69-(3)(b): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

**70 [Review of compliance costs: universal service conditions]¹**

(1) OFCOM may from time to time review the extent (if any) of the financial burden for a particular designated universal service provider of complying in relation to any matter with any one or more of the universal service conditions applied to him.

(2) Where—

- (a) regulations under section 66 require the financial burden of so complying to be taken into account in determining whom to designate, and
- (b) the regulations provide for a particular method of calculating that burden to be used for the purposes of that determination,

that must be the method of calculation applied on a review under this section.

(3) Where subsection (2) does not apply, the financial burden of so complying is to be taken to be the amount calculated by OFCOM to be the net cost of compliance after allowing for market benefits accruing to the designated universal service provider from—

- (a) his designation; and
- (b) the application to him of universal service conditions.

(4) After carrying out a review under this section OFCOM must either—

- (a) cause the calculations made by them on the review to be audited by a person who appears to them to be independent of designated universal service providers; or
- (b) themselves carry out an audit of those calculations.

(5) OFCOM must ensure, in the case of every audit carried out under subsection (4), that a report on the audit—

- (a) is prepared; and
- (b) if not prepared by OFCOM, is provided to them.

(6) It shall be the duty of OFCOM, in the case of every review under this section, to publish—

- (a) their conclusions on the review; and
- (b) a summary of the report of the audit which was carried out as respects the calculations made for the purposes of that review.

(7) The publication of anything under subsection (6) must be a publication in such manner as OFCOM consider appropriate for bringing it to the attention of the persons who, in their opinion, are likely to be affected by it.

Notes

¹ Heading substituted by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.25 (December 21, 2020)

Commencement

Pt 2 c. 1 s. 70(1)-(7): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 70-(7): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6

with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

✓ Law In Force

71 Sharing of burden of universal service obligations

(1) This section applies where OFCOM—

- (a) have concluded, on a review under section 70, that complying in relation to any matter with universal service conditions imposes a financial burden on a particular designated universal service provider; and
- (b) have published that conclusion in accordance with that section.

(2) OFCOM must determine, in the case of the designated universal service provider, whether they consider it would be unfair for that provider to bear, or to continue to bear, the whole or any part of so much of the burden.

(3) If—

- (a) OFCOM determine that it would be unfair for the designated universal service provider to bear, or to continue to bear, the whole or a part of the burden, and
- (b) an application for a determination under this subsection is made to OFCOM by that provider,

OFCOM may determine that contributions are to be made by communications providers to whom general conditions are applicable for meeting that burden.

(4) The making of any of the following must be in accordance with regulations made by OFCOM—

- (a) a determination by OFCOM of the extent of the financial burden that exists for the designated universal service provider of complying in relation to any matter with universal service conditions;
- (b) an application for the purposes of subsection (3)(b);
- (c) a determination by OFCOM of whether it is or would be unfair for the designated universal service provider to bear, or to continue to bear, the burden of complying in relation to any matter with universal service conditions;
- (d) a determination of the extent (if any) to which that is or would be unfair.

(5) The assessment, collection and distribution of contributions under subsection (3) is not to be carried out except in accordance with a mechanism provided for in a scheme contained in regulations made by OFCOM.

(6) It shall be the duty of OFCOM to exercise their power to make regulations under this section in the manner which they consider will secure that the assessment, collection and distribution of contributions under subsection (3) is carried out—

- (a) in an objective and transparent manner;
- (b) in a manner that does not involve, or tend to give rise to, any undue discrimination against particular communications providers or particular designated universal service providers, or against a particular description of them; and
- (c) in a manner that avoids, or (if that is impracticable) at least minimises, any distortion of competition or of customer demand.

(7) Regulations made by OFCOM under this section may provide for a scheme containing the provision mentioned in subsection (5), and for any fund set up for the purposes of such a scheme, to be administered either—

- (a) by OFCOM; or
- (b) by such other person as may be specified in the regulations.

(8) A person other than OFCOM is not to be specified in regulations under this section as the administrator of such a scheme or fund unless he is a person who OFCOM are satisfied is independent of both—

- (a) the persons who are designated universal service providers; and
- (b) communications providers to whom general conditions are applicable.

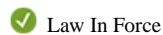
(9) Section 403 applies to the powers of OFCOM to make regulations under this section.

Commencement

Pt 2 c. 1 s. 71(1)-(9): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 71-(9): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)



Law In Force

72 [Report on sharing mechanism: universal service obligations]¹

(1) This section applies where regulations under section 71 provide for a scheme for the assessment, collection and distribution of contributions under subsection (3) of that section.

(2) OFCOM must prepare and publish a report setting out, in relation to the period to which it applies—

- (a) every determination by OFCOM that has had effect in relation to a time in that period as a determination of the costs of providing anything contained in the universal service order;
- (b) the market benefits for each designated universal service provider that have accrued to him during that period from his designation and from the application to him of universal service conditions; and
- (c) the contribution made under section 71(3) by every person who has made a contribution during that period.

(3) The first report under this section must be prepared in relation to the period of twelve months beginning with the coming into force of the first regulations to be made under section 71.

(4) Every subsequent report must be prepared in relation to the period of twelve months beginning with the end of the period to which the previous report applied.

(5) Every report under this section—

- (a) must be prepared as soon as practicable after the end of the period to which it is to apply; and
 - (b) must be published as soon as practicable after its preparation is complete.
- (6) OFCOM are not required under this section—
- (a) to publish any matter that is confidential in accordance with subsection (7) or (8); or
 - (b) to publish anything that it would not be reasonably practicable to publish without disclosing such a matter.
- (7) A matter is confidential under this subsection if—
- (a) it relates specifically to the affairs of a particular body; and
 - (b) publication of that matter would or might, in OFCOM's opinion, seriously and prejudicially affect the interests of that body.
- (8) A matter is confidential under this subsection if—
- (a) it relates to the private affairs of an individual; and
 - (b) publication of that matter would or might, in OFCOM's opinion, seriously and prejudicially affect the interests of that individual.
- (9) The publication of a report under this section must be a publication in such manner as OFCOM consider appropriate for bringing it to the attention of the persons who, in their opinion, are affected by the matters to which it relates.

Notes

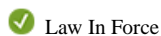
- ¹ Heading substituted by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.26 (December 21, 2020)

Commencement

Pt 2 c. 1 s. 72(1)-(9): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 72-(9): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)



Law In Force

[72A Review of universal service order

- (1) The Secretary of State may direct OFCOM to review and report to the Secretary of State on any provision made, or that may be made, by the universal service order [...] ² .
- (2) The Secretary of State must consult OFCOM before giving a direction under this section.
- (3) The Secretary of State must publish a direction under this section.
- (3A) [...] ³

(4) OFCOM must publish the report made by them to the Secretary of State of a review under this section.

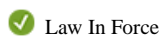
] ¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Pt 1 s.1(7) (June 27, 2017)
- ² Words repealed by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.27 (December 21, 2020)
- ³ Repealed by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 reg.5 (December 31, 2020)

Extent

Pt 2 c. 1 s. 72A(1)-(4): United Kingdom



Law In Force

[72B Broadband download speeds: duty to give direction under section 72A

(1) The Secretary of State must give OFCOM a direction under section 72A if—

- (a) the universal service order specifies a minimum download speed for broadband connections and services [at a fixed location] ² and the speed so specified is less than 30 megabits per second, and
- (b) it appears to the Secretary of State, on the basis of information published by OFCOM, that broadband connections or services that provide a minimum download speed of at least 30 megabits per second are subscribed to for use in at least 75% of premises in the United Kingdom.

(2) The direction—

- (a) must require OFCOM to review and report to the Secretary of State on whether it would be appropriate for the universal service order to specify a higher minimum download speed, and
- (b) may also require OFCOM to review and report to the Secretary of State on any other matter falling within section 72A(1).

] ¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Pt 1 s.1(7) (June 27, 2017)
- ² Words inserted by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.28 (December 21, 2020)

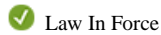
Extent

Pt 2 c. 1 s. 72B(1)-(2)(b): United Kingdom

[Further duty to review tariffs]¹

Notes

- ¹ Added by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.29 (December 21, 2020: insertion has effect subject to saving specified in Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations (draft) 2020 reg.6)
-



[72C Duty to review certain tariffs that are not universal service tariffs

(1) It is the duty of OFCOM—

- (a) to keep under review qualifying service tariffs, other than—
 - (i) universal service tariffs; or
 - (ii) tariffs available only to end-users who are carrying on a business; and
- (b) to monitor changes to those tariffs.

(2) The reference in subsection (1) to qualifying service tariffs is a reference to the tariffs used by the providers of qualifying services.

(3) In this section—

"qualifying services" means—

- (a) broadband services at a fixed location;
- (b) telephone services at a fixed location; and
- (c) mobile services, as defined by section 65(2BB)(a);

"tariff" includes a pricing structure.

¹

Notes

- ¹ Added by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.29 (December 21, 2020: insertion has effect subject to saving specified in Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations (draft) 2020 reg.6)

Extent

Pt 2 c. 1 s. 72C(1)-(3) definition of "tariff": United Kingdom

[Social tariff conditions]¹

Notes

- ¹ Added by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.29 (December 21, 2020: insertion has effect subject to saving specified in Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations (draft) 2020 reg.6)
-



Law In Force

[72D Social tariff conditions: procedure

- (1) The Secretary of State may direct OFCOM—
 - (a) to review the affordability of qualifying services for individuals on low incomes or with special social needs, with a view to considering whether to recommend to the Secretary of State the setting of a social tariff condition; and
 - (b) to report to the Secretary of State on the results of the review.
- (2) OFCOM may in their report recommend—
 - (a) the setting of a social tariff condition to be applied—
 - (i) generally to every person providing a public electronic communications service;
 - (ii) generally to every person providing a public electronic communications service of a particular description specified in the report; or
 - (iii) to a particular person (or particular persons) specified in the report; or
 - (b) the modification or revocation of a social tariff condition.
- (3) OFCOM may recommend the application of a social tariff condition to a particular person (or particular persons) specified in their report only in exceptional circumstances, in particular where the application of a social tariff condition to all providers of public electronic communications services of a particular description would result in an excessive administrative or financial burden on those providers, on OFCOM or on any government department.
- (4) The Secretary of State may give guidance to OFCOM as to the matters to which OFCOM are to have regard—
 - (a) in carrying out a review under subsection (1)(a); and
 - (b) in making a recommendation under subsection (2).
- (5) OFCOM must not recommend the setting or modification of a social tariff condition unless they are satisfied that the condition or (as the case may be) the modification satisfies the test in section 47(2).
- (6) Where section 72E does not apply to the recommendation because of subsection (2) of that section—
 - (a) the recommendation must relate to a social tariff condition that is to be temporary, or to a temporary modification or revocation;
 - (b) the recommendation must state the period for which it is proposed that the condition, or the modification or revocation, should have effect; and
 - (c) section 72E does not apply in relation to any recommendation by OFCOM in relation to the extension or making permanent of the temporary condition, modification or revocation.
- (7) The Secretary of State may direct OFCOM to implement any recommendation made under subsection (2).
- (8) The Secretary of State must publish—
 - (a) a direction given under subsection (1) or (7); and
 - (b) guidance given under subsection (4).
- (9) OFCOM must publish any report made under subsection (1)(b).
- (10) In this section "qualifying services" has the same meaning as in section 72C.

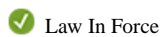
]¹

Notes

- ¹ Added by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.29 (December 21, 2020: insertion has effect subject to saving specified in Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations (draft) 2020 reg.6)

Extent

Pt 2 c. 1 s. 72D(1)-(10): United Kingdom



Law In Force

[72E Consultation by OFCOM on proposed recommendation

- (1) This section applies where—
- (a) OFCOM propose to recommend the setting, modification or revocation of a social tariff condition; and
 - (b) the implementation of the proposed recommendation would, in OFCOM's opinion, have a significant impact on a market for any of the services, facilities, apparatus or directories in relation to which they have functions under this Chapter.
- (2) But this section does not apply where in OFCOM's opinion—
- (a) there are exceptional circumstances; and
 - (b) there is an urgent need to act in order to safeguard competition and to protect the interests of consumers.
- (3) OFCOM must publish a notification—
- (a) stating that they are proposing to recommend the setting, modification or revocation of the social tariff condition specified in the notification;
 - (b) setting out the effect of that condition, modification or revocation;
 - (c) giving their reasons for proposing the recommendation; and
 - (d) specifying the period within which representations may be made to OFCOM about their proposal.
- (4) That period must end no less than 30 days after the day of the publication of the notification.
- (5) But where OFCOM are satisfied that there are exceptional circumstances justifying the use of a shorter period, the period specified as the period for making representations may be whatever shorter period OFCOM consider reasonable in those circumstances.
- (6) OFCOM must consider every representation about the proposal made to them during the period specified in the notification.
- (7) The publication of a notification under this section must be in such manner as appears to OFCOM to be appropriate for bringing the contents of the notification to the attention of such persons as OFCOM consider appropriate.

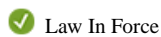
] ¹

Notes

- ¹ Added by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.29 (December 21, 2020: insertion has effect subject to saving specified in Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations (draft) 2020 reg.6)

Extent

Pt 2 c. 1 s. 72E(1)-(7): United Kingdom



Law In Force

[72F Social tariff conditions: general

- (1) The only provision that may be contained in a social tariff condition set under section 45 is provision requiring the use in relation to a qualifying service, in such cases as may be specified or described in the condition, of such social tariffs as may be so specified or described.
- (2) For this purpose a "social tariff" is a special tariff that differs from the tariff provided under normal commercial conditions and is available to an individual who meets criteria relating to low income or special social needs.
- (3) A social tariff condition may not be set, modified or revoked under section 45 except in accordance with a direction under section 72D(7).
- (4) Subsection (3) does not apply to modifications that in the opinion of OFCOM—
- (a) relate only to matters of administration; and
 - (b) are minor in character.
- (5) If by virtue of subsection (4) OFCOM modify a social tariff condition under section 45 in the absence of a direction under section 72D(7), they must, when publishing a notification of the modification under section 48(1), send a copy of the notification to the Secretary of State.
- (6) In this section "qualifying service" and "tariff" each has the same meaning as in section 72C.
- ¹

Notes

- ¹ Added by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.29 (December 21, 2020: insertion has effect subject to saving specified in Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations (draft) 2020 reg.6)

Extent

Pt 2 c. 1 s. 72F(1)-(6): United Kingdom



Law In Force

[72G Review of compliance costs: social tariff conditions

- (1) OFCOM may from time to time review the extent (if any) of the financial burden for a particular communications provider of complying in relation to any matter with a social tariff condition applied to the provider.
- (2) The financial burden of so complying is to be taken to be the amount calculated by OFCOM to be the net cost of compliance after allowing for market benefits accruing to the communications provider from the application to the provider of the social tariff condition.
- (3) After carrying out a review under this section OFCOM must either—
- (a) cause the calculations made by them on the review to be audited by a person who appears to them to be independent of the communications providers who are subject to the social tariff condition; or
 - (b) themselves carry out an audit of those calculations.
- (4) OFCOM must ensure, in the case of every audit carried out under subsection (3), that a report on the audit—
- (a) is prepared; and
 - (b) if not prepared by OFCOM, is provided to them.
- (5) It shall be the duty of OFCOM, in the case of every review under this section, to publish—
- (a) their conclusions on the review; and
 - (b) a summary of the report of the audit which was carried out as respects the calculations made for the purposes of that review.
- (6) The publication of anything under subsection (5) must be a publication in such manner as OFCOM consider appropriate for bringing it to the attention of the persons who, in their opinion, are likely to be affected by it.

]¹

Notes

- ¹ Added by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.29 (December 21, 2020: insertion has effect subject to saving specified in Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations (draft) 2020 reg.6)

Extent

Pt 2 c. 1 s. 72G(1)-(6): United Kingdom



Law In Force

[72H Sharing of burden of social tariff obligations

- (1) This section applies where OFCOM—
- (a) have concluded, on a review under section 72G, that complying in relation to any matter with social tariff conditions imposes a financial burden on a particular communications provider ("the social tariff provider"); and
 - (b) have published that conclusion in accordance with that section.

(2) OFCOM must determine, in the case of the social tariff provider, whether they consider it would be unfair for that provider to bear, or to continue to bear, the whole or any part of so much of the burden.

(3) If—

- (a) OFCOM determine that it would be unfair for the social tariff provider to bear, or to continue to bear, the whole or a part of the burden, and
- (b) an application for a determination under this subsection is made to OFCOM by that provider,

OFCOM may determine that contributions are to be made by communications providers to whom general conditions are applicable for meeting that burden.

(4) Subsections (4) to (9) of section 71 apply for the purposes of this section as if—

- (a) references to the designated universal service provider were references to the social tariff provider;
- (b) references to universal service conditions were references to social tariff conditions;
- (c) the reference to an application for the purposes of subsection (3)(b) of that section were a reference to an application for the purposes of subsection (3)(b) of this section;
- (d) references to contributions under subsection (3) of that section were references to contributions under subsection (3) of this section;
- (e) references to regulations made under that section were references to regulations made under subsections (4) to (7) of that section as applied by this subsection.

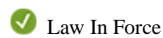
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Notes

- ¹ Added by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.29 (December 21, 2020: insertion has effect subject to saving specified in Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations (draft) 2020 reg.6)

Extent

Pt 2 c. 1 s. 72H(1)-(4)(e): United Kingdom



Law In Force

[72I Report on sharing mechanism: social tariff obligations

(1) This section applies where regulations made under section 71(4) to (7) as applied by section 72H(4) provide for a scheme for the assessment, collection and distribution of contributions under subsection (3) of that section.

(2) OFCOM must prepare and publish a report setting out, in relation to the period to which it applies—

- (a) every determination by OFCOM that has had effect in relation to a time in that period as a determination of the costs of providing anything contained in a social tariff condition;
- (b) the market benefits for each communications provider to whom a social tariff condition applies that have accrued to that provider during that period from the application to the provider of the social tariff condition; and

- (c) the contribution made under section 72H(3) by every person who has made a contribution during that period.
- (3) The first report under this section must be prepared in relation to the period of twelve months beginning with the coming into force of the first regulations to be made under section 71(4) to (7) as applied by section 72H(4).
- (4) Every subsequent report must be prepared in relation to the period of 12 months beginning with the end of the period to which the previous report applied.
- (5) Every report under this section—
- (a) must be prepared as soon as practicable after the end of the period to which it is to apply; and
 - (b) must be published as soon as practicable after its preparation is complete.
- (6) OFCOM are not required under this section—
- (a) to publish any matter that is confidential in accordance with section 72(7) or (8); or
 - (b) to publish anything that it would not be reasonably practicable to publish without disclosing such a matter.
- (7) The publication of a report under this section must be a publication in such manner as OFCOM consider appropriate for bringing it to the attention of the persons who, in their opinion, are affected by the matters to which it relates.
-] ¹

Notes

- ¹ Added by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.29 (December 21, 2020: insertion has effect subject to saving specified in Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations (draft) 2020 reg.6)

Extent

Pt 2 c. 1 s. 72I(1)-(7): United Kingdom

Access-related conditions

✓ Law In Force

73 Permitted subject-matter of access-related conditions

- (1) The only conditions that may be set under section 45 as access-related conditions are those authorised by this section.
- (2) Access-related conditions may include conditions relating to the provision of such network access and service interoperability as appears to OFCOM appropriate for the purpose of securing—
- (a) efficiency [...] ¹ ;
 - (b) sustainable competition [...] ² ; [...] ³

[(bza) the bringing into operation, where OFCOM consider it appropriate, of very high capacity networks;]⁴

[(ba) efficient investment and innovation; and]³

(c) the greatest possible benefit for the end-users of public electronic communications services.

(3) Access-related conditions may include conditions appearing to OFCOM to be appropriate for securing that persons to whom the electronic communications code applies participate [...] in arrangements for—

(a) sharing the use of electronic communications apparatus; and

(b) apportioning and making contributions towards costs incurred in relation to shared electronic communications apparatus.

[(3A) The power to set access-related conditions falling within subsection (3) is to be exercised for the purpose of—

(a) encouraging efficient investment in infrastructure; and

(b) promoting innovation.

] ⁶

(4) [...] ⁷

[(4A) Access-related conditions may include conditions permitted by section 74A.] ⁸

(5) Access-related conditions may include conditions containing any provision required by section 75(2).

Notes

¹ Words repealed by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.38(a)(i) (May 26, 2011: repeal has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 para.2)

² Words repealed by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.38(a)(ii) (May 26, 2011: repeal has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 para.2)

³ Added by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.38(a)(iii) (May 26, 2011: insertion has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 para.2)

⁴ Added by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.30(2) (December 21, 2020)

⁵ Words repealed by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.38(b) (May 26, 2011: repeal has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 para.2)

⁶ Added by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.38(c) (May 26, 2011: insertion has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 para.2)

⁷ Repealed by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.38(d) (May 26, 2011: repeal has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 para.2)

⁸ Added by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.30(3) (December 21, 2020)

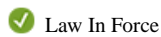
Commencement

Pt 2 c. 1 s. 73(1)-(5): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 73-(2)(bza), (2)(c)-(3)(b), (4)-(5): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

Pt 2 c. 1 s. 73(2)(ba), (3A)-(3A)(b): United Kingdom



Law In Force

74 Specific types of access-related conditions

(1) The conditions that may be set by virtue of section 73(2) include conditions which, for the purpose of securing end-to-end connectivity for the end-users of public electronic communications services provided by means of a series of electronic communications networks—

- (a) impose obligations on a person controlling network access to any of those networks; and
- (b) require the interconnection of the networks.

[(1A) The conditions that may be set by virtue of section 73(2) also include conditions which impose such obligations on a person controlling network access to customers as OFCOM consider necessary for the purpose of securing service interoperability.]¹

(2) The conditions that may be set by virtue of section 73(2) also include such conditions imposing obligations on a person providing facilities for the use of application programme interfaces or electronic programme guides as OFCOM consider to be necessary for securing—

- (a) that persons are able to have access to such programme services provided in digital form as OFCOM may determine; and
- (b) that the facility for using those interfaces or guides is provided on terms which—
 - (i) are fair and reasonable; and
 - (ii) do not involve, or tend to give rise to, any undue discrimination against any person or description of persons.

[(2A) The conditions that may be set by virtue of section 73(2) also include conditions imposing on a person who provides an electronic communications network that includes a line or associated facility to which this subsection applies, or who owns such a line or associated facility, obligations for the purposes of giving to other persons such entitlements as OFCOM may from time to time direct as respects the availability and use of the line or associated facility in cases where OFCOM are satisfied that it would be economically inefficient or physically impracticable for those other persons to replicate the line or associated facility.

(2B) Subsection (2A) applies—

- (a) to a line or associated facility that is—
 - (i) in a building, or
 - (ii) between the network termination point as determined by OFCOM and the first concentration or distribution point as so determined; and
- (b) in a case where OFCOM consider, having regard where applicable to any analysis of a services market under section 79, that obligations imposed by virtue of paragraph (a) will not in their opinion sufficiently address high and non-transitory economic or physical barriers to replication which underlie an existing or emerging market situation significantly limiting

competitive outcomes for end-users, to a line or associated facility that is outside a building beyond the first concentration or distribution point to a point determined by OFCOM to be the closest point to end-users that is capable of hosting a sufficient number of end-user connections to be commercially viable for those seeking access.

(2C) OFCOM may not apply a condition authorised by virtue of subsection (2B)(b) to a person providing an electronic communications network if—

- (a) the network concerned is not publicly funded and the person providing the network makes available a viable and similar alternative means of reaching end-users by providing any undertaking with access to a very high capacity network on fair, non-discriminatory and reasonable terms and conditions; or
- (b) the obligations would compromise the economic or financial viability of the bringing of a new network into operation.

(2D) The conditions authorised by subsection (2A) may include provision—

- (a) for securing fairness and reasonableness in the way in which requests for entitlements are made and responded to;
- (b) for securing that the obligations contained in the conditions are complied with within the periods and at the times required by or under the conditions;
- (c) requiring the person to whom the condition applies ("the relevant provider") not to discriminate unduly against particular persons, or against a particular description of persons, in relation to matters connected with the entitlements mentioned in subsection (2A);
- (d) requiring the relevant provider to publish, in such manner as OFCOM may from time to time direct, all such information as they may direct for the purpose of securing transparency in relation to such matters;
- (e) requiring the relevant provider to publish, in such manner as OFCOM may from time to time direct, the terms and conditions on which the relevant provider is willing to enter into a contract giving the entitlements mentioned in subsection (2A);
- (f) requiring the terms and conditions on which the relevant provider is willing to enter into such a contract to include such terms and conditions as may be specified or described in the condition;
- (g) requiring the relevant provider to make such modifications as OFCOM may direct of any offer by that provider which sets out the terms and conditions on which that provider is willing to enter into such a contract;
- (h) imposing rules about the apportionment and recovery of costs.

]²

(3) In this section—

“application programme interface” means a facility for allowing software to make use, in connection with any of the matters mentioned in subsection (4), of facilities contained in other software;

“electronic programme guide” means a facility by means of which a person has access to any service which consists of—

- (a) the listing or promotion, or both the listing and the promotion, of some or all of the programmes included in any one or more programme services; and
- (b) a facility for obtaining access, in whole or in part, to the programme service or services listed or promoted in the guide;

“end-to-end connectivity” means the facility—

(a) for different end-users of the same public electronic communications service to be able to communicate with each other; and

(b) for the end-users of different such services to be able, each using the service of which he is the end-user, to communicate with each other [;]³

["line" means any wire, cable, tube, pipe or similar thing (including its casing or coating) which is designed or adapted for use in connection with the provision of any electronic communications network or electronic communications service.]³

(4) The matters mentioned in subsection (3), in the definition of “application programme interface”, are—

(a) allowing a person to have access to programme services;

(b) allowing a person, other than a communications provider or a person who makes associated facilities available, to make use of an electronic communications network by means of which a programme service is broadcast or otherwise transmitted;

(c) allowing a person to become the end-user of a description of public electronic communications service.

(5) This section is not to be construed as restricting the provision that may be made under section 73(2).

Notes

¹ Added by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.39 (May 26, 2011: insertion has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 para.2)

² Added by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.31(2) (December 21, 2020)

³ Definition inserted by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.31(3) (December 21, 2020)

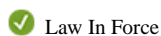
Commencement

Pt 2 c. 1 s. 74(1)-(5): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 74-(1)(b), (2)-(5): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

Pt 2 c. 1 s. 74(1A): United Kingdom



Law In Force

[74A Access-related conditions in certain cases involving use of radio spectrum

(1) OFCOM may apply a condition falling within subsection (2) to a person who provides an electronic communications network ("the host network") if it appears to OFCOM that—

- (a) in a particular local area within the United Kingdom ("the relevant area"), access by end-users to electronic communications services which depend on the use of wireless telegraphy is unavailable or severely restricted;
 - (b) the unavailability or restriction results from the physical characteristics of the relevant area or from other characteristics of the relevant area that tend to make the bringing into operation of infrastructure uneconomic;
 - (c) the provider of the host network has not made network access available on fair and reasonable commercial terms and conditions to other persons providing electronic communications services; and
 - (d) when granting or varying the wireless telegraphy licence relating to the host network, OFCOM had made clear the possibility that a requirement to provide network access or to enter into wholesale roaming access agreements might subsequently be imposed.
- (2) A condition falling within this subsection is one requiring the provider of the host network—
- (a) to provide network access in relation to network elements which are not active; or
 - (b) to enter into wholesale roaming access agreements relating to the relevant area or any part of the relevant area, on such terms and conditions as may be specified or described in the condition, in response to a request meeting specified requirements.
- (3) If OFCOM are satisfied as to the matters in subsection (1) but it appears to them that in the circumstances a condition falling within subsection (2) does not suffice to address the situation, OFCOM may also apply a condition requiring the provider of the host network to provide network access in relation to network elements which are active.
- (4) The conditions authorised by subsection (2) or (3) may include any provision mentioned in subsection (2D) of section 74, reading references in that subsection to subsection (2A) of that section as references to subsection (2) or (3) of this section (as the case requires).
- (5) In exercising their powers under this section, OFCOM must have regard to—
- (a) the need to maximise the coverage and availability of electronic communications services throughout the [United Kingdom]², along major transport paths and in particular territorial areas;
 - (b) the desirability of significantly increasing choice, and improving the quality of service, for end-users;
 - (c) the desirability of promoting the efficient use of radio spectrum;
 - (d) the technical feasibility of network access and associated conditions;
 - (e) the extent of infrastructure-based and service-based competition in the market concerned;
 - (f) the desirability of promoting technological innovation;
 - (g) the need to maintain incentives for investment in infrastructure.
- (6) In this section "a wholesale roaming access agreement" means an agreement between the provider of the host network and the provider of a public electronic communications service that depends on the use of wireless telegraphy ("the roaming provider") for the purpose of enabling public electronic communications services to be provided in the relevant area to the customers of the roaming provider.

]¹


Notes

¹ Added by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.32 (December 21, 2020)

- ² Words substituted by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(2) para.71 (December 31, 2020: shall come into force on IP completion day)

Extent

Pt 2 c. 1 s. 74A(1)-(6): United Kingdom

 Law In Force

[74B Review of access-related conditions

- (1) This section applies to a condition set by virtue of section 73(2) or (4A) and applied to a particular person, so long as the condition remains in force, but does not apply to a condition required by section 75(2).
- (2) OFCOM must within the specified period review the results of imposing the obligations in question and consider whether the condition should be modified or revoked.
- (3) OFCOM must, as soon as reasonably practicable after complying with subsection (2), publish—
- (a) a report on the review, and
 - (b) if the review concludes that the condition should be modified or revoked, a notification under section 48(1) or, where section 48A applies, section 48A(3).
- (4) In this section "the specified period", in relation to a condition, means the period of 5 years beginning with the latest of the following days—
- (a) the commencement of this section;
 - (b) the date of the most recent notification under section 48(1) setting or modifying the condition;
 - (c) the date of the most recent report under subsection (3)(a) in relation to the condition.

] ¹

Notes

- ¹ Added by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.32 (December 21, 2020)

Extent

Pt 2 c. 1 s. 74B(1)-(4)(c): United Kingdom

 Law In Force

75 Conditional access systems and access to digital services

- (1) [...]¹
- (2) It shall be the duty of OFCOM to ensure—
- (a) that access-related conditions are applied to every person who provides a conditional access system in relation to a protected programme service; and

(b) that those conditions make all such provision as is required by the provision contained [...] ² in [Annex 2 to the EECC Directive] ³ (conditions relating to access to digital programme services) [as it had effect immediately before IP completion day] ⁴ .

[(2A) For the purposes of subsection (2)(b), Part 1 of Annex 2 to the EECC Directive is to be read as if—

- (a) the reference to viewers and listeners in the Union were a reference to viewers and listeners in the United Kingdom;
- (b) the reference to member States were a reference to OFCOM;
- (c) the words "in accordance with Article 62" were omitted;
- (d) in point (a), the references to Union competition law were references to any provision relating to competition that is contained in or made under an enactment.

] ⁵

[(2B) OFCOM may also apply access-related conditions to any person who provides a conditional access system in relation to services which are not protected programme services but appear to OFCOM to be complementary to protected programme services; and those conditions may contain any provision of the kind mentioned in subsection (2)(b).] ⁶

(3) In this section—

“conditional access system” means any system, facility, arrangements or technical measure under or by means of which access to programme services requires—

- (a) a subscription to the service or to a service that includes that service; or
- (b) an authorisation to view it, or to listen to it, on a particular occasion;

“protected programme service” means a programme service the programmes included in which cannot be viewed or listened to in an intelligible form except by the use of a conditional access system.

Notes

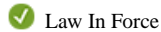
- ¹ Repealed by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.40 (May 26, 2011: repeal has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 para.2)
- ² Words repealed by Broadcasting (Amendment) (EU Exit) Regulations 2019/224 Sch.1(3) para.19(2)(a) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))
- ³ Words substituted by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.33(2) (December 21, 2020)
- ⁴ Words inserted by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(2) para.72(2) (December 31, 2020: shall come into force on IP completion day)
- ⁵ Added by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(2) para.72(3) (December 31, 2020: shall come into force on IP completion day)
- ⁶ Added by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.33(3) (December 21, 2020)

Commencement

Pt 2 c. 1 s. 75(2)-(3) definition of "protected programme service": July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 75-(3) definition of "protected programme service": United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)



Law In Force

76 Modification and revocation of conditions imposed under s. 75

- (1) This section applies in the case of conditions falling within section 75(2) which have been set by OFCOM in relation to a particular person ("the system provider").
- (2) OFCOM must not give effect to a proposal to modify or revoke any of the conditions unless—
- (a) they have carried out an analysis for the purpose of determining in accordance with this Chapter whether that person is or remains a person on whom SMP services conditions are capable of being imposed;
 - (b) they have determined in consequence of that analysis that he is not; and
 - (c) they are satisfied that the modification or revocation will not have an adverse effect on any or all of the matters mentioned in subsection (3).
- (3) Those matters are—
- (a) the accessibility to any persons of services that are for the time being included in the list of must-carry services in section 64;
 - (b) the prospects for effective competition in the market for programme services provided by being broadcast or otherwise transmitted in digital form; and
 - (c) the prospects for effective competition in the markets for conditional access systems and other associated facilities.
- (4) In this section "conditional access system" has the same meaning as in section 75.
-

Commencement

Pt 2 c. 1 s. 76(1)-(4): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 76-(4): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)



Law In Force

[76A.— Information about electronic communications apparatus available for shared use

- (1) OFCOM may make available to such persons as they consider appropriate information about electronic communications apparatus that in OFCOM's opinion is suitable for shared use.

(2) OFCOM may impose such restrictions as they consider appropriate on the use and further disclosure of information made available under this section.

]¹


Notes

¹ Added by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.41 (May 26, 2011: insertion has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 para.2)

Extent

Pt 2 c. 1 s. 76A(1)-(2): United Kingdom

Privileged supplier conditions

 Law In Force

77 Imposition of privileged supplier conditions

(1) It shall be the duty of OFCOM to secure that privileged supplier conditions containing all such provision falling within subsection (3) as they consider appropriate are applied to every public communications provider to whom this section applies.

(2) This section applies to every public communications provider who—
(a) enjoys special or exclusive rights in relation to the provision of any non-communications services; and
(b) is not such a provider in respect only of associated facilities.

(3) The provision that may be contained in a condition set under section 45 as a privileged supplier condition is any provision that OFCOM consider appropriate for any one or more of the following purposes—

- (a) requiring the provider to whom it applies to keep separate accounts in relation to his public electronic communications network or public electronic communications service and other matters;
- (b) requiring that provider to submit the accounts of the different parts of his undertaking, and any financial report relating to a part of that undertaking, to a qualified auditor for auditing;
- (c) requiring the accounts of the different parts of his undertaking to be published;
- (d) securing, by means other than the keeping of separate accounts, the structural separation of the different parts of his undertaking.

(4) OFCOM are not required under this section to apply a condition to a person where they are satisfied that that person has an annual turnover in relation to all his communications activities that is less than [£45 million]¹ .

(5) Where in a case falling within subsection (4) OFCOM are not required to apply a privileged supplier condition to a person, they may apply such a condition to him if they think fit.

(6) The reference in subsection (4) to a person's communications activities is a reference to any activities of his that consist in, or are connected with, either or both of the following—

- (a) the provision of any one or more electronic communications networks;
- (b) the provision of any one or more electronic communications services.

(7) The making, for the purposes of subsection (4), of—

- (a) a determination of the period in respect of which a person's annual turnover in relation to any activities is computed, and
- (b) a determination of the amount in [sterling]² of that turnover for any period,

must be in accordance with such rules as OFCOM consider to be reasonable.

(8) OFCOM must publish any rules made by them for the purposes of subsection (7) in such manner as they consider appropriate for bringing them to the attention of the persons who, in their opinion, are likely to be affected by them.

(9) In this section—

“non-communications services”, in relation to a person, means services other than those consisting in, or connected with, the provision by him of—

- (a) an electronic communications network; or
- (b) an electronic communications service;

[“qualified auditor” means a person who—

- (a) is eligible for appointment as a statutory auditor under Part 42 of the Companies Act 2006, and
- (b) if the appointment to carry out such auditing as is mentioned in subsection (3)(b) were an appointment as a statutory auditor, would not be prohibited from acting by section 1214 of that Act (independence requirement);

]³

“special or exclusive rights” has the same meaning as in [Article 106 of the Treaty on the Functioning of the European Union]⁴.

Notes

- ¹ Possible drafting error - the words purportedly substituted do not exist and therefore the amendment is applied to reflect the presumed intention; words substituted by Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019/246 Sch.1(1) para.22(2) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))
- ² Word substituted by Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019/246 Sch.1(1) para.22(3) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))
- ³ Definition substituted subject to savings specified in SI 2008/948 arts 11 and 12 by Companies Act 2006 (Consequential Amendments etc) Order 2008/948 Sch.1(1) para.30(3) (April 6, 2008)
- ⁴ Words substituted by Treaty of Lisbon (Changes in Terminology or Numbering) Order 2012/1809 Sch.1(1) para.1 (August 1, 2012: substitution has effect subject to savings specified in SI 2012/1809 art.2(2))

Commencement

Pt 2 c. 1 s. 77(1)-(9) definition of "special or exclusive rights": July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 77-(9) definition of "qualified auditor", (9) definition of "special or exclusive rights": United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195

Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

Pt 2 c. 1 s. 77(9) definition of "qualified auditor" (a)-(9) definition of "qualified auditor" (b): United Kingdom

SMP conditions: procedure

✓ Law In Force

78 Circumstances required for the setting of SMP conditions

(1) For the purposes of this Chapter a person shall be taken to have significant market power in relation to a market if he enjoys a position which amounts to or is equivalent to dominance of the market.

[(2) References in this section to dominance of a market are to be construed, so far as it is appropriate to do so for the purposes of this Chapter, in the same way as the reference in section 18(1) of the Competition Act 1998 to a dominant position in a market.]¹

(3) A person is to be taken to enjoy a position of dominance of a market if he is one of a number of persons who enjoy such a position in combination with each other.

(4) A person or combination of persons may also be taken to enjoy a position of dominance of a market by reason wholly or partly of his or their position in a closely related market if the links between the two markets allow the market power held in the closely related market to be used in a way that influences the other market so as to strengthen the position in the other market of that person or combination of persons.

(5) [...] ²

Notes

¹ Substituted by Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019/246 Sch.1(1) para.23(2) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))

² Repealed by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.34(3) (December 21, 2020)

Commencement

Pt 2 c. 1 s. 78(1)-(5): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 78-(5): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)



Law In Force

79 Market power determinations

(1) Before making a market power determination, OFCOM must—

- (a) identify (by reference, in particular, to area and locality) the markets which in their opinion are the ones which in the circumstances of the United Kingdom are the markets in relation to which it is appropriate to consider whether to make the determination; and
- (b) carry out an analysis of the identified markets.

[(1A) In identifying or analysing a services market for the purposes of this Chapter, OFCOM must conduct a forward-looking assessment of the market, taking into account expected or foreseeable developments that may affect competition in the market.]¹

(2) [...] ²

[(2ZA) In identifying or analysing a services market for the purposes of this Chapter, OFCOM may have regard to EECC materials relating to market identification and analysis.]³

[(2A) In determining whether to identify a market for the purpose of considering whether to make a market power determination, OFCOM must consider whether the criteria in subsection (2B) are met; and OFCOM may not identify that market for that purpose unless they consider that the criteria are met.

(2B) Those criteria are—

- (a) that high and non-transitory structural, legal or regulatory barriers to entry are present;
- (b) that there is a market structure which, having regard to the state of infrastructure-based competition and other sources of competition behind the barriers to entry, does not tend towards effective competition within such period as OFCOM determine to be appropriate in relation to the review;
- (c) that competition law alone is insufficient adequately to address the identified market failure.

[(2BA) In considering whether to make or revise a market power determination in relation to a services market, OFCOM may have regard to EECC materials relating to market analysis or the determination of what constitutes significant market power.]⁵

(2C) [...] ⁶
]⁴

(3) [...] ²

(4) The way in which—

- (a) a market is to be identified for the purposes of this section, or
- (b) a market power determination is to be made,

is by the publication of a notification containing the identification or determination.

(5) Notifications for the purposes of subsection (4)—

- (a) may be given separately;
- (b) may be contained in a single notification relating to both the identification of a market and the making of a market determination in relation to that market; or
- (c) may be contained in a single notification under section 48(1) with respect to the setting or modification of an SMP condition and either—

- (i) the making of the market power determination by reference to which OFCOM set or modify that condition; or
- (ii) the making of that market power determination and the identification of the market in relation to which they make that determination.

(6) The publication of a notification under this section must be in such manner as appears to OFCOM to be appropriate for bringing the contents of the notification to the attention of the persons who, in OFCOM's opinion, are likely to be affected by the matters notified.

[(6A) In this section "EECC materials" means recommendations or guidelines published by the European Commission, and guidelines published by BEREC, under the Framework Directive or the EECC Directive (including those published after IP completion day).]⁷

(7) [...] ²

Notes

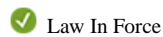
- ¹ Added by Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019/246 Sch.1(1) para.24(2) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))
- ² Repealed by Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019/246 Sch.1(1) para.24(3) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))
- ³ Added by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(2) para.73(2) (December 31, 2020: shall come into force on IP completion day)
- ⁴ Added by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.35 (December 21, 2020)
- ⁵ Added by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(2) para.73(3) (December 31, 2020: shall come into force on IP completion day)
- ⁶ Repealed by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(2) para.73(4) (December 31, 2020: shall come into force on IP completion day)
- ⁷ Added by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(2) para.73(5) (December 31, 2020: shall come into force on IP completion day)

Commencement

Pt 2 c. 1 s. 79(1)-(7): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 79-(7): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)



80 Proposals for identifying markets and for market power determinations

[(1) Where section 80A applies, OFCOM must comply with the applicable requirements of that section [...] ² before—

- (a) identifying a market for the purposes of making a market power determination, or
- (b) making a market power determination.

(1A) Where section 80A does not apply because of subsection (2) of that section—

- (a) any identification of a market or market power determination must be temporary; and
- (b) the notification published under section 79(4) containing the identification or determination must state the period for which the identification or determination is to have effect.

(1B) Where OFCOM propose to extend or make permanent any such temporary identification or determination—

- (a) [section 80A does] ³ not apply in relation to the proposal [.] ⁴
- (b) [...] ⁴

] ¹

(7) [...] ⁵

Notes

¹ S.80(1)-(1B) substituted for s.80(1)-(6) by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.42(a) (May 26, 2011: substitution has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 11)

² Words repealed by Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019/246 Sch.1(1) para.25(2) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))

³ Words substituted by Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019/246 Sch.1(1) para.25(3)(a) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))

⁴ Repealed by Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019/246 Sch.1(1) para.25(3)(b) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))

⁵ Repealed by Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019/246 Sch.1(1) para.25(4) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))

Commencement

Pt 2 c. 1 s. 80(1)-(6)(b): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 80-(1)(b), (2), (2)(a)-(2)(b), (2)(c)-(6)(b): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

Pt 2 c. 1 s. 80(1A)-(1B), (1B)(a), (1B)(b): United Kingdom

**[80A.— [Consultation]² for market identifications and market power determinations**

- (1) This section applies where—
 - (a) OFCOM propose—
 - (i) to identify a market for the purposes of making a market power determination; or
 - (ii) to make a market power determination; and
 - (b) (in the case of a services market) the proposed identification or determination is in OFCOM's opinion likely to result in the setting, modification or revocation of SMP services conditions that will have a significant impact on the market.
- (2) But this section does not apply where [...] ³ in OFCOM's opinion—
 - (a) there are exceptional circumstances; and
 - (b) there is an urgent need to act in order to safeguard competition and to protect the interests of consumers.
- (3) OFCOM must publish a notification of what they are proposing to do.
- (4) Notifications for the purposes of subsection (3)—
 - (a) may be given separately;
 - (b) may be contained in a single notification relating to both the identification of a market and the making of a market power determination in relation to that market; or
 - (c) may be contained in a single notification under section 48A(3) with respect to the setting or modification of an SMP condition and either—
 - (i) the making of the market power determination by reference to which OFCOM are proposing to set or modify that condition; or
 - (ii) the making of that market power determination and the identification of the market in relation to which they are proposing to make that determination.
- (5) A notification under this section relating to a proposal to identify a market or to make a market power determination must—
 - (a) state that OFCOM are proposing to identify that market or to make that market power determination;
 - (b) set out the effect of the proposal;
 - (c) give their reasons for making the proposal; and
 - (d) specify the period within which representations may be made to OFCOM about their proposal.
- (6) That period must be a period of not less than [30 days] ⁴ after the day of the publication of the notification.
- (7) But where OFCOM are satisfied that there are exceptional circumstances justifying the use of a shorter period, the period specified as the period for making representations may be whatever shorter period OFCOM considers reasonable in those circumstances.
- (8) The publication of a notification under this section must be in such manner as appears to OFCOM to be appropriate for bringing the contents of the notification to the attention of the persons who, in OFCOM's opinion, are likely to be affected by the matters notified.
- (9) OFCOM must—

- (a) consider every representation about the proposal made to them during the period specified in the notification; and
- (b) have regard to every international obligation of the United Kingdom (if any) which has been notified to them for the purposes of this paragraph by the Secretary of State.

(10) [...] ⁵ OFCOM may then give effect to [the proposal] ⁶, with any modifications that appear to OFCOM to be appropriate.

] ¹

Notes

- ¹ Added by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.43 (May 26, 2011: insertion has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 11)
- ² Words substituted by Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019/246 Sch.1(1) para.26(4) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))
- ³ Words repealed by Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019/246 Sch.1(1) para.26(2) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))
- ⁴ Words substituted by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.36 (December 21, 2020)
- ⁵ Words repealed by Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019/246 Sch.1(1) para.26(3)(a) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))
- ⁶ Word substituted by Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019/246 Sch.1(1) para.26(3)(b) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))

Extent

Pt 2 c. 1 s. 80A(1)-(10): United Kingdom



Repealed

80B.— [...] ¹

Notes

- ¹ Repealed by Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019/246 Sch.1(1) para.27 (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))



Law In Force

[81.— Delivery of copies of notifications under sections 79 and 80A

(1) OFCOM must send to the Secretary of State a copy of every notification published under section 79(4) or 80A(3).

(2)-(4) [...] ²

] ¹

Notes

- ¹ Substituted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.44 (May 26, 2011: substitution has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 11)
- ² Repealed by Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019/246 Sch.1(1) para.28 (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))

Commencement

Pt 2 c. 1 s. 81(1)-(4)(b): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 81-(4)(b): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

Pt 2 c. 1 s. 81(4)(c): United Kingdom

 Repealed

82 [...]¹

Notes

- ¹ Repealed by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.45 (May 26, 2011: repeal has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 11)
-

 Repealed

83 [...]¹

Notes

- ¹ Repealed by Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019/246 Sch.1(1) para.29 (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))
-

 Law In Force

84 Review of services market identifications and determinations

(1) This section applies where OFCOM have identified and analysed a services market for the purposes of making a market power determination.

(2) OFCOM [must, when required to do so by section 84A and at such other times as they may consider appropriate,]¹ carry out further analyses of the identified market for one or both of the following purposes—

- (a) reviewing market power determinations made on the basis of an earlier analysis;
- (b) deciding whether to make proposals for the modification of SMP conditions set by reference to a market power determination made on such a basis.

(3) [...] ²

(4) Where on, or in consequence of, a further analysis under this section, OFCOM determine that a person to whom any SMP conditions apply is no longer a person with significant market power in that market, they must revoke every SMP services condition applied to that person by reference to the market power determination made on the basis of the earlier analysis.

(5) Before carrying out a further analysis under subsection (2), OFCOM may review any decision of theirs identifying the markets which it was appropriate to consider for the purpose of carrying out an earlier analysis.

(6) Where, on such a review, OFCOM conclude that the appropriate markets have changed—

- (a) they must identify the markets they now consider to be the appropriate ones; and
- (b) those markets shall be the identified markets for the purposes of the further analysis.

(7) [Sections 79 to 81] ³ apply—

- (a) in relation to the identification of a services market for the purposes of reviewing a market power determination under this section, as they apply in relation to the identification of such a market for the purpose of making a market determination; and
- (b) in relation to the review of such a determination, as they apply in relation to the making of such a determination.

Notes

¹ Words substituted by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.39 (December 21, 2020)

² Repealed by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.46(b) (May 26, 2011: repeal has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 12)

³ Word substituted by Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019/246 Sch.1(1) para.30 (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))

Commencement

Pt 2 c. 1 s. 84(1)-(7)(b): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 84-(7)(b): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)



[84A.— Timing of services market identifications and determinations

- (1) This section makes provision about the exercise by OFCOM of their powers—
- (a) to identify and analyse services markets;
 - (b) to make and review market power determinations in respect of such markets; and
 - (c) to set, modify and revoke SMP services conditions by reference to such determinations.
- (2) [...] ²
- (3) Where, following the identification and analysis of a services market, OFCOM have made a market power determination in relation to it, they must ensure that within the specified period they have—
- (a) carried out a further analysis of the market and reviewed the identification and determination made on the basis of the earlier analysis [.] ³
 - (b) [...] ³
- (4) Subsection (3) applies only where the market power determination was made after 25 May 2011.
- (5)-(6) [...] ⁴
- [(7) In subsection (3), "the specified period" means the period of 5 years from the publication under section 79(4) of the notification of the market power determination made on the basis of the earlier analysis, but this is subject to subsection (8).
- (8) If, in relation to an analysis and review that would otherwise be required within the period mentioned in subsection (7), OFCOM are of the opinion that exceptionally a longer period is justified, OFCOM may, by publishing a statement of the reasons for their opinion, extend the specified period by up to one additional year.] ⁵
-] ¹

Notes

- ¹ Added by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.47 (May 26, 2011: insertion has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 para.2)
- ² Repealed by Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019/246 Sch.1(1) para.31(2) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))
- ³ Repealed by Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019/246 Sch.1(1) para.31(3) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))
- ⁴ Repealed by Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019/246 Sch.1(1) para.31(4) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))
- ⁵ S.84A(7) and (8) substituted for s.84A(7) by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(2) para.74 (December 31, 2020: shall come into force on IP completion day)

Extent

Pt 2 c. 1 s. 84A(1)-(6)(c): United Kingdom



Law In Force

85 Review of apparatus market identifications and determinations

- (1) This section applies where OFCOM have identified and analysed an apparatus market for the purposes of making a market power determination.
- (2) OFCOM must, at such intervals as they consider appropriate, carry out further analyses of the identified market for one or both of the following purposes—
- (a) reviewing market power determinations made on the basis of an earlier analysis;
 - (b) deciding whether to make proposals for the modification of SMP conditions set by reference to any such market power determination.
- (3) Where on, or in consequence of, a further analysis under this section, OFCOM determine that a person to whom any SMP conditions apply is no longer a person with significant market power in that market, they shall revoke every SMP apparatus condition applied to that person by reference to the market power determination made on the basis of the earlier analysis.
- (4) Before carrying out any further analysis under subsection (2), OFCOM may review any decision of theirs identifying the markets which it was appropriate to consider for the purpose of carrying out any earlier analysis.
- (5) Where on such a review OFCOM conclude that the appropriate markets have changed—
- (a) they shall identify the markets they now consider to be the appropriate ones; and
 - (b) those markets shall be the identified markets for the purposes of the further analysis.
- (6) Where on such a review OFCOM conclude that there is no person at all with significant market power in relation to the identified market—
- (a) they must so inform the Secretary of State; and
 - (b) the Secretary of State may by order remove or restrict OFCOM's power under this Chapter to set SMP apparatus conditions by reference to that market.
- (7) [Sections 79, 80, 80A and 81(1)]¹ apply—
- (a) in relation to the identification of a apparatus market for the purposes of reviewing a market power determination under this section, as they apply in relation to the identification of such a market for the purpose of making a market determination; and
 - (b) in relation to the review of such a determination, as they apply in relation to the making of such a determination.

Notes

- ¹ Words substituted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.48 (May 26, 2011: substitution has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 11)

Commencement

Pt 2 c. 1 s. 85(1)-(7)(b): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 85-(7)(b): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6

with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

✓ Law In Force

86 Cases where review required

(1) OFCOM must not set an SMP services condition by a notification which does not also make the market power determination by reference to which the condition is set unless—

- (a) the condition is set by reference to a market power determination which has been reviewed under section 84 and, in consequence of that review, is confirmed in the notification setting the condition; or
- (b) the condition is set by reference to a market power determination made in relation to a market in which OFCOM are satisfied there has been no material change since the determination was made.

(2) OFCOM must not modify or revoke SMP services conditions applying to a person except in a case falling within subsection (3) or (4).

(3) The first case is where, for the purpose of determining whether to make the modification or revocation, OFCOM have—

- (a) carried out a further analysis under section 84 of the market in question; and
- (b) reviewed the market power determination for the time being in force in that person's case.

(4) The second case is where OFCOM are satisfied that there has not—

- (a) in the case of an unmodified condition, since the condition was set, or
- (b) in any other case, since the condition was last modified,

been a material change in the market identified or otherwise used for the purposes of the market power determination by reference to which the condition was set or last modified.

(5) OFCOM must not modify SMP apparatus conditions applying to a person except where, for the purpose of determining whether to make the modification or revocation, they have—

- (a) carried out a further analysis under section 85 of the market in question; and
- (b) reviewed the market power determination for the time being in force in that person's case.

(6) A change is a material change for the purposes of subsection (1) or (4) if it is one that is material to—

- (a) the setting of the condition in question; or
- (b) the modification or revocation in question.

Commencement

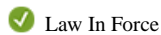
Pt 2 c. 1 s. 86(1)-(6)(b): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 86-(6)(b): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6

with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

SMP services conditions: subject-matter



Law In Force

87 Conditions about network access etc.

(1) Where OFCOM have made a determination that a person to whom this section applies (“the dominant provider”) has significant market power in an identified services market, they shall—

- (a) set such SMP conditions authorised by this section as they consider it appropriate to apply to that person in respect of the relevant network or relevant facilities; and
- (b) apply those conditions to that person.

(2) This section applies to—

- (a) a person who provides a public electronic communications network; and
- (b) a person who makes available facilities that are associated facilities by reference to such a network.

(3) This section authorises SMP conditions requiring the dominant provider to give such entitlements as OFCOM may from time to time direct as respects—

- (a) the provision of network access to the relevant network;
- (b) the use of the relevant network; and
- (c) the availability of the relevant facilities.

[(3A) The assets as respects which entitlements may be given under subsection (3) include, in the case of assets which are not active, any which, although forming part of the relevant network or the relevant facilities, do not form part of the services market to which the determination relates.]¹

(4) In determining what conditions authorised by subsection (3) to set in a particular case, OFCOM must take into account, in particular, the following factors—

- (a) the technical and economic viability [(including the viability of other network access products, whether provided by the dominant provider or another person)]², having regard to the state of market development, of installing and using facilities that would make the proposed network access unnecessary;
- (b) the feasibility of the provision of the proposed network access;
 - [(ba) any technological developments that, in OFCOM's opinion, are likely to affect the design and management of the relevant network or (as the case may be) the relevant facilities;
 - (bb) the need to ensure that the provision of the proposed network access does not have the effect of favouring one form of technology over another in relation to the design and management of electronic communications networks;]³
- (c) the investment made by the person initially providing or making available the network or other facility in respect of which an entitlement to network access is proposed [(taking account of any public investment made)]⁴;
- (d) the need to secure effective competition [(including, where it appears to OFCOM to be appropriate, economically efficient infrastructure based competition)]⁵ in the long term

[and to support innovative business models that support sustainable competition]⁶ ; [and]⁷

(e) any rights to intellectual property that are relevant to the proposal [.]⁸

(f) [...] ⁸

(5) The conditions authorised by subsection (3) may include provision—

(a) for securing fairness and reasonableness in the way in which requests for network access are made and responded to; and

(b) for securing that the obligations contained in the conditions are complied with within the periods and at the times required by or under the conditions.

[(5A) The SMP conditions authorised by this section also include a condition which—

(a) is of a technical or operational nature; and

(b) appears to OFCOM to be appropriate for securing the proper operation of an electronic communications network in compliance with a condition under subsection (3).

(5B) A condition falling within subsection (5A) may provide that compliance with the condition is not required unless a person on whom an entitlement is or may be conferred in pursuance of a requirement imposed by a condition under subsection (3) fulfils such technical or operational requirements as may be specified by OFCOM.

(5C) It shall be the duty of OFCOM, when setting a condition falling within subsection (5A), to ensure that it contains all such provision as they consider appropriate for the purpose of taking account of the relevant international standards.]⁹

(6) The SMP conditions authorised by this section also include one or more of the following—

(a) a condition requiring the dominant provider not to discriminate unduly against particular persons, or against a particular description of persons, in relation to matters connected with network access to the relevant network or with the availability of the relevant facilities;

(b) a condition requiring the dominant provider to publish, in such manner as OFCOM may from time to time direct, all such information as they may direct for the purpose of securing transparency in relation to such matters;

(c) a condition requiring the dominant provider to publish, in such manner as OFCOM may from time to time direct, the terms and conditions on which he is willing to enter into an access contract;

(d) a condition requiring the terms and conditions on which the dominant provider is willing to enter into an access contract to include such terms and conditions as may be specified or described in the condition;

(e) a condition requiring the dominant provider to make such modifications as OFCOM may direct of any offer by that provider which sets out the terms and conditions on which he is willing to enter into an access contract.

(7) The SMP conditions authorised by this section also include conditions requiring the dominant provider to maintain a separation for accounting purposes between such different matters relating—

(a) to network access to the relevant network, or

(b) to the availability of the relevant facilities,

as OFCOM may from time to time direct.

(8) The SMP conditions authorised by subsection (7) include conditions imposing requirements about the accounting methods to be used in maintaining the separation.

(9) The SMP conditions authorised by this section also include (subject to section 88) conditions imposing on the dominant provider—

- (a) such price controls as OFCOM may direct in relation to matters connected with the provision of network access to the relevant network, or with the availability of the relevant facilities;
- (b) such rules as they may make in relation to those matters about the recovery of costs and cost orientation;
- (c) such rules as they may make for those purposes about the use of cost accounting systems; and
- (d) obligations to adjust prices in accordance with such directions given by OFCOM as they may consider appropriate.

(10) The SMP conditions authorised by subsection (9) include conditions requiring the application of presumptions in the fixing and determination of costs and charges for the purposes of the price controls, rules and obligations imposed by virtue of that subsection.

(11) Where OFCOM set a condition authorised by this section which imposes rules on the dominant provider about the use of cost accounting systems, it shall be their duty also to set, and to apply to him, an SMP condition which imposes on him an obligation—

- (a) to make arrangements for a description to be made available to the public of the cost accounting system used in pursuance of that condition; and
- (b) to include in that description details of—
 - (i) the main categories under which costs are brought into account for the purposes of that system; and
 - (ii) the rules applied for the purposes of that system with respect to the allocation of costs.

(12) In this section—

“access contract” means—

- (a) a contract for the provision by a person to whom this section applies to another person of network access to the relevant network; or
- (b) a contract under which the relevant facilities are made available by a person to whom this section applies to another person;

“the relevant facilities”, in relation to a person to whom this section applies, means the associated facilities made available by that person in relation to a public electronic communications network; and

“the relevant network”, in relation to such a person, means the public electronic communications network provided by him.

Notes

¹ Added by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.41(2) (December 21, 2020)

² Words inserted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.49(a) (May 26, 2011: insertion has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 para.2)

³ Added by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.41(3)(a) (December 21, 2020)

⁴ Words inserted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.49(b) (May 26, 2011: insertion has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 para.2)

- ⁵ Words inserted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.49(c) (May 26, 2011: insertion has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 para.2)
- ⁶ Words inserted by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.41(3)(b) (December 21, 2020)
- ⁷ Word inserted by Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019/246 Sch.1(1) para.32(a) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))
- ⁸ Repealed by Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019/246 Sch.1(1) para.32(b) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))
- ⁹ Added by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.49(d) (May 26, 2011: insertion has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 para.2)

Commencement

Pt 2 c. 1 s. 87(1)-(12) definition of "the relevant network": July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 87-(5)(b), (6)-(12) definition of "the relevant network": United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

Pt 2 c. 1 s. 87(5A)-(5C): United Kingdom

✓ Law In Force

88 Conditions about network access pricing etc.

- (1) OFCOM are not to set an SMP condition falling within section 87(9) except where—
- (a) it appears to them from the market analysis carried out for the purpose of setting that condition that there is a relevant risk of adverse effects arising from price distortion; and
 - (b) it also appears to them that the setting of the condition is appropriate for the purposes of—

- (i) promoting efficiency;
- (ii) promoting sustainable competition; [...]¹
- (iii) conferring the greatest possible benefits on the end-users of public electronic communications services [having regard, where relevant to the market analysis, to the long-term interests of end-users in the use of next-generation networks; and]²
- [(iv) where relevant to the market analysis, promoting the availability and use of new and enhanced networks.]³

[(1A) Even if the tests in subsection (1)(a) and (b) are satisfied, OFCOM may consider not imposing an SMP condition if they consider—

- (a) that a demonstrable retail price constraint is present; and
- (b) that obligations imposed by SMP conditions not falling within section 87(9) ensure effective and non-discriminatory access.

] ⁴

- [(2) In setting an SMP condition falling within section 87(9), OFCOM must take account of—
- (a) the extent of the investment in the matters to which the condition relates of the person to whom it is to apply; and
 - (b) where the condition involves price controls on the provision of network access to existing network elements, the benefits of predictable and stable wholesale prices in ensuring—
 - (i) efficient market entry; and
 - (ii) sufficient incentives for all undertakings to bring into operation new and enhanced networks.

] ⁵

- (3) For the purposes of this section there is a relevant risk of adverse affects arising from price distortion if the dominant provider might—

- (a) so fix and maintain some or all of his prices at an excessively high level, or
- (b) so impose a price squeeze,

as to have adverse consequences for end-users of public electronic communications services.

- (4) In considering the matters mentioned in subsection (1)(b) OFCOM may—

- (a) have regard to the prices at which services are available in comparable competitive markets;
- (b) determine what they consider to represent efficiency by using such cost accounting methods as they think fit.

- (5) In this section “the dominant provider” has the same meaning as in section 87.

Notes

- ¹ Word repealed by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.42(2)(i) (December 21, 2020)
- ² Words inserted by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.42(2)(ii) (December 21, 2020)
- ³ Added by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.42(2)(iii) (December 21, 2020)
- ⁴ Added by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.42(3) (December 21, 2020)
- ⁵ Substituted by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.42(4) (December 21, 2020)

Commencement

Pt 2 c. 1 s. 88(1)-(5): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 88-(5): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)



Law In Force

89 Conditions about network access in exceptional cases

(1) This section applies where—

- (a) OFCOM have made a determination that a person (“the dominant provider”) has significant market power in an identified services market;
- (b) that person is the provider of an electronic communications network or a person who makes associated facilities available; and
- (c) OFCOM consider that there are exceptional circumstances making it appropriate for conditions with respect to the provision of network access to be applied to the dominant provider in addition to those that are required to be or may be applied to him apart from this section.

(2) OFCOM may set the additional SMP conditions and apply them to the dominant provider [.]¹

(a) [...] ¹

(b) [...] ¹

Notes

- ¹ Words repealed by Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019/246 Sch.1(1) para.33 (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))

Commencement

Pt 2 c. 1 s. 89(1)-(2)(b): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 89-(2)(b): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)



Law In Force

[89A.— Functional separation

(1) This section applies where—

- (a) OFCOM have made a determination that a person (“the dominant provider”) has significant market power in an identified services market;
- (b) that person is the provider of a public electronic communications network or a person who makes available facilities that are associated facilities by reference to such a network;
- (c) it appears to OFCOM that the setting of conditions applying to the dominant provider under section 87 (and, where OFCOM think it appropriate, section 88) has failed to address competition problems identified by OFCOM in carrying out a market analysis for the purpose of setting or modifying those conditions; and
- (d) OFCOM have identified important and persisting competition problems or market failures in relation to the provision of network access.

- (2) OFCOM may set an SMP services condition (referred to in this section and section 89B as a “functional separation condition”) requiring the dominant provider to transfer activities relating to the provision of network access to an independently operating business entity which is a part of the dominant provider.
- (3) Where a functional separation condition is imposed on the dominant provider, the products or services specified in the condition must be given to the dominant provider and to other persons—
- (a) on the same timescales, terms and conditions, including those relating to price and service levels, and
 - (b) by means of the same systems and processes.
- (4) A functional separation condition must, where relevant, specify—
- (a) the precise nature and level of separation, specifying in particular the legal status of the entity to which activities are transferred;
 - (b) an identification of the assets of that entity and the products or services to be supplied by it;
 - (c) the governance arrangements (including incentive structures) to ensure the independence of the staff employed in that entity;
 - (d) rules for ensuring compliance with the obligations imposed by the condition;
 - (e) rules for ensuring transparency of operational procedures, in particular towards persons, other than the dominant provider, who in OFCOM's opinion are likely to be affected by the condition; and
 - (f) a monitoring programme to ensure compliance, including a requirement for the publication of an annual report.


] ¹

Notes

- ¹ Added by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.50 (May 26, 2011: insertion has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 para.2)

Extent

Pt 2 c. 1 s. 89A(1)-(4)(f): United Kingdom

 Law In Force

[89B.— Functional separation conditions: matters to be considered by OFCOM

- (1) This section applies where OFCOM propose to apply a functional separation condition to a person.
- (2) OFCOM must consider the expected impact of the condition on—
- (a) OFCOM;
 - (b) the person on whom the condition is to be imposed;
 - (c) the staff of the entity to which activities are to be transferred;
 - (d) the electronic communications sector as a whole;
 - (e) incentives to invest in the electronic communications sector, particularly with regard to the need to ensure social and territorial cohesion;
 - (f) competition in the services market affected by the condition; and

(g) other persons who in OFCOM's opinion are likely to be affected by the condition, including, in particular, consumers.

(3) OFCOM must also consider—

- (a) evidence relevant to the conclusions mentioned in section 89A(1)(c) and (d);
- (b) whether there is little or no prospect of effective and sustainable infrastructure based competition within a reasonable timeframe;
- (c) whether a functional separation condition would be the most effective means of addressing important and persisting competition problems or market failures identified by OFCOM; and
- (d) the impact that the obligations contained in the condition are likely to have on SMP services conditions set in relation to the services markets which, in OFCOM's opinion, will be affected by the proposed condition.

] ¹

Notes

- ¹ Substituted by Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019/246 Sch.1(1) para.34 (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))

Extent

Pt 2 c. 1 s. 89B(1)-(3)(d): United Kingdom

✓ Law In Force

[89C.— Obligation to notify OFCOM of voluntary separation

(1) This section applies where—

- (a) OFCOM have made a determination that a person (“the dominant provider”) has significant market power in an identified services market;
- (b) the dominant provider is the provider of a public electronic communications network or a person who makes associated facilities available; and
- (c) the dominant provider decides to transfer a substantial part or all of the dominant provider's local access network assets to an independently operating business entity (which may be a part of the dominant provider or another person) for the purpose specified in subsection (2).

(2) That purpose is to use the assets to provide products or services to the dominant provider and to other persons—

- (a) on the same timescales, terms and conditions, including those relating to price and service levels; and
- (b) by means of the same systems and processes.

(3) The dominant provider must notify OFCOM of—

- (a) the decision to transfer the assets;
- (b) any changes to its intentions; and
- (c) the taking effect of the transfer.

(4) Where OFCOM receive a notification under this section, they must, as soon as reasonably practicable, consider the impact that the transfer is likely to have on SMP services conditions set in relation to the services markets which, in OFCOM's opinion, will be affected by the proposed transfer.

] ¹

Notes

- ¹ Added by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.50 (May 26, 2011: insertion has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 para.2)

Extent

Pt 2 c. 1 s. 89C(1)-(4): United Kingdom



Repealed

90 [...] ¹

Notes

- ¹ Repealed by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.51 (May 26, 2011: repeal has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 para.2)



Law In Force

91 Conditions about regulation of services etc. for end-users

(1) Where—

- (a) OFCOM have made a determination that a person (“the dominant provider”) has significant market power in an identified services market (“the relevant market”),
 - (b) the relevant market is one for the end-users of public electronic communications services that are available in that market, and
 - (c) it appears to OFCOM that the test in subsection (2) is satisfied in the case of that provider,
- they shall set, and apply to that provider, such SMP conditions authorised by this section as they consider appropriate.

(2) That test is that OFCOM are unable, by the setting of conditions of the sorts specified in subsection (3), to perform, or fully to perform, their duties under section 4 in relation to the market situation in the relevant market.

(3) The sorts of conditions referred to in subsection (2) are—

- (a) access-related conditions; and
- (b) SMP conditions authorised or required by [sections 87 to 89] ¹.

(4) The reference in subsection (2) to the market situation in the relevant market is a reference to the situation revealed by such market analyses of that market as may have been carried out for the purposes of this Chapter.

(5) The SMP conditions authorised by this section are conditions imposing on the dominant provider such regulatory controls as OFCOM may from time to time direct in relation to the provision by that provider of any public electronic communications service to the end-users of that service.

(6) Where OFCOM set a condition which is authorised by this section and imposes regulatory control on tariffs or other matters to which costs are relevant, they shall also set, and apply to the dominant provider, an SMP condition which requires him, to the extent that they consider it appropriate—

- (a) to use such cost accounting systems as may be determined by them;
- (b) to have the use of those systems audited annually by a qualified auditor; and
- (c) to publish an annual statement about compliance by the dominant provider with the obligations imposed by virtue of paragraph (a).

(7) [...] ²

[(8) In this section “qualified auditor” means a person who—

- (a) is eligible for appointment as a statutory auditor under Part 42 of the Companies Act 2006, and
- (b) if the appointment to carry out such auditing as is mentioned in subsection (6)(b) were an appointment as a statutory auditor, would not be prohibited from acting by section 1214 of that Act (independence requirement).

] ³

Notes

- ¹ Word substituted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.52(a) (May 26, 2011: substitution has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 para.2)
- ² Repealed by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.52(b) (May 26, 2011: repeal has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 para.2)
- ³ Substituted subject to savings specified in SI 2008/948 arts 11 and 12 by Companies Act 2006 (Consequential Amendments etc) Order 2008/948 Sch.1(1) para.30(4) (April 6, 2008)

Commencement

Pt 2 c. 1 s. 91(1)-(8): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 91-(8): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

Pt 2 c. 1 s. 91(8)(a)-(8)(b): United Kingdom

 Repealed

92 [...] ¹

Notes

- ¹ Repealed by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.53 (May 26, 2011: repeal has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 para.2)
-

[SMP services conditions: wholesale-only undertakings]¹

Notes

- ¹ Added by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.43 (December 21, 2020)
-

✓ Law In Force

[91A.— SMP services conditions: wholesale-only undertakings

(1) Subsection (2) applies where—

- (a) OFCOM make or have made a market power determination that a person ("the dominant provider") has significant market power in an identified services market; and
- (b) the dominant provider is not engaged in any of the following—
 - (i) the provision of a public electronic communications network to end-users of public electronic communications services;
 - (ii) the provision of a public electronic communications service to end-users;
 - (iii) the making available of associated facilities to end-users of public electronic communications services.

(2) OFCOM must consider whether the following tests are satisfied in the case of the dominant provider.

(3) The first test is that none of the persons specified in subsection (4) has activities in any retail market for electronic communications services provided to end-users in the [United Kingdom]².

(4) Those persons are—

- (a) the dominant provider;
- (b) any subsidiary undertaking or parent undertaking of the dominant provider;
- (c) any subsidiary undertaking of a parent undertaking of the dominant provider.

(5) The second test is that the dominant provider is not bound to deal with a single and separate undertaking operating downstream that is active in any retail market for electronic communications services provided to end-users, because of an exclusive agreement, or an agreement which amounts in effect to an exclusive agreement.

(6) If OFCOM are satisfied that both those tests are satisfied, OFCOM are not to apply to the dominant provider any SMP condition except one or more of the following—

- (a) a condition authorised by section 87(3);
- (b) a condition authorised by section 87(6)(a);

(c) a condition which is authorised by section 87(9) and relates to fair and reasonable pricing in connection with the provision of network access to the dominant provider's network.

(7) Subsection (6) does not restrict OFCOM's powers in a case where, by reason of the terms and conditions on which the dominant provider is willing to enter into an access contract, OFCOM conclude that competition problems have arisen or are likely to arise to the detriment of end-users.

(8) The dominant provider must notify OFCOM as soon as reasonably practicable of any change in circumstances relevant to the application of the tests in subsections (3) and (5).

(9) If, as a result of a notification under subsection (8) or otherwise, OFCOM determine that either of the tests in subsections (3) and (5) is no longer satisfied in relation to the dominant provider, OFCOM must consider whether to set or modify SMP conditions applying to the dominant provider.

(10) In this section "parent undertaking" and "subsidiary undertaking" each has the meaning given by section 1162 of the Companies Act 2006.

]¹

Notes

- ¹ Added by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.43 (December 21, 2020)
- ² Words substituted by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(2) para.75 (December 31, 2020: shall come into force on IP completion day)

Extent

Pt 2 c. 1 s. 91A(1)-(10): United Kingdom

SMP apparatus conditions: subject-matter

 Law In Force

93 Conditions about apparatus supply

(1) Where OFCOM have made a determination that a person ("the dominant supplier") has significant market power in an identified apparatus market, they may—

- (a) set such SMP conditions authorised by this section as they consider it appropriate to apply to that person in respect of the supply of electronic communications apparatus; and
- (b) apply those conditions to that person.

(2) This section authorises the setting of SMP conditions of each of the following descriptions—

- (a) conditions requiring the dominant supplier to maintain such a separation for accounting purposes between matters relating to the supply of electronic communications apparatus and other matters as may be described in the conditions;
- (b) conditions imposing requirements about the accounting methods to be used in maintaining the separation; and
- (c) conditions imposing such rules as OFCOM may make, for the purpose of securing the maintenance of the separation, about the use of cost accounting systems.

(3) This section also authorises the setting of SMP conditions imposing price controls in relation to the hiring of telephones which are hardwired to an electronic communications network.

(4) Conditions set under this section must not make provision in relation to the supply of electronic communications apparatus unless the apparatus is of a description of apparatus as respects the supply of which the dominant supplier has been found to have significant market power.

(5) For the purposes of this section a telephone is hardwired to an electronic communications network where, in order for it to be used with that network—

- (a) it has to be physically attached to apparatus comprised in the network; and
- (b) the attachment has to be effected by a process that requires the use of a tool.

Commencement

Pt 2 c. 1 s. 93(1)-(5)(b): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 93-(5)(b): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

[Commitments by network provider]¹

Notes

- ¹ Added by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.44 (December 21, 2020)
-



[93A.— Notification to OFCOM of proposed commitments

(1) This section applies where OFCOM have made, or are considering the making of, a determination that a person who provides a public electronic communications network ("the dominant provider") has significant market power in an identified services market.

(2) The dominant provider may notify OFCOM of a proposal to address the competition problems that are identified in the market power determination, or the possible competition problems that are identified in the proposal for a market power determination, by making commitments to provide network access to, or co-investment in, that network.

(3) The proposal must—

- (a) be sufficiently detailed to enable OFCOM to undertake a detailed consideration under subsection (6);
- (b) specify the period during which the dominant provider is willing to be bound by the commitments; and

- (c) comply with such other requirements as OFCOM may publish for the purposes of this subsection.
- (4) If the proposal complies with subsection (3), OFCOM must publish a notification of the proposal.
- (5) The notification must—
- (a) state that OFCOM are considering whether to accept the proposed commitments;
 - (b) set out the effect of the proposal and an initial analysis by OFCOM of the proposal; and
 - (c) specify the period within which representations may be made to OFCOM about the proposal and analysis.
- (6) OFCOM must—
- (a) consider every representation about the proposal and analysis made to them during the period specified in the notification under subsection (5);
 - (b) notify the dominant provider of their opinion—
 - (i) that the proposal is adequate to address the competition problems, or possible competition problems, mentioned in subsection (2); or
 - (ii) that if specified changes were made the proposal would be adequate to address those problems; or
 - (iii) that for specified reasons the proposal is inadequate to address those problems; and
 - (c) publish the notification given under paragraph (b).
- (7) The dominant provider may then revise the proposal in the light of OFCOM's opinion.
- (8) If the dominant provider notifies OFCOM that the dominant provider is willing to implement the proposal, or the proposal as revised under subsection (7), OFCOM may decide to make the commitments binding, for such period as they may specify in the decision.
- (9) A decision under subsection (8) (referred to in this Chapter as a "commitments decision") takes effect on being notified by OFCOM to the dominant provider and published by OFCOM.
- (10) The publication of a notification under this section must be in such manner as appears to OFCOM to be appropriate for bringing the notification to the attention of the persons who, in OFCOM's opinion, are likely to be affected by the matters notified.


]¹

Notes

- ¹ Added by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.44 (December 21, 2020)

Extent

Pt 2 c. 1 s. 93A(1)-(10): United Kingdom

 Law In Force

[93B.— Notification of proposed commitments relating to very high capacity network

- (1) Section 93A has effect subject to the provisions of this section in a case where—

- (a) the dominant provider referred to in section 93A(1) proposes commitments which include a commitment to open up investment in a network to co-investment ("a co-investment commitment");
 - (b) the network is a very high capacity network which consists of optical fibre elements—
 - (i) up to the premises of the end-user or, where this is technically impracticable, up to the immediate proximity of those premises; or
 - (ii) up to the base station; and
 - (c) the bringing into operation of the network was not publicly announced before 21 December 2018;
 - (d) the dominant provider has notified OFCOM under subsection (2) of section 93A of a proposal complying with subsection (3) of that section.
- (2) OFCOM are not required to publish under section 93A(4) a notification complying with section 93A(5) in relation to the proposed co-investment commitment if in their opinion the proposal does not address all the matters specified in subsection (3) of this section.
- (3) In considering the proposed co-investment commitment under section 93A(6), OFCOM must, in particular, consider whether in their opinion the offer to co-invest satisfies the following requirements—
- (a) it is open at any moment during the lifetime of the network to any provider of electronic communications networks or services;
 - (b) it would allow other co-investors who are providers of electronic communications networks or services to compete effectively and sustainably in the long term in downstream markets in which the dominant provider is active on terms which include—
 - (i) fair, reasonable and non-discriminatory terms allowing access to the full capacity of the network to the extent that it is subject to co-investment;
 - (ii) flexibility in terms of the value and timing of the participation of each co-investor;
 - (iii) the possibility of increasing such participation in the future;
 - (iv) reciprocal rights awarded by the co-investors after the bringing into operation of the co-invested infrastructure;
 - (c) it is made public by the dominant provider in a timely manner and, if the dominant provider is not a wholesale-only undertaking, within such period of not less than 6 months before the bringing into operation of the new network as OFCOM consider appropriate;
 - (d) persons seeking access to the network but not participating in the co-investment can benefit from the outset from the same quality, speed, conditions and end-user reach as were available before the bringing into operation of the network;
 - (e) it is accompanied by a mechanism of adaptation over time, confirmed by OFCOM in light of developments on the related retail markets, that—
 - (i) maintains the incentives to participate in the co-investment; and
 - (ii) ensures that persons seeking access at any time have access to the very high capacity elements of the network on transparent and non-discriminatory terms which reflect appropriately the degrees of risk incurred by the respective co-investors at different stages of the bringing into operation of the network and take into account the competitive situation in retail markets;
 - (f) it complies with—
 - (i) the criteria set out in points (a) to (d) of Annex 4 to the EEC Directive; and

- (ii) any additional criteria that OFCOM consider necessary to ensure accessibility of potential investors to the co-investment and publish for the purposes of this section; and
 - (g) it is made in good faith.
- (4) OFCOM must, by a commitments decision, make the co-investment commitment binding if—
 - (a) in considering the proposal under section 93A(6), they determine that the co-investment commitment—
 - (i) satisfies (or, if changes specified under section 93A(6) were made, would satisfy) the requirements in subsection (3); and
 - (ii) is adequate (or, if changes so specified were made, would be adequate) to address the competition problems, or possible competition problems, mentioned in section 93A(2); and
 - (b) the dominant provider notifies OFCOM under section 93A(8) in relation to the proposal (or, as the case requires, the proposal as revised under section 93A(7)).
- (5) In the case of a co-investment commitment, the period specified by OFCOM in a commitments decision must be at least 7 years.


[(6) In determining whether the requirements of subsection (3) are met, OFCOM may have regard to any guidelines that are from time to time published by BEREC under Article 76(4) of the EECC Directive (whether before or after IP completion day).]²
]¹

Notes

- ¹ Added by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.44 (December 21, 2020)
- ² Added by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(2) para.76 (December 31, 2020: shall come into force on IP completion day)

Extent

Pt 2 c. 1 s. 93B(1)-(6): United Kingdom

 Law In Force

[93C.— Giving effect to commitments decision

- (1) It is the duty of the dominant provider to comply with the commitments specified in a commitments decision during the period specified in the decision.
- (2) As soon as practicable after making a commitments decision in a case where SMP services conditions have been applied or would have been applied to the dominant provider, OFCOM must review the appropriateness, having regard to the commitments decision, of the conditions that have been or would have been applied.
- (3) In carrying out the review, the matters to which OFCOM are to have regard include—
 - (a) evidence regarding the fair and reasonable character of the commitments;
 - (b) whether the commitments involve obligations to all market participants;

(c) whether the commitments promote the timely availability of access under fair, reasonable and non-discriminatory conditions, including access to very high capacity networks, before the launch of related retail services;

(d) the overall adequacy of the commitments to enable sustainable competition on downstream markets and to facilitate co-operative deployment and take-up of very high capacity networks in the interests of end-users.

(4) If, in the case of a commitment made binding as a result of section 93B(4), at least one person has entered into an agreement for co-investment with the dominant provider under the commitments decision, OFCOM must take steps to revoke or modify any SMP services conditions that they consider to be affected by the decision.

(5) Subsection (4) does not apply where, in OFCOM's opinion, the characteristics of the services market to which the determination referred to in section 93A(1) relates are such that, despite the commitments to which effect is given by the commitments decision, the SMP services condition continues to be necessary in order to address significant competition problems.

(6) [...] ²

(7) In this section "dominant provider" means the person who made the proposal to which the commitments decision relates.

] ¹

Notes

¹ Added by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.44 (December 21, 2020)

² Repealed by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(2) para.77 (December 31, 2020: shall come into force on IP completion day)

Extent

Pt 2 c. 1 s. 93C(1)-(7): United Kingdom

 Law In Force

[93D.— Modification of commitments

(1) This section applies where a commitments decision has effect in relation to a person who provides a public electronic communications network ("the dominant provider").

(2) The dominant provider may notify OFCOM of a proposed modification of the commitments that are made binding by the commitments decision.

(3) In a case where OFCOM consider that the modification would not have a material effect, they may make a decision under section 93A(8) relating to the commitments as proposed to be modified.

(4) In any other case, OFCOM must notify the dominant provider of their opinion that the proposed modification would have a material effect; and subsections (2) to (10) of section 93A then apply in relation to the commitments as proposed to be modified.

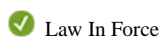
] ¹

Notes

- ¹ Added by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.44 (December 21, 2020)

Extent

Pt 2 c. 1 s. 93D(1)-(4): United Kingdom

Enforcement of conditions

Law In Force

94 Notification of contravention of [SMP apparatus] ¹ conditions

- (1) Where OFCOM determine that there are reasonable grounds for believing that a person is contravening, or has contravened, [an SMP apparatus condition] ², 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 condition and contravention in respect of which that determination has been made; and
 - (c) specifies the period during which the person notified has an opportunity of doing the things specified in subsection (3).
- (3) Those things are—
- (a) making representations about the matters notified;
 - (b) complying with notified conditions of which he remains in contravention; and
 - (c) remedying the consequences of notified contraventions.
- (4) Subject to subsections (5) to (7) and section 98(3), the period for doing those things must be the period of one month beginning with the day after the one on which the notification was given.
- (5) OFCOM may, if they think fit, allow a longer period for doing those things either—
- (a) by specifying a longer period in the notification; or
 - (b) by subsequently, on one or more occasions, extending the specified period.
- (6) The person notified shall have a shorter period for doing those things if a shorter period is agreed between OFCOM and the person notified.
- (7) The person notified shall also have a shorter period if—
- (a) OFCOM have reasonable grounds for believing that the contravention is a repeated contravention;
 - (b) they have determined that, in those circumstances, a shorter period would be appropriate; and
 - (c) the shorter period has been specified in the notification.
- (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 condition, OFCOM may give a further notification in respect of the same contravention of that condition 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.

[(10) Before giving a notification under this section, OFCOM must consider whether it would be more appropriate to proceed under the Competition Act 1998.

(10A) OFCOM must not give a notification under this section if they consider that it would be more appropriate to proceed under the Competition Act 1998.

(10B) In a case where OFCOM decide that it would be more appropriate to proceed under the Competition Act 1998, they must publish a statement to that effect in such manner as they consider appropriate for bringing their decision to the attention of persons whom they consider are likely to be affected by it.]³

(11) For the purposes of this section a contravention is a repeated contravention, in relation to a notification with respect to that contravention, if—

- (a) a previous notification under this section has been given in respect of the same contravention or in respect of another contravention of the same condition; and
- (b) the subsequent notification is given no more than twelve months after the day of the making by OFCOM of a determination for the purposes of section 95(2) or 96(2) that the contravention to which the previous notification related did occur.

Notes

- ¹ Words inserted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.54(b) (May 26, 2011: insertion has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 13)
- ² Words substituted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.54(a) (May 26, 2011: substitution has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 13)
- ³ S.94(10)-(10B) substituted for s.94(10) by Enterprise and Regulatory Reform Act 2013 c. 24 Sch.14 para.17 (April 1, 2014 as SI 2014/416)

Commencement

Pt 2 c. 1 s. 94(1)-(11)(b): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 94-(10)(b), (11)-(11)(b): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI

2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

Pt 2 c. 1 s. 94(10A)-(10B): United Kingdom

✓ Law In Force

95 Enforcement notification for contravention of conditions

(1) This section applies where—

- (a) a person (“the notified provider”) has been given a notification under section 94;
- (b) OFCOM have allowed the notified provider an opportunity of making representations about the matters notified; and
- (c) the period allowed for the making of the representations has expired.

(2) OFCOM may give the notified provider an enforcement notification if they are satisfied—

- (a) that he has, in one or more of the respects notified, been in contravention of a condition specified in the notification under section 94; and
- (b) that he has not, during the period allowed under that section, taken all such steps as they consider appropriate—
 - (i) for complying with that condition; and
 - (ii) for remedying the consequences of the notified contravention of that condition.

(3) An enforcement notification is a notification which imposes one or both of the following requirements on the notified provider—

- (a) a requirement to take such steps for complying with the notified condition as may be specified in the notification;
- (b) a requirement to take such steps for remedying the consequences of the notified contravention as may be so specified.

(4) A decision of OFCOM to give an enforcement notification to a person—

- (a) must be notified by them to that person, together with the reasons for the decision, no later than one week after the day on which it is taken; and
- (b) must fix a reasonable period for the taking of the steps required by the notification.

(5) It shall be the duty of a person to whom an enforcement notification has been given to comply with it.

(6) That duty shall be enforceable in civil proceedings by OFCOM—

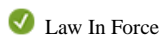
- (a) for an injunction;
- (b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988 (c. 36); or
- (c) for any other appropriate remedy or relief.

Commencement

Pt 2 c. 1 s. 95(1)-(6)(c): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 95-(6)(c): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)



Law In Force

96 Penalties for contravention of conditions

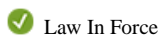
- (1) This section applies (in addition to section 95) where—
 - (a) a person (“the notified provider”) has been given a notification under section 94;
 - (b) OFCOM have allowed the notified provider an opportunity of making representations about the matters notified; and
 - (c) the period allowed for the making of the representations has expired.
- (2) OFCOM may impose a penalty on the notified provider if he—
 - (a) has, in one or more of the respects notified, been in contravention of a condition specified in the notification under section 94; and
 - (b) has not, during the period allowed under that section, taken the steps OFCOM consider appropriate—
 - (i) for complying with the notified condition; and
 - (ii) for remedying the consequences of the notified contravention of that condition.
- (3) Where a notification under section 94 relates to more than one contravention, a separate penalty may be imposed in respect of each contravention.
- (4) Where such a notification 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) OFCOM may also impose a penalty on the notified provider if he has contravened, or is contravening, a requirement of an enforcement notification given under section 95 in respect of the notified contravention.
- (6) Where OFCOM impose a penalty on a person under this section, they shall—
 - (a) within one week of making their decision to impose the penalty, notify that person of that decision and of their reasons for that decision; and
 - (b) in that notification, fix a reasonable period after it is given as the period within which the penalty is to be paid.
- (7) A penalty imposed under this section—
 - (a) must be paid to OFCOM; and
 - (b) if not paid within the period fixed by them, is to be recoverable by them accordingly.

Commencement

Pt 2 c. 1 s. 96(1)-(7)(b): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 96-(7)(b): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)



Law In Force

[96A.— Notification of contravention of condition other than SMP apparatus condition

(1) Where OFCOM determine that there are reasonable grounds for believing that a person is contravening, or has contravened, a condition (other than an SMP apparatus condition) set under section 45, 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 condition 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 representations;
- (d) specifies the steps that OFCOM think should be taken by the person in order to—
 - (i) comply with the condition;
 - (ii) remedy the consequences of the contravention;
- (e) specifies any penalty which OFCOM are minded to impose in accordance with section 96B;
- (f) where the contravention is serious, specifies any direction which OFCOM are minded to give under section 100; and
- (g) where the contravention relates to a condition set under sections 87 to 91, specifies any direction which OFCOM are minded to give under section 100A.

(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 condition, OFCOM may give a further notification in respect of the same contravention of that condition 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.

[(5) Before giving a notification under this section, OFCOM must consider whether it would be more appropriate to proceed under the Competition Act 1998.

(6) OFCOM must not give a notification under this section if they consider that it would be more appropriate to proceed under the Competition Act 1998.

(7) In a case where OFCOM decide that it would be more appropriate to proceed under the Competition Act 1998, they must publish a statement to that effect in such manner as they consider appropriate for bringing their decision to the attention of persons whom they consider are likely to be affected by it.]²

[(8) This section applies in relation to a commitment that is made binding by a commitments decision as it applies in relation to a condition (other than an SMP apparatus condition) set under section 45.]³

] ¹

Notes

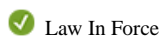
¹ Added by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.55 (May 26, 2011: insertion has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 13)

² S.96A(5)-(7) substituted for s.96A(5) by Enterprise and Regulatory Reform Act 2013 c. 24 Sch.14 para.18 (April 1, 2014 as SI 2014/416)

³ Added by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.45 (December 21, 2020)

Extent

Pt 2 c. 1 s. 96A(1)-(8): United Kingdom



Law In Force

[96B.— Penalties for contravention of conditions

(1) This section applies where a person is given a notification under section 96A which specifies a proposed penalty.

(2) Where the notification relates to more than one contravention, a separate penalty may be specified in respect of each contravention.

(3) 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.

(4) 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 96C(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.

(5) The amount of a penalty under subsection (4) 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.

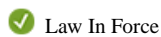
] ¹

Notes

- ¹ Added by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.55 (May 26, 2011: insertion has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 13)

Extent

Pt 2 c. 1 s. 96B(1)-(5)(b): United Kingdom



Law In Force

[96C.— Enforcement of notification under section 96A

(1) This section applies where—

- (a) a person has been given a notification under section 96A;
- (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 96A; 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 condition [or commitment] ² specified in the notification under section 96A.

(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 requirements of a kind mentioned in section 96A(2)(d), or may specify a period within which the person must comply with those requirements; and
- (d) may require the person to pay—
 - (i) the penalty specified in the notification under section 96A, 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 commitment or to] ³ remedy the consequences of the contravention, andmay 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.

] ¹

Notes

- ¹ Added by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.55 (May 26, 2011: insertion has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 13)
- ² Words inserted by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.46(2) (December 21, 2020)
- ³ Words substituted by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.46(3) (December 21, 2020)

Extent

Pt 2 c. 1 s. 96C(1)-(7)(b): United Kingdom

✓ Law In Force

97 Amount of penalty under s. 96 [or 96A] ¹

(1) The amount of a penalty imposed under section 96 [or notified under section 96A (other than a penalty falling within section 96B(4))] ² is to be such amount not exceeding ten per cent. of the turnover of the [person] ³ 's relevant business for the relevant period as OFCOM determine to be—

- (a) appropriate; and
- (b) proportionate to the contravention in respect of which it is imposed.

(2) In making [a determination in relation to a penalty imposed under section 96] ⁴ OFCOM must have regard to—

- (a) any representations made to them by the [person] ³ ;
- (b) any steps taken by him towards complying with the conditions contraventions of which have been notified to him under section 94; and
- (c) any steps taken by him for remedying the consequences of those contraventions.

(3) For the purposes of this section—

- (a) the turnover of a person's relevant business for a period shall be calculated in accordance with such rules as may be set out by order made by the Secretary of State; and
- (b) provision may also be made by such an order for determining what is to be treated as the network, service, facility or business by reference to which the calculation of that turnover falls to be made.

(4) No order is to be made containing provision authorised by subsection (3) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

(5) In this section—

“relevant business” means (subject to the provisions of an order under subsection (3) and to subsections (6) and (7)) so much of any business carried on by the [person]³ as consists in any one or more of the following—

- (a) the provision of an electronic communications network;
- (b) the provision of an electronic communications service;
- (c) the making available of associated facilities;
- (d) the supply of directories for use in connection with the use of such a network or service;
- (e) the making available of directory enquiry facilities for use for purposes connected with the use of such a network or service;
- (f) any business not falling within any of the preceding paragraphs which is carried on in association with any business in respect of which any access-related condition is applied to the person carrying it on;

“relevant period”, in relation to a contravention by a person of a condition set under section 45 [or of a commitment that is made binding by a commitments decision]⁵, means—

- (a) except in a case falling within paragraph (b) or (c), the period of one year ending with the 31st March next before the time when notification of the contravention was given under [section 94 or 96A]⁶;
- (b) in the case of a person who at that time has been carrying on that business for a period of less than a year, the period, ending with that time, during which he has been carrying it on; and
- (c) in the case of a person who at that time has ceased to carry on that business, the period of one year ending with the time when he ceased to carry it on.

(6) In the case of a contravention of an SMP apparatus condition the relevant business is so much of any business carried on by the person in respect of whose contravention the penalty is imposed as consists in the supply of electronic communications apparatus.

(7) So much of any business of a person on whom the penalty is imposed as falls within paragraph (f) of the definition of a relevant business shall be disregarded for the purposes of this section except in relation to—

- (a) a contravention of an access-related condition imposed in respect of that business; or
- (b) a contravention of an enforcement notification given under section 95 [or a confirmation decision under section 96C]⁷ relating to such a condition.

(8) [...] ⁸

Notes

¹ Words inserted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.56(g) (May 26, 2011: insertion has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 13)

² Words inserted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.56(a) (May 26, 2011: insertion has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 13)


- ³ Words substituted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.56(b) (May 26, 2011: substitution has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 13)
- ⁴ Words substituted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.56(c) (May 26, 2011: substitution has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 13)
- ⁵ Words inserted by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.47 (December 21, 2020)
- ⁶ Words inserted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.56(d) (May 26, 2011: insertion has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 13)
- ⁷ Words inserted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.56(e) (May 26, 2011: insertion has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 13)
- ⁸ Repealed by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.56(f) (May 26, 2011: repeal has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 13)

Commencement

Pt 2 c. 1 s. 97(1)-(8): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 97-(8): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

 Law In Force

98 Power to deal with urgent cases

(1) This section applies where OFCOM determine—

- (a) that they are entitled to give a notification under [section 96A]¹ with respect to a contravention by a person (“the contravening provider”) of a condition set under section 45 [or of a commitment that is made binding by a commitments decision]²[...]³ ;
- (b) that there are reasonable grounds for suspecting that the case is an urgent case; and
- (c) that the urgency of the case makes it appropriate for OFCOM to take action under this section.

(2) A case is an urgent case for the purposes of this section if the contravention has resulted in, or creates 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 (other than the contravening provider) 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.

(3) [...] ⁴

(4) OFCOM shall [...] ⁵ have power to give to the contravening provider—

- (a) a direction that his entitlement 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.

(5) A direction under subsection (4)—

- (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.

(6) A direction under subsection (4)—

- (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 his customers.

(7) 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.

(8) OFCOM have power to revoke a direction given under subsection (4)—

- (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.

Notes

¹ Word substituted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.57(a) (May 26, 2011: substitution has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 13)

² Words inserted by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.48 (December 21, 2020)

³ Words repealed by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.57(a) (May 26, 2011: repeal has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 13)

⁴ Repealed by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.57(b) (May 26, 2011: repeal has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 13)

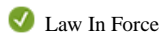
⁵ Word repealed by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.57(c) (May 26, 2011: repeal has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 13)

Commencement

Pt 2 c. 1 s. 98(1)-(8)(c): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 98-(8)(c): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)



Law In Force

99 Confirmation of directions under s. 98

(1) As soon as reasonably practicable after giving a direction under section 98(4), OFCOM must give the person to whom it is given—

- (a) an opportunity of making representations to them about the grounds on which it was given and its effect; and
- (b) an opportunity of proposing 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 under section 98(4) was given)]¹, 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.

[(2A) 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).

] ²

(3) If OFCOM decide that the contravention did occur and that the direction was justified, they may confirm the direction.

(4) If not, they must exercise their power to revoke it.

(5) As soon as reasonably practicable after determining whether to confirm the direction, OFCOM must notify the person to whom it was given of their decision.

(6) Conditions included in a direction by virtue of section 98(7) have effect only if the direction is confirmed.

Notes

¹ Words inserted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.58(a) (May 26, 2011: insertion has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 13)

- ² Added by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.58(b) (May 26, 2011: insertion has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 13)

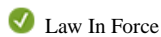
Commencement

Pt 2 c. 1 s. 99(1)-(6): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 99-(2)(b), (3)-(6): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

Pt 2 c. 1 s. 99(2A)-(2A)(b): United Kingdom



Law In Force

100 Suspending service provision for contraventions of conditions

[(1) OFCOM may give a direction under this section to a person where—

- (a) either Condition A or Condition B is satisfied in relation to the person; and
- (b) the giving of a direction is appropriate and proportionate to the contravention in respect of which it is imposed.

(1A) Condition A is that—

- (a) the person is in serious contravention of a condition set under section 45, other than SMP apparatus conditions; and
- (b) the proposed direction has been notified to the person under section 96A and confirmed by a confirmation decision under section 96C.

(1B) Condition B is that—

- (a) the person has repeatedly contravened a condition set under section 45, other than SMP apparatus conditions; and
- (b) an attempt, by the imposition of penalties or the giving of notifications under section 96A and confirmation decisions under section 96C, or both, to secure compliance with the contravened conditions has failed.

(1C) Where Condition A is satisfied, a direction under this section is given where OFCOM give a confirmation decision under section 96C to the person in respect of a direction proposed in a notification under section 96A.

(1D) Where Condition B is satisfied, a direction under this section is to be given in accordance with the procedure set out in section 102.]¹

(2) A direction under this section is—

- (a) a direction that the entitlement of the [person]² 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 [person]² 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 [person]²'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 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 conditions set under section 45 to the extent that—
- [(a) in the case of a previous notification of a contravention given to that person under section 96A, OFCOM have given a confirmation decision to that person under section 96C(2) in respect of the contravention;]³
 - [(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 a condition under section 45; and]⁴
 - (c) the previous [confirmation decision]⁵ and the subsequent ones all relate to contraventions of the same condition (whether the same contravention or different contraventions).
- [(8) This section applies in relation to a commitment that is made binding by a commitments decision as it applies in relation to a condition set under section 45, other than an SMP apparatus condition.]⁶

Notes

¹ S.100(1)-(1D) substituted for s.100(1) by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.59(a) (May 26, 2011: substitution has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 13)

² Words substituted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.59(b) (May 26, 2011: substitution has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 13)

- ³ Substituted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.59(c)(i) (May 26, 2011: substitution has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 13)
- ⁴ Substituted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.59(c)(ii) (May 26, 2011: substitution has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 13)
- ⁵ Word substituted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.59(c)(iii) (May 26, 2011: substitution has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 13)
- ⁶ Added by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.49 (December 21, 2020)


Commencement

Pt 2 c. 1 s. 100(1)-(7)(c): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 100-(1)(c), (2)-(8): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

Pt 2 c. 1 s. 100(1A)-(1D): United Kingdom

 Law In Force

[100A.— Suspending service provision for breach of SMP services condition

(1) OFCOM may give a direction under this section to a person who provides a public electronic communications network, or a person who makes available facilities that are associated facilities by reference to such a network, if OFCOM are satisfied that—

- (a) the person is or has been in contravention of conditions set under sections 87 to 91 [or of commitments that are made binding by a commitments decision]²; and
- (b) the provision of an electronic communications service by the person on that public electronic communications network could result in significant harm to competition.

(2) A direction under this section is given where OFCOM give a confirmation decision under section 96C to the person in respect of a direction proposed in a notification under section 96A.

(3) A direction under this section is—

- (a) a direction that the entitlement of the person to provide an electronic communications service over the public electronic communications network to which the contravened condition [or commitment]³ relates is suspended (either generally or in relation to particular services); or
- (b) a direction that the person may not begin to provide an electronic communications service over the public electronic communications network to which the contravened provision relates.

(4) A direction under this section—

- (a) must specify the electronic communications services to which it relates, and

- (b) takes effect for an indefinite period beginning with the time at which a confirmation decision relating to the direction is given to the person under section 96C.
- (5) A direction under this section—
- (a) may provide for a suspension or prohibition to take effect only at a time determined by or in accordance with the terms of the direction; and
 - (b) in connection with a suspension or prohibition contained in the direction or with the postponement of its effect, may impose such conditions on the person to whom it is given as appear to OFCOM to be appropriate for the purpose of protecting that person's customers.
- (6) Those conditions may include a condition requiring the making of payments—
- (a) by way of compensation for loss or damage suffered by the person'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.
- (7) 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 services, or parts of a service, as they may determine.

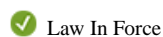
] ¹

Notes

- ¹ Added by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.60 (May 26, 2011: insertion has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 13)
- ² Words inserted by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.50(2) (December 21, 2020)
- ³ Words inserted by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.50(3) (December 21, 2020)

Extent

Pt 2 c. 1 s. 100A(1)-(7)(c): United Kingdom



Law In Force

101 Suspending apparatus supply for contraventions of conditions

- (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 any SMP apparatus conditions;
 - (b) that an attempt, by the imposition of penalties or the giving of enforcement notifications under section 95 or both, to secure compliance with the contravened conditions has failed; and

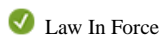
- (c) that the giving of the direction is appropriate and proportionate to the seriousness (when repeated as they have been) of the contraventions.
- (2) A direction under this section is—
- (a) a direction to the contravening supplier to cease to act as a supplier of electronic communications apparatus (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 at any time 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 there are repeated contraventions by a person of SMP apparatus conditions to the extent that—
- (a) in the case of a previous notification given to that person under section 94, OFCOM have determined for the purposes of section 95(2) or 96(2) that such a contravention did occur;
 - (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 an SMP apparatus condition; and
 - (c) the previous notification and the subsequent ones all relate to contraventions of the same condition (whether the same contravention or different contraventions).

Commencement

Pt 2 c. 1 s. 101(1)-(7)(c): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 101-(7)(c): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)



Law In Force

102 Procedure for directions under ss. 100 and 101

(1) Except in an urgent case, [or a case where Condition A in section 100 is satisfied,]¹ OFCOM are not to give a direction under section 100 or 101 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.

[(2) That period must be—

- (a) in relation to a direction under section 100, such reasonable period as OFCOM may determine, and
- (b) in relation to a direction under section 101 , a period ending not less than [30 days]³ after the day of the giving of the notification.

] ²

(3) As soon as practicable after giving a direction under section 100 or 101 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 100 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

(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 subsection (5), to allow time, before giving a direction under section 100 or 101, for the making and consideration 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” means a person who is a communications provider or makes associated facilities available; and] ⁵

“contravening supplier” has the same meaning as in section 101.

Notes

- ¹ Words inserted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.61(a) (May 26, 2011: insertion has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 13)
- ² Substituted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.61(b) (May 26, 2011: substitution has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 13)
- ³ Words substituted by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.51 (December 21, 2020)
- ⁴ Added by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.61(c) (May 26, 2011: insertion has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 13)
- ⁵ Definition substituted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.61(d) (May 26, 2011: substitution has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 13)

Commencement

Pt 2 c. 1 s. 102(1)-(6) definition of "contravening supplier": July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 102-(2), (3)-(3)(b), (4)-(6) definition of "contravening supplier": United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick

of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

Pt 2 c. 1 s. 102(2)(a)-(2)(b), (3A)-(3B)(b): United Kingdom

✓ Law In Force

103 Enforcement of directions under ss. 98, 100 [, 100A]¹ and 101

(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 98(4), 100 or 100A]²; 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 101; 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 98, 100 or 100A 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 101 as they apply in relation to a contravention of SMP apparatus conditions.]³

Notes

¹ Word inserted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.62(c) (May 26, 2011: insertion has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 13)

² Words substituted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.62(a) (May 26, 2011: substitution has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 13)

³ S.103(4) and (5) substituted for s.103(4) by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.62(b) (May 26, 2011: substitution has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 13)

Commencement

Pt 2 c. 1 s. 103(1)-(4): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 103-(4): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6

with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

Pt 2 c. 1 s. 103(5): United Kingdom

✓ Law In Force

104 Civil liability for breach of conditions or [confirmation decision]¹

(1) The obligation of a person to comply with—

(a) the conditions set under section 45 which apply to him,

[(aa) the person's commitments that are made binding by a commitments decision,]²

(b) requirements imposed on him by an enforcement notification under section 95 , [...] ³

[(ba) requirements imposed on the person by a notification under section 96A and a confirmation decision under section 96C; and]³

(c) the conditions imposed by a direction under [section 98, 100 or 100A]⁴,

shall be a duty owed to every person who may be affected by a contravention of the condition [, commitment]⁵ or requirement.

(2) Where a duty is owed by virtue of this section to a person—

(a) a breach of the duty that causes that person to sustain loss or damage, and

(b) an act which—

(i) by inducing a breach of the duty or interfering with its performance, causes that person to sustain loss or damage, and

(ii) is done wholly or partly for achieving that result,

shall be actionable at the suit or instance of that person.

(3) In proceedings brought against a person by virtue of subsection (2)(a) it shall be a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid contravening the condition [, commitment]⁶ or requirement in question.

(4) The consent of OFCOM is required for the bringing of proceedings by virtue of subsection (1)(a) [or (aa)]⁷ .

(5) Where OFCOM give a consent for the purposes of subsection (4) subject to conditions relating to the conduct of the proceedings, the proceedings are not to be carried on by that person except in compliance with those conditions.

Notes

¹ Words substituted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.63(c) (May 26, 2011: substitution has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 13)

² Added by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.52(2)(a) (December 21, 2020)

³ Added by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.63(a) (May 26, 2011: insertion has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 13)

⁴ Words substituted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.63(b) (May 26, 2011: substitution has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 13)

- ⁵ Word inserted by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.52(2)(b) (December 21, 2020)
- ⁶ Word inserted by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.52(3) (December 21, 2020)
- ⁷ Words inserted by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.52(4) (December 21, 2020)

Commencement

Pt 2 c. 1 s. 104(1)-(5): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 104-(1)(b), (1)(c)-(5): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

Pt 2 c. 1 s. 104(1)(ba): United Kingdom

Ofcom's duty to intervene on network access issues

 Repealed

105 [...]¹

Notes

- ¹ Repealed by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.64 (May 26, 2011: repeal has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 para.2)

*[Security of public electronic communications networks and services]*¹

Notes

- ¹ Added by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.65 (May 26, 2011: insertion has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 para.2)

 Law In Force With Amendments Pending

[105A.— Requirement to protect security of networks and services

(1) Network providers and service providers must take technical and organisational measures appropriately to manage risks to the security of public electronic communications networks and public electronic communications services.

(2) Measures under subsection (1) must, in particular, include measures to prevent or minimise the impact of security incidents on end-users.

(3) Measures under subsection (1) taken by a network provider must also include measures to prevent or minimise the impact of security incidents on interconnection of public electronic communications networks.

(4) A network provider must also take all appropriate steps to protect, so far as possible, the availability of the provider's public electronic communications network.

(5) In this section and sections 105B and 105C—

“network provider” means a provider of a public electronic communications network, and

“service provider” means a provider of a public electronic communications service.

] ¹

Notes

¹ Added by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.65 (May 26, 2011: insertion has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 para.2)

Proposed Draft Amendments

Pt 2 c. 1 s. 105A: ss 105A and 105B substituted for ss 105A-105D by Telecommunications (Security) Bill 2019-21 (HC Bill 246) s. 1(2) (Commons' Committee Stage, January 26, 2021) (date to be appointed)

Extent

Pt 2 c. 1 s. 105A(1)-(5) definition of "service provider": United Kingdom

 Law In Force With Amendments Pending

[105B.— Requirement to notify OFCOM of security breach

(1) A network provider must notify OFCOM—

(a) of a breach of security which has a significant impact on the operation of a public electronic communications network, and

(b) of a reduction in the availability of a public electronic communications network which has a significant impact on the network.

(2) A service provider must notify OFCOM of a breach of security which has a significant impact on the operation of a public electronic communications service.

(3) If OFCOM receive a notification under this section, they [may] ² , where they think it appropriate, notify—

(a) the regulatory authorities in [...] ³ member States, and

(b) the European Network and Information Security Agency (“ENISA”).

(4) OFCOM may also inform the public of a notification under this section, or require the network provider or service provider to inform the public, if OFCOM think that it is in the public interest to do so.

(5) OFCOM must prepare an annual report summarising notifications received by them under this section during the year, and any action taken in response to a notification.

(6) A copy of the annual report [may]⁴ be sent to the European Commission and to ENISA.
]¹

Notes

- ¹ Added by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.65 (May 26, 2011: insertion has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 para.2)
- ² Word substituted by Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019/246 Sch.1(1) para.35(2)(a) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))
- ³ Word repealed by Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019/246 Sch.1(1) para.35(2)(b) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))
- ⁴ Word substituted by Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019/246 Sch.1(1) para.35(3) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))

Proposed Draft Amendments

Pt 2 c. 1 s. 105B: ss 105A and 105B substituted for ss 105A-105D by Telecommunications (Security) Bill 2019-21 (HC Bill 246) s. 1(2) (Commons' Committee Stage, January 26, 2021) (date to be appointed)

Extent

Pt 2 c. 1 s. 105B(1)-(6): United Kingdom



Law In Force With Amendments Pending

[105C.— Requirement to submit to audit

(1) OFCOM may carry out, or arrange for another person to carry out, an audit of the measures taken by a network provider or a service provider under section 105A.

(2) A network provider or a service provider must—

- (a) co-operate with an audit under subsection (1), and
- (b) pay the costs of the audit.

] ¹

Notes

- ¹ Added by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.65 (May 26, 2011: insertion has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 para.2)

Proposed Draft Amendments

Pt 2 c. 1 s. 105C: ss 105A and 105B substituted for ss 105A-105D by Telecommunications (Security) Bill 2019-21 (HC Bill 246) s. 1(2) (Commons' Committee Stage, January 26, 2021) (date to be appointed)

Pt 2 c. 1 s. 105C: added by Telecommunications (Security) Bill 2019-21 (HC Bill 246) s. 2 (Commons' Committee Stage, January 26, 2021) (date to be appointed)

Extent

Pt 2 c. 1 s. 105C(1)-(2)(b): United Kingdom



[105D.— Enforcement of obligations under sections 105A to 105C

(1) Sections 96A to 96C, 98 to 100, 102 and 103 apply in relation to a contravention of a requirement under sections 105A to 105C as they apply in relation to a contravention of a condition set under section 45, other than an SMP apparatus condition.

(2) The obligation of a person to comply with the requirements of section 105A to 105C is a duty owed to every person who may be affected by a contravention of a requirement, and—

- (a) section 104 applies in relation to that duty as it applies in relation to the duty set out in subsection (1) of that section, and
- (b) section 104(4) applies in relation to proceedings brought by virtue of this section as it applies in relation to proceedings by virtue of section 104(1)(a).

(3) The amount of a penalty imposed under sections 96A to 96C, as applied by this section, is to be such amount not exceeding £2 million as OFCOM determine to be—

- (a) appropriate; and
- (b) proportionate to the contravention in respect of which it is imposed.

] ¹

Notes

- ¹ Added by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.65 (May 26, 2011: insertion has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 para.2)

Proposed Draft Amendments

Pt 2 c. 1 s. 105D: ss 105A and 105B substituted for ss 105A-105D by Telecommunications (Security) Bill 2019-21 (HC Bill 246) s. 1(2) (Commons' Committee Stage, January 26, 2021) (date to be appointed)

Pt 2 c. 1 s. 105D: added by Telecommunications (Security) Bill 2019-21 (HC Bill 246) s. 2 (Commons' Committee Stage, January 26, 2021) (date to be appointed)

Extent

Pt 2 c. 1 s. 105D(1)-(3)(b): United Kingdom

Electronic communications code



106 Application of the electronic communications code

(1) In this Chapter “the electronic communications code” means [the code set out in Schedule 3A] ¹.

(2) [...] ²

(3) The electronic communications code shall have effect—

- (a) in the case of a person to whom it is applied by a direction given by OFCOM; and
 - (b) in the case of the Secretary of State or any Northern Ireland department where the Secretary of State or that department is providing or proposing to provide an electronic communications network.
- (4) The only purposes for which the electronic communications code may be applied in a person's case by a direction under this section are—
- (a) the purposes of the provision by him of an electronic communications network; or
 - (b) the purposes of the provision by him of a system of [infrastructure]³ which he is making available, or proposing to make available, for use by providers of electronic communications networks for the purposes of the provision by them of their networks.
- (5) A direction applying the electronic communications code in any person's case may provide for that code to have effect in his case—
- (a) in relation only to such places or localities as may be specified or described in the direction;
 - (b) for the purposes only of the provision of such electronic communications network, or part of an electronic communications network, as may be so specified or described; or
 - (c) for the purposes only of the provision of such [system of infrastructure]⁴, or part of a [system of infrastructure]⁴, as may be so specified or described.
- (6) The Secretary of State may by order provide for the electronic communications code to have effect for all purposes with a different amount substituted for the amount for the time being specified in [paragraph 85(7)]⁵ of the code (minimum compensation).
- (7) [...] ⁶

Notes

- ¹ Words substituted by Digital Economy Act 2017 c. 30 Pt 2 s.4(4) (December 28, 2017 as SI 2017/1286 reg.2(a) subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2)
- ² Repealed by Digital Economy Act 2017 c. 30 Pt 2 s.4(5) (December 28, 2017 as SI 2017/1286 reg.2(a) subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2)
- ³ Word substituted by Digital Economy Act 2017 c. 30 Pt 2 s.4(6) (December 28, 2017 as SI 2017/1286 reg.2(a) subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2)
- ⁴ Words substituted by Digital Economy Act 2017 c. 30 Pt 2 s.4(7) (December 28, 2017 as SI 2017/1286 reg.2(a) subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2)
- ⁵ Word substituted by Digital Economy Act 2017 c. 30 Pt 2 s.4(8) (December 28, 2017 as SI 2017/1286 reg.2(a) subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2)
- ⁶ Repealed by Digital Economy Act 2017 c. 30 Pt 2 s.4(9) (December 28, 2017 as SI 2017/1286 reg.2(a) subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2)

Commencement

Pt 2 c. 1 s. 106(1)-(7): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 106-(7): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6

with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

✓ Law In Force

107 Procedure for directions applying code

(1) OFCOM are not to give a direction applying the electronic communications code in any person's case except on an application made for the purpose by that person.

[(1A) Regulation 3 of the Electronic Communications and Wireless Telegraphy Regulations 2011 makes provision about the time within which an application under subsection (1) must be determined.]¹

(2) If OFCOM publish a notification setting out their requirements with respect to—

(a) the content of an application for a direction applying the electronic communications code, and

(b) the manner in which such an application is to be made,

such an application must be made in accordance with the requirements for the time being in force.

(3) OFCOM may—

(a) from time to time review the requirements for the time being in force for the purposes of subsection (2); and

(b) on any such review, modify them in such manner as they think fit by giving a notification of the revised requirements.

[(3A) A modification may not be made under subsection (3) unless the modification is—

(a) objectively justifiable, and

(b) proportionate to what it is intended to achieve.

(3B) Before making a modification under subsection (3), OFCOM must publish a notification of the proposed modification which contains the following—

(a) a statement of the proposal,

(b) a statement of their reasons for the proposal, and

(c) a statement of the period within which representations may be made to them about the proposal.

(3C) The period specified under subsection (3B)(c) must end no less than [30 days]³ after the day of the publication of the notification.]²

(4) In considering whether to apply the electronic communications code in any person's case, OFCOM must have regard, in particular, to each of the following matters—

(a) the benefit to the public of the electronic communications network or conduit system by reference to which the code is to be applied to that person;

(b) the practicability of the provision of that network or system without the application of the code;

(c) the need to encourage the sharing of the use of electronic communications apparatus;

(d) whether the person in whose case it is proposed to apply the code will be able to meet liabilities arising as a consequence of—

(i) the application of the code in his case; and

(ii) any conduct of his in relation to the matters with which the code deals.

- (5) For the purposes of subsections (6) and (7) of section 3 OFCOM's duty under subsection (4) ranks equally with their duties under that section.
- (6) Before giving a direction under section 106, OFCOM must—
- (a) publish a notification of their proposal to give the direction; and
 - (b) consider any representations about that proposal that are made to them within the period specified in the notification.
- (7) A notification for the purposes of subsection (6)(a) must contain the following—
- (a) a statement of OFCOM's proposal;
 - (b) a statement of their reasons for that proposal;
 - (c) a statement of the period within which representations may be made to them about the proposal.
- (8) The statement of OFCOM's proposal must—
- (a) contain a statement that they propose to apply the code in the case of the person in question;
 - (b) set out any proposals of theirs to impose terms under section 106(5);
- but this subsection is subject to sections 113(7) and 115(5).
- (9) The period specified as the period within which representations may be made must end no less than [30 days]³ after the day of the publication of the notification.
- (10) The publication by OFCOM of a notification for any of the purposes of this section must be a publication in such manner as OFCOM consider appropriate for bringing the notification to the attention of the persons who, in their opinion, are likely to be affected by it.

Notes

- ¹ Added by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.66(a) (May 26, 2011: insertion has effect subject to transitional and saving provisions specified in SI 2011/1210 Sch.3 paras 1 and 2)
- ² Added by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.66(b) (May 26, 2011: insertion has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 para.2)
- ³ Words substituted by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.53 (December 21, 2020)

Commencement

Pt 2 c. 1 s. 107(1)-(10): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 107-(1), (2)-(3)(b), (4)-(10): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

Pt 2 c. 1 s. 107(1A), (3A)-(3C): United Kingdom



Law In Force

108 Register of persons in whose case code applies

- (1) It shall be the duty of OFCOM to establish and maintain a register of persons in whose case the electronic communications code applies by virtue of a direction under section 106.
- (2) OFCOM must record in the register every direction given under that section.
- (3) Information recorded in the register must be recorded in such manner as OFCOM consider appropriate.
- (4) It shall be the duty of OFCOM to publish a notification setting out—
- (a) the times at which the register is for the time being available for public inspection; and
 - (b) the fees that must be paid for, or in connection with, an inspection of the register.
- (5) The publication of a notification under subsection (4) must be a publication in such manner as OFCOM consider appropriate for bringing it to the attention of the persons who, in their opinion, are likely to be affected by it.
- (6) OFCOM must make the register available for public inspection—
- (a) during such hours, and
 - (b) on payment of such fees,
- as are set out in the notification for the time being in force under subsection (4).

Commencement

Pt 2 c. 1 s. 108(1)-(6)(b): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 108-(6)(b): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)



Law In Force

109 Restrictions and conditions subject to which code applies

- (1) Where the electronic communications code is applied in any person's case by a direction given by OFCOM, that code is to have effect in that person's case subject to such restrictions and conditions as may be contained in regulations made by the Secretary of State.
- (2) In exercising his power to make regulations under this section it shall be the duty of the Secretary of State to have regard to each of the following—
- (a) the duties imposed on OFCOM by sections 3 and 4;
 - (b) the need to protect the environment and, in particular, to conserve the natural beauty and amenity of the countryside;
 - [(ba) the need to promote economic growth in the United Kingdom;]¹
 - (c) the need to ensure that highways are not damaged or obstructed, and traffic not interfered with, to any greater extent than is reasonably necessary;

- (d) the need to encourage the sharing of the use of electronic communications apparatus;
- [(da) the need to ensure that restrictions and conditions are objectively justifiable and proportionate to what they are intended to achieve;]²
- (e) the need to secure that a person in whose case the code is applied will be able to meet liabilities arising as a consequence of—
 - (i) the application of the code in his case; and
 - (ii) any conduct of his in relation to the matters with which the code deals.

[

[(2A) Subsection (2B) applies if the Secretary of State has complied with subsection (2)(b) in connection with any particular exercise of the power to make regulations under this section.]⁴

(2B) The Secretary of State is to be treated as also having complied with any duty imposed in connection with that exercise of that power by any of the following—

- section 11A(2) of the National Parks and Access to the Countryside Act 1949;
- section 85(1) of the Countryside and Rights of Way Act 2000;
- section 17A(1) of the Norfolk and Suffolk Broads Act 1988;
- section 14 of the National Parks (Scotland) Act 2000 (asp 10);
- Article 4(1) of the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985 (S.I. 1985/170 (N.I. 1)).

] ³

(3) The power of the Secretary of State to provide by regulations for the restrictions and conditions subject to which the electronic communications code has effect includes power to provide for restrictions and conditions which are framed by reference to any one or more of the following—

- (a) the making of a determination in accordance with the regulations by a person specified in the regulations;
- (b) the giving of an approval or consent by a person so specified; or
- (c) the opinion of any person.

(4) Before making any regulations under this section, the Secretary of State must consult—

- (a) OFCOM; and
- (b) such other persons as he considers appropriate.

Notes

¹ Added by Growth and Infrastructure Act 2013 c. 27 s.9(1) (April 25, 2013)

² Added by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.67 (May 26, 2011: insertion has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 para.2)

³ Added by Growth and Infrastructure Act 2013 c. 27 s.9(2) (April 25, 2013)

⁴ Substituted by Digital Economy Act 2017 c. 30 Pt 2 s.7 (June 27, 2017)

Commencement

Pt 2 c. 1 s. 109(1)-(4)(b): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 109-(2)(b), (2)(c)-(2)(d), (2)(e)-(2)(e)(ii), (3)-(4)(b): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey

to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

Pt 2 c. 1 s. 109(2)(ba), (2)(da), (2A)-(2B): United Kingdom

✓ Law In Force

110 Enforcement of restrictions and conditions

(1) Where OFCOM determine that there are reasonable grounds for believing that a person in whose case the electronic communications code applies is contravening, or has contravened, a requirement imposed by virtue of any restrictions or conditions under section 109, they may give him 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 the contravention in respect of which that determination has been made; [...]¹

[(c) specifies the period during which the person notified has an opportunity to make representations;

(d) specifies the steps that OFCOM think should be taken by the person in order to—

(i) comply with the requirement;

(ii) remedy the consequences of the contravention;

(e) specifies any penalty which OFCOM are minded to impose in accordance with section 110A; and

(f) where the contravention is serious, specifies any direction which OFCOM are minded to give under section 113(4).]²

(3)-(7) [...]³

(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 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.

(10) [...]³

Notes

¹ Word repealed by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.68(a) (May 26, 2011: repeal has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 15)

- ² S.110(2)(c)-(f) substituted for s.110(2)(c) by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.68(b) (May 26, 2011: substitution has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 15)
- ³ Repealed by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.68(c) (May 26, 2011: repeal has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 15)

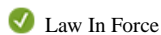
Commencement

Pt 2 c. 1 s. 110(1)-(10)(b): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 110-(2)(c), (3)-(10)(b): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

Pt 2 c. 1 s. 110(2)(d)-(2)(f): United Kingdom



Law In Force

[110A.— Penalties for contravention of code restrictions

- (1) This section applies where a person is given a notification under section 110 which specifies a proposed penalty.
- (2) Where the notification relates to more than one contravention, a separate penalty may be specified in respect of each contravention.
- (3) 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.
- (4) 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 111(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.
- (5) The amount of a penalty under subsection (4) is to be such amount not exceeding £100 per day as OFCOM determine to be—
- (a) appropriate; and
 - (b) proportionate to the contravention in respect of which it is imposed
- (6) The amount of any other penalty specified in a notification under section 110 is to be such amount not exceeding £10,000 as OFCOM determine to be—
- (a) appropriate, and
 - (b) proportionate to the contravention in respect of which it is imposed.
- (7) 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 (6).

(8) No order is to be made containing provision authorised by subsection (7) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

] ¹

Notes

¹ Added by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.69 (May 26, 2011: insertion has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 15)

Extent

Pt 2 c. 1 s. 110A(1)-(8): United Kingdom



Law In Force

111 [Confirmation decision] ¹ for contravention of code restrictions

(1) This section applies where—

- (a) a person (“the notified provider”) has been given a notification under section 110;
- (b) OFCOM have allowed the notified provider an opportunity of making representations about the matters notified; and
- (c) the period allowed for the making of the representations has expired.

[(2) OFCOM may—

- (a) give the notified provider a decision (a “confirmation decision”) confirming the imposition of requirements on the notified provider, or the giving of a direction to the notified provider, or both, in accordance with the notification under section 110; or
- (b) notify the notified provider that they are satisfied with the representations and that no further action will be taken.

(3) OFCOM may not give a confirmation decision to the notified provider unless, after considering any representations, they are satisfied that the notified provider has, in one or more of the respects notified, been in contravention of a requirement specified in the notification under section 110.] ²

[(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 requirements of a kind mentioned in section 110(2)(d), or may specify a period within which the person must comply with those requirements; and
- (d) may require the person to pay—
 - (i) the penalty specified in the notification under section 110(2)(e), 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, andmay specify the period within which the penalty is to be paid.

] ³

(5) It shall be the duty of a person to whom [a confirmation decision] ⁴ has been given to comply with [any requirement imposed by it] ⁵ .

(6) That duty shall be 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 (c. 36); 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.

] ⁶

Notes

- ¹ Words substituted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.70(e) (May 26, 2011: substitution has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 15)
- ² Substituted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.70(a) (May 26, 2011: substitution has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 15)
- ³ Substituted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.70(b) (May 26, 2011: substitution has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 15)
- ⁴ Words substituted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.70(c)(i) (May 26, 2011: substitution has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 15)
- ⁵ Word substituted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.70(c)(ii) (May 26, 2011: substitution has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 15)
- ⁶ Added by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.70(d) (May 26, 2011: insertion has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 15)


Commencement

Pt 2 c. 1 s. 111(1)-(6)(c): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 111-(4)(b), (5)-(6)(c): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

Pt 2 c. 1 s. 111(4)(c)-(4)(d)(ii), (7)-(7)(b): United Kingdom

 Law In Force

[111A.— Power to deal with urgent cases

(1) This section applies where OFCOM determine—

- (a) that they are entitled to give a notification under section 110 with respect to a contravention by a person (“P”) of a requirement imposed by virtue of any restrictions or conditions under section 109;
 - (b) that there are reasonable grounds for suspecting that the case is an urgent case; and
 - (c) that the urgency of the case makes it appropriate for OFCOM to take action under this section.
- (2) A case is an urgent case for the purposes of this section if the contravention has resulted in, or creates 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 (other than P) 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.
- (3) OFCOM may, to the extent specified in subsection (4), give a direction suspending the application in P's case of the electronic communications code if the electronic communications code has been applied to P by a direction under section 106.
- (4) The extent of a suspension under subsection (3) must not go beyond the following applications of the code in that person's case—
- (a) its application for the purposes of electronic communications networks, or parts of such a network, which are not yet in existence at the time of the suspension;
 - (b) its application for the purposes of conduit systems, or parts of such systems, which are not yet in existence or not yet used for the purposes of electronic communications networks; and
 - (c) its application for other purposes in circumstances in which the provision of an electronic communications network, or part of such a network, would not have to cease if its application for those purposes were suspended.
- (5) A direction under subsection (3), except so far as it otherwise provides, shall continue in force until such time (if any) as it is withdrawn by OFCOM.
- (6) Subject to subsection (7), where the application of the electronic communications code is suspended in a person's case, the person is not entitled to exercise any right conferred by or by virtue of the code.
- (7) The suspension of the application of the electronic communications code in a person's case does not, except so far as otherwise provided by a scheme contained in an order under section 117—
- (a) affect (as between the original parties to it) any agreement entered into for the purposes of the code or any agreement having effect in accordance with it;
 - (b) affect anything done under the code before the suspension of its application; or
 - (c) require the removal of, or prohibit the use of, any apparatus lawfully installed on, in or over any premises before that suspension.


]¹

Notes

¹ Added by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.71 (May 26, 2011: insertion has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 15)

Extent

Pt 2 c. 1 s. 111A(1)-(7)(c): United Kingdom

 Law In Force

[111B.— Confirmation of direction under section 111A

(1) As soon as reasonably practicable after giving a direction under section 111A(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 determining whether to confirm the direction, OFCOM must notify the person to whom it was given of their decision.

] ¹

Notes

¹ Added by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.71 (May 26, 2011: insertion has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 15)

Extent

Pt 2 c. 1 s. 111B(1)-(6): United Kingdom

 Repealed

112 [...]¹

Notes

- ¹ Repealed by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.72 (May 26, 2011: repeal has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 15)
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 Law In Force With Amendments Pending

113 Suspension of application of code

(1) OFCOM may suspend the application of the electronic communications code in any person's case if they are satisfied—

(a) that he is or has been in [serious or repeated]¹ contravention of requirements to pay administrative charges fixed under section 38 (whether in respect of the whole or a part of the charges);

[(aa) that, in the case of a single serious contravention, a notification has been given to the contravening provider under section 40 and the period for making representations under that section has expired;]²

(b) that [, in the case of a repeated contravention]³ the bringing of proceedings for the recovery of the amounts outstanding has failed to secure complete compliance by the contravening provider with the requirements to pay the charges fixed in his case, or has no reasonable prospect of securing such compliance;

(c) that [, in the case of a repeated contravention]³ an attempt, by the imposition of penalties under section 41, to secure such compliance has failed; and

[(d) that the suspension of the application of the code is appropriate and proportionate to the contravention.]⁴

(2) OFCOM may, to the extent specified in subsection (3), suspend the application in that person's case of the electronic communications code if—

(a) the electronic communications code has been applied by a direction under section 106 in any person's case; and

(b) OFCOM give a direction under [section 42, 100, (including that section as applied by section 105D) 132 or 140]⁵ for the suspension or restriction of that person's entitlement to provide an electronic communications network, or a part of such a network.

(3) The extent, in any person's case, of a suspension under subsection (2) must not go beyond the application of the code for the purposes of so much of an electronic communications network as that person is prohibited from providing by virtue of the suspension or restriction of his entitlement to provide such a network, or part of a network.

(4) OFCOM may, to the extent specified in subsection (5), suspend the application in that person's case of the electronic communications code if—

(a) the electronic communications code has been applied by a direction under section 106 in any person's case; and

(b) that person is a person in whose case there have been [repeated or serious]⁶ contraventions of requirements imposed by virtue of any restrictions or conditions under section 109.

(5) The extent, in any person's case, of a suspension under subsection (4) must not go beyond the following applications of the code in his case—

- (a) its application for the purposes of electronic communications networks, or parts of such a network, which are not yet in existence at the time of the suspension;
- (b) its application for the purposes of conduit systems, or parts of such systems, which are not yet in existence or not yet used for the purposes of electronic communications networks; and
- (c) its application for other purposes in circumstances in which the provision of an electronic communications network, or part of such a network, would not have to cease if its application for those purposes were suspended.

(6) A suspension under this section of the application of the code in any person's case must be by a further direction given to that person by OFCOM under section 106.

(7) The statement required by section 107(8) to be included, in the case of a direction for the purposes of this section, in the statement of OFCOM's proposal is a statement of their proposal to suspend the application of the code.

(8) A suspension of the application of the electronic communications code in any person's case—

- (a) shall cease to have effect if the suspension is under subsection (2) and the network suspension or restriction ceases to have effect; but
- (b) subject to that shall continue in force until such time (if any) as it is withdrawn by OFCOM.

(9) In subsection (8) the reference to the network suspension or restriction, in relation to a suspension of the application of the electronic communications code, is a reference to the suspension or restriction of an entitlement to provide an electronic communications network, or part of such a network, which is the suspension or restriction by reference to which the application of the code was suspended under subsection (2).

(10) Subject to subsection (11), where the application of the electronic communications code is suspended in a person's case, he shall not, while it is so suspended, be entitled to exercise any right conferred on him by or by virtue of the code.

(11) The suspension, in a person's case, of the application of the electronic communications code does not, except so far as otherwise provided by a scheme contained in an order under section 117—

- (a) affect (as between the original parties to it) any agreement entered into for the purposes of the code or any agreement having effect in accordance with it;
- (b) affect anything done under the code before the suspension of its application; or
- (c) require the removal of, or prohibit the use of, any apparatus lawfully installed on, in or over any premises before that suspension.

(12) Subsection (9) of section 42 applies for the purposes of subsection (1) as it applies for the purposes of that section.

[(13) For the purposes of subsection (4) there are repeated contraventions by a person of conditions or restrictions under section 109 if—

- (a) in the case of a previous notification given to the person under section 110, OFCOM have given a confirmation decision to the person under section 111(2);

- (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 a condition or restriction under section 109; and
- (c) the previous confirmation decision and the subsequent ones all relate to contraventions of the same condition or restriction (whether the same contravention or different contraventions).

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Notes

- ¹ Words substituted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.73(a)(i) (May 26, 2011: substitution has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 15)
- ² Added by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.73(a)(ii) (May 26, 2011: insertion has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 15)
- ³ Words inserted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.73(a)(iii) (May 26, 2011: insertion has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 15)
- ⁴ Substituted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.73(a)(iv) (May 26, 2011: substitution has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 15)
- ⁵ Words inserted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.73(b) (May 26, 2011: insertion has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 15)
- ⁶ Words substituted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.73(c) (May 26, 2011: substitution has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 15)
- ⁷ Added by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.73(d) (May 26, 2011: insertion has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 15)

Proposed Draft Amendments

Pt 2 c. 1 s. 113(2)(b): words substituted by Telecommunications (Security) Bill 2019-21 (HC Bill 246) s. 7(3) (Commons' Committee Stage, January 26, 2021) (date to be appointed)

Pt 2 c. 1 s. 113(2)(b): words inserted by Telecommunications (Security) Bill 2019-21 (HC Bill 246) s. 19(3) (Commons' Committee Stage, January 26, 2021) (date to be appointed)

Commencement

Pt 2 c. 1 s. 113(1)-(12): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 113-(1)(a), (1)(b)-(12): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

Pt 2 c. 1 s. 113(1)(aa), (13)-(13)(c): United Kingdom



Law In Force

114 Procedure for directions under s. 113

(1) Except in an urgent case [, or a case of a single serious contravention]¹ , OFCOM are not to give a direction under section 113(4) suspending the application of the electronic communications code in the case of any person (“the operator”) unless they have—

- (a) notified the operator of the proposed suspension and of the steps (if any) that they are proposing to take under section 117;
- (b) provided him with an opportunity of making representations about the proposals and of proposing steps for remedying the situation that has given rise to the proposed suspension; and
- (c) considered every representation and proposal made to them during the period allowed by them for the operator to take advantage of that opportunity.

[(2) That period is such reasonable period as OFCOM may specify, beginning with the day on which the notification is given.]²

(3) As soon as practicable after giving a direction under section 113 in an urgent case, OFCOM must provide the operator with an opportunity of—

- (a) making representations about the effect of the direction and of any steps taken under section 117 in connection with the suspension; and
- (b) proposing steps for remedying the situation that has given rise to the situation.

[(3A) 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).

(3C) If OFCOM decide that the contravention did occur and that the direction was justified, they may confirm the direction.

(3D) If not, they must revoke it.]³

(4) A case is an urgent case for the purposes of this section if OFCOM—

- (a) consider that it would be inappropriate, because the circumstances appearing to OFCOM to require the suspension fall within subsection (5), to allow time, before giving a direction under section 113, for the making and consideration of representations; and
- (b) decide for that reason to act in accordance with subsection (3), instead of subsection (1).

(5) Circumstances 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 operator) 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.

Notes

- ¹ Words inserted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.74(a) (May 26, 2011: insertion has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 15)
- ² Substituted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.74(b) (May 26, 2011: substitution has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 15)
- ³ Added by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.74(c) (May 26, 2011: insertion has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 15)

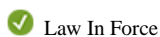
Commencement

Pt 2 c. 1 s. 114(1)-(5)(c): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 114-(3)(b), (4)-(5)(c): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

Pt 2 c. 1 s. 114(3A)-(3D): United Kingdom



Law In Force

115 Modification and revocation of application of code

(1) OFCOM may at any time modify the terms on which, by virtue of section 106(5), the code is applied in a person's case.

(2) OFCOM may revoke a direction applying the electronic communications code in a person's case if an application for the revocation has been made by that person.

(3) If at any time it appears to OFCOM that a person in whose case the electronic communications code has been applied is not the provider of an electronic communications network or conduit system for the purposes of which the code applies, OFCOM may revoke the direction applying the code in his case.

(4) A modification or revocation under this section shall be by a further direction under section 106 to the person in whose case the electronic communications code has been applied by the direction being modified or revoked.

[(4A) A modification under this section may not be made unless the modification is—

- (a) objectively justifiable, and
- (b) proportionate to what it is intended to achieve.

]¹

(5) The matters required by section 107(8) to be included, in the case of a direction for the purposes of this section, in the statement of OFCOM's proposal are whichever of the following is applicable—

- (a) a statement of their proposal to modify terms imposed under section 106(5);
- (b) a statement of their proposal to revoke the direction applying the code.

Notes

- ¹ Added by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.75 (May 26, 2011: insertion has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 para.2)

Commencement

Pt 2 c. 1 s. 115(1)-(5)(b): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 115-(4), (5)-(5)(b): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

Pt 2 c. 1 s. 115(4A)-(4A)(b): United Kingdom

✓ Law In Force

116 Notification of cessation by person to whom code applies

(1) This section applies where, by virtue of a direction under section 106, the electronic communications code applies in any person's case for the purposes of the provision by him of—

- (a) an electronic communications network which is not of a description designated for the purposes of section 33; or
- (b) such a system of conduits as is mentioned in section 106(4)(b).

(2) If that person ceases to provide that network or conduit system, he must notify OFCOM of that fact.

(3) A notification under this section must be given within such period and in such manner as may be required by OFCOM.

(4) OFCOM may impose a penalty on a person who fails to comply with a requirement imposed by or under this section.

(5) The amount of a penalty imposed on a person under this section is to be such amount not exceeding £1,000 as OFCOM may determine to be both—

- (a) appropriate; and
- (b) proportionate to the matter in respect of which it is imposed.

(6) Where OFCOM impose a penalty on a person under this section, they shall—

- (a) within one week of making their decision to impose the penalty, notify that person of that decision and of their reasons for that decision; and

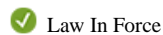
- (b) in that notification, fix a reasonable period after it is given as the period within which the penalty is to be paid.
- (7) A penalty imposed under this section—
 - (a) must be paid to OFCOM; and
 - (b) if not paid within the period fixed by them, is to be recoverable by them accordingly.
- (8) 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).
- (9) No order is to be made containing provision authorised by subsection (8) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

Commencement

Pt 2 c. 1 s. 116(1)-(9): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 116-(9): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)



Law In Force

117 Transitional schemes on cessation of application of code

- (1) Where it appears to OFCOM—
 - (a) that the electronic communications code has ceased or is to cease to apply, to any extent, in the case of any person (“the former operator”),
 - (b) that it has ceased or will cease so to apply for either of the reasons specified in subsection (2), and
 - (c) that it is appropriate for transitional provision to be made in connection with it ceasing to apply in the case of the former operator,they may by order make a scheme containing any such transitional provision as they think fit in that case.
- (2) Those reasons are—
 - (a) the suspension under section 113 of the application of the code in the former operator's case;
 - (b) the revocation or modification under section 115 of the direction applying the code in his case.
- (3) A scheme contained in an order under this section may, in particular—
 - (a) impose any one or more obligations falling within subsection (4) on the former operator;
 - (b) provide for those obligations to be enforceable in such manner (otherwise than by criminal penalties) and by such persons as may be specified in the scheme;


- (c) authorise the retention of apparatus on any land pending its subsequent use for the purposes of an electronic communications network, electronic communications service or conduit system to be provided by any person;
 - (d) provide for the transfer to such persons as may be specified in, or determined in accordance with, the scheme of any rights or liabilities arising out of any agreement or other obligation entered into or incurred in pursuance of the code by the former operator;
 - (e) provide, for the purposes of any provision contained in the scheme by virtue of any of the preceding paragraphs, for such questions arising under the scheme as are specified in the scheme, or are of a description so specified, to be referred to, and determined by, OFCOM.
- (4) The obligations referred to in subsection (3)(a) are—
- (a) an obligation to remove anything installed in pursuance of any right conferred by or in accordance with the code;
 - (b) an obligation to restore land to its condition before anything was done in pursuance of any such right; or
 - (c) an obligation to pay the expenses of any such removal or restoration.
- (5) Sections 110 to 112 apply in relation to the requirements imposed by virtue of a scheme contained in an order under this section as they apply in relation to a requirement imposed by virtue of restrictions or conditions under section 109.
- (6) Section 403 applies to the power of OFCOM to make an order under this section.

Commencement

Pt 2 c. 1 s. 117(1)-(6): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 117-(6): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

 Law In Force

118 Compulsory acquisition of land etc.

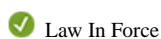
Schedule 4 (which provides for compulsory acquisition of land by the provider of an electronic communications network in whose case the electronic communications code applies and for entry on land by persons nominated by such a provider) shall have effect.

Commencement

Pt 2 c. 1 s. 118: July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 118-: United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)



Law In Force

119 Power to give assistance in relation to certain proceedings

(1) This section applies where any actual or prospective party to any proceedings falling within subsection (2) (other than the operator, within the meaning of the electronic communications code) applies to OFCOM for assistance under this section in relation to those proceedings.

(2) The proceedings falling within this subsection are any actual or prospective proceedings in which there falls to be determined any question arising under, or in connection with—

- (a) the electronic communications code as applied in any person's case by a direction under section 106; or
- (b) any restriction or condition subject to which that code applies.

(3) OFCOM may grant the application if, on any one or more of the following grounds, they think fit to do so—

- (a) on the ground that the case raises a question of principle;
- (b) on the ground that it is unreasonable, having regard to the complexity of the case or to any other matter, to expect the applicant to deal with the case without assistance under this section;
- (c) by reason of any other special consideration.

(4) Assistance by OFCOM under this section may include—

- (a) giving advice or arranging for the giving of advice by a solicitor or counsel;
- (b) procuring or attempting to procure the settlement of the matter in dispute;
- (c) arranging for the giving of any assistance usually given by a solicitor or counsel—
 - (i) in the steps preliminary or incidental to proceedings; or
 - (ii) in arriving at, or giving effect to, a compromise to avoid proceedings or to bring them to an end;
- (d) arranging for representation by a solicitor or counsel;
- (e) arranging for the giving of any other assistance by a solicitor or counsel;
- (f) any other form of assistance which OFCOM consider appropriate.

(5) Nothing in subsection (4)(d) shall be taken to affect the law and practice regulating the descriptions of persons who may appear in, conduct or defend any proceedings, or who may address the court in any proceedings.

(6) In so far as expenses are incurred by OFCOM in providing the applicant with assistance under this section, the recovery of those expenses (as taxed or assessed in such manner as may be prescribed by rules of court) shall constitute a first charge for the benefit of OFCOM—

- (a) on any costs or expenses which (whether by virtue of a judgment or order of a court, or an agreement or otherwise) are payable to the applicant by any other person in respect of the matter in connection with which the assistance is given; and
- (b) so far as relates to costs or expenses, on the applicant's rights under a compromise or settlement arrived at in connection with that matter to avoid proceedings, or to bring them to an end.

(7) A charge conferred by subsection (6) is subject to—

- (a) any charge imposed by [section 25 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012]¹ and any provision made by or under Part 1 of that Act for the payment of any sum to the [Lord Chancellor]² ;
- (b) any charge or obligation for payment in priority to other debts under the Legal Aid (Scotland) Act 1986 (c. 47); or
- (c) any charge under the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 (S.I. 1981/228 (N.I. 8)).

Notes

¹ Words substituted by Legal Aid, Sentencing and Punishment of Offenders Act 2012 c. 10 Sch.5(1) para.61(a) (April 1, 2013 subject to saving and transitional provisions as specified in SI 2013/534 regs 6-13)

² Words substituted by Legal Aid, Sentencing and Punishment of Offenders Act 2012 c. 10 Sch.5(1) para.61(b) (April 1, 2013 subject to saving and transitional provisions as specified in SI 2013/534 regs 6-13)

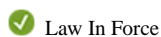
Commencement

Pt 2 c. 1 s. 119(1)-(7)(c): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 119-(7)(c): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

Regulation of premium rate services



Law In Force

120 Conditions regulating premium rate services

(1) OFCOM shall have the power, for the purpose of regulating the provision, content, promotion and marketing of premium rate services, to set conditions under this section that bind the persons to whom they are applied.

(2) Conditions under this section may be applied either—

- (a) generally to every person who provides a premium rate service; or
 - (b) to every person who is of a specified description of such persons, or who provides a specified description of such services.
- (3) The only provision that may be made by conditions under this section is provision requiring the person to whom the condition applies to comply, to the extent required by the condition, with—
 - [(za) the provisions of an approved code;]¹
 - (a) directions given in accordance with an approved code by the enforcement authority and for the purpose of enforcing its provisions; and
 - (b) if there is no such code, the provisions of the order for the time being in force under section 122.
- (4) The power to set a condition under this section includes power to modify or revoke the conditions for the time being in force under this section.
- (5) [Section 47 applies]² to the setting, modification and revocation of a condition under this section as [it applies]² to the setting, modification and revocation of a condition under section 45.
- (6) [...] ³
- (7) A service is a premium rate service for the purposes of this Chapter if—
 - (a) it is a service falling within subsection (8);
 - (b) there is a charge for the provision of the service;
 - (c) the charge is required to be paid to a person providing an electronic communications service by means of which the service in question is provided; and
 - (d) that charge is imposed in the form of a charge made by that person for the use of the electronic communications service.
- (8) A service falls within this subsection if its provision consists in—
 - (a) the provision of the contents of communications transmitted by means of an electronic communications network; or
 - (b) allowing the user of an electronic communications service to make use, by the making of a transmission by means of that service, of a facility made available to the users of the electronic communications service.
- (9) For the purposes of this Chapter a person provides a premium rate service (“the relevant service”) if—
 - (a) he provides the contents of the relevant service;
 - (b) he exercises editorial control over the contents of the relevant service;
 - (c) he is a person who packages together the contents of the relevant service for the purpose of facilitating its provision;
 - (d) he makes available a facility comprised in the relevant service; or
 - (e) he falls within subsection (10), (11) or (12).
- (10) A person falls within this subsection if—
 - (a) he is the provider of an electronic communications service used for the provision of the relevant service; and
 - (b) under arrangements made with a person who is a provider of the relevant service falling within subsection (9)(a) to (d), he is entitled to retain some or all of the charges received by him in respect of the provision of the relevant service or of the use of his electronic communications service for the purposes of the relevant service.

- (11) A person falls within this subsection if—
- (a) he is the provider of an electronic communications network used for the provision of the relevant service; and
 - (b) an agreement relating to the use of the network for the provision of that service subsists between the provider of the network and a person who is a provider of the relevant service falling within subsection (9)(a) to (d).
- (12) A person falls within this subsection if—
- (a) he is the provider of an electronic communications network used for the provision of the relevant service; and
 - (b) the use of that network for the provision of premium rate services, or of services that include or may include premium rate services, is authorised by an agreement subsisting between that person and either an intermediary service provider or a person who is a provider of the relevant service by virtue of subsection (10) or (11).
- (13) Where one or more persons are employed or engaged under the direction of another to do any of the things mentioned in subsection (9)(a) to (d), only that other person shall be a provider of the relevant service for the purposes of this Chapter.
- (14) References in this section to a facility include, in particular, references to—
- (a) a facility for making a payment for goods or services;
 - (b) a facility for entering a competition or claiming a prize; and
 - (c) a facility for registering a vote or recording a preference.
- (15) In this section—
- “approved code” means a code for the time being approved under section 121;
 - “enforcement authority”, in relation to such a code, means the person who under the code has the function of enforcing it; and
 - “intermediary service provider” means a person who—
 - (a) provides an electronic communications service used for the provision of the relevant service or an electronic communications network so used; and
 - (b) is a party to an agreement with—
 - (i) a provider of the relevant service falling within subsection (9)(a) to (d), or
 - (ii) another intermediary service provider,which relates to the use of that electronic communications service or network for the provision of premium rate services, or of services that include or may include premium rate services.

Notes

- ¹ Added by Consumer Rights Act 2015 c. 15 Pt 3 c.1 s.80(1) (October 1, 2015: insertion has effect subject to transitional provision specified in SI 2015/1630 art.7)
- ² Words substituted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.76(a) (May 26, 2011: substitution has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 16)
- ³ Repealed by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.76(b) (May 26, 2011: repeal has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 16)

Commencement

Pt 2 c. 1 s. 120(1)-(15) definition of "intermediary service provider" (b)(ii): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Extent

Pt 2 c. 1 s. 120-(3), (3)(a)-(15) definition of "intermediary service provider" (b)(ii): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

Pt 2 c. 1 s. 120(3)(za): United Kingdom

✓ Law In Force

[120A.— Procedure for setting, modifying and revoking premium rate services conditions

- (1) The way in which conditions are to be set or modified under section 120 is by the publication of a notification setting out the conditions or modifications.
- (2) The way in which such a condition is to be revoked is by the publication of a notification stating that the condition is revoked.
- (3) Before setting such conditions, or modifying or revoking a condition so set, OFCOM must publish a notification—
 - (a) stating that they are proposing to set, modify or revoke the conditions that are specified in the notification;
 - (b) setting out the effect of those conditions, modifications or revocations;
 - (c) giving their reasons for making the proposal; and
 - (d) specifying the period within which representations may be made to OFCOM about their proposal.
- (3) That period must end no less than one month after the day of the publication of the notification.
- (4) But where OFCOM are satisfied that there are exceptional circumstances justifying the use of a shorter period, the period specified as the period for making representations may be whatever shorter period OFCOM consider reasonable in those circumstances.
- (5) OFCOM may give effect to the proposal, with any modifications that appear to OFCOM to be appropriate, after—
 - (a) considering every representation about the proposal made to them during the period specified in the notification; and
 - (b) having regard to every international obligation of the United Kingdom (if any) which has been notified to them for the purposes of this paragraph by the Secretary of State.
- (6) The publication of a notification under this section must be in such manner as appears to OFCOM to be appropriate for bringing the contents of the notification to the attention of the persons who, in OFCOM's opinion, are likely to be affected by its contents.
- (7) OFCOM must send a copy of every notification published under this section to the Secretary of State.

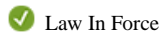
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Notes

- ¹ Added by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.77 (May 26, 2011: insertion has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 16)

Extent

Pt 2 c. 1 s. 120A(1)-(7): United Kingdom



Law In Force

121 Approval of code for premium rate services

(1) If it appears to OFCOM—

- (a) that a code has been made by any person for regulating the provision and contents of premium rate services, and the facilities made available in the provision of such services;
- (b) that the code contains provision for regulating, to such extent (if any) as they think fit, the arrangements made by the providers of premium rate services for promoting and marketing those services; and
- (c) that it would be appropriate for them to approve that code for the purposes of section 120,

they may approve that code for those purposes.

(2) OFCOM are not to approve a code for those purposes unless they are satisfied—

- (a) that there is a person who, under the code, has the function of administering and enforcing it; and
- (b) that that person is sufficiently independent of the providers of premium rate services;
- (c) that adequate arrangements are in force for funding the activities of that person in relation to the code;
- (d) that the provisions of the code are objectively justifiable in relation to the services to which it relates;
- (e) that those provisions are not such as to discriminate unduly against particular persons or against a particular description of persons;
- (f) that those provisions are proportionate to what they are intended to achieve; and
- (g) that, in relation to what those provisions are intended to achieve, they are transparent.

(3) OFCOM are not for those purposes to approve so much of a code as imposes an obligation as respects a premium rate service on a person who is a provider of the service by virtue only of section 120(12) (“the relevant provider”) unless they are satisfied that the obligation—

- (a) arises only if there is no one who is a provider of the service otherwise than by virtue of section 120(12) against whom it is practicable to take action;
- (b) arises only after a notice identifying the service and setting out respects in which requirements of the code have been contravened in relation to it has been given to the relevant provider by the person responsible for enforcing the code; and
- (c) is confined to an obligation to secure that electronic communications networks provided by the relevant provider are not used for making the service available to persons who are in the United Kingdom.

- (4) The provision that may be contained in a code and approved under this section includes, in particular, provision about the pricing of premium rate services and provision for the enforcement of the code.
- (5) The provision for the enforcement of a code that may be approved under this section includes—
- (a) provision for the payment, to a person specified in the code, of a penalty not exceeding the maximum penalty for the time being specified in section 123(2);
 - [(aa) provision that applies where there is or has been more than one contravention of the code or directions given in accordance with it by a person and which enables—
 - (i) a single penalty (which does not exceed that maximum penalty) to be imposed on the person in respect of all of those contraventions, or
 - (ii) separate penalties (each of which does not exceed that maximum penalty) to be imposed on the person in respect of each of those contraventions,according to whether the person imposing the penalty determines that a single penalty or separate penalties are appropriate and proportionate to those contraventions;
-] ¹
- (b) provision requiring a provider of a premium rate service to secure that the provision of the service is suspended or otherwise ceases or is restricted in any respect;
 - (c) provision for the imposition on a person, in respect of a contravention of the code, of a temporary or permanent prohibition or restriction on his working in connection with the provision of premium rate services or, in the case of a body corporate, on its providing such services or on its carrying on other activities in connection with their provision.
- (6) OFCOM may, at any time, for the purposes of section 120—
- (a) approve modifications that have been made to an approved code; or
 - (b) withdraw their approval from an approved code.
- (7) Where OFCOM give or withdraw an approval for the purposes of section 120, they must give notification of their approval or of its withdrawal.
- (8) The notification must be published in such manner as OFCOM consider appropriate for bringing it to the attention of the persons who, in OFCOM's opinion, are likely to be affected by the approval or withdrawal.

Notes

- ¹ Added by Consumer Rights Act 2015 c. 15 Pt 3 c.1 s.80(2) (October 1, 2015: insertion has effect subject to transitional provision specified in SI 2015/1630 art.7)

Commencement

Pt 2 c. 1 s. 121(1)-(8): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Extent

Pt 2 c. 1 s. 121-(5)(a), (5)(b)-(8): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

Pt 2 c. 1 s. 121(5)(aa)-(5)(aa)(ii): United Kingdom



Law In Force

122 Orders by OFCOM in the absence of a code under s. 121

- (1) OFCOM may make an order under this section if, at any time, they consider that there is no code in force to which they think it would be appropriate to give, or to continue to give, their approval under section 121.
- (2) An order under this section may make such of the following provisions as OFCOM think fit—
- (a) provision imposing requirements with respect to the provision and contents of premium rate services, and with respect to the facilities made available in the provision of such services (including provision about pricing);
 - (b) provision imposing requirements with respect to the arrangements made by the providers of premium rate services for the promotion and marketing of those services;
 - (c) provision for the enforcement of requirements imposed by virtue of paragraph (a) or (b);
 - (d) provision making other arrangements for the purposes of those requirements.
- (3) The power to make provision by an order under this section includes, in particular—
- (a) power to establish a body corporate with the capacity to make its own rules and to establish its own procedures;
 - (b) power to determine the jurisdiction of a body established by such an order or, for the purposes of the order, of any other person;
 - (c) power to confer jurisdiction with respect to any matter on OFCOM themselves;
 - (d) power to provide for a person on whom jurisdiction is conferred by the arrangements to make awards of compensation, to direct the reimbursement of costs or expenses, or to do both;
 - (e) power to provide for such a person to enforce, or to participate in the enforcement of, any awards or directions made under such an order;
 - (f) power to make provision falling within section 121(5)(c) for the enforcement of the provisions of the order; and
 - (g) power to make such other provision as OFCOM think fit for the enforcement of such awards and directions.
- (4) An order under this section may require such providers of premium rate services as may be determined by or under the order to make payments to OFCOM in respect of expenditure incurred by OFCOM in connection with—
- (a) the establishment and maintenance, in accordance with such an order, of any body corporate or procedure; or
 - (b) the making of other arrangements for the purposes of the requirements of such an order.
- (5) An order under this section is not to impose an obligation as respects a premium rate service on a person who is a provider of the service by virtue only of section 120(12) (“the relevant provider”) unless the obligation—
- (a) arises only if there is no one who is a provider of the service otherwise than by virtue of section 120(12) against whom it is practicable to take action;
 - (b) arises only after a notice identifying the service and setting out respects in which requirements of the order have been contravened in relation to it has been given to the relevant provider by OFCOM; and

(c) is confined to an obligation to secure that electronic communications networks provided by the relevant provider are not used for making the service available to persons who are in the United Kingdom.

(6) The consent of the Secretary of State is required for the making by OFCOM of an order under this section.

(7) Section 403 applies to the power of OFCOM to make an order under this section.

(8) A statutory instrument containing an order made by OFCOM under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Commencement

Pt 2 c. 1 s. 122(1)-(8): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Extent

Pt 2 c. 1 s. 122-(8): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)



Law In Force

123 Enforcement of s. 120 conditions

(1) Sections 94 to 96 apply in relation to a contravention of conditions set under section 120 as they apply in relation to a contravention of a condition set under section 45.

[(1A) Subsection (1B) applies where a notification under section 94 as applied by this section relates to more than one contravention of—

- (a) a code approved under section 121,
- (b) directions given in accordance with such a code, or
- (c) an order under section 122.

(1B) Section 96(3) as applied by this section enables OFCOM to impose—

- (a) a single penalty in respect of all of those contraventions, or
- (b) separate penalties in respect of each of those contraventions,

according to whether OFCOM determine that a single penalty or separate penalties are appropriate and proportionate to those contraventions.

] ¹

(2) The amount of [each penalty] ² imposed under section 96 as applied by this section is to be such amount not exceeding [£250,000] ³ as OFCOM determine to be—

- (a) appropriate; and
- (b) proportionate to the contravention in respect of which it is imposed.

(3) In making that determination OFCOM must have regard to—

- (a) any representations made to them by the notified provider;
- (b) any steps taken by him towards complying with the conditions contraventions of which have been notified to him under section 94 (as applied); and
- (c) any steps taken by him for remedying the consequences of those contraventions.

(4) 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 (2).

(5) No order is to be made containing provision authorised by subsection (4) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

Notes

- ¹ Added by Consumer Rights Act 2015 c. 15 Pt 3 c.1 s.80(4) (October 1, 2015: insertion has effect subject to transitional provision specified in SI 2015/1630 art.7)
- ² Words substituted by Consumer Rights Act 2015 c. 15 Pt 3 c.1 s.80(5) (October 1, 2015: substitution has effect subject to transitional provision specified in SI 2015/1630 art.7)
- ³ Figure substituted subject to transitional provision specified in SI 2005/3469 art.2(2) by Communications Act 2003 (Maximum Penalty and Disclosure of Information) Order 2005/3469 art.2(1) (December 30, 2005: substitution has effect subject to transitional provision specified in SI 2005/3469 art.2(2))

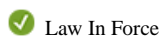
Commencement

Pt 2 c. 1 s. 123(1)-(5): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Extent

Pt 2 c. 1 s. 123-(1), (2)-(5): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

Pt 2 c. 1 s. 123(1A)-(1B)(b): United Kingdom



Law In Force

124 Suspending service provision for contraventions of s. 120 conditions

(1) OFCOM may give a direction under this section to a person who is a communications provider (“the contravening provider”) if they are satisfied—

- (a) that he is or has been in serious and repeated contravention of conditions set under section 120;
- (b) that an attempt, by the imposition of penalties or the giving of enforcement notifications under section 95 (as applied by section 123) or both, to secure compliance with the contravened conditions has failed;
- (c) that the giving of the direction is appropriate and proportionate to the seriousness (when repeated as they have been) of the contraventions; and
- (d) that the giving of the direction is required for reasons of public policy.

(2) OFCOM may also give a direction under this section to a person who is a communications provider (“the contravening provider”) if they are satisfied—

- (a) that he is, or has been, in contravention of conditions set under section 120 in respect of a premium rate service;
- (b) that the circumstances of the contravention make it appropriate for OFCOM to suspend or restrict the provision of premium rate services provided by the contravening provider without the conditions set out in subsection (1) being satisfied; and

- (c) that in those circumstances the giving of the direction is urgently required for reasons of public policy.
- (3) A direction under this section is—
- (a) a direction to the contravening provider to secure the suspension of the provision of premium rate services provided by him; or
 - (b) a direction requiring him to secure compliance with restrictions, set out in the direction, on the provision of such services.
- (4) A direction under this section—
- (a) must specify the services 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.
- (5) 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.
- (6) 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.
- (7) 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 services as they may determine.
- (8) Sections 102 and 103 apply in the case of a direction under this section as they apply in the case of a direction under section 100, but as if references in section 103(1) to an electronic communications network or electronic communications service were references to a premium rate service.
- (9) For the purposes of this section there are repeated contraventions by a person of conditions set under section 120 to the extent that—
- (a) in the case of a previous notification given to that person under section 94 (as applied by section 123), OFCOM have determined for the purposes of section 95(2) or 96(2) (as so applied) 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 a condition set under section 120.
- (10) For the purposes of this section the seriousness of repeated contraventions of conditions set under section 120 has to be determined by reference to the seriousness of the contraventions of the approved code or order by reference to which the conditions have effect.

Commencement

Pt 2 c. 1 s. 124(1)-(10): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

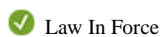
Extent

Pt 2 c. 1 s. 124-(10): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

[Online infringement of copyright: obligations of internet service providers]¹

Notes

¹ Added by Digital Economy Act 2010 c. 24 s.3 (June 8, 2010)



Law In Force

[124A Obligation to notify subscribers of copyright infringement reports

- (1) This section applies if it appears to a copyright owner that—
 - (a) a subscriber to an internet access service has infringed the owner's copyright by means of the service; or
 - (b) a subscriber to an internet access service has allowed another person to use the service, and that other person has infringed the owner's copyright by means of the service.
- (2) The owner may make a copyright infringement report to the internet service provider who provided the internet access service if a code in force under section 124C or 124D (an “initial obligations code”) allows the owner to do so.
- (3) A “copyright infringement report” is a report that—
 - (a) states that there appears to have been an infringement of the owner's copyright;
 - (b) includes a description of the apparent infringement;
 - (c) includes evidence of the apparent infringement that shows the subscriber's IP address and the time at which the evidence was gathered;
 - (d) is sent to the internet service provider within the period of 1 month beginning with the day on which the evidence was gathered; and
 - (e) complies with any other requirement of the initial obligations code.
- (4) An internet service provider who receives a copyright infringement report must notify the subscriber of the report if the initial obligations code requires the provider to do so.
- (5) A notification under subsection (4) must be sent to the subscriber within the period of 1 month beginning with the day on which the provider receives the report.
- (6) A notification under subsection (4) must include—
 - (a) a statement that the notification is sent under this section in response to a copyright infringement report;

- (b) the name of the copyright owner who made the report;
 - (c) a description of the apparent infringement;
 - (d) evidence of the apparent infringement that shows the subscriber's IP address and the time at which the evidence was gathered;
 - (e) information about subscriber appeals and the grounds on which they may be made;
 - (f) information about copyright and its purpose;
 - (g) advice, or information enabling the subscriber to obtain advice, about how to obtain lawful access to copyright works;
 - (h) advice, or information enabling the subscriber to obtain advice, about steps that a subscriber can take to protect an internet access service from unauthorised use; and
 - (i) anything else that the initial obligations code requires the notification to include.
- (7) For the purposes of subsection (6)(h) the internet service provider must take into account the suitability of different protection for subscribers in different circumstances.
- (8) The things that may be required under subsection (6)(i), whether in general or in a particular case, include in particular—
- (a) a statement that information about the apparent infringement may be kept by the internet service provider;
 - (b) a statement that the copyright owner may require the provider to disclose which copyright infringement reports made by the owner to the provider relate to the subscriber;
 - (c) a statement that, following such a disclosure, the copyright owner may apply to a court to learn the subscriber's identity and may bring proceedings against the subscriber for copyright infringement; and
 - (d) where the requirement for the provider to send the notification arises partly because of a report that has already been the subject of a notification under subsection (4), a statement that the number of copyright infringement reports relating to the subscriber may be taken into account for the purposes of any technical measures.
- (9) In this section “notify”, in relation to a subscriber, means send a notification to the electronic or postal address held by the internet service provider for the subscriber (and sections 394 to 396 do not apply).


]¹

Notes

¹ Added by Digital Economy Act 2010 c. 24 s.3 (June 8, 2010)

Extent

Pt 2 c. 1 s. 124A(1)-(9): United Kingdom (amendment may be extended to any of the Channel Islands or the Isle of Man under the relevant extending power as specified in s.46(3))

 Law In Force

[124B Obligation to provide copyright infringement lists to copyright owners

- (1) An internet service provider must provide a copyright owner with a copyright infringement list for a period if—
- (a) the owner requests the list for that period; and


- (b) an initial obligations code requires the internet service provider to provide it.
- (2) A “copyright infringement list” is a list that—
- (a) sets out, in relation to each relevant subscriber, which of the copyright infringement reports made by the owner to the provider relate to the subscriber, but
 - (b) does not enable any subscriber to be identified.
- (3) A subscriber is a “relevant subscriber” in relation to a copyright owner and an internet service provider if copyright infringement reports made by the owner to the provider in relation to the subscriber have reached the threshold set in the initial obligations code.
-] ¹

Notes

¹ Added by Digital Economy Act 2010 c. 24 s.4 (June 8, 2010)

Extent

Pt 2 c. 1 s. 124B(1)-(3): United Kingdom (amendment may be extended to any of the Channel Islands or the Isle of Man under the relevant extending power as specified in s.46(3))

 Law In Force

[124C Approval of code about the initial obligations

- (1) The obligations of internet service providers under sections 124A and 124B are the “initial obligations”.
- (2) If it appears to OFCOM—
- (a) that a code has been made by any person for the purpose of regulating the initial obligations; and
 - (b) that it would be appropriate for them to approve the code for that purpose,
- they may by order approve it, with effect from the date given in the order.
- (3) The provision that may be contained in a code and approved under this section includes provision that—
- (a) specifies conditions that must be met for rights and obligations under the copyright infringement provisions or the code to apply in a particular case;
 - (b) requires copyright owners or internet service providers to provide any information or assistance that is reasonably required to determine whether a condition under paragraph (a) is met.
- (4) The provision mentioned in subsection (3)(a) may, in particular, specify that a right or obligation does not apply in relation to a copyright owner unless the owner has made arrangements with an internet service provider regarding—
- (a) the number of copyright infringement reports that the owner may make to the provider within a particular period; and
 - (b) payment in advance of a contribution towards meeting costs incurred by the provider.
- (5) The provision mentioned in subsection (3)(a) may also, in particular, provide that—

- (a) except as provided by the code, rights and obligations do not apply in relation to an internet service provider unless the number of copyright infringement reports the provider receives within a particular period reaches a threshold set in the code; and
 - (b) if the threshold is reached, rights or obligations apply with effect from the date when it is reached or from a later time.
- (6) OFCOM must not approve a code under this section unless satisfied that it meets the criteria set out in section 124E.
- (7) Not more than one approved code may have effect at a time.
- (8) OFCOM must keep an approved code under review.
- (9) OFCOM may by order, at any time, for the purpose mentioned in subsection (2)—
- (a) approve modifications that have been made to an approved code; or
 - (b) withdraw their approval from an approved code,
- with effect from the date given in the order, and must do so if the code ceases to meet the criteria set out in section 124E.
- (10) The consent of the Secretary of State is required for the approval of a code or the modification of an approved code.
- (11) An order made by OFCOM under this section approving a code or modification must set out the code or modification.
- (12) Section 403 applies to the power of OFCOM to make an order under this section.
- (13) A statutory instrument containing an order made by OFCOM under this section is subject to annulment in pursuance of a resolution of either House of Parliament.


]¹

Notes

- ¹ Added by Digital Economy Act 2010 c. 24 s.5 (April 8, 2010)

Extent

Pt 2 c. 1 s. 124C(1)-(13): United Kingdom (amendment may be extended to any of the Channel Islands or the Isle of Man under the relevant extending power as specified in s.46(3))

 Law In Force

[124D Initial obligations code by OFCOM in the absence of an approved code

- (1) For any period when sections 124A and 124B are in force but for which there is no approved initial obligations code under section 124C, OFCOM must by order make a code for the purpose of regulating the initial obligations.
- (2) OFCOM may but need not make a code under subsection (1) for a time before the end of—
- (a) the period of six months beginning with the day on which sections 124A and 124B come into force, or
 - (b) such longer period as the Secretary of State may specify by notice to OFCOM.

- (3) The Secretary of State may give a notice under subsection (2)(b) only if it appears to the Secretary of State that it is not practicable for OFCOM to make a code with effect from the end of the period mentioned in subsection (2)(a) or any longer period for the time being specified under subsection (2)(b).
- (4) A code under this section may do any of the things mentioned in section 124C(3) to (5).
- (5) A code under this section may also—
- (a) confer jurisdiction with respect to any matter (other than jurisdiction to determine appeals by subscribers) on OFCOM themselves;
 - (b) provide for OFCOM, in exercising such jurisdiction, to make awards of compensation, to direct the reimbursement of costs, or to do both;
 - (c) provide for OFCOM to enforce, or to participate in the enforcement of, any awards or directions made under the code;
 - (d) make other provision for the enforcement of such awards and directions;
 - (e) establish a body corporate, with the capacity to make its own rules and establish its own procedures, for the purpose of determining subscriber appeals;
 - (f) provide for a person with the function of determining subscriber appeals to enforce, or to participate in the enforcement of, any awards or directions made by the person;
 - (g) make other provision for the enforcement of such awards and directions; and
 - (h) make other provision for the purpose of regulating the initial obligations.
- (6) OFCOM must not make a code under this section unless they are satisfied that it meets the criteria set out in section 124E.
- (7) OFCOM must—
- (a) keep a code under this section under review; and
 - (b) by order make any amendment of it that is necessary to ensure that while it is in force it continues to meet the criteria set out in section 124E.
- (8) The consent of the Secretary of State is required for the making or amendment by OFCOM of a code under this section.
- (9) Section 403 applies to the power of OFCOM to make an order under this section.
- (10) A statutory instrument containing an order made by OFCOM under this section is subject to annulment in pursuance of a resolution of either House of Parliament.

J¹

Notes

- ¹ Added by Digital Economy Act 2010 c. 24 s.6 (April 8, 2010)

Extent

Pt 2 c. 1 s. 124D(1)-(10): United Kingdom (amendment may be extended to any of the Channel Islands or the Isle of Man under the relevant extending power as specified in s.46(3))



Law In Force

[124E Contents of initial obligations code

- (1) The criteria referred to in sections 124C(6) and 124D(6) are—
- (a) that the code makes the required provision about copyright infringement reports (see subsection (2));
 - (b) that it makes the required provision about the notification of subscribers (see subsections (3) and (4));
 - (c) that it sets the threshold applying for the purposes of determining who is a relevant subscriber within the meaning of section 124B(3) (see subsections (5) and (6));
 - (d) that it makes provision about how internet service providers are to keep information about subscribers;
 - (e) that it limits the time for which they may keep that information;
 - (f) that it makes any provision about contributions towards meeting costs that is required to be included by an order under section 124M;
 - (g) that the requirements concerning administration and enforcement are met in relation to the code (see subsections (7) and (8));
 - (h) that the requirements concerning subscriber appeals are met in relation to the code (see section 124K);
 - (i) that the provisions of the code are objectively justifiable in relation to the matters to which it relates;
 - (j) that those provisions are not such as to discriminate unduly against particular persons or against a particular description of persons;
 - (k) that those provisions are proportionate to what they are intended to achieve; and
 - (l) that, in relation to what those provisions are intended to achieve, they are transparent.
- (2) The required provision about copyright infringement reports is provision that specifies—
- (a) requirements as to the means of obtaining evidence of infringement of copyright for inclusion in a report;
 - (b) the standard of evidence that must be included; and
 - (c) the required form of the report.
- (3) The required provision about the notification of subscribers is provision that specifies, in relation to a subscriber in relation to whom an internet service provider receives one or more copyright infringement reports—
- (a) requirements as to the means by which the provider identifies the subscriber;
 - (b) which of the reports the provider must notify the subscriber of; and
 - (c) requirements as to the form, contents and means of the notification in each case.
- (4) The provision mentioned in subsection (3) must not permit any copyright infringement report received by an internet service provider more than 12 months before the date of a notification of a subscriber to be taken into account for the purposes of the notification.
- (5) The threshold applying in accordance with subsection (1)(c) may, subject to subsection (6), be set by reference to any matter, including in particular one or more of—
- (a) the number of copyright infringement reports;
 - (b) the time within which the reports are made; and
 - (c) the time of the apparent infringements to which they relate.
- (6) The threshold applying in accordance with subsection (1)(c) must operate in such a way that a copyright infringement report received by an internet service provider more than 12 months before

a particular date does not affect whether the threshold is met on that date; and a copyright infringement list provided under section 124B must not take into account any such report.

- (7) The requirements concerning administration and enforcement are—
- (a) that OFCOM have, under the code, the functions of administering and enforcing it, including the function of resolving owner-provider disputes;
 - (b) that there are adequate arrangements under the code for OFCOM to obtain any information or assistance from internet service providers or copyright owners that OFCOM reasonably require for the purposes of administering and enforcing the code; and
 - (c) that there are adequate arrangements under the code for the costs incurred by OFCOM in administering and enforcing the code to be met by internet service providers and copyright owners.
- (8) The provision mentioned in subsection (7) may include, in particular—
- (a) provision for the payment, to a person specified in the code, of a penalty not exceeding the maximum penalty for the time being specified in section 124L(2);
 - (b) provision requiring a copyright owner to indemnify an internet service provider for any loss or damage resulting from the owner's failure to comply with the code or the copyright infringement provisions.
- (9) In this section “owner-provider dispute” means a dispute that—
- (a) is between persons who are copyright owners or internet service providers; and
 - (b) relates to an act or omission in relation to an initial obligation or an initial obligations code.

] ¹

Notes

¹ Added by Digital Economy Act 2010 c. 24 s.7 (April 8, 2010)

Extent

Pt 2 c. 1 s. 124E(1)-(9)(b): United Kingdom (amendment may be extended to any of the Channel Islands or the Isle of Man under the relevant extending power as specified in s.46(3))

 Law In Force

[124F Progress reports

- (1) OFCOM must prepare the following reports for the Secretary of State about the infringement of copyright by subscribers to internet access services.
- (2) OFCOM must prepare a full report for—
- (a) the period of 12 months beginning with the first day on which there is an initial obligations code in force; and
 - (b) each successive period of 12 months.
- (3) OFCOM must prepare an interim report for—
- (a) the period of 3 months beginning with the first day on which there is an initial obligations code in force; and

(b) each successive period of 3 months, other than one ending at the same time as a period of 12 months under subsection (2).

But this is subject to any direction by the Secretary of State under subsection (4).

(4) The Secretary of State may direct that subsection (3) no longer applies, with effect from the date given in the direction.

(5) A full report under this section must include—

- (a) an assessment of the current level of subscribers' use of internet access services to infringe copyright;
- (b) a description of the steps taken by copyright owners to enable subscribers to obtain lawful access to copyright works;
- (c) a description of the steps taken by copyright owners to inform, and change the attitude of, members of the public in relation to the infringement of copyright;
- (d) an assessment of the extent of the steps mentioned in paragraphs (b) and (c);
- (e) an assessment of the extent to which copyright owners have made copyright infringement reports;
- (f) an assessment of the extent to which they have brought legal proceedings against subscribers in relation to whom such reports have been made;
- (g) an assessment of the extent to which any such proceedings have been against subscribers in relation to whom a substantial number of reports have been made; and
- (h) anything else that the Secretary of State directs OFCOM to include in the report.

(6) An interim report under this section must include—

- (a) the assessments mentioned in subsection (5)(a), (e) and (f); and
- (b) anything else that the Secretary of State directs OFCOM to include in the report.

(7) OFCOM must send a report prepared under this section to the Secretary of State as soon as practicable after the end of the period for which it is prepared.

(8) OFCOM must publish every full report under this section—

- (a) as soon as practicable after they send it to the Secretary of State, and
- (b) in such manner as they consider appropriate for bringing it to the attention of persons who, in their opinion, are likely to have an interest in it.

(9) OFCOM may exclude information from a report when it is published under subsection (8) if they consider that it is information that they could refuse to disclose in response to a request under the Freedom of Information Act 2000.

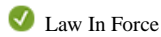
]¹

Notes

¹ Added by Digital Economy Act 2010 c. 24 s.8 (June 8, 2010)

Extent

Pt 2 c. 1 s. 124F(1)-(9): United Kingdom (amendment may be extended to any of the Channel Islands or the Isle of Man under the relevant extending power as specified in s.46(3))



Law In Force

[124G Obligations to limit internet access: assessment and preparation

- (1) The Secretary of State may direct OFCOM to—
- (a) assess whether one or more technical obligations should be imposed on internet service providers;
 - (b) take steps to prepare for the obligations;
 - (c) provide a report on the assessment or steps to the Secretary of State.
- (2) A “technical obligation”, in relation to an internet service provider, is an obligation for the provider to take a technical measure against some or all relevant subscribers to its service for the purpose of preventing or reducing infringement of copyright by means of the internet.
- (3) A “technical measure” is a measure that—
- (a) limits the speed or other capacity of the service provided to a subscriber;
 - (b) prevents a subscriber from using the service to gain access to particular material, or limits such use;
 - (c) suspends the service provided to a subscriber; or
 - (d) limits the service provided to a subscriber in another way.
- (4) A subscriber to an internet access service is “relevant” if the subscriber is a relevant subscriber, within the meaning of section 124B(3), in relation to the provider of the service and one or more copyright owners.
- (5) The assessment and steps that the Secretary of State may direct OFCOM to carry out or take under subsection (1) include, in particular—
- (a) consultation of copyright owners, internet service providers, subscribers or any other person;
 - (b) an assessment of the likely efficacy of a technical measure in relation to a particular type of internet access service; and
 - (c) steps to prepare a proposed technical obligations code.
- (6) Internet service providers and copyright owners must give OFCOM any assistance that OFCOM reasonably require for the purposes of complying with any direction under this section.
- (7) The Secretary of State must lay before Parliament any direction under this section.
- (8) OFCOM must publish every report under this section—
- (a) as soon as practicable after they send it to the Secretary of State, and
 - (b) in such manner as they consider appropriate for bringing it to the attention of persons who, in their opinion, are likely to have an interest in it.
- (9) OFCOM may exclude information from a report when it is published under subsection (8) if they consider that it is information that they could refuse to disclose in response to a request under the Freedom of Information Act 2000.

] ¹

Notes

¹ Added by Digital Economy Act 2010 c. 24 s.9 (June 8, 2010)

Extent

Pt 2 c. 1 s. 124G(1)-(9): United Kingdom (amendment may be extended to any of the Channel Islands or the Isle of Man under the relevant extending power as specified in s.46(3))

✓ Law In Force

[124H Obligations to limit internet access

(1) The Secretary of State may by order impose a technical obligation on internet service providers if—

- (a) OFCOM have assessed whether one or more technical obligations should be imposed on internet service providers; and
- (b) taking into account that assessment, reports prepared by OFCOM under section 124F, and any other matter that appears to the Secretary of State to be relevant, the Secretary of State considers it appropriate to make the order.

(2) No order may be made under this section within the period of 12 months beginning with the first day on which there is an initial obligations code in force.

(3) An order under this section must specify the date from which the technical obligation is to have effect, or provide for it to be specified.

(4) The order may also specify—

- (a) the criteria for taking the technical measure concerned against a subscriber;
- (b) the steps to be taken as part of the measure and when they are to be taken.

(5) No order is to be made under this section unless—

- (a) the Secretary of State has complied with subsections (6) to (10), and
- (b) a draft of the order has been laid before Parliament and approved by a resolution of each House.

(6) If the Secretary of State proposes to make an order under this section, the Secretary of State must lay before Parliament a document that—

- (a) explains the proposal, and
- (b) sets it out in the form of a draft order.

(7) During the period of 60 days beginning with the day on which the document was laid under subsection (6) (“the 60-day period”), the Secretary of State may not lay before Parliament a draft order to give effect to the proposal (with or without modifications).

(8) In preparing a draft order under this section to give effect to the proposal, the Secretary of State must have regard to any of the following that are made with regard to the draft order during the 60-day period—

- (a) any representations, and
- (b) any recommendations of a committee of either House of Parliament charged with reporting on the draft order.

(9) When laying before Parliament a draft order to give effect to the proposal (with or without modifications), the Secretary of State must also lay a document that explains any changes made to the proposal contained in the document laid before Parliament under subsection (6).

(10) In calculating the 60-day period, no account is to be taken of any time during which Parliament is dissolved or prorogued or during which either House is adjourned for more than 4 days.


] ¹

Notes

¹ Added by Digital Economy Act 2010 c. 24 s.10 (June 8, 2010)

Extent

Pt 2 c. 1 s. 124H(1)-(10): United Kingdom (amendment may be extended to any of the Channel Islands or the Isle of Man under the relevant extending power as specified in s.46(3))

 Law In Force

[124I Code by OFCOM about obligations to limit internet access

(1) For any period during which there are one or more technical obligations in force under section 124H, OFCOM must by order make a technical obligations code for the purpose of regulating those obligations.

(2) The code may be made separately from, or in combination with, any initial obligations code under section 124D.

(3) A code under this section may—

- (a) do any of the things mentioned in section 124C(3) to (5) or section 124D(5)(a) to (g); and
- (b) make other provision for the purpose of regulating the technical obligations.

(4) OFCOM must not make a code under this section unless they are satisfied that it meets the criteria set out in section 124J.

(5) OFCOM must—

- (a) keep a code under this section under review; and
- (b) by order make any amendment of it that is necessary to ensure that while it is in force it continues to meet the criteria set out in section 124J.

(6) The consent of the Secretary of State is required for the making or amendment by OFCOM of a code under this section.

(7) Section 403 applies to the power of OFCOM to make an order under this section.

(8) A statutory instrument containing an order made by OFCOM under this section is subject to annulment in pursuance of a resolution of either House of Parliament.

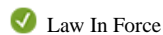
] ¹

Notes

¹ Added by Digital Economy Act 2010 c. 24 s.11 (June 8, 2010)

Extent

Pt 2 c. 1 s. 124I(1)-(8): United Kingdom (amendment may be extended to any of the Channel Islands or the Isle of Man under the relevant extending power as specified in s.46(3))



Law In Force

[124J Contents of code about obligations to limit internet access

- (1) The criteria referred to in section 124I(4) are—
- (a) that the requirements concerning enforcement and related matters are met in relation to the code (see subsections (2) and (3));
 - (b) that the requirements concerning subscriber appeals are met in relation to the code (see section 124K);
 - (c) that it makes any provision about contributions towards meeting costs that is required to be included by an order under section 124M;
 - (d) that it makes any other provision that the Secretary of State requires it to make;
 - (e) that the provisions of the code are objectively justifiable in relation to the matters to which it relates;
 - (f) that those provisions are not such as to discriminate unduly against particular persons or against a particular description of persons;
 - (g) that those provisions are proportionate to what they are intended to achieve; and
 - (h) that, in relation to what those provisions are intended to achieve, they are transparent.
- (2) The requirements concerning enforcement and related matters are—
- (a) that OFCOM have, under the code, the functions of administering and enforcing it, including the function of resolving owner-provider disputes;
 - (b) that there are adequate arrangements under the code for OFCOM to obtain any information or assistance from internet service providers or copyright owners that OFCOM reasonably require for the purposes of administering and enforcing the code; and
 - (c) that there are adequate arrangements under the code for the costs incurred by OFCOM in administering and enforcing the code to be met by internet service providers and copyright owners.
- (3) The provision made concerning enforcement and related matters may also (unless the Secretary of State requires otherwise) include, in particular—
- (a) provision for the payment, to a person specified in the code, of a penalty not exceeding the maximum penalty for the time being specified in section 124L(2);
 - (b) provision requiring a copyright owner to indemnify an internet service provider for any loss or damage resulting from the owner's infringement or error in relation to the code or the copyright infringement provisions.
- (4) In this section “owner-provider dispute” means a dispute that—
- (a) is between persons who are copyright owners or internet service providers; and
 - (b) relates to an act or omission in relation to a technical obligation or a technical obligations code.

] ¹

Notes

¹ Added by Digital Economy Act 2010 c. 24 s.12 (June 8, 2010)

Extent

Pt 2 c. 1 s. 124J(1)-(4)(b): United Kingdom (amendment may be extended to any of the Channel Islands or the Isle of Man under the relevant extending power as specified in s.46(3))

✓ Law In Force

[124K Subscriber appeals

- (1) The requirements concerning subscriber appeals are—
 - (a) for the purposes of section 124E(1)(h), the requirements of subsections (2) to (8); and
 - (b) for the purposes of section 124J(1)(b), the requirements of subsections (2) to (11).
- (2) The requirements of this subsection are—
 - (a) that the code confers on subscribers the right to bring a subscriber appeal and, in the case of a technical obligations code, a further right of appeal to the First-tier Tribunal;
 - (b) that there is a person who, under the code, has the function of determining subscriber appeals;
 - (c) that that person is for practical purposes independent (so far as determining subscriber appeals is concerned) of internet service providers, copyright owners and OFCOM; and
 - (d) that there are adequate arrangements under the code for the costs incurred by that person in determining subscriber appeals to be met by internet service providers, copyright owners and the subscriber concerned.
- (3) The code must provide for the grounds of appeal (so far as an appeal relates to, or to anything done by reference to, a copyright infringement report) to include the following—
 - (a) that the apparent infringement to which the report relates was not an infringement of copyright;
 - (b) that the report does not relate to the subscriber's IP address at the time of the apparent infringement.
- (4) The code must provide for the grounds of appeal to include contravention by the copyright owner or internet service provider of the code or of an obligation regulated by the code.
- (5) The code must provide that an appeal on any grounds must be determined in favour of the subscriber unless the copyright owner or internet service provider shows that, as respects any copyright infringement report to which the appeal relates or by reference to which anything to which the appeal relates was done (or, if there is more than one such report, as respects each of them)—
 - (a) the apparent infringement was an infringement of copyright, and
 - (b) the report relates to the subscriber's IP address at the time of that infringement.
- (6) The code must provide that, where a ground mentioned in subsection (3) is relied on, the appeal must be determined in favour of the subscriber if the subscriber shows that—
 - (a) the act constituting the apparent infringement to which the report relates was not done by the subscriber, and
 - (b) the subscriber took reasonable steps to prevent other persons infringing copyright by means of the internet access service.
- (7) The powers of the person determining subscriber appeals must include power—

- (a) to secure so far as practicable that a subscriber is not prejudiced for the purposes of the copyright infringement provisions by an act or omission in respect of which an appeal is determined in favour of the subscriber;
 - (b) to make an award of compensation to be paid by a copyright owner or internet service provider to a subscriber affected by such an act or omission; and
 - (c) where the appeal is determined in favour of the subscriber, to direct the copyright owner or internet service provider to reimburse the reasonable costs of the subscriber.
- (8) The code must provide that the power to direct the reimbursement of costs under subsection (7)(c) is to be exercised to award reasonable costs to a subscriber whose appeal is successful, unless the person deciding the appeal is satisfied that it would be unjust to give such a direction having regard to all the circumstances including the conduct of the parties before and during the proceedings.
- (9) In the case of a technical obligations code, the powers of the person determining subscriber appeals must include power—
- (a) on an appeal in relation to a technical measure or proposed technical measure—
 - (i) to confirm the measure;
 - (ii) to require the measure not to be taken or to be withdrawn;
 - (iii) to substitute any other technical measure that the internet service provider has power to take;
 - (b) to exercise the power mentioned in paragraph (a)(ii) or (iii) where an appeal is not upheld but the person determining it is satisfied that there are exceptional circumstances that justify the exercise of the power;
 - (c) to take any steps that OFCOM could take in relation to the act or omission giving rise to the technical measure; and
 - (d) to remit the decision whether to confirm the technical measure, or any matter relating to that decision, to OFCOM.
- (10) In the case of a technical obligations code, the code must make provision—
- (a) enabling a determination of a subscriber appeal to be appealed to the First-tier Tribunal, including on grounds that it was based on an error of fact, wrong in law or unreasonable;
 - (b) giving the First-tier Tribunal, in relation to an appeal to it, the powers mentioned in subsections (7) and (9); and
 - (c) in relation to recovery of costs awarded by the Tribunal.
- (11) In the case of a technical obligations code, the code must include provision to secure that a technical measure is not taken against a subscriber until—
- (a) the period for bringing a subscriber appeal, or any further appeal to the First-tier Tribunal, in relation to the proposed measure has ended (or the subscriber has waived the right to appeal); and
 - (b) any such subscriber appeal or further appeal has been determined, abandoned or otherwise disposed of.

] ¹

Notes

¹ Added by Digital Economy Act 2010 c. 24 s.13 (June 8, 2010)

Extent

Pt 2 c. 1 s. 124K(1)-(11)(b): United Kingdom (amendment may be extended to any of the Channel Islands or the Isle of Man under the relevant extending power as specified in s.46(3))

✓ Law In Force

[124L Enforcement of obligations

(1) Sections 94 to 96 apply in relation to a contravention of an initial obligation or a technical obligation, or a contravention of an obligation under section 124G(6), as they apply in relation to a contravention of a condition set out under section 45.

(2) The amount of the penalty imposed under section 96 as applied by this section is to be such amount not exceeding £250,000 as OFCOM determine to be—

- (a) appropriate; and
- (b) proportionate to the contravention in respect of which it is imposed.

(3) In making that determination OFCOM must have regard to—

- (a) any representations made to them by the internet service provider or copyright owner on whom the penalty is imposed;
- (b) any steps taken by the provider or owner towards complying with the obligations contraventions of which have been notified to the provider or owner under section 94 (as applied); and
- (c) any steps taken by the provider or owner for remedying the consequences of those contraventions.

(4) 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 (2).

(5) No order is to be made containing provision authorised by subsection (4) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

] ¹

Notes

¹ Added by Digital Economy Act 2010 c. 24 s.14 (June 8, 2010)

Extent

Pt 2 c. 1 s. 124L(1)-(5): United Kingdom

✓ Law In Force

[124M Sharing of costs

(1) The Secretary of State may by order specify provision that must be included in an initial obligations code or a technical obligations code about payment of contributions towards costs incurred under the copyright infringement provisions.

- (2) Any provision specified under subsection (1) must relate to payment of contributions by one or more of the following only—
- (a) copyright owners;
 - (b) internet service providers;
 - (c) in relation to a subscriber appeal or a further appeal by a subscriber to the First-tier Tribunal, the subscriber.
- (3) Provision specified under subsection (1) may relate to, in particular—
- (a) payment by a copyright owner of a contribution towards the costs that an internet service provider incurs;
 - (b) payment by a copyright owner or internet service provider of a contribution towards the costs that OFCOM incur.
- (4) Provision specified under subsection (1) may include, in particular—
- (a) provision about costs incurred before the provision is included in an initial obligations code or a technical obligations code;
 - (b) provision for payment in advance of expected costs (and for reimbursement of overpayments where the costs incurred are less than expected);
 - (c) provision about how costs, expected costs or contributions must be calculated;
 - (d) other provision about when and how contributions must be paid.
- (5) No order is to be made under this section unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

]¹

Notes

¹ Added by Digital Economy Act 2010 c. 24 s.15 (April 8, 2010)

Extent

Pt 2 c. 1 s. 124M(1)-(5): United Kingdom (amendment may be extended to any of the Channel Islands or the Isle of Man under the relevant extending power as specified in s.46(3))

 Law In Force

[124N Interpretation

In sections 124A to 124M and this section—

- “apparent infringement”, in relation to a copyright infringement report, means the infringement of copyright that the report states appears to have taken place;
- “copyright infringement list” has the meaning given in section 124B(2);
- “copyright infringement provisions” means sections 124A to 124M and this section;
- “copyright infringement report” has the meaning given in section 124A(3);
- “copyright owner” means—
 - (a) a copyright owner within the meaning of Part 1 of the Copyright, Designs and Patents Act 1988 (see section 173 of that Act); or
 - (b) someone authorised by that person to act on the person's behalf;
- “copyright work” has the same meaning as in Part 1 of the Copyright, Designs and Patents Act 1988 (see section 1(2) of that Act);

“initial obligations” has the meaning given in section 124C(1);

“initial obligations code” has the meaning given in section 124A(2);

“internet access service” means an electronic communications service that—

- (a) is provided to a subscriber;
- (b) consists entirely or mainly of the provision of access to the internet; and
- (c) includes the allocation of an IP address or IP addresses to the subscriber to enable that access;

“internet service provider” means a person who provides an internet access service;

“IP address” means an internet protocol address;

“subscriber”, in relation to an internet access service, means a person who—

- (a) receives the service under an agreement between the person and the provider of the service; and
- (b) does not receive it as a communications provider;

“subscriber appeal” means—

- (a) in relation to an initial obligations code, an appeal by a subscriber on grounds specified in the code in relation to—

- (i) the making of a copyright infringement report;
- (ii) notification under section 124A(4);
- (iii) the inclusion or proposed inclusion of an entry in a copyright infringement list; or
- (iv) any other act or omission in relation to an initial obligation or an initial obligations code;

- (b) in relation to a technical obligations code, an appeal by a subscriber on grounds specified in the code in relation to—

- (i) the proposed taking of a technical measure; or
- (ii) any other act or omission in relation to a technical obligation or a technical obligations code;

“technical measure” has the meaning given in section 124G(3);

“technical obligation” has the meaning given in section 124G(2);

“technical obligations code” means a code in force under section 124I.

] ¹

Notes

¹ Added by Digital Economy Act 2010 c. 24 s.16(1) (April 8, 2010)

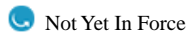
Extent

Pt 2 c. 1 s. 124N definition of "apparent infringement"- definition of "technical obligations code": United Kingdom (amendment may be extended to any of the Channel Islands or the Isle of Man under the relevant extending power as specified in s.46(3))

[Powers in relation to internet domain registries] ¹

Notes

¹ Added by Digital Economy Act 2010 c. 24 s.19 (date to be appointed)

**[124O Notification of failure in relation to internet domain registry**

- (1) This section applies where the Secretary of State—
- (a) is satisfied that a serious relevant failure in relation to a qualifying internet domain registry is taking place or has taken place, and
 - (b) wishes to exercise the powers under section 124P or 124R.
- (2) The Secretary of State must notify the internet domain registry, specifying the failure and a period during which the registry has the opportunity to make representations to the Secretary of State.
- (3) There is a relevant failure in relation to a qualifying internet domain registry if—
- (a) the registry, or any of its registrars or end-users, engages in prescribed practices that are unfair or involve the misuse of internet domain names, or
 - (b) the arrangements made by the registry for dealing with complaints in connection with internet domain names do not comply with prescribed requirements.
- (4) A relevant failure is serious, for the purposes of this section, if it has adversely affected or is likely adversely to affect—
- (a) the reputation or availability of electronic communications networks or electronic communications services provided in the United Kingdom or a part of the United Kingdom, or
 - (b) the interests of consumers or members of the public in the United Kingdom or a part of the United Kingdom.
- (5) In subsection (3) “prescribed” means prescribed by regulations made by the Secretary of State.
- (6) Before making regulations under subsection (3) the Secretary of State must consult such persons as the Secretary of State considers appropriate.
- (7) In this section and sections 124P to 124R—
- “end-user”, in relation to a qualifying internet domain registry, means a person who has been or wants to be allocated an internet domain name that is or would be included in the register maintained by the registry;
 - “qualifying internet domain registry” means a relevant body that—
 - (a) maintains a relevant register of internet domain names, and
 - (b) operates a computer program or server that forms part of the system that enables the names included in the register to be used to access internet protocol addresses or other information by means of the internet;
 - “registrar”, in relation to a qualifying internet domain registry, means a person authorised by the registry to act on behalf of end-users in connection with the registration of internet domain names;
 - “relevant body” means a company formed and registered under the Companies Act 2006 or a limited liability partnership;
 - “relevant register of internet domain names” means a register of—
 - (a) the names of second level internet domains that form part of the same UK-related top level internet domain, or

(b) the names of third level internet domains that form part of the same UK-related second level internet domain;

“second level internet domain” means an internet domain indicated by the last two elements of an internet domain name;

“third level internet domain” means an internet domain indicated by the last three elements of an internet domain name;

“top level internet domain” means an internet domain indicated by the last element of an internet domain name.

(8) An internet domain is “UK-related” if, in the opinion of the Secretary of State, the last element of its name is likely to cause users of the internet, or a class of such users, to believe that the domain and its sub-domains are connected with the United Kingdom or a part of the United Kingdom.


] ¹

Notes

¹ Added by Digital Economy Act 2010 c. 24 s.19 (date to be appointed)

Extent

Pt 2 c. 1 s. 124O(1)-(8): United Kingdom (amendment may be extended to any of the Channel Islands or the Isle of Man under the relevant extending power as specified in s.46(3))

 Not Yet In Force

[124P Appointment of manager of internet domain registry

(1) This section applies where—

- (a) the Secretary of State has given a notification under section 124O to a qualifying internet domain registry specifying a failure,
- (b) the period allowed for making representations has expired, and
- (c) the Secretary of State is satisfied that the registry has not taken the steps that the Secretary of State considers appropriate for remedying the failure.

(2) The Secretary of State may by order appoint a manager in respect of the property and affairs of the internet domain registry for the purpose of securing that the registry takes the steps described in subsection (1)(c).

(3) The person appointed may be anyone whom the Secretary of State thinks appropriate.

(4) The appointment of the manager does not affect—

- (a) a right of a person to appoint a receiver of the registry's property, or
- (b) the rights of a receiver appointed by a person other than the Secretary of State.

(5) The Secretary of State must—

- (a) keep the order under review, and
- (b) if appropriate, discharge all or part of the order.

(6) The Secretary of State must discharge the order on the appointment of a person to act as administrative receiver, administrator, provisional liquidator or liquidator of the registry.

(7) The Secretary of State must discharge the order before the end of the period of 2 years beginning with the day on which it was made (but this does not prevent the Secretary of State from making a further order in the same or similar terms).

(8) When discharging an order under this section, the Secretary of State may make savings and transitional provision.

(9) The Secretary of State must send a copy of an order made under this section to the registry as soon as practicable after it is made.

(10) In subsection (4), “receiver” includes a manager (other than a manager appointed by the registry) and a person who is appointed as both receiver and manager.

(11) In subsection (6)—

“administrative receiver” means an administrative receiver within the meaning of section 251 of the Insolvency Act 1986 or Article 5(1) of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19));

“administrator” means a person appointed to manage the affairs, business and property of the registry under Schedule B1 to that Act or Schedule B1 to that Order.

] ¹

Notes

¹ Added by Digital Economy Act 2010 c. 24 s.20(1) (date to be appointed)

Extent

Pt 2 c. 1 s. 124P(1)-(11) definition of "administrator": United Kingdom (amendment may be extended to any of the Channel Islands or the Isle of Man under the relevant extending power as specified in s.46(3))



Not Yet In Force With Amendments Pending

[124Q Functions of manager etc

(1) An order under section 124P may make provision about the functions to be exercised by, and the powers of, the manager.

(2) The order may, in particular—

(a) provide for the manager to have such of the functions of the registry's directors as are specified in the order (including functions exercisable only by a particular director or class of directors), and

(b) provide for one or more of the registry's directors to be prevented from exercising any of those functions.

(3) The order may make provision about the remuneration of the manager, including in particular—

(a) provision for the amount of the remuneration to be determined by the Secretary of State, and

(b) provision for the remuneration to be payable from the property of the registry.

(4) In carrying out the functions conferred by the order, the manager acts as the registry's agent.

(5) The Secretary of State may apply to the court for directions in relation to any matter arising in connection with the functions or powers of the manager (and the costs of the application are to be paid by the registry).

(6) On an application under subsection (5) the court may give such directions or make such orders as it thinks fit.

(7) In this section “the court” means—

- (a) in England and Wales, the High Court or a county court,
- (b) in Scotland, the Court of Session or the sheriff, and
- (c) in Northern Ireland, the High Court.

(8) Where the registry is a limited liability partnership, this section applies as if references to a director of the registry were references to a member of the limited liability partnership.

] ¹

Notes

¹ Added by Digital Economy Act 2010 c. 24 s.20(1) (date to be appointed)

Amendments Pending

Pt 2 c. 1 s. 124Q(7)(a): words substituted by Crime and Courts Act 2013 c. 22, Sch. 9(3) para. 52(1)(b) (date to be appointed: substitution came into force on April 22, 2014 as SI 2014/954 subject to savings and transitional provisions specified in 2013 c.22 s.15 and Sch.8 and transitional provision specified in SI 2014/954 arts 2(c) and 3 but cannot take effect until the commencement of 2010 c.24 s.20(1))

Extent

Pt 2 c. 1 s. 124Q(1)-(8): United Kingdom (amendment may be extended to any of the Channel Islands or the Isle of Man under the relevant extending power as specified in s.46(3))



Not Yet In Force

[124R Application to court to alter constitution of internet domain registry

(1) This section applies where—

- (a) the Secretary of State has given a notification under section 124O to a qualifying internet domain registry specifying a failure,
- (b) the period allowed for making representations has expired, and
- (c) the Secretary of State is satisfied that the registry has not taken the steps that the Secretary of State considers appropriate for remedying the failure.

(2) The Secretary of State may apply to the court (as defined in section 124Q) for an order under this section.

(3) The court may make an order—

- (a) making alterations of the registry's constitution, and
- (b) requiring the registry not to make any alterations, or any specified alterations, of its constitution without the leave of the court.

(4) An order under this section may contain only such provision as the court considers appropriate for securing that the registry remedies the failure specified in the notification under section 124O.

(5) In this section—

“constitution” means, in the case of a company, the articles of association and, in the case of a limited liability partnership, the limited liability partnership agreement;

“limited liability partnership agreement” means the agreement or agreements, whether express or implied, between the members of a limited liability partnership, and between the partnership and the members of the partnership, determining—

- (a) the mutual rights and duties of the members, and
- (b) their rights and duties in relation to the partnership.

] ¹

Notes

- ¹ Added by Digital Economy Act 2010 c. 24 s.21 (date to be appointed)

Extent

Pt 2 c. 1 s. 124R(1)-(5) definition of "limited liability partnership agreement" (b): United Kingdom (amendment may be extended to any of the Channel Islands or the Isle of Man under the relevant extending power as specified in s.46(3))

*[Billing limits for mobile phones]*¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Pt 6 s.102 (October 1, 2018)
-

 Law In Force

[124S Mobile phone providers' duty to enable billing limits to be applied

(1) The provider of a mobile phone service must not enter into a contract to provide the service unless the customer has been given an opportunity to specify a billing limit in the contract.

(2) In relation to a contract to provide a mobile phone service—

- (a) a billing limit is a limit on the amount the customer may be charged for provision of the service in respect of each billing period, and
- (b) a billing period is one of successive periods specified in the contract and together making up the period for which the contract remains in force.

(3) A contract to provide a mobile phone service must provide for the customer on reasonable notice at any time—

- (a) to specify a billing limit if none is specified for the time being,
- (b) to amend or remove a limit in respect of all billing periods or a specified billing period.

(4) In any billing period the provider must—

- (a) so far as practicable, notify the customer in reasonable time if a limit is likely to be reached before the end of the period, and
- (b) notify the customer as soon as practicable if a limit is reached before the end of the period.

- (5) A limit may be exceeded in relation to a billing period only if the customer agrees after a notification under subsection (4)(a) or (b).
- (6) If the provider continues to provide the service after a limit is reached, the customer's use of the service does not constitute agreement to the limit being exceeded.
- (7) The provider must give the customer confirmation in writing of—
- (a) the decision made by the customer in accordance with subsection (1),
 - (b) any decision of the customer under provision made in accordance with subsection (3), and
 - (c) any agreement by the customer in accordance with subsection (5).
- (8) This section applies to agreeing to extend a contract as it applies to entering into a contract, and in that case the reference in subsection (2)(b) to the period for which the contract remains in force is a reference to the period of the extension.
- (9) Nothing in this section affects a provider's duty to comply with requirements to enable calls to emergency services.
- (10) In this section—
- “customer” does not include a person who is a customer as a communications provider;
 - “mobile phone service” means an electronic communications service which is provided in the course of a business wholly or mainly so as to be available to members of the public for the purpose of communicating with others, or accessing data, by mobile phone.


]¹

Notes

¹ Added by Digital Economy Act 2017 c. 30 Pt 6 s.102 (October 1, 2018)

Extent

Pt 2 c. 1 s. 124S(1)-(10) definition of "mobile phone service": United Kingdom

 Law In Force

[124T Enforcement of duty to enable billing limits to be applied

- (1) Sections 96A to 96C apply in relation to a contravention of a requirement under section 124S as they apply in relation to a contravention of a condition set under section 45, with the following modifications.
- (2) Section 96A(2)(f) and (g) (OFCOM directions) do not apply.
- (3) Section 96A(5) to (7) (action under the Competition Act 1998) do not apply.
- (4) The amount of a penalty imposed under sections 96A to 96C, as applied by this section, other than a penalty falling within section 96B(4), is to be such amount not exceeding £2 million as OFCOM determine to be—
- (a) appropriate; and
 - (b) proportionate to the contravention in respect of which it is imposed.

]¹

Notes

¹ Added by Digital Economy Act 2017 c. 30 Pt 6 s.102 (October 1, 2018)


Extent

Pt 2 c. 1 s. 124T(1)-(4)(b): United Kingdom

[Rights of end-users in relation to contract termination]¹

Notes

¹ Added by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.54 (December 21, 2020)

 Law In Force

[124U.— Rights of end-users in relation to contract termination

(1) Where an end-user has (whether under an enactment or at common law) the right to terminate a contract for a public electronic communications service before the end of the agreed contract period—

- (a) no compensation is to be due by the end-user, except compensation for any retained terminal equipment;
- (b) if the end-user chooses to retain terminal equipment to which the contract relates—
 - (i) the compensation payable for the equipment is not to exceed the amount determined under subsection (2); and
 - (ii) on payment of the compensation, the provider must lift any conditions restricting the use of the terminal equipment on an electronic communications network of another communications provider.

(2) The maximum amount of compensation is whichever is the lesser of the following—

- (a) the remaining part of any fee for the service until the end of the agreed contract period; or
- (b) a proportion of the value of the terminal equipment, as agreed at the time of the conclusion of the contract, corresponding to the proportion of the agreed contract period that remains unexpired.

(3) Where the public electronic communications service is a transmission service involving an automated transfer of data and information between devices or software-based applications with limited or no human interaction, subsection (1) does not apply unless the end-user is a qualifying end-user, as defined by section 51(9).

(4) Where the contract referred to in subsection (1) is, or is included in, a bundled contract, subsection (1) applies to all the elements of the bundled contract, unless the end-user—

- (a) falls within paragraph (b) or (c) of the definition of "qualifying end-user" in section 51(9); and
- (b) has waived the rights conferred by this subsection.

] ¹

Notes

- ¹ Added by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.54 (December 21, 2020)

Extent

Pt 2 c. 1 s. 124U(1)-(4)(b): United Kingdom

✓ Law In Force

[124V.— Further rights relating to bundled contracts

(1) Subsection (2) applies where—

- (a) an individual, acting for purposes other than those of a business, has entered into a bundled contract;
- (b) the individual has (whether under an enactment or at common law) the right to terminate any element of the bundled contract before the end of the agreed contract period because of a lack of conformity with the contract or a failure to supply.

(2) The individual has the right to terminate all elements of the bundled contract.

] ¹

Notes

- ¹ Added by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.54 (December 21, 2020)

Extent

Pt 2 c. 1 s. 124V(1)-(2): United Kingdom

✓ Law In Force

[124W.— Enforcement of obligations of providers under sections 124U and 124V

(1) Sections 96A to 96C apply in relation to a contravention by the provider of a public electronic communications service of the requirements imposed on the provider by sections 124U and 124V as they apply in relation to a contravention of a condition set under section 45, other than an SMP apparatus condition, but with the following modifications.

(2) Section 96A(2)(f) and (g) (OfCOM directions) do not apply.

(3) Section 96A(5) to (7) (action under the Competition Act 1998) do not apply.

(4) The amount of a penalty imposed under sections 96A to 96C, as applied by this section, other than a penalty falling within section 96B(4), is to be such amount not exceeding £2 million as OfCOM determine to be—

- (a) appropriate; and
- (b) proportionate to the contravention in respect of which it is imposed.

] ¹

Notes

- ¹ Added by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.54 (December 21, 2020)

Extent

Pt 2 c. 1 s. 124W(1)-(4)(b): United Kingdom

Offences relating to networks and services

✓ Law In Force

125 Dishonestly obtaining electronic communications services

(1) A person who—

- (a) dishonestly obtains an electronic communications service, and
- (b) does so with intent to avoid payment of a charge applicable to the provision of that service,

is guilty of an offence.

(2) It is not an offence under this section to obtain a service mentioned in section 297(1) of the Copyright, Designs and Patents Act 1988 (c. 48) (dishonestly obtaining a broadcasting [...] ¹ service provided from a place in the UK).

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

- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine, or to both.

Notes

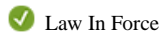
- ¹ Words repealed subject to the savings specified in SI 2003/2498 reg.32 by Copyright and Related Rights Regulations 2003/2498 Sch.2 para.1 (October 31, 2003: repeal has effect subject to the savings specified in SI 2003/2498 reg.32)

Commencement

Pt 2 c. 1 s. 125(1)-(3)(b): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 125-(3)(b): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)



Law In Force

126 Possession or supply of apparatus etc. for contravening s. 125

- (1) A person is guilty of an offence if, with an intention falling within subsection (3), he has in his possession or under his control anything that may be used—
- (a) for obtaining an electronic communications service; or
 - (b) in connection with obtaining such a service.
- (2) A person is guilty of an offence if—
- (a) he supplies or offers to supply anything which may be used as mentioned in subsection (1); and
 - (b) he knows or believes that the intentions in relation to that thing of the person to whom it is supplied or offered fall within subsection (3).
- (3) A person's intentions fall within this subsection if he intends—
- (a) to use the thing to obtain an electronic communications service dishonestly;
 - (b) to use the thing for a purpose connected with the dishonest obtaining of such a service;
 - (c) dishonestly to allow the thing to be used to obtain such a service; or
 - (d) to allow the thing to be used for a purpose connected with the dishonest obtaining of such a service.
- (4) An intention does not fall within subsection (3) if it relates exclusively to the obtaining of a service mentioned in section 297(1) of the Copyright, Designs and Patents Act 1988 (c. 48).
- (5) A person guilty of an offence under this section shall be liable—
- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both; and
 - (b) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine, or to both.
- (6) In this section, references, in the case of a thing used for recording data, to the use of that thing include references to the use of data recorded by it.

Commencement

Pt 2 c. 1 s. 126(1)-(6): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 126-(6): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)



Law In Force

127 Improper use of public electronic communications network

- (1) A person is guilty of an offence if he—
- (a) sends by means of a public electronic communications network a message or other matter that is grossly offensive or of an indecent, obscene or menacing character; or
 - (b) causes any such message or matter to be so sent.
- (2) A person is guilty of an offence if, for the purpose of causing annoyance, inconvenience or needless anxiety to another, he—
- (a) sends by means of a public electronic communications network, a message that he knows to be false,
 - (b) causes such a message to be sent; or
 - (c) persistently makes use of a public electronic communications network.
- (3) A person guilty of an offence under this section shall be liable, on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale, or to both.
- (4) Subsections (1) and (2) do not apply to anything done in the course of providing a programme service (within the meaning of the Broadcasting Act 1990 (c. 42)).
- [(5) An information or complaint relating to an offence under this section may be tried by a magistrates' court in England and Wales or Northern Ireland if it is laid or made—
- (a) before the end of the period of 3 years beginning with the day on which the offence was committed, and
 - (b) before the end of the period of 6 months beginning with the day on which evidence comes to the knowledge of the prosecutor which the prosecutor considers sufficient to justify proceedings.
- (6) Summary proceedings for an offence under this section may be commenced in Scotland—
- (a) before the end of the period of 3 years beginning with the day on which the offence was committed, and
 - (b) before the end of the period of 6 months beginning with the day on which evidence comes to the knowledge of the prosecutor which the prosecutor considers sufficient to justify proceedings,
- and section 136(3) of the Criminal Procedure (Scotland) Act 1995 (date when proceedings deemed to be commenced) applies for the purposes of this subsection as it applies for the purposes of that section.
- (7) A certificate of a prosecutor as to the date on which evidence described in subsection (5)(b) or (6)(b) came to his or her knowledge is conclusive evidence of that fact.]¹

Notes

¹ Added by Criminal Justice and Courts Act 2015 c. 2 Pt 3 s.51(1) (April 13, 2015: insertion has effect as SI 2015/778 subject to saving specified in 2015 c.2 s.51(2))

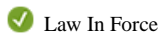
Commencement

Pt 2 c. 1 s. 127(1)-(4): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 127-(4): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

Pt 2 c. 1 s. 127(5)-(7): United Kingdom

Persistent misuse of network or service

Law In Force

128 Notification of misuse of networks and services

- (1) Where OFCOM determine that there are reasonable grounds for believing that a person has persistently misused an electronic communications network or electronic communications services, 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 use that OFCOM consider constitutes persistent misuse; and
 - (c) specifies the period during which the person notified has an opportunity of making representations about the matters notified.
- (3) That period must not be less than the following—
 - (a) in an urgent case, seven days; and
 - (b) in any other case, one month.
- (4) A case is an urgent case for the purposes of subsection (3) if OFCOM consider—
 - (a) that the misuse in question is continuing; and
 - (b) that the harm it causes makes it necessary for it to be stopped as soon as possible.
- (5) For the purposes of this Chapter a person misuses an electronic communications network or electronic communications service if—
 - (a) the effect or likely effect of his use of the network or service is to cause another person unnecessarily to suffer annoyance, inconvenience or anxiety; or
 - (b) he uses the network or service to engage in conduct the effect or likely effect of which is to cause another person unnecessarily to suffer annoyance, inconvenience or anxiety.
- (6) For the purposes of this Chapter the cases in which a person is to be treated as persistently misusing a network or service include any case in which his misuse is repeated on a sufficient number of occasions for it to be clear that the misuse represents—
 - (a) a pattern of behaviour or practice; or
 - (b) recklessness as to whether persons suffer annoyance, inconvenience or anxiety.
- (7) For the purpose of determining whether misuse on a number of different occasions constitutes persistent misuse for the purposes of this Chapter, each of the following is immaterial—
 - (a) that the misuse was in relation to a network on some occasions and in relation to a service on others;

- (b) that different networks or services were involved on different occasions; and
- (c) that the persons who were or were likely to suffer annoyance inconvenience or anxiety were different on different occasions.

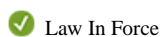
(8) If he considers that appropriate alternative means of dealing with it exists, the Secretary of State may by order provide that a use of a description specified in the order is not to be treated for the purposes of this Chapter as a misuse of an electronic communications network or electronic communications service.

Commencement

Pt 2 c. 1 s. 128(1)-(8): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 128-(8): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)



Law In Force

129 Enforcement notifications for stopping persistent misuse

(1) This section applies where—

- (a) a person (“the notified misuser”) has been given a notification under section 128;
- (b) OFCOM have allowed the notified misuser an opportunity of making representations about the matters notified; and
- (c) the period allowed for the making of the representations has expired.

(2) OFCOM may give the notified misuser an enforcement notification if they are satisfied—

- (a) that he has, in one or more of the notified respects, persistently misused an electronic communications network or electronic communications service; and
- (b) that he has not, since the giving of the notification, taken all such steps as OFCOM consider appropriate for—
 - (i) securing that his misuse is brought to an end and is not repeated; and
 - (ii) remedying the consequences of the notified misuse.

(3) An enforcement notification is a notification which imposes a requirement on the notified misuser to take all such steps for—

- (a) securing that his misuse is brought to an end and is not repeated, and
- (b) remedying the consequences of the notified misuse,

as may be specified in the notification.

(4) A decision of OFCOM to give an enforcement notification to a person must fix a reasonable period for the taking of the steps required by the notification.

(5) It shall be the duty of a person to whom an enforcement notification has been given to comply with it.

- (6) That duty shall be 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 (c. 36); or
 - (c) for any other appropriate remedy or relief.
- (7) References in this section to remedying the consequences of misuse include references to paying an amount to a person—
- (a) by way of compensation for loss or damage suffered by that person; or
 - (b) in respect of annoyance, inconvenience or anxiety to which he has been put.

Commencement

Pt 2 c. 1 s. 129(1)-(7)(b): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 129-(7)(b): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

✓ Law In Force

130 Penalties for persistent misuse

- (1) This section applies (in addition to section 129) where—
- (a) a person (“the notified misuser”) has been given a notification under section 128;
 - (b) OFCOM have allowed the notified misuser an opportunity of making representations about the matters notified; and
 - (c) the period allowed for the making of the representations has expired.
- (2) OFCOM may impose a penalty on the notified misuser if he has, in one or more of the notified respects, persistently misused an electronic communications network or electronic communications service.
- (3) OFCOM may also impose a penalty on the notified misuser if he has contravened a requirement of an enforcement notification given in respect of the notified misuse.
- (4) The amount of a penalty imposed is to be such amount not exceeding [£2,000,000]¹ as OFCOM determine to be—
- (a) appropriate; and
 - (b) proportionate to the misuse in respect of which it is imposed.
- (5) In making that determination OFCOM must have regard to—
- (a) any representations made to them by the notified misuser;
 - (b) any steps taken by him for securing that his misuse is brought to an end and is not repeated; and
 - (c) any steps taken by him for remedying the consequences of the notified misuse.

- (6) Where OFCOM impose a penalty on a person under this section, they shall—
- (a) notify the person penalised; and
 - (b) in that notification, fix a reasonable period after it is given as the period within which the penalty is to be paid.
- (7) A penalty imposed under this section—
- (a) must be paid to OFCOM; and
 - (b) if not paid within the period fixed by them, is to be recoverable by them accordingly.
- (8) It is to be possible for a person to be both liable for an offence under sections 125 to 127 and to have a penalty imposed on him under this section in respect of the same conduct.
- (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 (4).
- (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.

Notes

- ¹ Figure substituted by Communications Act 2003 (Maximum Penalty for Persistent Misuse of Network or Service) Order 2010/2291 art.2(1) (September 26, 2010: substitution has effect subject to transitional provision specified in SI 2010/2291 art.2(2))

Commencement

Pt 2 c. 1 s. 130(1)-(10): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 130(1)-(10): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

 Law In Force

131 Statement of policy on persistent misuse

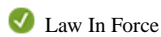
- (1) It shall be the duty of OFCOM to prepare and publish a statement of their general policy with respect to the exercise of their powers under sections 128 to 130.
- (2) OFCOM may from time to time revise that statement as they think fit.
- (3) Where OFCOM make or revise their statement of policy 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 128 to 130, to have regard to the statement for the time being in force under this section.

Commencement

Pt 2 c. 1 s. 131(1)-(4): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 131-(4): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

Powers to deal with emergencies

Law In Force

132 Powers to require suspension or restriction of a provider's entitlement

(1) If the Secretary of State has reasonable grounds for believing that it is necessary to do so—

- (a) to protect the public from any threat to public safety or public health, or
- (b) in the interests of national security,

he may, by a direction to OFCOM, require them to give a direction under subsection (3) to a person (“the relevant provider”) who provides an electronic communications network or electronic communications service or who makes associated facilities available.

(2) OFCOM must comply with a requirement of the Secretary of State under subsection (1) by giving to the relevant provider such direction under subsection (3) as they consider necessary for the purpose of complying with the Secretary of State's direction.

(3) A direction under this section is—

- (a) a direction that the entitlement of the relevant 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.

(4) A direction under subsection (3)—

- (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.

(5) A direction under subsection (3)—

- (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 relevant provider as appear to OFCOM to be appropriate for the purpose of protecting that provider's customers.
- (6) Those conditions may include a condition requiring the making of payments—
 - (a) by way of compensation for loss or damage suffered by the relevant 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.
- (7) Where OFCOM give a direction under subsection (3), they shall, as soon as practicable after doing so, provide that person with an opportunity of—
 - (a) making representations about the effect of the direction; and
 - (b) proposing steps for remedying the situation.
- (8) If OFCOM consider it appropriate to do so (whether in consequence of any representations or proposals made to them under subsection (3) or otherwise), they may, without revoking it, at any time modify the terms of a direction under subsection (3) in such manner as they consider appropriate.
- (9) If the Secretary of State considers it appropriate to do so, he may, by a direction to OFCOM, require them to revoke a direction under subsection (3).
- (10) Where OFCOM modify or revoke a direction they have given under subsection (3), they may do so—
 - (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.
- (11) It shall be the duty of OFCOM to comply with—
 - (a) a requirement under subsection (9) to revoke a direction; and
 - (b) a requirement contained in that direction as to how they should exercise their powers under subsection (10) in the case of the required revocation.

Commencement

Pt 2 c. 1 s. 132(1)-(11)(b): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 132-(11)(b): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)



Law In Force

133 Enforcement of directions under s. 132

- (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 132; or
 - (b) in contravention of a restriction contained in such a direction.
- (2) A person guilty of an offence under subsection (1) shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to a fine.
- (3) The duty of a person to comply with a condition of a direction under section 132 shall be a duty owed to every person who may be affected by a contravention of the condition.
- (4) Where a duty is owed by virtue of subsection (3) to a person—
- (a) a breach of the duty that causes that person to sustain loss or damage, and
 - (b) an act which—
 - (i) by inducing a breach of the duty or interfering with its performance, causes that person to sustain loss or damage, and
 - (ii) is done wholly or partly for achieving that result,
- shall be actionable at the suit or instance of that person.
- (5) In proceedings brought against a person by virtue of subsection (4)(a) it shall be a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid contravening the condition in question.
- (6) [Sections 96A to 99]¹ apply in relation to a contravention of conditions imposed by a direction under section 132 as they apply in relation to a contravention of conditions set under section 45 [, other than SMP apparatus conditions]².

Notes

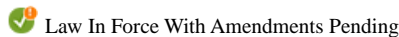
- ¹ Word substituted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.78 (May 26, 2011: substitution has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 17)
- ² Words inserted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.78 (May 26, 2011: insertion has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 17)

Commencement

Pt 2 c. 1 s. 133(1)-(6): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 133-(6): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

Restrictions in leases and licences

Law In Force With Amendments Pending

134 Restrictions in leases and licences

(1) This section applies where provision contained in a lease, licence or other agreement relating to premises has the effect of imposing on the occupier a prohibition or restriction under which his choice of—

- (a) the person from whom he obtains electronic communications services, or particular electronic communications services, or
- (b) the person through whom he arranges to be provided with electronic communications services, or particular electronic communications services,

is confined to a person with an interest in the premises, to a person selected by a person with such an interest or to persons who are one or the other.

(2) This section also applies where—

- (a) provision contained in a lease for a year or more has the effect of imposing any other prohibition or restriction on the lessee with respect to an electronic communications matter; or
- (b) provision contained in an agreement relating to premises to which a lease for a year or more applies has the effect of imposing a prohibition or restriction on the lessee with respect to such a matter.

(3) A provision falling within subsection (1) shall have effect—

- (a) as if the prohibition or restriction applied only where the lessor, licensor or other party to the agreement has not given his consent to a departure from the requirements imposed by the prohibition or restriction; and
- (b) as if the lessor, licensor or other party were required not to withhold that consent unreasonably.

(4) A provision falling within subsection (2)(a) or (b) shall have effect—

- (a) in relation to things done inside a building occupied by the lessee under the lease, or
- (b) for purposes connected with the provision to the lessee of an electronic communications service,

as if the prohibition or restriction applied only where the lessor has not given his consent in relation to the matter in question and as if the lessor were required not to withhold that consent unreasonably.

(5) Where (whether by virtue of this section or otherwise) a provision falling within subsection (1) or (2) imposes a requirement on a lessor, licensor or party to an agreement not unreasonably to withhold his consent—

- (a) in relation to an electronic communications matter, or
- (b) to the obtaining by the occupier of premises of an electronic communications service from or through a particular person,

the question whether the consent is unreasonably withheld has to be determined having regard to all the circumstances and to the principle that no person should unreasonably be denied access to an electronic communications network or to electronic communications services.

(6) OFCOM may by order provide for this section not to apply in the case of such provisions as may be described in the order.

- (7) References in this section to electronic communications matters are references to—
- (a) the provision of an electronic communications network or electronic communications service;
 - (b) the connection of electronic communications apparatus to a relevant electronic communications network or of any such network to another; and
 - (c) the installation, maintenance, adjustment, repair, alteration or use for purposes connected with the provision of such a network or service of electronic communications apparatus.
- (8) In this section—
- “alteration” has the same meaning as in the electronic communications code;
 - “lease” includes—
 - (a) a leasehold tenancy (whether in the nature of a head lease, sub-lease or under lease) and an agreement to grant such a tenancy, and
 - (b) in Scotland, a sub-lease and an agreement to grant a sub-lease,
 - and “lessor” and “lessee” are to be construed accordingly;
 - “relevant electronic communications network” means—
 - (a) a public electronic communications network that is specified for the purposes of this section in an order made by the Secretary of State; or
 - (b) an electronic communications network that is, or is to be, connected (directly or indirectly) to such a network.
- (9) This section applies to provisions contained in leases, licences or agreements granted or entered into before the commencement of this section to the extent only that provision to that effect is contained in an order made by OFCOM.
- (10) This section is not to be construed as affecting the operation of paragraph 2(3) of the electronic communications code (lessees etc. bound by rights granted under code by owners).
- (11) The consent of the Secretary of State is required for the making by OFCOM of an order under this section.
- (12) Section 403 applies to the powers of OFCOM to make orders under this section.
- (13) A statutory instrument containing an order made by OFCOM under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Amendments Pending

Pt 2 c. 1 s. 134(8) definition of "lease": definition substituted by Telecommunications Infrastructure (Leasehold Property) Act 2021 c. 7 Sch. 1 para. 2 (Not yet in force: 2021 c.7 Sch.1 para.2 came into force on March 15, 2021 as specified in 2021 c.7 s.3(3)(b) for the limited purpose of enabling the exercise, on or after that day, of any power to make regulations under 2003 c.21 Sch.3A Pt 4A; not yet in force otherwise)

Commencement

Pt 2 c. 1 s. 134(1)-(13): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent


Pt 2 c. 1 s. 134-(13): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6

with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

[Reports on infrastructure etc]¹

Notes

¹ Added by Digital Economy Act 2010 c. 24 s.1(1) (June 8, 2010)

 Law In Force

[134A OFCOM reports on infrastructure etc

- (1) OFCOM must prepare reports in accordance with subsections (2) and (3) and each report must deal with—
- (a) the electronic communications networks matters listed in section 134B(1), and
 - (b) the electronic communications services matters listed in section 134B(2).
- (2) The first report must—
- (a) relate to the position on a day specified in the report which falls within the period of 12 months beginning with the day on which this section comes into force, and
 - (b) be sent to the Secretary of State by OFCOM not more than 2 months after the specified day.
- (3) A further report must—
- (a) be prepared for each relevant period, and
 - (b) be sent to the Secretary of State by OFCOM as soon as practicable after the end of the relevant period.
- (4) “Relevant period” means—
- (a) the period of 3 years beginning with the day specified in the first report, and
 - [(b) each subsequent period beginning with the end of the previous period and ending at such time not more than 3 years after the end of the previous period as OFCOM may determine.]²
- (5) Where there is a significant change in connection with a matter listed in section 134B(1) or (2) and OFCOM consider that the change should be brought to the attention of the Secretary of State, OFCOM must—
- (a) prepare a report on the change, and
 - (b) send it to the Secretary of State as soon as practicable.
- (6) For the purposes of subsection (5), a change is significant if OFCOM consider that it has, or is likely to have, a significant adverse impact on—
- (a) persons carrying on business in the United Kingdom or a part of the United Kingdom,
 - or
 - (b) the general public in the United Kingdom or a part of the United Kingdom.
- (7) OFCOM must publish every report under this section—
- (a) as soon as practicable after they send it to the Secretary of State, and

(b) in such manner as they consider appropriate for bringing it to the attention of persons who, in their opinion, are likely to have an interest in it.

(8) OFCOM may exclude information from a report when it is published under subsection (7) if they consider that it is information that they could refuse to disclose in response to a request under the Freedom of Information Act 2000.

] ¹


Notes

¹ Added by Digital Economy Act 2010 c. 24 s.1(1) (June 8, 2010)

² Substituted by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.55 (December 21, 2020)

Extent

Pt 2 c. 1 s. 134A(1)-(8): United Kingdom (amendment may be extended to any of the Channel Islands or the Isle of Man under the relevant extending power as specified in s.46(3))

 Law In Force

[134AA Additional OFCOM reports on infrastructure etc

(1) OFCOM may prepare reports dealing with—

- (a) any of the electronic communications network matters listed in section 134B(1);
- (b) any of the electronic communications services matters listed in section 134B(2).

(2) OFCOM may publish a report under this section in such manner as they consider appropriate for bringing it to the attention of persons who, in their opinion, are likely to have an interest in it.

(3) Before publishing a report under this section OFCOM must consider—

- (a) whether any of the information to be contained in it is information that they could refuse to disclose in response to a request under the Freedom of Information Act 2000, and
- (b) if so, whether that information should be excluded from the report.

(4) This section does not affect OFCOM's duty to prepare reports under section 134A.

] ¹

Notes

¹ Added by Digital Economy Act 2017 c. 30 Pt 6 s.82(2) (June 27, 2017)

Extent

Pt 2 c. 1 s. 134AA(1)-(4): United Kingdom

 Law In Force

[134AB Publication of information required for purpose of preparing reports

(1) OFCOM may publish—

- (a) any relevant section 135 information, and

- (b) any information derived from relevant section 135 information.
- (2) Before publishing information under this section OFCOM must consider—
- (a) whether any of the information that they propose to publish is information that they could refuse to disclose in response to a request under the Freedom of Information Act 2000, and
 - (b) if so, whether that information should be published.
- (3) In this section "relevant section 135 information" means information required by OFCOM under section 135 for the purpose of preparing a report under section 134A or 134AA.


] ¹

Notes

¹ Added by Digital Economy Act 2017 c. 30 Pt 6 s.82(2) (June 27, 2017)

Extent

Pt 2 c. 1 s. 134AB(1)-(3): United Kingdom

 Law In Force

[134AC.— Use of reports

- (1) The Secretary of State must have regard to reports received from OFCOM under section 134A, or published by OFCOM under section 134AA, when exercising functions for any of the relevant purposes.
- (2) The relevant purposes are—
- (a) the allocation of public funds for the bringing into operation of electronic communications networks;
 - (b) the design of national broadband plans;
 - (c) verifying the availability of services to which universal service conditions apply.
- (3) Any other public authority must have regard to reports published by OFCOM under section 134AA when exercising functions for either of the purposes specified in subsection (2)(a) and (b).
-] ¹

Notes

¹ Added by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.56 (December 21, 2020)

Extent

Pt 2 c. 1 s. 134AC(1)-(3): United Kingdom



[134B Networks and services matters

(1) For the purposes of [sections 134A and 134AA]², the electronic communications networks matters are—

- (a) the different types of electronic communications network provided in the United Kingdom (“UK networks”),
- (b) the geographic coverage of the different UK networks,
- (c) the proportion of the population covered by the different UK networks,
- (d) the extent to which UK networks share infrastructure,
- (e) the capacity of the different UK networks,
- (f) the extent to which the providers of the different UK networks allow other communications providers to use their networks to provide services,
- [(fa) the quality of service available on different UK networks, by reference to such parameters as OFCOM consider appropriate,]³
- (g) the amount of time for which the different UK networks are and are not available, including the steps that have been or are to be taken to maintain or improve the level of availability,
- (h) the preparations made by providers of UK networks for responding to an emergency, including preparations for restoring normal operation of UK networks disrupted by the emergency, [...] ⁴
- (i) the standard of the different UK networks in comparison with electronic communications networks provided in a range of other countries, having regard, in particular, to their coverage and capacity [, and] ⁵
- [(j) any proposals that providers of UK networks may at any time have to do any of the following within the next 3 years—
 - (i) to bring into operation a new very high capacity network, other than a mobile network, or
 - (ii) to extend or upgrade any part of a fixed line network or its equivalent, such as a fixed wireless access network, so as to provide a download speed of at least 100 megabits per second.

] ⁶

(2) For the purposes of [sections 134A and 134AA]², the electronic communications services matters are—

- (a) the use of the electromagnetic spectrum for wireless telegraphy in the United Kingdom,
- (b) the different types of electronic communications service provided in the United Kingdom (“UK services”),
- (c) the geographic coverage of the different UK services,
- (d) the proportion of the population covered by the different UK services,
- (e) the amount of time for which the different UK services are and are not available, including the steps that have been or are to be taken to maintain or improve the level of availability,
- (f) the preparations made by providers of UK services for responding to an emergency, including preparations for restoring normal operation of UK services disrupted by the emergency, and
- (g) the standard of the different UK services in comparison with electronic communications services provided in a range of other countries.

- (3) The preparations referred to in subsections (1)(h) and (2)(f) include—
- (a) the steps taken to assess the risks of different types of emergency occurring,
 - (b) the steps taken to reduce or remove those risks, and
 - (c) the testing of proposed responses to different types of emergency.
- (4) In a report under section 134A [or 134AA]⁷, OFCOM are required to include only information about, and analysis of, such networks, services and providers as they consider appropriate.
- (5) In this section “emergency” means an event or situation that seriously disrupts a UK network or UK service.
-] ¹

Notes

- ¹ Added by Digital Economy Act 2010 c. 24 s.1(1) (June 8, 2010)
- ² Words substituted by Digital Economy Act 2017 c. 30 Pt 6 s.82(3)(a) (June 27, 2017)
- ³ Added by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.57(a) (December 21, 2020)
- ⁴ Word repealed by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.57(b) (December 21, 2020)
- ⁵ Word inserted by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.57(c) (December 21, 2020)
- ⁶ Added by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.57(d) (December 21, 2020)
- ⁷ Words inserted by Digital Economy Act 2017 c. 30 Pt 6 s.82(3)(b) (June 27, 2017)

Proposed Draft Amendments

Pt 2 c. 1 s. 134B(1)(ha): added by Telecommunications (Security) Bill 2019-21 (HC Bill 246) s. 11(3)(a) (Commons' Committee Stage, January 26, 2021) (date to be appointed)

Pt 2 c. 1 s. 134B(2)(fa): added by Telecommunications (Security) Bill 2019-21 (HC Bill 246) s. 11(3)(b) (Commons' Committee Stage, January 26, 2021) (date to be appointed)

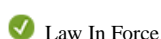
Extent

Pt 2 c. 1 s. 134B(1)-(5): United Kingdom (amendment may be extended to any of the Channel Islands or the Isle of Man under the relevant extending power as specified in s.46(3))

[Reports on internet domain names]¹

Notes

- ¹ Added by Digital Economy Act 2010 c. 24 s.1(1) (June 8, 2010)
-



Law In Force

[134C OFCOM reports on internet domain names

(1) OFCOM must, if requested to do so by the Secretary of State—

- (a) prepare a report on matters specified by the Secretary of State relating to internet domain names, and
 - (b) send the report to the Secretary of State as soon as practicable.
- (2) The specified matters may, in particular, include matters relating to—
 - (a) the allocation and registration of internet domain names, and
 - (b) the misuse of internet domain names.
- (3) OFCOM must publish every report under this section—
 - (a) as soon as practicable after they send it to the Secretary of State, and
 - (b) in such manner as they consider appropriate for bringing it to the attention of persons who, in their opinion, are likely to have an interest in it.
- (4) OFCOM may exclude information from a report when it is published under subsection (3) if they consider that it is information that they could refuse to disclose in response to a request under the Freedom of Information Act 2000.

] ¹

Notes

- ¹ Added by Digital Economy Act 2010 c. 24 s.1(1) (June 8, 2010)

Extent

Pt 2 c. 1 s. 134C(1)-(4): United Kingdom (amendment may be extended to any of the Channel Islands or the Isle of Man under the relevant extending power as specified in s.46(3))

[Comparative overviews]¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Pt 6 s.83(2) (June 27, 2017)
-



Law In Force

[134D Comparative overviews of quality and prices

- (1) OFCOM may, in the interest of the end-users of public electronic communications services, carry out comparative overviews of the quality and prices of such services.
- (2) OFCOM may publish a comparative overview carried out under this section in such manner as they consider appropriate for bringing it to the attention of persons who, in their opinion, are likely to have an interest in it.

] ¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Pt 6 s.83(2) (June 27, 2017)

Extent

Pt 2 c. 1 s. 134D(1)-(2): United Kingdom

Information provisions

 Law In Force With Amendments Pending

135 Information required for purposes of [certain OFCOM]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—

- (a) section 14(1),
- (b) section 26, so far as relating to matters in relation to which they have functions under this Chapter, or
- (c) this Chapter.

] ²

(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
- [(g) a person who provides or has provided a number-independent interpersonal communications service and appears to OFCOM to have information relevant to their functions under section 14(1).] ³

(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, 70 or 72A] ⁴;
- [(fa) ascertaining whether a commitment which is made binding by a commitments decision continues to be effective for the purpose for which it was made binding under section 93A(8);] ⁵

- (g) identifying markets and carrying out market analyses in accordance with, or for the purposes of, any provision of this Chapter;
- (h) [...]⁶
- (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;]⁷
- [(ic) preparing a report under section 134A;
- [(ica) preparing a report under section 134AA;]⁹
- (id) preparing a report under section 134C;]⁸
- [(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;]¹⁰
- (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.

] ¹¹

[(3B) In subsection (2)(g), "number-independent interpersonal communications service" means an interpersonal communications service, as defined by section 32A(2), other than—

- (a) a number-based interpersonal communications service; or
- (b) a service where the interpersonal and interactive communication is merely a minor ancillary feature that is intrinsically linked to another service.

] ¹²

(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.

Notes

¹ Words substituted by Digital Economy Act 2017 c. 30 Pt 6 s.85(3) (June 27, 2017)

² Substituted by Digital Economy Act 2017 c. 30 Pt 6 s.85(2) (June 27, 2017)

³ Added by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.58(2) (December 21, 2020)

⁴ Words substituted by Digital Economy Act 2017 c. 30 Pt 1 s.1(8) (June 27, 2017)

⁵ Added by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.58(3) (December 21, 2020)

⁶ Repealed by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.79(a)(i) (May 26, 2011: repeal has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 para.2)

⁷ Added by Digital Economy Act 2010 c. 24 s.16(2) (June 8, 2010)

- ⁸ Added by Digital Economy Act 2010 c. 24 s.1(2) (June 8, 2010)
- ⁹ Added by Digital Economy Act 2017 c. 30 Pt 6 s.82(4) (June 27, 2017)
- ¹⁰ Added by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.79(a)(ii) (May 26, 2011: insertion has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 para.2)
- ¹¹ Added by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.79(b) (May 26, 2011: insertion has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 para.2)
- ¹² Added by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.58(4) (December 21, 2020)

Proposed Draft Amendments

Pt 2 c. 1 s. 135(3)(iza): added by Telecommunications (Security) Bill 2019-21 (HC Bill 246) s. 6(3) (Commons' Committee Stage, January 26, 2021) (date to be appointed)

Pt 2 c. 1 s. 135(3)(izb): added by Telecommunications (Security) Bill 2019-21 (HC Bill 246) s. 11(4) (Commons' Committee Stage, January 26, 2021) (date to be appointed)

Pt 2 c. 1 s. 135(3)(izc): added by Telecommunications (Security) Bill 2019-21 (HC Bill 246) s. 12(3)(a)(i) (Commons' Committee Stage, January 26, 2021) (date to be appointed)

Pt 2 c. 1 s. 135(3)(izd): added by Telecommunications (Security) Bill 2019-21 (HC Bill 246) s. 18(3) (Commons' Committee Stage, January 26, 2021) (date to be appointed)

Pt 2 c. 1 s. 135(3)(ie): repealed by Telecommunications (Security) Bill 2019-21 (HC Bill 246) s. 12(3)(a)(ii) (Commons' Committee Stage, January 26, 2021) (date to be appointed)

Pt 2 c. 1 s. 135(3)(if): repealed by Telecommunications (Security) Bill 2019-21 (HC Bill 246) s. 12(3)(a)(ii) (Commons' Committee Stage, January 26, 2021) (date to be appointed)

Pt 2 c. 1 s. 135(3A)(za): added by Telecommunications (Security) Bill 2019-21 (HC Bill 246) s. 12(3)(b) (Commons' Committee Stage, January 26, 2021) (date to be appointed)

Pt 2 c. 1 s. 135(3C): added by Telecommunications (Security) Bill 2019-21 (HC Bill 246) s. 12(3)(c) (Commons' Committee Stage, January 26, 2021) (date to be appointed)

Pt 2 c. 1 s. 135(4): words substituted by Telecommunications (Security) Bill 2019-21 (HC Bill 246) s. 12(3)(d) (Commons' Committee Stage, January 26, 2021) (date to be appointed)

Pt 2 c. 1 s. 135(3D): added by Telecommunications (Security) Bill 2019-21 (HC Bill 246) s. 12(3)(c) (Commons' Committee Stage, January 26, 2021) (date to be appointed)

Pt 2 c. 1 s. 135(5): added by Telecommunications (Security) Bill 2019-21 (HC Bill 246) s. 12(3)(c) (Commons' Committee Stage, January 26, 2021) (date to be appointed)

Commencement

Pt 2 c. 1 s. 135(1)-(3)(j): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

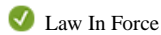
Pt 2 c. 1 s. 135-(1), (2)-(3)(i), (3)(j), (3B)-(3B)(b): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent

specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

Pt 2 c. 1 s. 135(1)(a)-(1)(c): (extent not available)

Pt 2 c. 1 s. 135(3)(ia): United Kingdom (amendment may be extended to any of the Channel Islands or the Isle of Man under the relevant extending power as specified in s.46(3))

Pt 2 c. 1 s. 135(3)(ie)-(3)(ig), (3A)-(3A)(b): United Kingdom



Law In Force

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 [of carrying out comparative overviews under section 134D]¹.

(2) [...] ²

(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.

Notes

¹ Words substituted by Digital Economy Act 2017 c. 30 Pt 6 s.83(3)(a) (June 27, 2017)

² Repealed by Digital Economy Act 2017 c. 30 Pt 6 s.83(3)(b) (June 27, 2017)

Commencement

Pt 2 c. 1 s. 136(1)-(5): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 136-(5): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)



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; [...]¹

(d) the condition in question is one falling within section 51(1)(d) [; or]²

[(e) the condition in question is one relating to the effective and efficient use of telephone numbers.]²

[(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

(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.

Notes

- ¹ Word repealed by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.80(a)(i) (May 26, 2011: repeal has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 para.2)
- ² Added by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.80(a)(ii) (May 26, 2011: insertion has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 para.2)
- ³ Added by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.80(b) (May 26, 2011: insertion has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 para.2)

Proposed Draft Amendments

Pt 2 c. 1 s. 137(1): words substituted by Telecommunications (Security) Bill 2019-21 (HC Bill 246) s. 12(4)(a) (Commons' Committee Stage, January 26, 2021) (date to be appointed)

Pt 2 c. 1 s. 137(2A): repealed by Telecommunications (Security) Bill 2019-21 (HC Bill 246) s. 12(4)(b) (Commons' Committee Stage, January 26, 2021) (date to be appointed)

Pt 2 c. 1 s. 137(7): added by Telecommunications (Security) Bill 2019-21 (HC Bill 246) s. 12(4)(c) (Commons' Committee Stage, January 26, 2021) (date to be appointed)

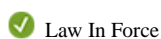
Commencement

Pt 2 c. 1 s. 137(1)-(6)(b): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 137-(2)(d), (3)-(6)(b): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

Pt 2 c. 1 s. 137(2)(e)-(2A)(c): United Kingdom



Law In Force

[137A Information required from communications providers

- (1) OFCOM may require a communications provider—
- (a) to publish any information held by the provider, or
 - (b) to provide any such information to OFCOM for publication by OFCOM.
- (2) The information that OFCOM may require the communications provider to publish or provide under subsection (1) includes information that OFCOM require the provider to produce, generate or obtain for that purpose.
- (3) For that purpose OFCOM may, in particular, require the communications provider—
- (a) to collect or retain any information that the provider would not otherwise collect or retain,
 - (b) to process, collate or analyse any information held by the provider, or
 - (c) to answer any questions.
- (4) The power conferred by this section may be exercised only—

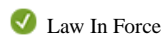
- (a) in connection with OFCOM's functions—
 - (i) under Part 1, so far as relating to electronic communications, or
 - (ii) under this Chapter, and
 - (b) in such a way as is proportionate to the use to which the information is to be put in connection with those functions.
- (5) The power conferred by this section is to be exercised by a demand, contained in a notice served on the communications provider, that—
- (a) describes the information required to be published or provided, and
 - (b) sets out OFCOM's reasons for requiring it to be published or provided.
- (6) Before serving the notice on the communications provider, OFCOM must—
- (a) serve a draft of the notice on the provider and inform the provider of the period for making representations, and
 - (b) consider any representations made by the provider within that period which—
 - (i) identify restrictions on the disclosure or publication of information that would or might prevent the provider from complying with the notice, or
 - (ii) otherwise relate to the practicability of complying with it.
- (7) The communications provider must publish or provide the information required by the notice in such manner and form, in accordance with such other requirements, and within such reasonable period, as may be specified by OFCOM.
- (8) Where OFCOM publish anything provided to them pursuant to subsection (1)(b) they must do so in such manner and form as they consider appropriate.
-] ¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Pt 6 s.86(2) (June 27, 2017)

Extent

Pt 2 c. 1 s. 137A(1)-(8): United Kingdom



Law In Force

[137B Section 137A: confidential matters

- (1) In exercising functions under section 137A, OFCOM must have regard to the need to exclude from publication, so far as that is practicable, the matters which are confidential in accordance with subsections (2) and (3).
- (2) A matter is confidential under this subsection if—
- (a) it relates specifically to the affairs of a particular body, and
 - (b) publication of that matter would or might, in OFCOM's opinion, seriously and prejudicially affect the interests of that body.
- (3) A matter is confidential under this subsection if—
- (a) it relates to the private affairs of an individual, and
 - (b) publication of that matter would or might, in OFCOM's opinion, seriously and prejudicially affect the interests of that individual.


] ¹

Notes

¹ Added by Digital Economy Act 2017 c. 30 Pt 6 s.86(2) (June 27, 2017)

Extent

Pt 2 c. 1 s. 137B(1)-(3)(b): United Kingdom

 Law In Force

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, 136 or 137A] ¹, 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; [...] ²
- [(c) specifies the period during which the person notified has an opportunity to make representations;
- [(d) specifies what the person must do in order to comply with the requirement;] ³
- (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.] ²

(3)-(7) [...] ⁴

(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 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.

[(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.] ⁵

(10) [...] ⁴**Notes**

- ¹ Words substituted by Digital Economy Act 2017 c. 30 Pt 6 s.86(3)(a) (June 27, 2017)
- ² S.138(2)(c)-(f) substituted for s.138(2)(c) by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.81(a) (May 26, 2011: substitution has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 18)
- ³ Substituted by Digital Economy Act 2017 c. 30 Pt 6 s.86(3)(b) (June 27, 2017)
- ⁴ Repealed by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.81(b) (May 26, 2011: repeal has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 18)
- ⁵ Added by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.81(c) (May 26, 2011: insertion has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 18)

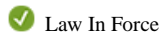
Commencement

Pt 2 c. 1 s. 138(1)-(10)(b): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 138-(2)(c), (8)-(9)(c), (6)-(10)(b): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

Pt 2 c. 1 s. 138(2)(d)-(2)(f), (9A): United Kingdom



Law In Force

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.] ¹

(2) OFCOM may [specify a penalty] ² if—

(a)-(b) [...] ³

(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] ⁴ in respect of each contravention.

(4) Where such a notification relates to a continuing contravention, no more than one penalty may be [specified] ⁴ 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

(5) The amount of [any other penalty notified] ⁶ under this section is to be such amount not exceeding [£2,000,000] ⁷ as OFCOM determine to be both—

(a) appropriate; and

(b) proportionate to the contravention in respect of which it is imposed.

(6)-(8) [...] 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.

Notes

¹ Substituted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.82(a) (May 26, 2011: substitution has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 18)

² Words substituted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.82(b) (May 26, 2011: substitution has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 18)

³ Repealed by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.82(c) (May 26, 2011: repeal has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 18)

⁴ Word substituted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.82(d) (May 26, 2011: substitution has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 18)

⁵ Added by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.82(e) (May 26, 2011: insertion has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 18)

⁶ Words substituted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.82(f) (May 26, 2011: substitution has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 18)

⁷ Figure substituted by Communications Act 2003 (Maximum Penalty for Contravention of Information Requirements) Order 2011/1773 art.2(1) (July 13, 2011: substitution has effect subject to transitional provision specified in SI 2011/1773 art.2(2))

⁸ Repealed by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.82(g) (May 26, 2011: repeal has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 18)

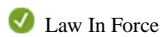
Commencement

Pt 2 c. 1 s. 139(1)-(10): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 139-(4), (5)-(10): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

Pt 2 c. 1 s. 139(4A)-(4B)(b): United Kingdom



Law In Force

[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.

] ¹

Notes

- ¹ Added by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.83 (May 26, 2011: insertion has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 18)

Extent

Pt 2 c. 1 s. 139A(1)-(7)(b): United Kingdom

✓ Law In Force

[139B.— Power to deal with urgent cases

(1) This section applies where OFCOM determine—

- (a) that they are entitled to give a notification under section 138 with respect to a contravention by a person (“P”) of a requirement imposed under section 135 or 136;
- (b) that there are reasonable grounds for suspecting that the case is an urgent case; and
- (c) that the urgency of the case makes it appropriate for OFCOM to take action under this section.

(2) A case is an urgent case for the purposes of this section if the contravention has resulted in, or creates 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 (other than P) 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.

(3) OFCOM may give P a direction—

- (a) that the entitlement of P 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) that that entitlement is restricted in the respects set out in the direction.

(4) Subsections (3) to (6) of section 140 apply in relation to a direction under subsection (3) as they apply in relation to a direction under section 140.

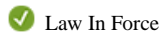
] ¹

Notes

- ¹ Added by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.83 (May 26, 2011: insertion has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 18)

Extent

Pt 2 c. 1 s. 139B(1)-(4): United Kingdom



Law In Force

[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.
-] ¹**

Notes

- ¹ Added by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.83 (May 26, 2011: insertion has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 18)

Extent

Pt 2 c. 1 s. 139C(1)-(6): United Kingdom



Law In Force

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] ¹ contravention of requirements imposed under [sections 135, 136 and 137A, or any] ² 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,]³ that an attempt, by the imposition of penalties [or the giving of notifications under section 138 and confirmation decisions under section 139A, or both,]⁴ 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.]⁵
- (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, 136 and 137A, or any]² 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;]⁶

and for the purposes of this subsection it shall be immaterial whether the [confirmation decisions]⁷ related to the same contravention or to different contraventions of the same or different requirements or of requirements under different sections.

Notes


- ¹ Words substituted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.84(a)(i) (May 26, 2011: substitution has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 18)
- ² Words substituted by Digital Economy Act 2017 c. 30 Pt 6 s.86(4) (June 27, 2017)
- ³ Words inserted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.84(a)(ii) (May 26, 2011: insertion has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 18)
- ⁴ Words substituted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.84(a)(ii) (May 26, 2011: substitution has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 18)
- ⁵ Substituted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.84(a)(iii) (May 26, 2011: substitution has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 18)
- ⁶ Substituted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.84(b)(i) (May 26, 2011: substitution has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 18)
- ⁷ Word substituted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.84(b)(ii) (May 26, 2011: substitution has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 18)

Commencement

Pt 2 c. 1 s. 140(1)-(7)(b): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 140-(7)(b): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

 Law In Force

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.

Commencement

Pt 2 c. 1 s. 141(1)-(7)(b): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 141-(7)(b): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6

with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

✓ Law In Force

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)]¹ 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.

]²

(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).

]³

(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 subsection (5), to allow time, before giving a direction under section 140 or 141, for the making and consideration 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.

Notes

- ¹ Words inserted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.85(a) (May 26, 2011: insertion has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 18)
- ² S.142(2A) substituted for s.142(2) by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.85(b) (May 26, 2011: substitution has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 18)
- ³ Added by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.85(c) (May 26, 2011: insertion has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 18)

Commencement

Pt 2 c. 1 s. 142(1)-(6) definition of "contravening supplier": July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 142-(1)(c), (2)-(3)(b), (4)-(6) definition of "contravening supplier": United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

Pt 2 c. 1 s. 142(2A)-(2A)(b), (3A)-(3B)(b): United Kingdom



Law In Force

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.]¹

Notes

- ¹ S.143(4)-(5) substituted for s.143(4) by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.86 (May 26, 2011: substitution has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 18)

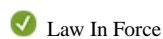
Commencement

Pt 2 c. 1 s. 143(1)-(4): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 143-(4): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

Pt 2 c. 1 s. 143(5): United Kingdom



Law In Force

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 [, or who contravenes a requirement imposed under section 137A]¹ 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 [comply with the requirement]² after the end of that period.
- (3) A person is guilty of an offence if—

- (a) in pursuance of any requirement under [section 135, 136 or 137A]³, he provides [or publishes]⁴ any information that is false in any material particular; and
 - (b) at the time he provides [or publishes]⁴ 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) 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 requirement have been complied with; and]⁵
 - (c) OFCOM have not imposed a financial penalty under section 139 in respect of that contravention.
- [(6) Nothing in this section applies in relation to a contravention of a requirement imposed on a person by virtue of section 135(2)(g).]⁶

Notes

- ¹ Words inserted by Digital Economy Act 2017 c. 30 Pt 6 s.86(5)(a) (June 27, 2017)
- ² Words substituted by Digital Economy Act 2017 c. 30 Pt 6 s.86(5)(b) (June 27, 2017)
- ³ Words substituted by Digital Economy Act 2017 c. 30 Pt 6 s.86(5)(c)(i) (June 27, 2017)
- ⁴ Words inserted by Digital Economy Act 2017 c. 30 Pt 6 s.86(5)(c)(ii) (June 27, 2017)
- ⁵ Substituted by Digital Economy Act 2017 c. 30 Pt 6 s.86(5)(d) (June 27, 2017)
- ⁶ Added by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.59 (December 21, 2020)

Commencement

Pt 2 c. 1 s. 144(1)-(5)(c): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 144-(6): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)



Law In Force

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, 136 and 137A]¹; and
- (b) the uses to which they are proposing to put information obtained under [sections 135 and 136]².

(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.

Notes

¹ Words substituted by Digital Economy Act 2017 c. 30 Pt 6 s.86(6)(a) (June 27, 2017)

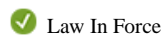
² Words substituted by Digital Economy Act 2017 c. 30 Pt 6 s.86(6)(b) (June 27, 2017)

Commencement

Pt 2 c. 1 s. 145(1)-(4): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 145-(4): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)



Law In Force

146 Provision of information by OFCOM

(1) OFCOM must comply with a request made by a person for the purposes of this section—

- (a) to notify the person whether or not a notification is required to be submitted by him under section 33;
- (b) to notify the person whether a notification submitted by him for the purposes of that section satisfies the requirements of this Chapter;
- (c) to provide the person with such information about his rights as may be necessary for the purpose of facilitating the negotiation by him of his right to network access; or
- (d) to provide the person with such information as they consider necessary to enable the applicant to apply for a direction under section 106 to be made in his case.

(2) A request for the purposes of this section must be made in such manner as OFCOM may require.

(3) OFCOM are not required to comply with a request under this section if (without having been asked to do so) they have already given that person the notification or information for which he is asking.


(4) Any notification or information which under subsection (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 for the notification or information was made to OFCOM.

Commencement

Pt 2 c. 1 s. 146(1)-(4): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 146-(4): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

 Law In Force

[146A.— Rights of third parties to use information without charge

(1) Any person has a right to use, free of charge, information published by a communications provider if the use is for the purpose specified in subsection (2).

(2) That purpose is to sell or make available an interactive guide or other technique for evaluating the cost of alternative usage patterns in relation to electronic communications services.

] ¹

Notes

¹ Added by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.88 (May 26, 2011: insertion has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 para.2)

Extent

Pt 2 c. 1 s. 146A(1)-(2): United Kingdom

Abolition of telecommunications licensing etc.

 Law In Force

147 Repeal of provisions of Telecommunications Act 1984

The following provisions of the Telecommunications Act 1984 (c. 12) shall cease to have effect—

- (a) sections 5 to 8 (licensing provisions);
- (b) sections 9 to 11 (public telecommunications systems);
- (c) sections 12 to 15 (modification of licences);
- (d) sections 16 to 19 (enforcement of licences); and

(e) sections 27A to 27L (standards of performance of designated public telecommunications operators).

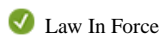
Commencement

Pt 2 c. 1 s. 147(a)-(e): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 147-(e): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

Local authority powers in relation to networks and services



Law In Force

148 Powers of local authorities in connection with networks

(1) A local authority may borrow money for the purpose of providing a public electronic communications network or public electronic communications service.

(2) A local authority may—

- (a) provide a public electronic communications network part of which is outside their area; and
- (b) provide a public electronic communications service even if some of the persons to whom they provide the service are outside their area.

(3) In this section, a 'local authority' means—

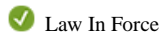
- (a) in relation to England, a London borough council or a district council;
- (b) in relation to Wales, a county council or a county borough council;
- (c) in Scotland, a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39).

Commencement

Pt 2 c. 1 s. 148(1)-(3)(c): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 148-(3)(c): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

Grants for networks and services in Northern Ireland

Law In Force

149 Grants by Department of Enterprise, Trade and Investment

(1) The Department of Enterprise, Trade and Investment may, in accordance with this section, make payments to persons engaged in, or in commercial activities connected with—

- (a) the provision of electronic communications networks and electronic communications services in Northern Ireland; or
- (b) improving the extent, quality and reliability of such networks or services.

(2) A payment shall not be made under this section unless in the opinion of the Department of Enterprise, Trade and Investment—

- (a) the making of the payment is likely to achieve—
 - (i) one or more of the purposes set out in subsection (1); and
 - (ii) any other purposes prescribed by regulations made by that Department with the approval of the Department of Finance and Personnel; and
- (b) the amount of the payment is reasonable having regard to all the circumstances.

(3) Payments under this section shall—

- (a) be of such amounts, and
- (b) be made subject to such conditions (including conditions as to repayment),

as the Department of Enterprise, Trade and Investment may determine.

(4) This section extends only to Northern Ireland.

Commencement

Pt 2 c. 1 s. 149(1)-(4): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 149-(4): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)



Law In Force

150 Grants by district councils

(1) This section applies where a district council in Northern Ireland consider that it would be for the benefit of their area—

- (a) for a public electronic communications network or electronic communications service to be provided by a particular person;
- (b) for facilities to be made available by a particular person for the purposes of, or in connection with, the provision of such a network or service; or

(c) for such a network or service that is being provided by a particular person, or for any such facilities that are being so made available by a particular person, to continue to be provided or made available.

(2) The district council may—

- (a) undertake to pay to that person, and
- (b) pay him,

whatever sums they think appropriate for, or towards, compensating him for losses sustained in the provision of the network or service or in making the facilities available.

(3) For the purposes of this section it is immaterial—

- (a) in the case of a network, whether any part of the network is situated in the council's area; and
- (b) in the case of a service or facility, whether any of the persons to whom the service or facility is provided or made available are in that area.

Commencement

Pt 2 c. 1 s. 150(1)-(3)(b): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 150-(3)(b): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

Interpretation of Chapter 1

 Repealed

150A.— [...]¹

Notes

¹ Repealed by Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019/246 Sch.1(1) para.36 (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))

 Law In Force With Amendments Pending

151 Interpretation of Chapter 1

(1) In this Chapter—

[...]¹

“access-related condition” means a condition set as an access-related condition under section 45;

“allocation” and “adoption”, in relation to telephone numbers, and cognate expressions, are to be construed in accordance with section 56;

“apparatus market”, in relation to a market power determination, is to be construed in accordance with section 46(9)(b);

[“bundled contract” has the meaning given by section 51(8);

“commitments decision” means a decision under section 93A(8);]²

“designated universal service provider” means a person who is for the time being designated in accordance with regulations under section 66 as a person to whom universal service conditions are applicable;

“electronic communications apparatus” —

(a) in relation to SMP apparatus conditions and in section 141, means apparatus that is designed or adapted for a use which consists of or includes the sending or receiving of communications or other signals (within the meaning of section 32) that are transmitted by means of an electronic communications network; and

(b) in all other contexts, has the same meaning as in the electronic communications code;

“the electronic communications code” has the meaning given by section 106(1);

“end-user”, in relation to a public electronic communications service, means—

(a) a person who, otherwise than as a communications provider, is a customer of the provider of that service;

(b) a person who makes use of the service otherwise than as a communications provider; or

(c) a person who may be authorised, by a person falling within paragraph (a), so to make use of the service;

“the Framework Directive” means Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services [, as amended by Directive 2009/140/EC of the European Parliament and of the Council]³;

“general condition” means a condition set as a general condition under section 45;

“interconnection” is to be construed in accordance with subsection (2);

“market power determination” means—

(a) a determination, for the purposes of provisions of this Chapter, that a person has significant market power in an identified services market or an identified apparatus market, or

(b) a confirmation for such purposes of a market power determination reviewed on a further analysis under section 84 or 85;

“misuse”, in relation to an electronic communications network or electronic communications service, is to be construed in accordance with section 128(5) and (8), and cognate expressions are to be construed accordingly;

“network access” is to be construed in accordance with subsection (3);

[“not-for-profit body” means a body which, by virtue of its constitution or any enactment—

(a) is required (after payment of outgoings) to apply the whole of its income, and any capital which it expends, for charitable or public purposes; and

(b) is prohibited from directly or indirectly distributing amongst its members any part of its assets (otherwise than for charitable or public purposes);

“number-based interpersonal communications service” has the meaning given by section 32A(1);]⁴

“persistent” and “persistently”, in relation to misuse of an electronic communications network or electronic communications service, are to be construed in accordance with section 128(6) and (7);

“premium rate service” is to be construed in accordance with section 120(7);

“privileged supplier condition” means a condition set as a privileged supplier condition under section 45;

“provider”, in relation to a premium rate service, is to be construed in accordance with section 120(9) to (12), and cognate expressions are to be construed accordingly;

“public communications provider” means—

- (a) a provider of a public electronic communications network;
- (b) a provider of a public electronic communications service; or
- (c) a person who makes available facilities that are associated facilities by reference to a public electronic communications network or a public electronic communications service;

“public electronic communications network” means an electronic communications network provided wholly or mainly for the purpose of making electronic communications services available to members of the public;

“public electronic communications service” means any electronic communications service that is provided so as to be available for use by members of the public;

“regulatory authorities” is to be construed in accordance with subsection (5);

“relevant international standards” means—

- (a) any standards or specifications from time to time drawn up and published in accordance with Article 17 of the Framework Directive [or Article 39 of the EECC Directive]⁵ ;
- (b) the standards and specifications from time to time adopted by—
 - (i) the European Committee for Standardisation,
 - (ii) the European Committee for Electrotechnical Standardisation; or
 - (iii) the European Telecommunications Standards Institute; and
- (c) the international standards and recommendations from time to time adopted by—
 - (i) the International Telecommunication Union;
 - (ii) the International Organisation for Standardisation; or
 - (iii) the International Electrotechnical Committee;

“service interoperability” means interoperability between different electronic communications services;

“services market”, in relation to a market power determination or market identification, is to be construed in accordance with section 46(8)(a);

“significant market power” is to be construed in accordance with section 78;

“SMP condition” means a condition set as an SMP condition under section 45, and “SMP services condition” and “SMP apparatus condition” are to be construed in accordance with subsections (8) and (9) of that section respectively;

[“social tariff condition” means a condition set as a social tariff condition under section 45;]⁶

“telephone number” has the meaning given by section 56(5);

[“terminal equipment” means—

- (a) equipment directly or indirectly connected to the interface of a public electronic communications network to send, process or receive information, with the direct or indirect connection being made by a wire or optical fibre or electromagnetically; or
- (b) equipment which is capable of being used for the transmission or reception, or both, of radio communication signals by means of satellites or other space-based systems;

] ⁷

[...] ⁸

“universal service condition” means a condition set as a universal service condition under section 45;

“the universal service order” means the order for the time being in force under section 65.

(2) In this Chapter references to interconnection are references to the linking (whether directly or indirectly by physical or logical means, or by a combination of physical and logical means) of one public electronic communications network to another for the purpose of enabling the persons using one of them to be able—

- (a) to communicate with users of the other one; or
- (b) to make use of services provided by means of the other one (whether by the provider of that network or by another person).

(3) In this Chapter references to network access are references to—

- (a) interconnection of public electronic communications networks; or
- (b) any services, facilities or arrangements which—
 - (i) are not comprised in interconnection; but
 - (ii) are services, facilities or arrangements by means of which [a person] ⁹ is able, for the purposes of the provision of an electronic communications service (whether by him or by another), to make use of anything mentioned in subsection (4);

and references to providing network access include references to providing any such services, making available any such facilities or entering into any such arrangements.

(4) The things referred to in subsection (3)(b) are—

- (a) any electronic communications network or electronic communications service provided by another communications provider;
- (b) any apparatus comprised in such a network or used for the purposes of such a network or service;
- [(ba) any electronic communications apparatus;] ¹⁰
- (c) any facilities made available by another that are associated facilities by reference to any network or service (whether one provided by that provider or by another);
- (d) any other services or facilities which are provided or made available by another person and are capable of being used for the provision of an electronic communications service.

[(4A) In subsections (3)(b)(ii) and (4)(d), the references to an electronic communications service include the conveyance by means of an electronic communications network of signals, including an information society service or content service so conveyed.

(4B) In subsection (4A)—

“content service” has the meaning given by section 32(7), and

“information society service” has the meaning given by [section 51(9)] ¹².

] ¹¹

(5) [...] ¹³

(6) For the purposes of this Chapter, where there is a contravention of an obligation that requires a person to do anything within a particular period or before a particular time, that contravention shall be taken to continue after the end of that period, or after that time, until that thing is done.

(7) References in this Chapter to remedying the consequences of a contravention include references to paying an amount to a person—

- (a) by way of compensation for loss or damage suffered by that person; or
- (b) in respect of annoyance, inconvenience or anxiety to which he has been put.

(8) In determining for the purposes of provisions of this Chapter whether a contravention is a repeated contravention for any purposes, a notification of a contravention under that provision shall be disregarded if it has been withdrawn before the imposition of a penalty in respect of the matters notified.

(9) For the purposes of this section a service is made available to members of the public if members of the public are customers, in respect of that service, of the provider of that service.

Notes

- ¹ Definition repealed by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.61(2)(a) (December 21, 2020)
- ² Definitions inserted by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.61(2)(b) (December 21, 2020)
- ³ Words inserted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.90(a)(ii) (May 26, 2011: insertion has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 paras 2 and 20)
- ⁴ Definitions inserted by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.61(2)(c) (December 21, 2020)
- ⁵ Words inserted by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.61(2)(d) (December 21, 2020)
- ⁶ Definition inserted by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.61(2)(e) (December 21, 2020)
- ⁷ Definition inserted by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.61(2)(f) (December 21, 2020)
- ⁸ Definition repealed by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.61(2)(g) (December 21, 2020)
- ⁹ Words substituted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.90(b) (May 26, 2011: substitution has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 para.2)
- ¹⁰ Added by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.90(c) (May 26, 2011: insertion has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 para.2)
- ¹¹ Added by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.90(d) (May 26, 2011: insertion has effect subject to transitional and saving provision specified in SI 2011/1210 Sch.3 para.2)
- ¹² Words substituted by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.61(3) (December 21, 2020)
- ¹³ Repealed by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(2) para.78 (December 31, 2020: shall come into force on IP completion day)

Proposed Draft Amendments

Pt 2 c. 1 s. 151(1) definition of "designated vendor": definitions inserted by Telecommunications (Security) Bill 2019-21 (HC Bill 246) s. 15(3) (Commons' Committee Stage, January 26, 2021) (date to be appointed)

Pt 2 c. 1 s. 151(1) definition of "designated vendor direction": definitions inserted by Telecommunications (Security) Bill 2019-21 (HC Bill 246) s. 15(3) (Commons' Committee Stage, January 26, 2021) (date to be appointed)

Pt 2 c. 1 s. 151(1) definition of "end user": definitions inserted by Telecommunications (Security) Bill 2019-21 (HC Bill 246) s. 15(3) (Commons' Committee Stage, January 26, 2021) (date to be appointed)

Pt 2 c. 1 s. 151(1) definition of "designation notice": definition inserted by Telecommunications (Security) Bill 2019-21 (HC Bill 246) s. 16(3) (Commons' Committee Stage, January 26, 2021) (date to be appointed)

Pt 2 c. 1 s. 151(1) definition of "inspection notice": definition inserted by Telecommunications (Security) Bill 2019-21 (HC Bill 246) s. 19(4) (Commons' Committee Stage, January 26, 2021) (date to be appointed)

Pt 2 c. 1 s. 151(1) definition of "monitoring direction": definition inserted by Telecommunications (Security) Bill 2019-21 (HC Bill 246) s. 18(4) (Commons' Committee Stage, January 26, 2021) (date to be appointed)

Pt 2 c. 1 s. 151(1) definition of "security compromise": definition inserted by Telecommunications (Security) Bill 2019-21 (HC Bill 246) s. 1(3) (Commons' Committee Stage, January 26, 2021) (date to be appointed)

Pt 2 c. 1 s. 151(1) definition of "urgent enforcement direction": definition inserted by Telecommunications (Security) Bill 2019-21 (HC Bill 246) s. 21(3) (Commons' Committee Stage, January 26, 2021) (date to be appointed)

Commencement

Pt 2 c. 1 s. 151(1)-(9): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 1 s. 151-(4)(b), (4)(c)-(4)(d), (6)-(9): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

Pt 2 c. 1 s. 151(4)(ba), (4A)-(4B) definition of "information society service": United Kingdom

CHAPTER 2

SPECTRUM USE

General functions relating to spectrum use

 Repealed

152 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

 Repealed

153 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

 Repealed

154 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

 Repealed

155 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

 Repealed

156 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

 Repealed

157 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

Reservation of spectrum for multiplex use

 Repealed

158 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

Recognised spectrum access

 Repealed

159 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

 Repealed

160 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

 Repealed

161 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

 Repealed

162 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

Crown use of the radio spectrum

 Repealed

163 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

Limitations and exemptions applied to spectrum use

 Repealed

164 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

 Repealed

165 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

 Repealed

166 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

Award and transfer of licences

 Repealed

167 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

 Repealed

168 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

Variation and revocation of licences

 Repealed

169 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

Wireless telegraphy register

 Repealed

170 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

Information requirements

 Repealed

171 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

Criminal proceedings etc.

 Repealed

172 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

 Repealed

173 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

 Repealed

174 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

 Repealed

175 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

 Repealed

176 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

 Repealed

177 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

 Repealed

178 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

 Repealed

179 [...]¹

Notes

- ¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)
-

 Repealed

180 [...]¹

Notes

- ¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)
-

 Repealed

181 [...]¹

Notes

- ¹ Repealed by Police and Criminal Evidence (Amendment) (Northern Ireland) Order 2007/288 Sch.2 para.1 (March 1, 2007)
-

 Repealed

182 [...]¹

Notes

- ¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)
-

Construction of 1949 Act

 Repealed

183 [...]¹

Notes

- ¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)
-

 Repealed

184 [...]¹

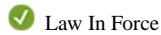
Notes

- ¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)
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CHAPTER 3

DISPUTES AND APPEALS

Disputes



Law In Force

185 Reference of disputes to OFCOM

- (1) This section applies in the case of a dispute relating to the provision of network access if it is—
- (a) a dispute between different communications providers;
 - (b) a dispute between a communications provider and a person who makes associated facilities available;
 - (c) a dispute between different persons making such facilities available [.]¹
 - (d)-(e) [...] ¹

[(1A) This section also applies in the case of a dispute relating to the provision of network access if—

- (a) it is a dispute between a communications provider and a person who is identified, or is a member of a class identified, in a condition imposed on the communications provider under section 45; and
- (b) the dispute relates to entitlements to network access that the communications provider is required to provide to that person by or under that condition.

] ²

- (2) This section also applies in the case of any other dispute if—
- (a) it relates to rights or obligations conferred or imposed by or under [a condition set under section 45, or any of the enactments relating to the management of the radio spectrum] ³ ;
 - (b) it is a dispute between different communications providers; and
 - (c) it is not an excluded dispute.

(3) Any one or more of the parties to the dispute may refer it to OFCOM.

(4) A reference made under this section is to be made in such manner as OFCOM may require.

(5) The way in which a requirement under subsection (4)—

- (a) is to be imposed, or
- (b) may be withdrawn or modified,

is by a notice published in such manner as OFCOM consider appropriate for bringing the requirement, withdrawal or modification to the attention of the persons who, in their opinion, are likely to be affected by it.

(6) Requirements imposed under subsection (4) may make different provision for different cases.

(7) A dispute is an excluded dispute for the purposes of subsection (2) if it is about—

- (a) obligations imposed on a communications provider by SMP apparatus conditions [.] ⁴
- (b)-(d) [...] ⁴

(8) For the purposes of this section—

- (a) the disputes that relate to the provision of network access include disputes as to the terms or conditions on which it is or may be provided in a particular case; and
- (b) the disputes that relate to an obligation include disputes as to the terms or conditions on which any transaction is to be entered into for the purpose of complying with that obligation.

Notes

- ¹ Repealed by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.91(a) (May 26, 2011)
- ² Added by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.91(b) (May 26, 2011)
- ³ Words substituted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.91(c) (May 26, 2011)
- ⁴ Repealed by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.91(d) (May 26, 2011)

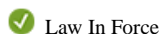
Commencement

Pt 2 c. 3 s. 185(1)-(8)(b): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 3 s. 185-(1)(e), (2)-(8)(b): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

Pt 2 c. 3 s. 185(1A)-(1A)(b): United Kingdom



Law In Force

[185A. Power of OFCOM to invite parties to refer dispute

OFCOM may invite any one or more of the parties to a dispute falling within section 185(1) to refer the dispute to OFCOM under section 185(3).]¹

Notes

- ¹ Added by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.92 (May 26, 2011)

Extent

Pt 2 c. 3 s. 185A: United Kingdom



186 Action by OFCOM on dispute reference

(1) This section applies where a dispute is referred to OFCOM under and in accordance with section 185.

(2) OFCOM must decide whether or not it is appropriate for them to handle the dispute.

[(2A) In relation to a dispute falling within subsection 185(1), OFCOM may in particular take into account their priorities and available resources in considering whether it is appropriate for them to handle the dispute.]¹

(3) [In relation to a dispute falling within section 185(1A) or (2), unless]² they consider—

- (a) that there are alternative means available for resolving the dispute,
- (b) that a resolution of the dispute by those means would be consistent with the [six]³ requirements set out in section 4, and
- (c) that a prompt and satisfactory resolution of the dispute is likely if those alternative means are used for resolving it,

their decision must be a decision that it is appropriate for them to handle the dispute.

(4) As soon as reasonably practicable after OFCOM have decided—

- (a) that it is appropriate for them to handle the dispute, or
- (b) that it is not,

they must inform each of the parties to the dispute of their decision and of their reasons for it.

(5) The notification must state the date of the decision.

(6) [In relation to a dispute falling within section 185(1A) or (2), where]² —

- (a) OFCOM decide that it is not appropriate for them to handle the dispute, but
- (b) the dispute is not resolved by other means before the end of the four months after the day of OFCOM's decision,

the dispute may be referred back to OFCOM by one or more of the parties to the dispute.

Notes

¹ Added by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.93(a) (May 26, 2011)

² Words inserted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.93(b) (May 26, 2011)

³ Word substituted by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(2) para.79 (December 31, 2020: shall come into force on IP completion day)

Commencement

Pt 2 c. 3 s. 186(1)-(6)(b): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 3 s. 186-(2), (3)-(6)(b): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI

2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

Pt 2 c. 3 s. 186(2A): United Kingdom

✓ Law In Force

187 Legal proceedings about referred disputes

(1) Where a dispute is referred or referred back to OFCOM under this Chapter, the reference is not to prevent—

- (a) the person making it,
- (b) another party to the dispute,
- (c) OFCOM, or
- (d) any other person,

from bringing, or continuing, any legal proceedings with respect to any of the matters under dispute.

(2) Nor is the reference or reference back to OFCOM under this Chapter of a dispute to prevent OFCOM from—

- (a) giving a notification in respect of something that they have reasonable grounds for believing to be a contravention of any obligation imposed by or under any an enactment;
- (b) exercising any of their other powers under any enactment in relation to a contravention of such an obligation; or
- (c) taking any other step in preparation for or with a view to doing anything mentioned in the preceding paragraphs.

(3) If, in any legal proceedings with respect to a matter to which a dispute relates, the court orders the handling of the dispute by OFCOM to be stayed or sisted—

- (a) OFCOM are required to make a determination for resolving the dispute only if the stay or sist is lifted or expires; and
- (b) the period during which the stay or sist is in force must be disregarded in determining the period within which OFCOM are required to make such a determination.

(4) Subsection (1) is subject to section 190(8) and to any agreement to the contrary binding the parties to the dispute.

(5) In this section “legal proceedings” means civil or criminal proceedings in or before a court.

Commencement

Pt 2 c. 3 s. 187(1)-(5): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 3 s. 187-(5): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)



Law In Force

188 Procedure for resolving disputes

- (1) This section applies where—
 - (a) OFCOM have decided under section 186(2) that it is appropriate for them to handle a dispute; or
 - (b) a dispute is referred back to OFCOM under section 186(6).
- (2) OFCOM must—
 - (a) consider the dispute; and
 - (b) make a determination for resolving it.
- (3) The procedure for the consideration and determination of the dispute is to be the procedure that OFCOM consider appropriate.
- (4) In the case of a dispute referred back to OFCOM under section 186(6), that procedure may involve allowing the continuation of a procedure that has already been begun for resolving the dispute by alternative means.
- (5) Except in exceptional circumstances and subject to section 187(3), OFCOM must make their determination no more than four months after the following day—
 - (a) in a case falling within subsection (1)(a), the day of the decision by OFCOM that it is appropriate for them to handle the dispute; and
 - (b) in a case falling within subsection (1)(b), the day on which the dispute is referred back to them.
- (6) Where it is practicable for OFCOM to make their determination before the end of the four month period, they must make it as soon in that period as practicable.
- (7) OFCOM must—
 - (a) send a copy of their determination, together with a full statement of their reasons for it, to every party to the dispute; and
 - (b) publish so much of their determination as (having regard, in particular, to the need to preserve commercial confidentiality) they consider it appropriate to publish.
- (8) The publication of information under this section must be in such manner as OFCOM consider appropriate for bringing it to the attention, to the extent that they consider appropriate, of members of the public.

Commencement

Pt 2 c. 3 s. 188(1)-(8): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent


Pt 2 c. 3 s. 188-(8): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

 Repealed

189 [...]¹

Notes

¹ Repealed by Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019/246 Sch.1(1) para.38 (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))

 Law In Force

190 Resolution of referred disputes

(1) Where OFCOM make a determination for resolving a dispute referred to them under this Chapter, their only powers are those conferred by this section.

(2) Their main power (except in the case of a dispute relating to rights and obligations conferred or imposed by or under the enactments relating to the management of the radio spectrum) is to do one or more of the following—

- (a) to make a declaration setting out the rights and obligations of the parties to the dispute;
- (b) to give a direction fixing the terms or conditions of transactions between the parties to the dispute;
- (c) to give a direction imposing an obligation, enforceable by the parties to the dispute, to enter into a transaction between themselves on the terms and conditions fixed by OFCOM; and
- (d) for the purpose of giving effect to a determination by OFCOM of the proper amount of a charge in respect of which amounts have been paid by one of the parties of the dispute to the other, to give a direction, enforceable by the party to whom the sums are to be paid, requiring the payment of sums by way of adjustment of an underpayment or overpayment.

[(2A) In relation to a dispute falling within section 185(1), OFCOM must exercise their powers under subsection (2) in the way that seems to them most appropriate for the purpose of securing—

- (a) efficiency;
- (b) sustainable competition;
- (c) efficient investment and innovation; and
- (d) the greatest possible benefit for the end-users of public electronic communications services.

]¹

(3) Their main power in the excepted case is just to make a declaration setting out the rights and obligations of the parties to the dispute.

(4) Nothing in this section prevents OFCOM from exercising the following powers in consequence of their consideration under this Chapter of any dispute—

- (a) their powers under Chapter 1 of this Part to set, modify or revoke general conditions, universal service conditions, access related conditions, privileged supplier conditions or SMP conditions;
- (b) their powers to vary, modify or revoke wireless telegraphy licences or grants of recognised spectrum access;

(c) their power to make, amend or revoke [regulations under section 8 or 45 of the Wireless Telegraphy Act 2006]².

(5) In the case of a dispute referred back to OFCOM under section 186(6)—

- (a) OFCOM may, in making their determination, take account of decisions already made by others in the course of an attempt to resolve the dispute by alternative means; and
- (b) the determination made by OFCOM may include provision ratifying decisions so made.

(6) Where OFCOM make a determination for resolving a dispute, they may require a party to the dispute—

- (a) to make payments to another party to the dispute in respect of costs and expenses incurred by that other party in consequence of the reference of the dispute to OFCOM, or in connection with it; and
- (b) to make payments to OFCOM in respect of costs and expenses incurred by them in dealing with the dispute [;]³

[and may determine the amount of the costs and when the costs are to be paid.]³

[(6A) OFCOM may not, under subsection (6)(a), require a party to the dispute to make payments to another party unless OFCOM have considered—

- (a) the conduct of the party before and after the reference to OFCOM (including, in particular, whether any attempt has been made to resolve the dispute), and
- (b) whether OFCOM has made a decision in the party's favour in respect of the whole or a part of the dispute.

(6B) OFCOM may not, under subsection (6)(b), require payments to be made to them by a party to the dispute unless—

- (a) the dispute relates to the rights and obligations of the parties to the dispute under the enactments relating to the management of the radio spectrum, or
- (b) they have considered the matters referred to in subsection (6A)(a) and (b).

] ⁴

(7) [...] ⁵

(8) A determination made by OFCOM for resolving a dispute referred or referred back to them under this Chapter binds all the parties to the dispute.

(9) Subsection (8) is subject to section 192.

Notes

¹ Added by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.95(a) (May 26, 2011)

² Words substituted by Wireless Telegraphy Act 2006 c. 36 Sch.7 para.27 (February 8, 2007)

³ Words inserted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.95(b) (May 26, 2011)

⁴ Added by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.95(c) (May 26, 2011)

⁵ Repealed by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.95(d) (May 26, 2011)

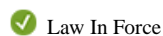
Commencement

Pt 2 c. 3 s. 190(1)-(9): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 3 s. 190-(2)(d), (3)-(6)(b), (7)-(9): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

Pt 2 c. 3 s. 190(2A)-(2A)(d), (6A)-(6B)(b): United Kingdom



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; [or]¹
- (b) [...] ²
- (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) [...] ³

Notes

¹ Word inserted by Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019/246 Sch.1(1) para.39(a) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))

² Repealed by Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019/246 Sch.1(1) para.39(b) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))

- ³ Repealed by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.96 (May 26, 2011)

Commencement

Pt 2 c. 3 s. 191(1)-(6): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 3 s. 191-(6): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

Appeals



Law In Force With Amendments Pending

192 Appeals against decisions by OFCOM, the Secretary of State etc.

(1) This section applies to the following decisions—

- (a) a decision by OFCOM under this Part [or any of Parts 1 to 3 of the Wireless Telegraphy Act 2006]¹ that is not a decision specified in Schedule 8;
- (b) a decision (whether by OFCOM or another) to which effect is given by a direction, approval or consent given for the purposes of a provision of a condition set under section 45;
- (c) a decision to which effect is given by the modification or withdrawal of such a direction, approval or consent;
- (d) a decision by the Secretary of State to which effect is given by one of the following—
 - (i) a specific direction under section 5 that is not about the making of a decision specified in Schedule 8;
 - (ii) a restriction or condition set by regulations under section 109;
 - (iii) a direction to OFCOM under section 132;
 - (iv) a specific direction under [section 5 of the Wireless Telegraphy Act 2006]² that is not about the making of a decision specified in Schedule 8 [;]³
- [(e) a decision by the CMA to which effect is given by an order made under section 193A.]³

(2) A person affected by a decision to which this section applies may appeal against it to the Tribunal.

(3) The means of making an appeal is by sending the Tribunal a notice of appeal in accordance with Tribunal rules.

(4) The notice of appeal must be sent within the period specified, in relation to the decision appealed against, in those rules.

(5) The notice of appeal must set out—

- (a) the provision under which the decision appealed against was taken; and
- (b) the grounds of appeal.

- (6) The grounds of appeal must be set out in sufficient detail to indicate—
- (a) to what extent (if any) the appellant contends that the decision appealed against was based on an error of fact or was wrong in law or both; and
 - (b) to what extent (if any) the appellant is appealing against the exercise of a discretion by OFCOM, by the Secretary of State [, by the CMA]⁴ or by another person.
- (7) In this section and Schedule 8 references to a decision under an enactment—
- (a) include references to a decision that is given effect to by the exercise or performance of a power or duty conferred or imposed by or under an enactment; but
 - (b) include references to a failure to make a decision, and to a failure to exercise a power or to perform a duty, only where the failure constitutes a failure to grant an application or to comply with any other form of request to make the decision, to exercise the power or to perform the duty;
- and references in the following provisions of this Chapter to a decision appealed against are to be construed accordingly.
- (8) For the purposes of this section and the following provisions of this Chapter a decision to which effect is given by the exercise or performance of a power or duty conferred or imposed by or under an enactment shall be treated, except where provision is made for the making of that decision at a different time, as made at the time when the power is exercised or the duty performed.

Notes

- ¹ Words substituted by Wireless Telegraphy Act 2006 c. 36 Sch.7 para.28(a) (February 8, 2007)
- ² Words substituted by Wireless Telegraphy Act 2006 c. 36 Sch.7 para.28(b) (February 8, 2007)
- ³ Added by Enterprise and Regulatory Reform Act 2013 c. 24 Sch.15 para.43(2) (April 1, 2014: insertion has effect subject to transitional provisions in SI 2014/416 art.2(2) and Sch.1 para.15)
- ⁴ Words inserted by Enterprise and Regulatory Reform Act 2013 c. 24 Sch.15 para.43(3) (April 1, 2014: insertion has effect subject to transitional provisions in SI 2014/416 art.2(2) and Sch.1 para.15)

Amendments Pending

Pt 2 c. 3 s. 192(1)(d)(ia): added by Digital Economy Act 2010 c. 24, s. 20(2) (date to be appointed)

Commencement

Pt 2 c. 3 s. 192(1)-(8): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 3 s. 192-(1)(d)(ii), (1)(d)(iii)-(1)(d)(iv), (2)-(8): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

Pt 2 c. 3 s. 192(1)(d)(ia): United Kingdom (amendment may be extended to any of the Channel Islands or the Isle of Man under the relevant extending power as specified in s.46(3))

Pt 2 c. 3 s. 192(1)(e): United Kingdom



Law In Force

193 Reference of price control matters to the [CMA]¹

(1) Tribunal rules must provide in relation to appeals under section 192(2) relating to price control that the price control matters arising in that appeal, to the extent that they are matters of a description specified in the rules, must be referred by the Tribunal to the [CMA]² for determination.

(2) Where a price control matter is referred in accordance with Tribunal rules to the [CMA]³ for determination, [the determination of the matter is to be carried out on behalf of the CMA by a group constituted for the purpose by the chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013, and [, having regard to the principles to be applied by the Tribunal under section 194A(2), is to be performed]⁵⁴ —

- (a) in accordance with the provision made by the rules;
- (b) in accordance with directions given to [the CMA]⁶ by the Tribunal in exercise of powers conferred by the rules; and
- (c) subject to the rules and any such directions, using such procedure as the [CMA]⁷ consider appropriate.

(3) The provision that may be made by Tribunal rules about the determination of a price control matter referred to the [CMA]⁸ in accordance with the rules includes provision about the period within which that matter is to be determined by [the CMA]⁹.

(4) Where the [CMA]¹⁰ determines a price control matter in accordance with Tribunal rules, they must notify the Tribunal of the determination they have made.

(5) The notification must be given as soon as practicable after the making of the notified determination.

(6) Where a price control matter arising in an appeal is required to be referred to the [CMA]¹¹ under this section, the Tribunal, in deciding the appeal [...]¹², must decide that matter in accordance with the determination of [the CMA]¹³.

(7) Subsection (6) does not apply to the extent that the Tribunal decides, applying the principles applicable on an application for judicial review, that the determination of the [CMA]¹⁴ is a determination that would fall to be set aside on such an application.

(8) Section 117 of the Enterprise Act 2002 (c. 40) (offences of supplying false or misleading information) shall have effect in relation to information supplied to the [CMA]¹⁴ in connection with their functions under this section as it has effect in relation to information supplied to them in connection with their functions under Part 3 of that Act.

(9) For the purposes of this section an appeal relates to price control if the matters to which the appeal relates are or include price control matters.

(10) In this section [and section 193A]¹⁵ “price control matter” means a matter relating to the imposition of any form of price control by an SMP condition the setting of which is authorised by—

- (a) section 87(9);
- (b) section 91; or
- (c) section 93(3).

Notes

- ¹ Words substituted by Enterprise and Regulatory Reform Act 2013 c. 24 Sch.6(1) para.98(8) (April 1, 2014: substitution has effect as SI 2014/416 subject to transitional provisions specified in 2013 c.24 s.28)
- ² Words substituted by Enterprise and Regulatory Reform Act 2013 c. 24 Sch.6(1) para.98(2) (April 1, 2014: substitution has effect as SI 2014/416 subject to transitional provisions specified in 2013 c.24 s.28)
- ³ Words substituted by Enterprise and Regulatory Reform Act 2013 c. 24 Sch.6(1) para.98(3)(a) (April 1, 2014: substitution has effect as SI 2014/416 subject to transitional provisions specified in 2013 c.24 s.28)
- ⁴ Words substituted by Enterprise and Regulatory Reform Act 2013 c. 24 Sch.6(1) para.98(3)(b) (April 1, 2014: substitution has effect as SI 2014/416 subject to transitional provisions specified in 2013 c.24 s.28)
- ⁵ Words substituted by Digital Economy Act 2017 c. 30 Pt 6 s.87(2) (July 31, 2017: substitution has effect subject to savings as specified in 2017 c.30 s.87(12))
- ⁶ Word substituted by Enterprise and Regulatory Reform Act 2013 c. 24 Sch.6(1) para.98(3)(c) (April 1, 2014: substitution has effect as SI 2014/416 subject to transitional provisions specified in 2013 c.24 s.28)
- ⁷ Word substituted by Enterprise and Regulatory Reform Act 2013 c. 24 Sch.6(1) para.98(3)(d) (April 1, 2014: substitution has effect as SI 2014/416 subject to transitional provisions specified in 2013 c.24 s.28)
- ⁸ Words substituted by Enterprise and Regulatory Reform Act 2013 c. 24 Sch.6(1) para.98(4)(a) (April 1, 2014: substitution has effect as SI 2014/416 subject to transitional provisions specified in 2013 c.24 s.28)
- ⁹ Words substituted by Enterprise and Regulatory Reform Act 2013 c. 24 Sch.6(1) para.98(4)(b) (April 1, 2014: substitution has effect as SI 2014/416 subject to transitional provisions specified in 2013 c.24 s.28)
- ¹⁰ Words substituted by Enterprise and Regulatory Reform Act 2013 c. 24 Sch.6(1) para.98(5) (April 1, 2014: substitution has effect as SI 2014/416 subject to transitional provisions specified in 2013 c.24 s.28)
- ¹¹ Words substituted by Enterprise and Regulatory Reform Act 2013 c. 24 Sch.6(1) para.98(6)(a) (April 1, 2014: substitution has effect as SI 2014/416 subject to transitional provisions specified in 2013 c.24 s.28)
- ¹² Words repealed by Digital Economy Act 2017 c. 30 Pt 6 s.87(3) (July 31, 2017: repeal has effect subject to savings as specified in 2017 c.30 s.87(12))
- ¹³ Words substituted by Enterprise and Regulatory Reform Act 2013 c. 24 Sch.6(1) para.98(6)(b) (April 1, 2014: substitution has effect as SI 2014/416 subject to transitional provisions specified in 2013 c.24 s.28)
- ¹⁴ Words substituted by Enterprise and Regulatory Reform Act 2013 c. 24 Sch.6(1) para.98(7) (April 1, 2014: substitution has effect as SI 2014/416 subject to transitional provisions specified in 2013 c.24 s.28)
- ¹⁵ Words inserted by Enterprise and Regulatory Reform Act 2013 c. 24 Sch.15 para.44 (April 1, 2014: insertion has effect subject to transitional provisions in SI 2014/416 art.2(2) and Sch.1 para.15)

Commencement

Pt 2 c. 3 s. 193(1)-(10)(c): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 3 s. 193-(10)(c): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)



Law In Force

[193A Recovery of CMA's costs in respect of price control references

- (1) Where a determination is made on a price control matter referred by virtue of section 193, the CMA may make an order in respect of the costs incurred by it in connection with the reference (a “costs order”).
- (2) A costs order may require the payment to the CMA of some or all of those costs by such parties to the appeal which gave rise to the reference, other than OFCOM, as the CMA considers appropriate.
- (3) A costs order must—
- (a) set out the total costs incurred by the CMA in connection with the reference, and
 - (b) specify the proportion of those costs to be paid by each party to the appeal in respect of whom the order is made.
- (4) In deciding on the proportion of costs to be paid by a party to the appeal the CMA must, in particular, consider—
- (a) the extent to which the determination on the reference upholds OFCOM's decision in relation to the price control matter in question,
 - (b) the extent to which the costs were attributable to the involvement in the appeal of the party, and
 - (c) the conduct of the party.
- (5) A costs order—
- (a) must be made as soon as reasonably practicable after the making of the determination on the reference, but
 - (b) does not take effect unless the Tribunal, in deciding the appeal which gave rise to the reference, decides the price control matter which is the subject of the reference in accordance with the determination of the CMA (see section 193(6)).
- (6) In a case where the Tribunal decides the price control matter in question otherwise than as mentioned in subsection (5)(b), the CMA may make an order under this subsection in respect of the costs incurred by it in connection with the reference.
- (7) Subsections (2) to (4) apply in relation to an order under subsection (6) as they apply in relation to an order under subsection (1); but for that purpose the reference in subsection (4)(a) to the determination on the reference is to be read as a reference to the decision of the Tribunal mentioned in subsection (6).
- (8) An order under subsection (6) must be made as soon as reasonably practicable after the decision of the Tribunal mentioned in that subsection.
- (9) An amount payable to the CMA by virtue of an order made under this section is recoverable summarily as a civil debt (but this does not affect any other method of recovery).
- (10) The CMA must pay any sums it receives by virtue of this section into the Consolidated Fund.
- (11) The functions of the CMA under this section, other than those under subsections (9) and (10), are to be carried out on behalf of the CMA by the group constituted by the chair of the CMA in relation to the reference in question.

] ¹

Notes

- ¹ Added by Enterprise and Regulatory Reform Act 2013 c. 24 Pt 4 c.5 s.54 (April 1, 2014: insertion has effect subject to transitional provisions in SI 2014/416 art.2(2) and Sch.1 para.15)

Extent


Pt 2 c. 3 s. 193A(1)-(11): United Kingdom

 Repealed

194 [...]¹

Notes

- ¹ Repealed by Enterprise and Regulatory Reform Act 2013 c. 24 Sch.6(1) para.99 (April 1, 2014: repeal has effect as SI 2014/416 subject to transitional provisions specified in 2013 c.24 s.28)
-

 Law In Force With Amendments Pending

[194A Disposal of appeals under section 192 (other than against certain decisions of Secretary of State)

- (1) This section applies to an appeal against a decision referred to in section 192(1)(a), (b), (c), (d)(iii) or (e).
- (2) The Tribunal must decide the appeal, by reference to the grounds of appeal set out in the notice of appeal, by applying the same principles as would be applied by a court on an application for judicial review.
- (3) The Tribunal may—
- (a) dismiss the appeal or quash the whole or part of the decision to which it relates; and
 - (b) where it quashes the whole or part of that decision, remit the matter back to the decision-maker with a direction to reconsider and make a new decision in accordance with the ruling of the Tribunal.
- (4) The decision-maker must comply with a direction under subsection (3)(b).
- (5) In its application to a decision of the Tribunal under this section, paragraph 1(2)(b) of Schedule 4 to the Enterprise Act 2002 (exclusion of commercial information from documents recording Tribunal decisions) is to have effect as if, for the reference to the undertaking to which commercial information relates, there were substituted a reference to any person to whom it relates.
- (6) In this section "the decision-maker" means the person who made the decision appealed against.
- ¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Pt 6 s.87(4) (July 31, 2017: insertion has effect subject to savings as specified in 2017 c.30 s.87(12))

Proposed Draft Amendments

Pt 2 c. 3 s. 194A(2A): added by Telecommunications (Security) Bill 2019-21 (HC Bill 246) s. 13(2) (Commons' Committee Stage, January 26, 2021) (date to be appointed)

Pt 2 c. 3 s. 194A(2B): added by Telecommunications (Security) Bill 2019-21 (HC Bill 246) s. 13(2) (Commons' Committee Stage, January 26, 2021) (date to be appointed)

Pt 2 c. 3 s. 194A(6) definition of "relevant security decision": definitions inserted by Telecommunications (Security) Bill 2019-21 (HC Bill 246) s. 13(3) (Commons' Committee Stage, January 26, 2021) (date to be appointed)

Pt 2 c. 3 s. 194A(6) definition of "retained case law": definitions inserted by Telecommunications (Security) Bill 2019-21 (HC Bill 246) s. 13(3) (Commons' Committee Stage, January 26, 2021) (date to be appointed)

Extent

Pt 2 c. 3 s. 194A(1)-(6): United Kingdom

✓ Law In Force

195 [Disposal of appeals under section 192 against certain decisions of Secretary of State]¹

[(1) This section applies to an appeal against a decision referred to in [section 192(1)(d)(i), (ii), (ia) or (iv)]³.]²

(2) The Tribunal shall decide the appeal on the merits and by reference to the grounds of appeal set out in the notice of appeal.

(3) The Tribunal's decision must include a decision as to what (if any) is the appropriate action for [the Secretary of State]⁴ to take in relation to the subject-matter of the decision under appeal.

(4) The Tribunal shall then remit the decision under appeal to [the Secretary of State]⁴ with such directions (if any) as the Tribunal considers appropriate for giving effect to its decision.

(5) The Tribunal must not direct [the Secretary of State]⁴ to take any action which he would not otherwise have power to take in relation to the decision under appeal.

(6) It shall be the duty of [the Secretary of State]⁴ to comply with every direction given under subsection (4).

(7) In the case of an appeal against a decision given effect to by a restriction or condition set by regulations under section 109, the Tribunal must take only such steps for disposing of the appeal as it considers are not detrimental to good administration.

(8) In its application to a decision of the Tribunal under this section, paragraph 1(2)(b) of Schedule 4 to the Enterprise Act 2002 (c. 40) (exclusion of commercial information from documents recording Tribunal decisions) is to have effect as if for the reference to the undertaking to which commercial information relates there were substituted a reference to any person to whom it relates.

(9) [...]⁵

Notes

¹ Heading substituted by Digital Economy Act 2017 c. 30 Pt 6 s.87(10) (July 31, 2017: substitution has effect subject to savings as specified in 2017 c.30 s.87(12))

² Substituted by Digital Economy Act 2017 c. 30 Pt 6 s.87(6) (July 31, 2017: substitution has effect subject to transitional provisions as specified in 2017 c.30 s.87(10))

- ³ Word inserted by Digital Economy Act 2017 c. 30 Pt 6 s.87(7) (July 31, 2017)
- ⁴ Words substituted by Digital Economy Act 2017 c. 30 Pt 6 s.87(8) (July 31, 2017: substitution has effect subject to savings as specified in 2017 c.30 s.87(12))
- ⁵ Repealed by Digital Economy Act 2017 c. 30 Pt 6 s.87(9) (July 31, 2017: repeal has effect subject to savings as specified in 2017 c.30 s.87(12))

Commencement

Pt 2 c. 3 s. 195(1)-(9)(b)(ii): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 3 s. 195-(9)(b)(ii): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

✓ Law In Force

196 Appeals from the Tribunal

- (1) A decision of the Tribunal on an appeal under section 192(2) may itself be appealed.
- (2) An appeal under this section—
- (a) lies to the Court of Appeal or to the Court of Session; and
 - (b) must relate only to a point of law arising from the decision of the Tribunal.
- (3) An appeal under this section may be brought by—
- (a) a party to the proceedings before the Tribunal; or
 - (b) any other person who has a sufficient interest in the matter.
- (4) An appeal under this section requires the permission of the Tribunal or of the court to which it is to be made.
- (5) In this section references to a decision of the Tribunal include references to a direction given by it under section 195(4).

Commencement

Pt 2 c. 3 s. 196(1)-(5): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 3 s. 196-(5): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

Interpretation of Chapter 3

✓ Law In Force

197 Interpretation of Chapter 3

(1) In this Chapter—

[“the CMA” means the Competition and Markets Authority;]¹
“network access” has the same meaning as in Chapter 1 of this Part;
“the Tribunal” means the Competition Appeal Tribunal; and
“Tribunal rules” means rules made under section 15 of the Enterprise Act 2002.

(2) [...] ²

(3) [...] ³

Notes

- ¹ Definition inserted by Enterprise and Regulatory Reform Act 2013 c. 24 Sch.6(1) para.100 (April 1, 2014; insertion has effect as SI 2014/416 subject to transitional provisions specified in 2013 c.24 s.28)
- ² Repealed by Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019/246 Sch.1(1) para.40 (December 31, 2020: commenced by an amendment)
- ³ Repealed by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.62(3) (December 21, 2020)

Commencement

Pt 2 c. 3 s. 197(1)-(3): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Extent

Pt 2 c. 3 s. 197(1), (1) definition of "network access"-(3): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

Pt 2 c. 3 s. 197(1) definition of "the CMA": United Kingdom

PART 3**TELEVISION AND RADIO SERVICES[ETC]¹**

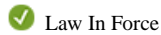
Notes

- ¹ Word inserted by Digital Economy Act 2010 c. 24 s.22(4) (June 8, 2010)
-

CHAPTER 1

THE BBC, C4C THE WELSH AUTHORITY AND THE GAELIC MEDIA SERVICE

The BBC



Law In Force

198 Functions of OFCOM in relation to the BBC

(1) It shall be a function of OFCOM, to the extent that provision for them to do so is contained in—

- (a) the BBC Charter and Agreement, and
- (b) the provisions of this Act and of Part 5 of the 1996 Act,

[to regulate the BBC.]¹

(2) For the purposes of the carrying out of that function OFCOM—

- (a) are to have such powers and duties as may be conferred on them by or under the BBC Charter and Agreement; and
- (b) are entitled, to the extent that they are authorised to do so by the Secretary of State or under the terms of that Charter and Agreement, to act on his behalf in relation to that Charter and Agreement.

[(2A) The BBC Charter and Agreement may in particular confer on OFCOM, as a power they are to have by virtue of subsection (2)(a), power to require any person to provide information for the purposes of the carrying out by OFCOM of their function under subsection (1).]²

(3) The BBC must pay OFCOM such penalties in respect of contraventions by the BBC of provision made by or under—

- (a) this Part, [...] ³
- [(aa) Part 4A, or] ³

(b) the BBC Charter and Agreement,

as are imposed by OFCOM in exercise of powers conferred on them by that Charter and Agreement.

(4) The BBC are also to be liable to pay OFCOM such sums in respect of the carrying out by OFCOM of their functions in relation to the BBC as may be—

- (a) agreed from time to time between the BBC and OFCOM; or
- (b) (in default of agreement) fixed by the Secretary of State.

(5) The maximum penalty that may be imposed on the BBC on any occasion by OFCOM in exercise of a power conferred by virtue of the BBC Charter and Agreement is £250,000.

(6) The Secretary of State may by order substitute a different sum for the sum for the time being specified in subsection (5).

(7) No order is to be made containing provision authorised by subsection (6) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

(8) It shall be the duty of OFCOM to have regard to their functions under this section when carrying out their functions under the 1990 Act, the 1996 Act and this Part in relation to services provided by persons other than the BBC.

(9) [...] ⁴

Notes

- ¹ Words substituted by Digital Economy Act 2017 c. 30 Pt 6 s.88(3) (April 27, 2017)
² Added by Digital Economy Act 2017 c. 30 Pt 6 s.88(4) (April 27, 2017)
³ Added by Audiovisual Media Services Regulations 2009/2979 reg.3(1)(a) (December 19, 2009)
⁴ Repealed by Digital Economy Act 2017 c. 30 Pt 6 s.88(5) (April 27, 2017)

Commencement


Pt 3 c. 1 s. 198(1)-(9): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Extent

Pt 3 c. 1 s. 198-(2)(b), (3)-(3)(a), (3)(b)-(9): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

Pt 3 c. 1 s. 198(2A): (extent not available)

Pt 3 c. 1 s. 198(3)(aa): United Kingdom

 Law In Force

[198ZA Penalties for failure to provide information

(1) This section applies if—

- (a) under a power conferred by virtue of section 198(2A), OFCOM require a person other than the BBC to provide information, and
- (b) OFCOM determine that there are reasonable grounds to believe the person has not provided the information.

(2) OFCOM may give the person a notice which sets out the determination and specifies—

- (a) what information the person must provide,
- (b) the time within which the person must provide it,
- (c) a penalty that OFCOM may impose if the person does not provide it, and
- (d) a period in which the person may make representations.

(3) OFCOM may impose a penalty on the person if they fail without reasonable excuse to provide the information in accordance with the notice.

(4) The penalty may include an amount for each day the person fails to provide the information after the time required by the notice.

(5) The penalty in respect of any notice—

- (a) must not be more than OFCOM determine to be proportionate,
- (b) must not be more than the penalty specified in the notice, and
- (c) must not be more than £250,000.

(6) OFCOM may withdraw a notice without imposing a penalty, and that does not affect the power to issue a further notice in relation to the same information.

(7) OFCOM must publish and keep up to date a statement of their proposed approach to issuing notices and imposing and recovering penalties under this section (subject to the guidelines published under section 392).

] ¹


Notes

¹ Added by Digital Economy Act 2017 c. 30 Pt 6 s.88(6) (April 27, 2017)

Extent

Pt 3 c. 1 s. 198ZA(1)-(7): United Kingdom

C4C

 Law In Force

[198A C4C's functions in relation to media content

(1) C4C must participate in—

- (a) the making of a broad range of relevant media content of high quality that, taken as a whole, appeals to the tastes and interests of a culturally diverse society,
- (b) the making of high quality films intended to be shown to the general public at the cinema in the United Kingdom, and
- (c) the broadcasting and distribution of such content and films.

(2) C4C must, in particular, participate in—

- (a) the making of relevant media content that consists of news and current affairs,
- (b) the making of relevant media content that appeals to the tastes and interests of older children and young adults,
- (c) the broadcasting or distribution by means of electronic communications networks of feature films that reflect cultural activity in the United Kingdom (including third party films), and
- (d) the broadcasting or distribution of relevant media content by means of a range of different types of electronic communications networks.

(3) In performing their duties under subsections (1) and (2) C4C must—

- (a) promote measures intended to secure that people are well-informed and motivated to participate in society in a variety of ways, and
- (b) contribute towards the fulfilment of the public service objectives (as defined in section 264A).

(4) In performing their duties under subsections (1) to (3) C4C must—

- (a) support the development of people with creative talent, in particular—
 - (i) people at the beginning of their careers in relevant media content or films, and
 - (ii) people involved in the making of innovative content and films,

- (b) support and stimulate well-informed debate on a wide range of issues, including by providing access to information and views from around the world and by challenging established views,
 - (c) promote alternative views and new perspectives, and
 - (d) provide access to material that is intended to inspire people to make changes in their lives.
- (5) In performing those duties C4C must have regard to the desirability of—
- (a) working with cultural organisations,
 - (b) encouraging innovation in the means by which relevant media content is broadcast or distributed, and
 - (c) promoting access to and awareness of services provided in digital form.
- (6) In this section—
- “participate in” includes invest in or otherwise procure;
- “relevant media content” means material, other than advertisements, which is included in any of the following services that are available to members of the public in all or part of the United Kingdom—
- (a) television programme services, additional television services or digital additional television services,
 - (b) on-demand programme services, or
 - (c) other services provided by means of the internet where there is a person who exercises editorial control over the material included in the service;
- and a film is a “third party film” if C4C did not participate in making it.
- (7) The services that are to be taken for the purposes of this section to be available to members of the public include any service which—
- (a) is available for reception by members of the public (within the meaning of section 361); or
 - (b) is available for use by members of the public (within the meaning of section 368R(4)).


]¹

Notes

¹ Added by Digital Economy Act 2010 c. 24 s.22(1) (June 8, 2010)

Extent

Pt 3 c. 1 s. 198A(1)-(7)(b): United Kingdom (amendment may be extended to any of the Channel Islands or the Isle of Man under the relevant extending power as specified in s.46(3))

 Law In Force

[198B Statement of media content policy

- (1) C4C must prepare a statement of media content policy—
- (a) at the same time as they prepare the first statement of programme policy that is prepared under section 266 after this section comes into force, and
 - (b) subsequently at annual intervals.

- (2) C4C must monitor their performance in carrying out the proposals contained in their statements of media content policy.
- (3) A statement of media content policy must—
- (a) set out C4C's proposals for securing that, during the following year, they will discharge their duties under section 198A, and
 - (b) include a report on their performance in carrying out the proposals contained in the previous statement.
- (4) In preparing the statement, C4C must—
- (a) have regard to guidance given by OFCOM, and
 - (b) consult OFCOM.
- (5) C4C must publish each statement of media content policy—
- (a) as soon as practicable after its preparation is complete, and
 - (b) in such manner as they consider appropriate, having regard to any guidance given by OFCOM.
- (6) OFCOM must—
- (a) from time to time review the guidance for the time being in force for the purposes of this section, and
 - (b) revise that guidance as they think fit.


] ¹

Notes

¹ Added by Digital Economy Act 2010 c. 24 s.23(1) (June 8, 2010)

Extent

Pt 3 c. 1 s. 198B(1)-(6)(b): United Kingdom (amendment may be extended to any of the Channel Islands or the Isle of Man under the relevant extending power as specified in s.46(3))

 Law In Force

[198C OFCOM reports on C4C's media content duties

- (1) For each relevant period, OFCOM must—
- (a) carry out a review of the extent to which C4C have discharged their duties under section 198A, and
 - (b) prepare a report on the matters found on the review.
- (2) OFCOM must publish each report under this section—
- (a) as soon as practicable after its preparation is complete, and
 - (b) in such manner as they consider appropriate.
- (3) “Relevant period” means each period selected by OFCOM for the purposes of section 264(1)(b) that ends after this section comes into force.

] ¹

Notes

¹ Added by Digital Economy Act 2010 c. 24 s.23(1) (June 8, 2010)

Extent

Pt 3 c. 1 s. 198C(1)-(3): United Kingdom (amendment may be extended to any of the Channel Islands or the Isle of Man under the relevant extending power as specified in s.46(3))

✓ Law In Force

[198D Directions in relation to C4C's media content duties

(1) This section applies if OFCOM—

- (a) are of the opinion that C4C have failed to perform one or more of their duties under section 198A or section 198B(1), (3) or (5),
- (b) are of the opinion that the failure is serious and is not excused by economic or market conditions, and
- (c) determine that the situation requires the exercise of their functions under this section.

(2) In making a determination under subsection (1)(c), OFCOM must have regard, in particular, to—

- (a) C4C's statements of media content policy,
- (b) C4C's effectiveness and efficiency in monitoring their own performance, and
- (c) general economic and market conditions affecting the provision of relevant media content (as defined in section 198A).

(3) OFCOM may give directions to C4C to do one or both of the following—

- (a) to revise the latest statement of media content policy in accordance with the direction;
- (b) to take such steps for remedying the failure as OFCOM specify in the direction.

(4) A direction given under this section must set out—

- (a) a reasonable timetable for complying with it, and
- (b) the factors that OFCOM will take into account in determining whether or not a failure has been remedied.

(5) OFCOM must consult C4C before giving a direction under this section.

] ¹

Notes

¹ Added by Digital Economy Act 2010 c. 24 s.23(1) (June 8, 2010)

Extent

Pt 3 c. 1 s. 198D(1)-(5): United Kingdom (amendment may be extended to any of the Channel Islands or the Isle of Man under the relevant extending power as specified in s.46(3))

✓ Law In Force

199 [Other functions] ¹ of C4C

(1) The activities that C4C are able to carry on include any activities which appear to them—

- (a) to be activities that it is appropriate for them to carry on in association with the carrying out of their primary functions; and

(b) to be connected, otherwise than merely in financial terms, with activities undertaken by them for the carrying out of those functions.

(2) [In subsection (1) “primary functions” means—

(za) the performance of C4C's duties under section 198A;

(a) securing the continued provision of Channel 4; and

(b) the fulfilment of the public service remit for that Channel under section 265.

]²

(3) Section 24(5)(b) and (6) of the 1990 Act (power of C4C to establish, acquire an interest in or assist a qualifying company) shall cease to have effect.

(4) For sub-paragraphs (3) and (4) of paragraph 1 of Schedule 3 to the 1990 Act (power of C4C to do things incidental or conducive to the carrying out of their functions) there shall be substituted—

“(3) The Corporation may do anything which appears to them to be incidental or conducive to the carrying out of their functions.

(4) The powers of the Corporation under sub-paragraph (3) include power, to the extent that it appears to them incidental or conducive to the carrying out of their functions to do so—

(a) to borrow money;

(b) to carry on activities (other than those comprised in their duty to carry out their primary functions) through Channel 4 companies; and

(c) to participate with others in the carrying on of any such activities.”

(5) Schedule 9 (which makes provision for the approval by OFCOM, and for the enforcement, of arrangements made by C4C about the carrying on of their activities) shall have effect.

Notes

¹ Word inserted by Digital Economy Act 2010 c. 24 s.22(2) (June 8, 2010)

² Words substituted by Digital Economy Act 2010 c. 24 s.22(2) (June 8, 2010)

Commencement

Pt 3 c. 1 s. 199(1)-(5): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Extent

Pt 3 c. 1 s. 199-(2), (2)(a)-(5): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

Pt 3 c. 1 s. 199(2)(za): United Kingdom (amendment may be extended to any of the Channel Islands or the Isle of Man under the relevant extending power as specified in s.46(3))

 Law In Force

200 Removal of members of C4C

(1) In paragraph 3 of Schedule 3 to the 1990 Act (term of office of members of C4C), after sub-paragraph (2) there shall be inserted—

“(2A) OFCOM may at any time, by notice to a member of the Corporation, terminate the appointment of that member.

(2B) Before terminating a person's appointment under sub-paragraph (2A), OFCOM must consult the Secretary of State.”

(2) This section applies only to a member whose appointment was made, or last renewed, after the coming into force of this section.

Commencement

Pt 3 c. 1 s. 200(1)-(2): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Extent

Pt 3 c. 1 s. 200-(2): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

✓ Law In Force

201 Deficits and surpluses of C4C

(1) Sections 26 and 27 of the 1990 Act (revenue deficits of C4C to be funded by providers of Channel 3 services and application of excess revenues of C4C) shall cease to have effect.

(2) This section has effect in relation to a deficit or excess for a year ending after the commencement of this section.

Commencement

Pt 3 c. 1 s. 201(1)-(2): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Extent

Pt 3 c. 1 s. 201-(2): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

✓ Law In Force

202 Borrowing limit for C4C

(1) The Secretary of State may by order provide for a limit on the borrowing that C4C is allowed to undertake.

(2) The order may fix the limit either—

(a) by specifying the sum which the outstanding borrowing of C4C must not at any time exceed; or

(b) by providing a method of determining the sum which that borrowing must not exceed.

(3) C4C are not to borrow money if the effect of the borrowing would be to cause the amount of their outstanding borrowing to be, or to remain, in excess of the limit (if any) that is for the time being in force.

(4) For the purposes of this section the amount of C4C's outstanding borrowing at any time is the aggregate amount outstanding at that time in respect of the principal of sums borrowed by them, but after allowing sums borrowed to repay existing loans to be applied for that purpose.

(5) Before making an order under this section, the Secretary of State must consult C4C.

(6) The consent of the Treasury is required for the making of an order under this section.

Commencement

Pt 3 c. 1 s. 202(1)-(6): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Extent

Pt 3 c. 1 s. 202-(6): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

The Welsh Authority

✓ Law In Force

203 Function of OFCOM in relation to the Welsh Authority

It shall be a function of OFCOM, to the extent that provision for them to do so is contained in this Act and Part 5 of the 1996 Act, to regulate the services provided by the Welsh Authority.

Commencement

Pt 3 c. 1 s. 203: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Extent

Pt 3 c. 1 s. 203: United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

✓ Law In Force

204 Welsh Authority's function of providing S4C and S4C Digital

(1) The Welsh Authority shall continue in existence with the substitution of the following function for their functions under section 57 of the 1990 Act.

(2) The Welsh Authority shall have the function of providing television programme services of high quality with a view to their being available for reception wholly or mainly by members of the public in Wales.

[(3) The carrying out of that function—

- (a) must include the continuing provision of the service provided in digital form and known as S4C Digital; and
- (b) may include the continuing provision of the television broadcasting service known as Sianel Pedwar Cymru (“S4C”).

] ¹

[(4) The duty of the Welsh Authority to provide S4C Digital includes a duty to secure that arrangements are made and remain in force for it to be broadcast in digital form.] ²

(5) It shall be the duty of the Welsh Authority to secure that S4C and S4C Digital each represents a public service for the dissemination of information, education and entertainment.

(6) The Welsh Authority may use part of the signals carrying S4C to provide—

- (a) subtitling in relation to programmes included in the service; and
- (b) other services which are ancillary to programmes included in S4C and which are directly related to their contents.

(7) In providing S4C Digital the Welsh Authority may also provide—

- (a) assistance for disabled people in relation to programmes included in the service; and
- (b) any other service (other than one mentioned in paragraph (a)) which is an ancillary service in relation to S4C Digital.

(8) The Secretary of State may by order modify this Act and such other enactments as he thinks fit for the purpose of—

- (a) replacing the requirement of the Welsh Authority to provide S4C with a requirement to provide a service in digital form;
- (b) requiring the Welsh Authority to secure that arrangements are made for that service and S4C Digital to be merged and provided as one service (also to be known as “S4C Digital”); and
- (c) applying enactments relating to the provision of S4C or S4C Digital to the provision of the merged service.

(9) An order under subsection (8) may require the Welsh Authority to ensure that, from the coming into force of a requirement to provide a merged service in digital form until a time determined in the manner described in the order, the whole or a part of the merged service is also to be provided for broadcasting in analogue form.

(10) In this section “programme” does not include an advertisement.

Notes

¹ Substituted by Welsh Authority (Digital Switchover) Order 2009/1968 art.2(2) (August 12, 2009)

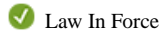
² Substituted by Welsh Authority (Digital Switchover) Order 2009/1968 art.2(3) (August 12, 2009)

Commencement

Pt 3 c. 1 s. 204(1)-(10): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Extent

Pt 3 c. 1 s. 204-(10): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)



Law In Force

205 Powers to provide other services

(1) The Welsh Authority are not, in the carrying out of their function under section 204, to provide any television programme service (apart from S4C and S4C Digital) unless—

- (a) the service appears to them to satisfy the requirements of subsection (3); and
- (b) the provision by them of the service has been approved by an order made by the Secretary of State.

(2) The functions of the Welsh Authority include the provision of services that are neither television programme services nor sound services but—

- (a) are provided with a view to being made available for reception wholly or mainly by members of the public in Wales or otherwise to be received or used by persons in Wales;
- (b) are services appearing to them to satisfy the requirements of subsection (3); and
- (c) are services the provision of which by the Authority has been approved by an order made by the Secretary of State.

(3) A service provided under this section must be a public service of high quality for the dissemination of information, education or entertainment (or a combination of them) wholly or mainly to members of the public in Wales.

(4) The Welsh Authority are not to provide a television programme service under this section unless it is one the provision of which by them broadens the range of television programme services available for reception by members of the public in Wales.

(5) The Welsh Authority must ensure, in the case of every television programme service provided with the approval of the Secretary of State under this section, that a substantial proportion of the programmes included in the service consists of programmes in Welsh.

(6) An order under this section approving the provision of a service must set out—

- (a) the nature and other characteristics of the service that is approved; and
- (b) in the case of a service that is a television programme service, a public service remit for that service.

(7) In providing a service approved under this section the Welsh Authority may also provide—

- (a) assistance for disabled people in relation to programmes included in the service;
- (b) other services which are ancillary to programmes included in the service and which are directly related to their contents; and
- (c) any other service (other than one mentioned in paragraph (a) or (b)) which is an ancillary service in relation to so much of the service as is provided in digital form.

(8) A television programme service provided under this section in digital form is a qualifying service for the purposes of the 1996 Act.

(9) In this section “sound service” means a service which would fall to be regulated under section 245 if provided by an S4C company.

Commencement

Pt 3 c. 1 s. 205(1)-(9): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Extent

Pt 3 c. 1 s. 205-(9): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

✓ Law In Force

206 Other activities of Welsh Authority

(1) The activities that the Welsh Authority are able to carry on include activities which appear to them—

- (a) to be activities that it is appropriate for them to carry on in association with the carrying out of their function of providing S4C, S4C Digital or a service the provision of which is approved under section 205; and
- (b) to be connected, otherwise than merely in financial terms, with activities undertaken by them for the carrying out of that function.

(2) The approval of the Secretary of State is required for the carrying on by the Welsh Authority of activities authorised only by subsection (1).

(3) The approval of the Secretary of State—

- (a) must be contained in an order made by him; and
- (b) may be a general approval in relation to a description of activities or a specific approval in relation to particular activities.

(4) The activities capable of being authorised under subsection (1)—

- (a) do not include the provision of a licensable service; but
- (b) do include activities for securing the provision of such a service by an S4C company and other activities connected with the provision of such a service by such a company.

(5) The activities referred to in subsection (4)(b) include—

- (a) the formation of a company to provide a programme service;
- (b) the taking of steps by means of which a company that is providing such a service becomes an S4C company.

(6) For sub-paragraphs (2) and (3) of paragraph 1 of Schedule 6 to the 1990 Act (power of Welsh Authority to do things incidental or conducive to the carrying out of their functions) there shall be substituted—

“(2) The Authority may do anything which appears to them to be incidental or conducive to the carrying out of their functions.

- (3) The powers of the Authority under sub-paragraph (2) include power, to the extent that it appears to them incidental or conducive to the carrying out of their functions to do so—
- (a) to carry on activities (other than those comprised in their duty to carry out their functions under section 204 of the Communications Act 2003) through S4C companies; and
 - (b) to participate with others in the carrying on of any such activities.”

(7) In this section “licensable service” means a service that would fall to be regulated under section 211 or 245 if provided by an S4C company.

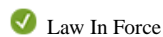
(8) Section 57(1A)(b) and (1B) of the 1990 Act (power of Welsh Authority to establish, acquire an interest in or assist a qualifying company) shall cease to have effect.

Commencement

Pt 3 c. 1 s. 206(1)-(8): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Extent

Pt 3 c. 1 s. 206-(8): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)



Law In Force

207 Welsh Authority finances

- (1) The Welsh Authority must not, whether directly or indirectly, impose charges on persons—
- (a) in respect of their reception or use in Wales of any of the Authority's public services;
 - (b) in respect of their reception in Wales of any service consisting in the provision of assistance for disabled people in relation to programmes included in any one or more of those services; or
 - (c) in respect of their reception in Wales of any service (other than one mentioned in paragraph (b)) which is an ancillary service in relation to any of the Authority's public services provided in digital form.
- (2) It shall be unlawful to impose a charge in contravention of subsection (1).
- (3) The power of the Welsh Authority to do anything that appears to them to be conducive or incidental to the carrying out of their functions includes power, subject to subsection (4), to borrow money.
- (4) The Welsh Authority are not to borrow money except with the approval of the Secretary of State.
- (5) The consent of the Treasury is to be required for the giving of an approval for the purposes of subsection (4).
- (6) The Welsh Authority are to be liable to pay OFCOM such sums in respect of the carrying out by OFCOM of their functions in relation to the Authority as may be—
- (a) agreed from time to time between the Authority and OFCOM; or
 - (b) (in default of agreement) fixed by the Secretary of State.

(7) In section 61(4) of the 1990 Act (power of Secretary of State to increase amount of grant to the Welsh Authority), for “transmitting S4C and the service referred to in section 57(1A)(a), by order” there shall be substituted—

- “(a) providing services that are public services of the Authority (within the meaning of section 207 of the Communications Act 2003), and
 - (b) arranging for the broadcasting or distribution of those services,
- by order”.

(8) In section 61A of the 1990 Act (the public service fund)—

- (a) in subsection (2) (application of fund), for “their functions under section 57(1) or (1A)(a)” there shall be substituted “their functions in relation to the provision of the services that are public services of the Authority (within the meaning of section 207 of the Communications Act 2003).”; and
- (b) in subsection (4) (programmes to be broadcast first on S4C or S4C Digital), for the words from “on S4C” onwards there shall be substituted “on a television programme service that is one of their public services (within the meaning of section 207 of the Communications Act 2003)”.

(9) In this section references to the Welsh Authority's public services are references to the following—

- (a) S4C;
- (b) S4C Digital; and
- (c) the services the provision of which by the Authority is authorised by or under section 205.

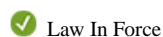
Commencement

Pt 3 c. 1 s. 207(1)-(9)(c): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Extent

Pt 3 c. 1 s. 207-(9)(c): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

The Gaelic Media Service



Law In Force

208 The Gaelic Media Service

(1) The body established for the purposes of section 183 of the 1990 Act (financing of programmes in Gaelic out of the Gaelic Television Fund) is hereby renamed Seirbheis nam Meadhanan Gàidhlig (the Gaelic Media Service).

(2) References in any instrument or other document to Comataidh Craolaidh Gàidhlig or to the Gaelic Broadcasting Committee are to be construed accordingly.

(3) For subsection (4) of that section there shall be substituted—

“(3B) The functions of the Service shall be to secure that a wide and diverse range of high quality programmes in Gaelic are broadcast or otherwise transmitted so as to be available to persons in Scotland.

(4) The Service may—

- (a) make grants out of the Fund, or
- (b) otherwise apply it,

for any of the purposes of carrying out their functions or for any purpose connected with the carrying out of those functions.

(4A) In carrying out their functions, the Service may finance, or engage in, any of the following—

- (a) the making of programmes in Gaelic with a view to those programmes being broadcast or otherwise transmitted so as to be available to persons in Scotland;
- (b) the provision of training for persons employed, or to be employed, in connection with the making of programmes in Gaelic to be so broadcast or otherwise transmitted;
- (c) research into the types of programmes in Gaelic that members of the Gaelic-speaking community would like to be broadcast or otherwise transmitted.

(4B) But the Service are not to be entitled, for the purpose of carrying out their functions, to provide—

- (a) a Channel 3 service;
- (b) Channel 4;
- (c) Channel 5;
- (d) a national sound broadcasting service;
- (e) a national digital sound programme service; or
- (f) a television multiplex service or a radio multiplex service.”

(4) For subsection (9) of that section there shall be substituted—

“(9) In this section, section 183A and Schedule 19—

‘Channel 3 service’, ‘Channel 4’ and ‘Channel 5’ each has the same meaning as in Part 1;

‘national digital sound programme service’ has the same meaning as in Part 2 of the Broadcasting Act 1996;

‘national sound broadcasting service’ means a sound broadcasting service within the meaning of Part 3 which, under subsection (4)(a) of section 245 of the Communications Act 2003, is a national service for the purposes of that section;

‘Gaelic’ means the Gaelic language as spoken in Scotland;

‘programme’ includes any item included in a programme service;

‘radio multiplex service’ has the same meaning as in Part 2 of the Broadcasting Act 1996;

‘the Service’ means the body established under subsection (3) and known as *Seirbheis nam Meadhanan Gàidhlig* (the Gaelic Media Service);

‘television multiplex service’ has the meaning given by section 241(1) of the Communications Act 2003 to a multiplex service within the meaning of Part 1 of the Broadcasting Act 1996;

and a reference to being available to persons in Scotland includes a reference to being available both to persons in Scotland and to others.”

Commencement

Pt 3 c. 1 s. 208(1)-(4): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Extent

Pt 3 c. 1 s. 208-(4): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

✓ Law In Force

209 Membership of the Service

After section 183 of the 1990 Act there shall be inserted—

“183A Membership of the Gaelic Media Service

- (1) The Service shall consist of not more than twelve members.
- (2) The members of the Service are to be appointed by OFCOM
- (3) OFCOM must appoint one of the members to be the chairman of the Service.
- (4) The approval of the Secretary of State is required for the appointment of a person as a member of the Service, and for the appointment of a member as their chairman.
- (5) The members of the Service must include—
 - (a) a member nominated by the BBC;
 - (b) a member nominated by Highlands and Islands Enterprise; and
 - (c) a member nominated by Bòrd Gàidhlig na h-Alba (the Gaelic Development Agency).
- (6) When appointing members of the Service, OFCOM must have regard to—
 - (a) the desirability of having members of the Service who are proficient in written and spoken Gaelic; and
 - (b) any guidance issued by the Secretary of State for the purposes of this section.
- (7) OFCOM must secure, so far as practicable, that the membership of the Service is such that the interests of each of the following are adequately represented—
 - (a) the holders of licences to provide regional Channel 3 services for areas wholly in Scotland;
 - (b) the holders of licences to provide regional Channel 3 services in respect of which determinations under section 184(4)(b) are for the time being in force;
 - (c) the independent television and radio production industries in Scotland;
 - (d) other persons and bodies concerned with the promotion and use of the Gaelic language, including those concerned with education in Gaelic and in Gaelic culture.
- (8) Schedule 19 to this Act shall have effect with respect to the Service.

(9) In this section—

‘Bòrd Gàidhlig na h-Alba’ means the body of that name formed under section 5 of the National Heritage (Scotland) Act 1985;

‘regional Channel 3 service’ has the same meaning as in Part 1.

(10) The Secretary of State may by order amend the reference in subsection (5) to Bòrd Gàidhlig na h-Alba (the Gaelic Development Agency)—

(a) by substituting a reference to another body formed under section 5 of the National Heritage (Scotland) Act 1985 with functions relating to the promotion of Gaelic; or

(b) for the purpose of giving effect to a change to the name of the body referred to in that subsection.

(11) An order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

Commencement

Pt 3 c. 1 s. 209: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Extent

Pt 3 c. 1 s. 209: United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

✓ Law In Force

210 Supplementary provisions about the Service

(1) Schedule 19 to the 1990 Act (supplementary provisions about the Gaelic Broadcasting Committee) shall be amended as follows.

(2) In paragraph 2 (tenure of office and remuneration)—

(a) in sub-paragraph (1), for “sub-paragraph (2)” there shall be substituted “sub-paragraphs (1A) and (2)”;

(b) after sub-paragraph (1) there shall be inserted—

“(1A) A person is not to be appointed as a member of the Service for a term of more than four years (but a person so appointed shall be eligible for re-appointment at the end of his term of office).”

(3) In paragraph 7 (employees of the Committee), after sub-paragraph (3) there shall be inserted—

“(4) A person who is an employee of the Service is not to be eligible to be appointed as a member of the Service.”

(4) After paragraph 8 (financial provision) there shall be inserted—

“8A

(1) The Service must pay all their receipts to OFCOM.

(2) OFCOM must hold amounts received by them under this paragraph to the credit of the Gaelic Broadcasting Fund (and, accordingly, those amounts are not to be regarded as forming part of OFCOM's revenues)."

(5) In paragraph 12 (annual reports), after sub-paragraph (1) there shall be inserted—

“(1A) The report must include a statement of how the Service are proposing to carry out their functions during the next financial year.”

Commencement

Pt 3 c. 1 s. 210(1)-(5): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

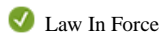
Extent

Pt 3 c. 1 s. 210-(5): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

CHAPTER 2

REGULATORY STRUCTURE FOR INDEPENDENT TELEVISION SERVICES

Preliminary



Law In Force

211 Regulation of independent television services

(1) It shall be a function of OFCOM to regulate the following services in accordance with this Act, the 1990 Act and the 1996 Act—

- (a) services falling within subsection (2) that are provided otherwise than by the BBC or the Welsh Authority; and
- (b) services falling within subsection (3) that are provided otherwise than by the BBC.

(2) The services referred to in subsection (1)(a) are—

- (a) television broadcasting services that are provided from places in the United Kingdom with a view to their being broadcast otherwise than only from a satellite;
- [(b) television licensable content services that meet the appropriate condition in subsection (4);
- (c) digital television programme services that—
 - (i) can be accessed by means of a regulated electronic programme guide and are not exempt foreign services, or
 - (ii) cannot be accessed by means of a regulated electronic programme guide but are provided by a person who is within the jurisdiction of the United Kingdom for

the purposes of the European Convention on Transfrontier Television and included in broadcasts to which that Convention applies;

] ¹

- (d) restricted television services that are provided from places in the United Kingdom; and
- (e) additional television services that are provided from places in the United Kingdom.

(3) The services referred to in subsection (1)(b) are—

- (a) television multiplex services that are provided from places in the United Kingdom; and
- [(b) digital additional television services that meet the appropriate condition in subsection (4).] ²

[(4) For the purposes of subsections (2)(b) and (3)(b) "the appropriate condition" is—

- (a) if or to the extent that the service does not consist of an electronic programme guide, that—
 - (i) the service can be accessed by means of a regulated electronic programme guide and is not an exempt foreign service, or
 - (ii) the service cannot be accessed by means of a regulated electronic programme guide but is provided by a person who is within the jurisdiction of the United Kingdom for the purposes of the European Convention on Transfrontier Television and included in broadcasts to which that Convention applies;
- (b) if or to the extent that the service consists of an electronic programme guide, that the electronic programme guide is a regulated electronic programme guide.

(5) In this section—

- (a) "electronic programme guide" has the meaning given by section 310(8),
- (b) "regulated electronic programme guide" has the meaning given by section 211A, and
- (c) "exempt foreign service" has the meaning given by section 211B.

] ³

Notes

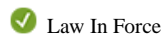
- ¹ Substituted by Broadcasting (Amendment) (EU Exit) Regulations 2019/224 Sch.1(3) para.20(2) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))
- ² Substituted by Broadcasting (Amendment) (EU Exit) Regulations 2019/224 Sch.1(3) para.20(3) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))
- ³ Added by Broadcasting (Amendment) (EU Exit) Regulations 2019/224 Sch.1(3) para.20(4) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))

Commencement

Pt 3 c. 2 s. 211(1)-(3)(b): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Extent

Pt 3 c. 2 s. 211-(5)(c): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)



Law In Force

[211A.— Regulated electronic programme guides

- (1) This section has effect for the interpretation of section 211.
- (2) "Regulated electronic programme guide" means an electronic programme guide which—
- (a) is provided, under a licence to provide television licensable content services or digital additional television services, by a person who was providing an electronic programme guide under that licence immediately before [IP completion day]² ,
 - (b) is provided by a person designated by the Secretary of State by regulations or by a person having a prescribed connection with a person so designated, or
 - (c) falls within a prescribed description.
- (3) In subsection (2) "prescribed" means prescribed by the regulations.
- (4) Regulations under subsection (2)(b) may only designate a person who, at the time when the regulations are made—
- (a) is providing an electronic programme guide that is used by members of the public in the United Kingdom as a facility for obtaining access to television programme services, or
 - (b) is providing, or has informed OFCOM of an intention to provide, an electronic programme guide with a view to its use by members of the public in the United Kingdom as such a facility.
- (5) The electronic programme guides that are to be taken for the purposes of this section to be used by members of the public include any electronic programme guide that—
- (a) is used, or available for use, only by persons who subscribe to the service (whether for a period or in relation to a particular occasion) or who otherwise request its provision, but
 - (b) is a service the facility of subscribing to which, or of otherwise requesting its provision, is offered or made available to members of the public.
- (6) Before making regulations under subsection (2), the Secretary of State must consult OFCOM.
- (7) In this section "electronic programme guide" has the meaning given by section 310(8).
-] ¹

Notes

- ¹ Added by Broadcasting (Amendment) (EU Exit) Regulations 2019/224 Sch.1(3) para.21 (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))
- ² Words substituted by Broadcasting (Amendment) (EU Exit) Regulations 2019/224 Sch.1(3) para.21 (December 31, 2020: commenced by an amendment)

Extent

Pt 3 c. 2 s. 211A(1)-(7): United Kingdom



Law In Force

[211B.— Exempt foreign services

- (1) In section 211 "exempt foreign service" means—

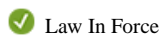
- (a) a service provided by a person who is for the purposes of the European Convention on Transfrontier Television within the jurisdiction of a CTT State other than the United Kingdom, or
 - (b) any of the following services—
 - (i) the services known as RTÉ1 and RTÉ2 provided by Raidió Teilifís Éireann, and
 - (ii) the service known as TG4 provided by Teilifís na Gaeilge.
- (2) The Secretary of State may by regulations amend subsection (1)(b)—
- (a) by adding a reference to a service appearing to the Secretary of State to be a public service channel established in Ireland,
 - (b) by amending the description of a service for the time being specified in that provision, or
 - (c) by omitting the reference to a service for the time being specified in that provision.
- (3) In this section "CTT State" means a State which is for the time being a party to the European Convention on Transfrontier Television.
-]¹

Notes

- ¹ Added by Broadcasting (Amendment) (EU Exit) Regulations 2019/224 Sch.1(3) para.21 (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))

Extent

Pt 3 c. 2 s. 211B(1)-(3): United Kingdom



Law In Force

212 Abolition of function of assigning television frequencies

The Secretary of State shall cease to have any function under the 1990 Act or the 1996 Act of assigning frequencies for the purposes of any of the following—

- (a) services falling to be licensed under Part 1 of the 1990 Act;
- (b) S4C; or
- (c) television multiplex services falling to be licensed under Part 1 of the 1996 Act.

Commencement

Pt 3 c. 2 s. 212(a)-(c): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Extent

Pt 3 c. 2 s. 212-(c): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)



Law In Force

213 Abolition of licensing for local cable systems

On and after the television transfer date no licence shall be required under Part 2 of the 1990 Act for the provision of a local delivery service.

Commencement

Pt 3 c. 2 s. 213: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Extent

Pt 3 c. 2 s. 213: United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

Channels 3 and 5



Law In Force

214 Digital Channel 3 and Channel 5 licences

(1) This section applies to the grant by OFCOM, at any time on or after the television transfer date, of a licence under Part 1 of the 1990 Act to provide a Channel 3 service or to provide Channel 5.

(2) The licence must—

- (a) be a licence to provide the licensed service with a view to its being broadcast in digital form; and
- (b) contain such condition (if any) requiring the provider of the service to ensure that the whole or a part of the service is also provided for broadcasting in analogue form as OFCOM consider appropriate.

(3) The conditions included in a licence by virtue of subsection (2)(b) must be such as to enable effect to be given to any directions given from time to time by the Secretary of State to OFCOM about the continuance of the provision of services in analogue form.

(4) Where the licence contains a condition falling within subsection (2)(b), it must also contain a condition that—

- (a) the programmes (apart from the advertisements) that are included in the service provided in analogue form, and
- (b) the times at which they are broadcast,

are to be the same as in the case of, or of the specified part of, the service provided for broadcasting in digital form.

(5) The licence—

- (a) must be a licence which continues in force, from the time from which it takes effect, until the end of the licensing period beginning or current at that time; and
- (b) shall be renewable, on one or more occasions, under section 216.

(6) For the purposes of subsection (5) a licensing period [, in relation to a licence,]¹ is—

- (a) the period beginning with the commencement of this section and ending with the initial expiry date [for that type of licence]² ; or
 - (b) any subsequent period of ten years beginning with the end of the previous licensing period [for that type of licence]³ .
- (7) The licence must contain the conditions that OFCOM consider appropriate for the purpose of performing their duty under section 263.
- (8) The conditions of the licence must also include conditions prohibiting the imposition, whether directly or indirectly, of the following—
- (a) charges on persons in respect of their reception in the United Kingdom of the licensed service;
 - (b) charges on persons in respect of their reception in the United Kingdom of any service consisting in the provision of assistance for disabled people in relation to programmes included in the licensed service; and
 - (c) charges on persons in respect of their reception in the United Kingdom of any service (other than one mentioned in paragraph (b)) which is an ancillary service in relation to so much of the licensed service as is provided in digital form.
- (9) It shall be unlawful to impose a charge in contravention of a condition imposed under subsection (8).

Notes

¹ Words inserted by Digital Economy Act 2010 c. 24 s.26(2)(a) (June 8, 2010)

² Words inserted by Digital Economy Act 2010 c. 24 s.26(2)(b) (June 8, 2010)

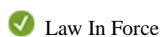
³ Words inserted by Digital Economy Act 2010 c. 24 s.26(2)(c) (June 8, 2010)

Commencement

Pt 3 c. 2 s. 214(1)-(9): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Extent

Pt 3 c. 2 s. 214-(9): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)



Law In Force

215 Replacement of existing Channel 3 and Channel 5 licences

- (1) It shall be the duty of OFCOM to make an offer under this section to every person who, when the offer is made, is the holder of a licence (an “existing licence”)—
- (a) to provide a Channel 3 service; or
 - (b) to provide Channel 5.
- (2) The offer made to a person under this section—
- (a) must be an offer to exchange his existing licence for a replacement licence; and
 - (b) must be made as soon as practicable after the television transfer date.

- (3) The replacement licence offered must be one granted in accordance with the provisions of—
- (a) Part 1 of the 1990 Act; and
 - (b) section 214 of this Act;
- but sections 15 to 17A of the 1990 Act (award of licences) are not to apply in the case of the replacement licence.
- (4) Subject to subsection (5), where OFCOM make an offer under this section to a person, the service which they are proposing to license by the replacement licence must be a service which—
- (a) is provided with a view to its being broadcast in digital form; but
 - (b) subject to that and to any requirements of section 214, appears to OFCOM to be a service that is equivalent in all material respects to the service the provision of which in analogue form was authorised by the existing licence.
- (5) An offer under this section may, to such extent as OFCOM think fit, propose the grant of a licence to provide a service for an area or at times which, though substantially the same as in the case of the existing licence, are not identical.
- (6) The offer must propose the inclusion in the replacement licence of conditions as to the payment of amounts to OFCOM which require the payment of—
- (a) the same amount in respect of each complete calendar year falling wholly or partly within the period for which the replacement licence is in force, and
 - (b) an amount equal to the same percentage of the qualifying revenue for each accounting period of the licence holder falling within that period,
- as would have been payable under the existing licence had that licence continued in force until the end of the period for which the replacement licence is granted.
- (7) That offer must also propose the conditions for allowing amounts paid for a period under the existing licence to be set off against liabilities for the same period arising under the replacement licence.
- (8) An offer under this section must set out—
- (a) the terms of the proposed replacement licence;
 - (b) the conditions on which OFCOM are proposing to grant the replacement licence;
 - (c) the period for which the offer is open;
 - (d) the date on which the proposed replacement licence will be granted if the offer is accepted;
 - (e) the time as from which it is proposed that that licence will take effect if the offer is accepted; and
 - (f) the time from which the existing licence will cease to have effect if the offer is not accepted.
- (9) The times set out under subsection (8) must—
- (a) in the case of the time set out under paragraph (e), be in the period of twelve months beginning with the television transfer date; and
 - (b) in the case of the time set out under paragraph (f), be in the period of eighteen months after the end of the period set out under paragraph (c) of that subsection.
- (10) Where a person to whom an offer has been made under this section elects, by notification to OFCOM, to exchange his licence for the replacement licence offered to him—

- (a) he is entitled, on the date set out in the offer, to be granted, in accordance with Part 1 of the 1990 Act and section 214 of this Act, a replacement licence under that Part in the terms, and on the conditions, so set out;
- (b) the replacement licence shall come into force, and the existing licence cease to have effect, at the time specified in the offer, or such later time as OFCOM may, with the consent of that person, direct; and
- (c) the service which he is authorised to provide by the replacement licence, so far as it is provided in digital form, shall be a qualifying service for the purposes of Part 1 of the 1996 Act.

(11) Where the person to whom an offer has been made under this section—

- (a) does not elect, during the period for which the offer is open, to exchange the existing licence for the replacement licence, or
- (b) rejects the offer before the end of that period,

the existing licence shall have effect as if the period for which it is to continue in force ended with the time specified in the offer for the purposes of subsection (8)(f).

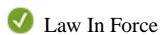
(12) In this section “qualifying revenue” has the same meaning as in section 19 of the 1990 Act.

Commencement

Pt 3 c. 2 s. 215(1)-(12): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Extent

Pt 3 c. 2 s. 215-(12): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)



Law In Force

216 Renewal of Channel 3 and 5 licences

(1) The holder of—

- (a) a licence to provide a Channel 3 service, or
- (b) a licence to provide Channel 5,

may apply to OFCOM for the renewal of his licence for a period of ten years from the end of the licensing period current at the time of the application.

(2) An application for renewal may only be made in the period which—

- (a) begins four years before the end of the current licensing period; and
- (b) ends three months before the day that OFCOM have determined to be the day by which they would need to publish a tender notice if they were proposing to grant a fresh licence to take effect from the end of that period.

(3) A determination for the purposes of subsection (2)(b)—

- (a) must be made at least one year before the day determined; and
- (b) must be notified by OFCOM to every person who, at the time of the determination, holds a licence in respect of which there is right to apply for renewal under this section.

[(4) Where OFCOM receive an application under this section for the renewal of a licence they must—

- (a) decide whether to renew the licence; and
- (b) notify the applicant of their decision.

(4A) If OFCOM decide to renew the licence they must—

- (a) in the case of a licence to provide a Channel 3 service, determine in accordance with section 216A the area for which the licence will be renewed;
- (b) in every case, determine in accordance with section 217 the financial terms on which the licence will be renewed; and
- (c) notify the applicant of their determinations.

] ¹

(5) Section 17(5) to (7) of the 1990 Act (suspect sources of funds) apply in relation to an applicant for a renewal under this section as they apply in relation to an applicant mentioned in section 17(5) of that Act, but as if references to the award of a licence were references to its renewal.

(6) OFCOM may decide not to renew the licence if they are not satisfied that the applicant (if his licence were renewed) would provide a service complying with the requirements imposed under Chapter 4 of this Part by conditions relating to—

- (a) the public service remit for the licensed service;
- (b) programming quotas;
- (c) news and current affairs programmes; and
- (d) programme production and regional programming.

[(6A) OFCOM may also decide not to renew a licence to provide a Channel 3 service if, for the licensing period in question, they have renewed or propose to renew one or more other licences to provide a Channel 3 service for all of the area to which the licence relates.] ²

(7) OFCOM may also decide not to renew the licence if they propose to grant a fresh licence for a service replacing the licensed service which would differ from the licensed service in—

- (a) the area for which it would be provided; or
- (b) the times of the day, or days of the week, between or on which it would be provided.

(8) In all cases in which—

- (a) the applicant notifies OFCOM that he accepts the terms notified to him under [subsection (4A)(c)] ³, and

(b) they are not required or allowed by subsections (5) to (7) to refuse a renewal, they must grant the renewal as soon as reasonably practicable.

(9) But OFCOM must not grant a renewal under this section more than eighteen months before the end of the licensing period from the end of which the renewal will take effect.

(10) Where a licence is renewed under this section, it must be renewed on the same terms and conditions, subject only to such modifications as are required to give effect [—] ⁴

- [(a) to any determination under subsection (4A)(a);
- (b) in accordance with the determination under subsection (4A)(b), to the requirements imposed by section 217(4).] ⁴

(11) Nothing in this section requires OFCOM, following the receipt of an application for the renewal of a licence—

- (a) to make a decision or determination, or

(b) to take any other step under this section, at any time after an order under section 230 has come into force preventing the renewal of the licence.

(12) For the purposes of this section a licensing period [, in relation to a licence,]⁵ is—

- (a) the period beginning with the commencement of this section and ending with the initial expiry date [for that type of licence]⁶ ; or
- (b) any subsequent period of ten years beginning with the end of the previous licensing period [for that type of licence]⁷ .

(13) In this section “tender notice” means a notice under section 15 of the 1990 Act.

Notes

- ¹ S.216(4)-(4A) substituted for s.216(4) by Digital Economy Act 2010 c. 24 s.24(3) (June 8, 2010)
- ² Added by Digital Economy Act 2010 c. 24 s.24(4) (June 8, 2010)
- ³ Words substituted by Digital Economy Act 2010 c. 24 s.24(5) (June 8, 2010)
- ⁴ Words substituted by Digital Economy Act 2010 c. 24 s.24(6) (June 8, 2010)
- ⁵ Words inserted by Digital Economy Act 2010 c. 24 s.26(2)(a) (June 8, 2010)
- ⁶ Words inserted by Digital Economy Act 2010 c. 24 s.26(2)(b) (June 8, 2010)
- ⁷ Words inserted by Digital Economy Act 2010 c. 24 s.26(2)(c) (June 8, 2010)

Commencement

Pt 3 c. 2 s. 216(1)-(13): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Extent

Pt 3 c. 2 s. 216-(4)(c), (5)-(6)(d), (7)-(10), (11)-(13): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

Pt 3 c. 2 s. 216(4A)-(4A)(c), (6A), (10)(a)-(10)(b): United Kingdom (amendment may be extended to any of the Channel Islands or the Isle of Man under the relevant extending power as specified in s.46(3))



Law In Force

[216A Renewal of Channel 3 licences: determination of licence areas

(1) This section applies if OFCOM decide under section 216(4) to renew a licence to provide a Channel 3 service.

(2) The area determined under section 216(4A)(a) for the licence—

- (a) must include all or part of the area to which the licence being renewed currently relates, and
- (b) may include all or part of another area if the holder of the licence to provide a Channel 3 service for the other area gives (and does not withdraw) consent before the determination is made.


] ¹

Notes

¹ Added by Digital Economy Act 2010 c. 24 s.24(7) (June 8, 2010)

Extent

Pt 3 c. 2 s. 216A(1)-(2)(b): United Kingdom (amendment may be extended to any of the Channel Islands or the Isle of Man under the relevant extending power as specified in s.46(3))

 Law In Force

217 Financial terms of licence renewed under s. 216

- (1) The determination under [section 216(4A)(b)]¹ must comprise—
- (a) a determination of the amount which the holder of the renewed licence will be required by the conditions of that licence to pay to OFCOM in respect of the first complete calendar year falling within the renewal period; and
 - (b) a determination of the percentage of qualifying revenue for each accounting period of the licence holder falling within the renewal period which the holder of that licence will be required by those conditions to pay to OFCOM.
- (2) The amount determined under subsection (1)(a) must be equal to the amount which, in OFCOM's opinion, would have been the cash bid of the licence holder were the licence (instead of being renewed) to be granted for the period of the renewal on an application made in accordance with section 15 of the 1990 Act.
- (3) For the purposes of subsection (1)(b)—
- (a) different percentages may be determined for different accounting periods; and
 - (b) the percentages that may be determined for an accounting period include a nil percentage.
- (4) The renewed licence is required, as renewed, to include conditions requiring the licence holder to pay to OFCOM—
- (a) in addition to any fees required to be paid by virtue of section 4(1)(b) of the 1990 Act, but
 - (b) instead of the amounts payable under the corresponding provision applicable under the conditions of the licence to the period before the renewal takes effect,
- the amounts specified in subsection (5).
- (5) Those amounts are—
- (a) in respect of the first complete calendar year falling within the renewal period, the amount determined under subsection (1)(a);
 - (b) in respect of each subsequent year falling wholly or partly within the renewal period, that amount increased by the appropriate percentage; and
 - (c) in respect of each accounting period of the licence holder falling within the renewal period, an amount representing a specified percentage of qualifying revenue for that accounting period.
- (6) The percentage specified for the purposes of subsection (5)(c) in respect of an accounting period must be the amount determined for that period under subsection (1)(b).
- (7) In this section—

“the appropriate percentage” and “qualifying revenue” each has the same meaning as in section 19 of the 1990 Act; and
“renewal period”, in relation to a licence, means the period for which the licence is in force by reason of its renewal.

Notes

¹ Words substituted by Digital Economy Act 2010 c. 24 s.24(8) (June 8, 2010)


Commencement

Pt 3 c. 2 s. 217(1)-(7) definition of "renewal period": December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Extent

Pt 3 c. 2 s. 217-(7) definition of "renewal period": United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

The public teletext service

 Law In Force

218 [Power]¹ to secure the provision of a public teletext service

(1) OFCOM [may]² secure the provision, in accordance with this Chapter and Part 1 of the 1996 Act, of a teletext service that is available nationwide [and complies with this section]³.

(2) The service must consist of—

- (a) a single teletext service provided in digital form with a view to its being broadcast by means of a television multiplex service; and
- (b) for so long as Channel 4, S4C and one or more Channel 3 services are broadcast in analogue form, an analogue teletext service.

(3) The service, if licensed to do so in accordance with section 219, may continue to include an analogue teletext service after it is no longer required under subsection (2)(b) to include such a service.

(4) The analogue teletext service that must be or may be comprised in the public teletext service is a single additional television service that uses the combined spare capacity available for the provision of additional television services on the frequencies on which Channel 3 services, Channel 4 and S4C (or any of them) are broadcast in analogue form.

(5) For so long as the public teletext service must consist of both a teletext service provided in digital form and an analogue teletext service, OFCOM must secure that both services are provided by the same person.

(6) But nothing in this section—

- (a) requires the contents of the two services comprised in the public teletext service to be the same;

- (b) prevents the service from including different items for different parts of the United Kingdom or prevents the different items from being made available only in the parts of the United Kingdom for which they are included; or
 - (c) prevents the licence holder from making arrangements authorised by virtue of section 220 for the provision of the whole or a part of the public teletext service by another.
- (7) [If there is a public teletext provider, OFCOM must take account of the requirements of the public teletext service when exercising their powers]⁴ —
- (a) to make frequencies available for the purposes of Channel 3 services, Channel 4 and S4C; and
 - (b) to make determinations for the purposes of section 48(2)(b) of the 1990 Act (determinations of spare capacity) [.]⁵
- [...]⁵

Notes

- ¹ Word substituted by Digital Economy Act 2010 c. 24 s.28(4) (June 8, 2010)
- ² Words substituted by Digital Economy Act 2010 c. 24 s.28(2)(a) (June 8, 2010)
- ³ Words inserted by Digital Economy Act 2010 c. 24 s.28(2)(b) (June 8, 2010)
- ⁴ Words substituted by Digital Economy Act 2010 c. 24 s.28(3)(a) (June 8, 2010)
- ⁵ Words repealed by Digital Economy Act 2010 c. 24 Sch.2 para.1 (June 8, 2010: as 2010 c.24)

Commencement

Pt 3 c. 2 s. 218(1)-(7)(b): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Extent

Pt 3 c. 2 s. 218-(7)(b): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

 Law In Force

[218A Duty to report on public teletext service

- (1) OFCOM must—
- (a) prepare a report on the public teletext service, and
 - (b) send it to the Secretary of State as soon as practicable after this section comes into force.
- (2) OFCOM must prepare and send to the Secretary of State further reports on the public teletext service when asked to do so by the Secretary of State.
- (3) Each report must include, in particular—
- (a) an assessment of the advantages and disadvantages for members of the public of the public teletext service being provided, and
 - (b) an assessment of whether the public teletext service can be provided at a cost to the licence holder that is commercially sustainable.


- (4) An assessment under subsection (3)(a) must take account of alternative uses for the capacity that would be available if the public teletext service were not provided.
- (5) OFCOM must publish every report under this section—
- (a) as soon as practicable after they send it to the Secretary of State, and
 - (b) in such manner as they consider appropriate.
- (6) “Capacity” means capacity on the frequencies on which Channel 3 services, Channel 4, S4C and television multiplex services are broadcast.
-]¹

Notes

- ¹ Added by Digital Economy Act 2010 c. 24 s.27 (June 8, 2010)

Extent

Pt 3 c. 2 s. 218A(1)-(6): United Kingdom (amendment may be extended to any of the Channel Islands or the Isle of Man under the relevant extending power as specified in s.46(3))

 Law In Force

219 Licensing of the public teletext service

- (1) The licence that is required for the purposes of section 13 of the 1990 Act in respect of the public teletext service is a licence under Part 1 of that Act complying with this section.
- (2) The licence—
- (a) must be a licence which continues in force, from the time from which it takes effect, until the end of the licensing period beginning or current at that time; and
 - (b) shall be renewable, on one or more occasions, under section 222.
- (3) For the purposes of subsection (2) a licensing period is—
- (a) the period beginning with the commencement of this section and ending with the initial expiry date [for the licence to provide the public teletext service]¹ ; or
 - (b) any subsequent period of ten years beginning with the end of the previous licensing period [for that type of licence]² .
- (4) The licence must contain the conditions that OFCOM consider appropriate for the purpose of performing their duty under section 263.
- (5) The conditions of the licence must also include conditions prohibiting the imposition, whether directly or indirectly, of any charges on persons in respect of their reception in the United Kingdom of the licensed service.
- (6) It shall be unlawful to impose a charge in contravention of a condition imposed under subsection (5).
- (7) The service authorised by a licence under this section, so far as it comprises a service provided in digital form, is a qualifying service for the purposes of Part 1 of the 1996 Act.
- (8) Schedule 10 (which makes further provision about the award and grant of the licence for the public teletext service and about the conditions and enforcement of that licence) shall have effect.

Notes

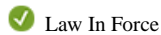
- ¹ Words inserted by Digital Economy Act 2010 c. 24 s.26(3)(a) (June 8, 2010)
² Words inserted by Digital Economy Act 2010 c. 24 s.26(3)(b) (June 8, 2010)

Commencement

Pt 3 c. 2 s. 219(1)-(8): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Extent

Pt 3 c. 2 s. 219-(8): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)



Law In Force

220 Delegation of provision of public teletext service

- (1) The licence for the provision of the public teletext service may—
(a) include provision enabling the licence holder to authorise an eligible person to provide the whole or a part of the public teletext service on his behalf; and
(b) impose conditions subject to and in accordance with which the whole or a part of that service may be provided by a person authorised by the licence holder.
- (2) The conditions of the licence to provide the public teletext service apply in relation to its provision by a person authorised to do so on the licence holder's behalf as they apply to its provision by the licence holder.
- (3) A contravention of those conditions by a person so authorised shall be treated for the purposes of this Chapter and the 1990 Act as a contravention on the part of the licence holder.
- (4) In this section “eligible person” means a person who is not a disqualified person under Part 2 of Schedule 2 to the 1990 Act in relation to the licence for the public teletext service.

Commencement

Pt 3 c. 2 s. 220(1)-(4): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Extent

Pt 3 c. 2 s. 220-(4): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)



Repealed

221 [...]¹

Notes

¹ Repealed by Digital Economy Act 2010 c. 24 Sch.2 para.1 (June 8, 2010: as 2010 c.24)

✓ Law In Force

222 Renewal of public teletext licence

(1) The holder of the licence to provide the public teletext service may apply to OFCOM for the renewal of his licence for a period of ten years from the end of the licensing period current at the time of the application.

(2) An application for renewal may only be made in the period which—
(a) begins four years before the end of the current licensing period; and
(b) ends three months before the day that OFCOM have determined to be the day by which they would need to publish a tender notice if they were proposing to grant a fresh licence to take effect from the end of that period.

(3) A determination for the purposes of subsection (2)(b)—
(a) must be made at least one year before the day determined; and
(b) must be notified by OFCOM to the holder, at the time of the determination, of the licence to provide the public teletext service.

(4) Where OFCOM receive an application under this section for the renewal of a licence, they must—
(a) decide whether they will be renewing the licence;
(b) if they decide that they will be, determine in accordance with section 223 the financial terms on which the licence will be renewed; and
(c) notify the applicant of their decision and determination.

(5) Section 17(5) to (7) of the 1990 Act (suspect sources of funds) apply in relation to an applicant for a renewal under this section as they apply in relation to an applicant mentioned in section 17(5) of that Act, but as if—
(a) references to the award of a licence were references to its renewal; and
(b) the reference in subsection (7)(a) to section 19(1) of that Act were a reference to paragraph 7 of Schedule 10.

(6) OFCOM may decide not to renew the licence if they are not satisfied that the applicant (if his licence were renewed) would provide a service complying with the requirements imposed under Chapter 4 of this Part by conditions relating to—
(a) the public service remit for the public teletext service;
(b) news; and
(c) regional matters.

(7) OFCOM may also decide not to renew the licence if they propose to grant a fresh licence for the public teletext service which would differ in any material respect from the licensed service.

(8) In all cases in which—
(a) the applicant notifies OFCOM that he accepts the terms notified to him under subsection (4)(c), and

(b) they are not required or allowed by subsections (5) to (7) to refuse a renewal, they must grant the renewal as soon as reasonably practicable.

(9) But OFCOM must not grant a renewal under this section more than eighteen months before the end of the licensing period from the end of which the renewal will take effect.

(10) Where a licence is renewed under this section, it must be renewed on the same terms and conditions subject only to such modifications as are required to give effect, in accordance with the determination under subsection (4)(b), to paragraph 7 of Schedule 10.

(11) Nothing in this section requires OFCOM, following the receipt of an application for the renewal of a licence—

(a) to make a decision or determination, or

(b) to take any other step under this section,

at any time after an order under section 230 has come into force preventing the renewal of the licence.

(12) For the purposes of this section a licensing period is—

(a) the period beginning with the commencement of this section and ending with the initial expiry date [for the licence to provide the public teletext service]¹ ; or

(b) any subsequent period of ten years beginning with the end of the previous licensing period [for that type of licence]² .

(13) In this section “tender notice” means a notice under paragraph 1 of Schedule 10.

Notes

¹ Words inserted by Digital Economy Act 2010 c. 24 s.26(3)(a) (June 8, 2010)

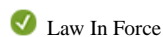
² Words inserted by Digital Economy Act 2010 c. 24 s.26(3)(b) (June 8, 2010)

Commencement

Pt 3 c. 2 s. 222(1)-(13): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Extent

Pt 3 c. 2 s. 222-(13): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)



Law In Force

223 Financial terms of licence renewed under s. 222

(1) The determination under section 222(4)(b) must comprise—

(a) a determination of the amount which the holder of the renewed licence will be required by the conditions of that licence to pay to OFCOM in respect of the first complete calendar year falling within the renewal period;

(b) a determination of the percentage of qualifying revenue for each accounting period of the licence holder falling within the renewal period which he will be required by those conditions to pay to OFCOM.

(2) The amount determined under subsection (1)(a) must be equal to the amount which, in OFCOM's opinion, would have been the cash bid of the licence holder were the licence (instead of being renewed) to be granted for the period of the renewal on an application made in accordance with Part 1 of Schedule 10.

(3) For the purposes of subsection (1)(b)—

- (a) different percentages may be determined for different accounting periods; and
- (b) the percentages that may be determined for an accounting period include a nil percentage.

(4) In this section “renewal period”, in relation to a licence, means the period for which the licence is in force by reason of its renewal.

(5) Part 3 of Schedule 10 applies for construing this section as it applies for construing that Schedule.

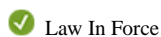
Commencement

Pt 3 c. 2 s. 223(1)-(5): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Extent

Pt 3 c. 2 s. 223-(5): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

Meaning of initial expiry date



Law In Force

224 Meaning of “initial expiry date”

[(1) Subject to any postponement under this section, for the purposes of this Part the initial expiry date for the following types of licence is 31 December 2014—

- (a) a licence to provide a Channel 3 service;
- (b) a licence to provide Channel 5;
- (c) the licence to provide the public teletext service.

] ¹

(2) The Secretary of State may (on one or more occasions) by order postpone the initial expiry date [for one or more of the types of licence mentioned in subsection (1)] ² .

(3) [...] ³

(4) Where the Secretary of State makes an order under this section at a time after he has fixed a date for digital switchover, the date to which the initial expiry date is postponed must be a date not less than eighteen months after the date for digital switchover.

(5) The Secretary of State must exercise his power to postpone the initial expiry date if it at any time appears to him that that date would otherwise fall within the period of eighteen months immediately following the date fixed for digital switchover.

- (6) Where an order under this section extends a licensing period for which a licence has been granted in accordance with section 214 or 219, the 1990 Act and this Part shall have effect (subject to subsection (7)) as if the licence had originally been granted for the extended period.
- (7) Where an order under this section extends the period for which a licence is to continue in force—
- (a) that order shall not affect the earliest time at which an application for the renewal of that licence may be made in accordance with section 216(2)(a) or 222(2)(a);
 - (b) as soon as reasonably practicable after making the order, OFCOM must make such modification of any determination made by them in the case of that licence for the purposes of section 216(2)(b) or 222(2)(b) as they consider appropriate in consequence of the extension; and
 - (c) neither section 216(3)(a) nor section 222(3)(a) applies to the making of that modification.
- (8) In this section a reference to the date for digital switchover is a reference to the date fixed by the Secretary of State for the purposes of this section as the date which appears to him, in consequence of directions given by him for the purposes of the conditions of the licences for the relevant public broadcasting services, to be the date after which none of those services will be broadcast to any significant extent in analogue form.
- (9) In this section “the relevant public broadcasting service” means any of the following—
- (a) the services comprised in Channel 3; and
 - (b) Channel 5.

Notes

- ¹ Substituted by Digital Economy Act 2010 c. 24 s.25(2) (June 8, 2010)
- ² Words inserted by Digital Economy Act 2010 c. 24 s.25(3) (June 8, 2010)
- ³ Repealed by Digital Economy Act 2010 c. 24 Sch.2 para.1 (June 8, 2010: as 2010 c.24)

Commencement

Pt 3 c. 2 s. 224(1)-(9)(b): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Extent

Pt 3 c. 2 s. 224-(1), (2)-(9)(b): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

Pt 3 c. 2 s. 224(1)(a)-(1)(c): United Kingdom (amendment may be extended to any of the Channel Islands or the Isle of Man under the relevant extending power as specified in s.46(3))

Reviews relating to licensing of Channels 3 & 5 and teletext



Law In Force

225 Application for review of financial terms of replacement licences

(1) The holder of a replacement licence granted under section 215 or 221 may apply to OFCOM, at any time in the first or any subsequent review period, for a review of the financial terms on which that licence is held.

(2) For the purposes of this section the first review period is the period which—

- (a) begins four years before the first notional expiry date; and
- (b) ends with the day before the day that OFCOM have determined to be the one by which they would need to publish a tender notice if they were proposing to grant a fresh licence to take effect from the first notional expiry date.

(3) For the purposes of this section a subsequent review period in the case of a replacement licence is so much (if any) of the following period as falls before the end of the initial expiry date [for that type of licence]¹, namely, the period which—

- (a) begins four years before a subsequent notional expiry date; and
- (b) ends with the day before the day that OFCOM have determined to be the one by which they would need to publish a tender notice if they were proposing to grant a fresh licence to take effect from that notional expiry date.

(4) A determination for the purposes of subsection (2)(b) or (3)(b) in respect of a replacement licence—

- (a) must be made at least one year before the day determined; and
- (b) must be notified by OFCOM to the person who, at the time of the determination, holds the licence in question.

(5) No application under this section for a review of the financial terms on which a replacement licence is held is to be made—

- (a) at any time when an application under section 226 for a review of those terms is pending; or
- (b) at any time in the period of twelve months following the day on which a determination by OFCOM on such an application is notified to the licence holder.

(6) For the purposes of this section an application for a review under section 226 is pending from the time when the application is made until the end of the day on which OFCOM's determination on the review is notified to the licence holder.

(7) In this section—

“the first notional expiry date”, in relation to a replacement licence, means the date with which (apart from this Act) the existing licence would have expired if not renewed;

“subsequent notional expiry date”, in relation to a replacement licence, means—

- (a) in a case in which an application by the licence holder for a review under this section was made during the review period beginning four years before the last notional expiry date, the tenth anniversary of the date on which OFCOM's determination on that review was notified to the licence holder; and
- (b) in any other case, the tenth anniversary of the last notional expiry date;

“tender notice” means a notice under section 15(1) of the 1990 Act or (as the case may be) paragraph 1 of Schedule 10.

(8) In subsection (7) “existing licence” has the same meaning as in section 215 or (as the case may be) 221.

Notes


¹ Words inserted by Digital Economy Act 2010 c. 24 s.26(4) (June 8, 2010)

Commencement

Pt 3 c. 2 s. 225(1)-(8): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Extent

Pt 3 c. 2 s. 225-(8): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

 Law In Force

226 Application for review of financial terms in consequence of new obligations

(1) This section applies where an order is made under section 411 that brings section 272, 273 or 274 (or any two or more of them) into force for the purpose of including conditions in the regulatory regime for—

- (a) a Channel 3 service;
- (b) Channel 5; or
- (c) the public teletext service.

(2) The holder of a licence in which conditions mentioned in section 272, 273 or 274 will fall to be included when the order comes into force may apply to OFCOM, at any time in the review period, for a review of the financial terms on which the licence is held.

(3) For the purposes of this section the review period in the case of an order under section 411 is the period which—

- (a) begins with the day on which the order is made; and
- (b) ends with the time at which, by virtue of the order, one or more of sections 272, 273 and 274 come into force in the case of the licence in question.

(4) If in the case of the same order there is more than one time falling within subsection (3)(b), the review period ends with the later or latest of them.

Commencement

Pt 3 c. 2 s. 226(1)-(4): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Extent

Pt 3 c. 2 s. 226-(4): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)



Law In Force

227 Reviews under ss. 225 and 226

- (1) This section applies where an application is made under section 225 or 226 for a review of the financial terms on which a licence is held.
- (2) As soon as reasonably practicable after receiving the application, OFCOM must—
- (a) determine the amount to be paid to them under the conditions of the licence for the first calendar year falling wholly or partly within the period under review to begin after the application date; and
 - (b) determine the percentage to be used for computing the payments to be made to them under those conditions in respect of each accounting period falling within the period under review to begin after that date.
- (3) The amount determined under subsection (2)(a) must be equal to the amount which, in OFCOM's opinion, would have been the cash bid of the licence holder were the licence being granted afresh on an application made in accordance with—
- (a) section 15 of the 1990 Act (licences for Channel 3 service or Channel 5); or
 - (b) paragraph 3 of Schedule 10 to this Act.
- (4) The determination required by subsection (2)(b) is a determination of the percentage of qualifying revenue for each accounting period that is to be paid to OFCOM.
- (5) For the purposes of subsection (2)(b)—
- (a) different percentages may be determined for different accounting periods; and
 - (b) the percentages that may be determined for an accounting period include a nil percentage.
- (6) In making their determinations on an application under section 226 OFCOM are to have regard, in particular, to any additional costs that are likely to be incurred by the licence holder in consequence of the commencement of so much of section 272, 273 or 274 (or any two or more of them) as is brought into force by the commencement order in question.
- (7) References in this section to qualifying revenue for an accounting period are to be construed—
- (a) in the case of the holder of a licence to provide a Channel 3 service or Channel 5, in accordance with section 19 of and Part 1 of Schedule 7 to the 1990 Act; and
 - (b) in the case of the holder of the licence to provide the public teletext service, in accordance with Part 3 of Schedule 10 to this Act.
- (8) In this section—
- “the application date”, in relation to a review, means the date of the making under section 225 or 226 of the application for the review; and
 - “the period under review”, in relation to a review of the financial terms of a licence, means so much of the period for which the licence will (if not renewed) continue in force after the application date.

Commencement

Pt 3 c. 2 s. 227(1)-(8) definition of "the period under review": December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Extent

Pt 3 c. 2 s. 227-(8) definition of "the period under review": United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to

the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

✓ Law In Force

228 Giving effect to reviews under ss. 225 and 226

(1) As soon as reasonably practicable after making a determination under section 227 on an application under section 225 or 226, OFCOM must give a notification of their determination to the applicant.

(2) The notification must set out—

- (a) the determination made by OFCOM;
- (b) the modifications of the applicant's licence that are required to give effect to the determination;
- (c) a date by which the applicant must notify OFCOM whether or not he accepts the determination and modifications; and
- (d) a subsequent date by which the applicant's licence will cease to have effect if he does not.

(3) The modifications set out in accordance with subsection (2)(b) must secure that the amount falling to be paid under the conditions of the applicant's licence for each calendar year subsequent to that for which an amount has been determined in accordance with section 227(2)(a) is the amount so determined as increased by the appropriate percentage.

(4) In the case of a determination on an application under section 225, the date specified in accordance with subsection (2)(d) must not fall before whichever is the earlier of—

- (a) the next notional expiry date after the application for the review; and
- (b) the end of the licensing period in which that application was made.

(5) Where the applicant notifies OFCOM that he accepts the determination—

- (a) his licence is to have effect with the modifications set out in OFCOM's notification; and
- (b) all such adjustments by way of payment or repayment as may be necessary for giving effect to the modifications are to be made in respect of any payments already made for years or periods affected by the modifications.

(6) Where the applicant does not, before the date specified in accordance with paragraph (c) of subsection (2), notify OFCOM that he accepts the determination, his licence shall have effect as if the period for which it is to continue in force ended with the time specified in accordance with paragraph (d) of that subsection.

(7) Where the time at which a licence would cease to have effect in accordance with subsection (6) is the end of a licensing period, that subsection does not affect any rights of the licence holder with respect to the renewal of his licence from the end of that period.

(8) In this section—

“the appropriate percentage” has the same meaning as in section 19 of the 1990 Act;

“licensing period” [, in relation to a licence,]¹ means—

- (a) the period beginning with the commencement of this section and ending with the initial expiry date [for that type of licence]² ; or

(b) any subsequent period of ten years beginning with the end of the previous licensing period [for that type of licence]³ ;
 “notional expiry date” means a first or subsequent notional expiry date within the meaning of section 225.

Notes

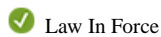
- ¹ Words inserted by Digital Economy Act 2010 c. 24 s.26(5)(a) (June 8, 2010)
² Words inserted by Digital Economy Act 2010 c. 24 s.26(5)(b) (June 8, 2010)
³ Words inserted by Digital Economy Act 2010 c. 24 s.26(5)(c) (June 8, 2010)

Commencement

Pt 3 c. 2 s. 228(1)-(8) definition of "notional expiry date": December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Extent

Pt 3 c. 2 s. 228-(8) definition of "notional expiry date": United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)



Law In Force

229 Report in anticipation of new licensing round

(1) OFCOM must, in anticipation of the end of each licensing period [for a type of relevant licence]¹ —

- (a) prepare a report under this section; and
- (b) submit it to the Secretary of State no later than thirty months before the end of that period.

(2) A report under this section must set out OFCOM's opinion on the effect of each of the matters mentioned in subsection (3) on the capacity of the [holder or holders of that type of licence]² to contribute, in the next licensing period, to the fulfilment of the purposes of public service television broadcasting in the United Kingdom at a cost to the [licence holder or holders]³ that is commercially sustainable.

(3) Those matters are—

- (a) the arrangements that (but for an order under section 230) would allow for the renewal of [that type of licence]⁴ from the end of the current licensing period; and
- (b) the conditions included in the regulatory regimes for the services provided under [that type of licence]⁴ .

(4) A report under this section must also include the recommendations (if any) which OFCOM consider, in the light of the opinion set out in the report, should be made to the Secretary of State for the exercise by him of—

- (a) his power under section 230; or
- (b) any of the powers to make statutory instruments that are conferred on him by Chapter 4 of this Part.

[(4A) Subsection (5) applies where the Secretary of State—

- (a) receives a report under this section in anticipation of the end of a licensing period for a type of relevant licence, and
- (b) subsequently makes an order under section 224 extending the licensing period for that type of licence.

] ⁵

(5) [Where this subsection applies—] ⁶

- (a) [the Secretary of State] ⁷ may require OFCOM to prepare a supplementary report in the light of the postponement of the beginning of the next licensing period [for that type of licence] ⁸ ; and
- (b) it shall be the duty of OFCOM, within such period as may be specified by the Secretary of State, to prepare the required supplementary report and to submit it to him.

(6) In this section—

“licensing period” [, in relation to a licence,] ⁹ means—

- (a) the period beginning with the commencement of this section and ending with the initial expiry date [for that type of licence] ¹⁰ ; or
- (b) any subsequent period of ten years beginning with the end of the previous licensing period [for that type of licence] ¹¹ ;

“relevant licence” means—

- (a) a licence to provide a Channel 3 service;
- (b) a licence to provide Channel 5; or
- (c) the licence to provide the public teletext service.

Notes

¹ Words inserted by Digital Economy Act 2010 c. 24 s.26(7) (June 8, 2010)

² Words substituted by Digital Economy Act 2010 c. 24 s.26(8)(a) (June 8, 2010)

³ Words substituted by Digital Economy Act 2010 c. 24 s.26(8)(b) (June 8, 2010)

⁴ Words substituted by Digital Economy Act 2010 c. 24 s.26(9) (June 8, 2010)

⁵ Added by Digital Economy Act 2010 c. 24 s.26(10) (June 8, 2010)

⁶ Words substituted by Digital Economy Act 2010 c. 24 s.26(11)(a) (June 8, 2010)

⁷ Words inserted by Digital Economy Act 2010 c. 24 s.26(11)(b) (June 8, 2010)

⁸ Word substituted by Digital Economy Act 2010 c. 24 s.26(11)(b) (June 8, 2010)

⁹ Words inserted by Digital Economy Act 2010 c. 24 s.26(12)(a) (June 8, 2010)

¹⁰ Words inserted by Digital Economy Act 2010 c. 24 s.26(12)(b) (June 8, 2010)

¹¹ Words inserted by Digital Economy Act 2010 c. 24 s.26(12)(c) (June 8, 2010)

Commencement

Pt 3 c. 2 s. 229(1)-(6) definition of "relevant licence" (c): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Extent

Pt 3 c. 2 s. 229-(4)(b), (5)-(6) definition of "relevant licence" (c): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey

to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

Pt 3 c. 2 s. 229(4A)-(4A)(b): United Kingdom (amendment may be extended to any of the Channel Islands or the Isle of Man under the relevant extending power as specified in s.46(3))

✓ Law In Force

230 Orders suspending rights of renewal

(1) This section applies where the Secretary of State has received and considered a report submitted to him by OFCOM under section 229.

(2) If—

- (a) the report contains a recommendation by OFCOM for the making of an order under this section, or
- (b) the Secretary of State considers, notwithstanding the absence of such a recommendation, that it would be appropriate to do so,

he may by order provide that [a licence for the time being in force that is of a description specified in the order is]¹ not to be renewable under section 216 or 222 from the end of the licensing period in which he received the report [(but see subsection (7))]².

(3) An order under this section preventing the renewal of [a licence]³ from the end of a licensing period must be made at least eighteen months before the end of that period.

(4) The Secretary of State is not to make an order under this section preventing the renewal of [a licence]³ from the end of the initial licensing period unless he has fixed a date before the end of that period as the date for digital switchover.

(5) Where the Secretary of State postpones the date for digital switchover after making an order under this section preventing the renewal of [a licence]³ from the end of the initial licensing period, the order shall have effect only if the date to which digital switchover is postponed falls before the end of that period.

(6) Subsection (5) does not affect the power of the Secretary of State to make another order under this section after postponing the date for digital switchover.

(7) An order under this section with respect to [a Channel 3 licence]⁴ must be an order of one of the following descriptions—

- (a) an order applying to every licence to provide a Channel 3 service;
- (b) an order applying to every licence to provide a national Channel 3 service; or
- (c) an order applying to every licence to provide a regional Channel 3 service.

(8) An order under this section does not affect—

- (a) the person to whom a licence may be granted on an application made under section 15 of the 1990 Act or under paragraph 3 of Schedule 10 to this Act; or
- (b) rights of renewal in respect of [a licence]³ first granted so as to take effect from the beginning of a licensing period beginning after the making of the order, or from a subsequent time.

(9) No order is to be made containing provision authorised by this section unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

(10) Subsection (8) of section 224 applies for construing references in this section to the date for digital switchover as it applies for the purposes of that section.

(11) In this section—

“initial licensing period” [, in relation to a licence,]⁵ means the licensing period ending with the initial expiry date [for that type of licence]⁶; and

“licensing period” has the same meaning as in section 229.

Notes

¹ Words substituted by Digital Economy Act 2010 c. 24 s.26(14) (June 8, 2010)

² Words inserted by Digital Economy Act 2010 c. 24 s.26(15) (June 8, 2010)

³ Word substituted by Digital Economy Act 2010 c. 24 s.26(16) (June 8, 2010)

⁴ Words substituted by Digital Economy Act 2010 c. 24 s.26(17) (June 8, 2010)

⁵ Words inserted by Digital Economy Act 2010 c. 24 s.26(18)(a) (June 8, 2010)

⁶ Words inserted by Digital Economy Act 2010 c. 24 s.26(18)(b) (June 8, 2010)

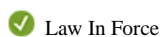
Commencement

Pt 3 c. 2 s. 230(1)-(11) definition of "licensing period": December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Extent

Pt 3 c. 2 s. 230-(11) definition of "licensing period": United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

Replacement of Channel 4 licence



Law In Force

231 Replacement of Channel 4 licence

(1) On the commencement of this subsection—

(a) Channel 4 shall cease to be licensed under the licence in force for the purposes of section 24(3) of the 1990 Act immediately before the commencement of this subsection; and

(b) a licence granted for those purposes in accordance with the following provisions of this section shall come into force as the licence under which Channel 4 is licensed.

(2) It shall be the duty of OFCOM, as soon as practicable after the television transfer date—

(a) to prepare a draft of a licence under Part 1 of the 1990 Act to replace the licence that is likely to be in force for the purposes of section 24(3) of the 1990 Act when subsection (1) of this section comes into force;

(b) to notify C4C of the terms and conditions of the replacement licence they propose; and

(c) after considering any representations made by C4C, to grant such a replacement licence to C4C so that it takes effect in accordance with paragraph (b) of subsection (1) of this section.

- (3) A replacement licence proposed or granted under this section—
- (a) must be a licence to provide a service with a view to its being broadcast in digital form; and
 - (b) must contain such conditions (if any) requiring C4C to ensure that the whole or a part of Channel 4 is also provided for broadcasting in analogue form as OFCOM consider appropriate.
- (4) The conditions included in a licence by virtue of subsection (3)(b) must be such as to enable effect to be given to any directions given from time to time by the Secretary of State to OFCOM about the continuance of the provision of services in analogue form.
- (5) Where a replacement licence proposed or granted under this section contains a condition falling within subsection (3)(b), it must also contain a condition that—
- (a) the programmes (apart from the advertisements) that are included in the service provided in analogue form, and
 - (b) the times at which they are broadcast,
- are to be the same as in the case of, or of the specified part of, the service provided for broadcasting in digital form.
- (6) The terms of a replacement licence proposed or granted under this section must provide for it to continue in force until the end of 2014.
- (7) But—
- (a) such a licence may be renewed, on one or more occasions, for such period as OFCOM may think fit in relation to the occasion in question; and
 - (b) the provisions of this section (apart from subsections (1), (2) and (6)) are to apply in the case of a licence granted by way of a renewal of a licence granted under this section as they apply in the case of the replacement licence.
- (8) The conditions of a replacement licence proposed or granted under this section must include the conditions that OFCOM consider appropriate for the purpose of performing their duty under section 263.
- (9) The conditions of such a licence must also include a condition prohibiting the imposition, whether directly or indirectly, of the following—
- (a) charges on persons in respect of their reception in the United Kingdom of Channel 4;
 - (b) charges on persons in respect of their reception in the United Kingdom of any service consisting in the provision of assistance for disabled people in relation to programmes included in Channel 4; and
 - (c) charges on persons in respect of their reception in the United Kingdom of any service (other than one mentioned in paragraph (b)) which is an ancillary service in relation to so much of Channel 4 as is provided in digital form.
- (10) It shall be unlawful to impose a charge in contravention of a condition falling within subsection (9).

Commencement

Pt 3 c. 2 s. 231(1)-(1)(b): December 28, 2004 (SI 2004/3309 art. 3)

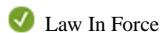
Pt 3 c. 2 s. 231(2)-(2)(b), (3)-(10): December 29, 2003

Pt 3 c. 2 s. 231(2)(c): December 10, 2004 (SI 2004/3309 art. 2)

Extent

Pt 3 c. 2 s. 231(1)-(10): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

Television licensable content services



Law In Force

232 Meaning of “television licensable content service”

(1) In this Part “television licensable content service” means (subject to section 233) any service [, or dissociable section of a service,]¹ falling within subsection (2) in so far as it is provided with a view to its availability for reception by members of the public being secured by one or [more]² of the following means—

(a) the broadcasting of the service [or dissociable section of the service]³ (whether by the person providing it or by another) from a satellite; [...]⁴

[(aa) the broadcasting of the service [or dissociable section of the service]³ (whether by that person or by another) by means of a radio multiplex service; or]⁴

(b) the distribution of the service [or dissociable section of the service]³ (whether by that person or by another) by any means involving the use of an electronic communications network.

(2) A service [, or dissociable section of a service,]⁵ falls within this subsection if it—

(a) is provided (whether in digital or in analogue form) as a service that is to be made available for reception by members of the public; and

(b) consists of [or has as its principal purpose the provision of]⁶ television programmes or electronic programme guides, or both.

(3) Where—

(a) [a service, or dissociable section of a service, consisting of television programmes]⁷ , an electronic programme guide or both (“the main service”) is provided by a person as a service to be made available for reception by members of the public, and

(b) that person provides the main service with other services or facilities that are ancillary to, or otherwise relate to, the main service and are also provided so as to be so available or in order to make a service so available,

subsection (1) has effect as if the main service and such of the other services or facilities as are relevant ancillary services and are not two-way services constituted a single service falling within subsection (2).

(4) Where a person providing the main service provides it with a facility giving access to another service, the other service shall also be taken for the purposes of this section as provided by that person with the main service only if what is comprised in the other service is something over which that person has general control.

(5) A service is a two-way service for the purposes of this section if it is provided by means of an electronic communications network and an essential feature of the service is that the purposes for which it is provided involve the use of that network, or a part of it, both—

- (a) for the transmission of visual images or sounds (or both) by the person providing the service to users of the service; and
- (b) for the transmission of visual images or sounds (or both) by those users for reception by the person providing the service or by other users of the service.

(6) In this section—

“electronic programme guide” means a service which consists of—

- (a) the listing or promotion, or both the listing and the promotion, of some or all of the programmes included in any one or more programme services the providers of which are or include persons other than the provider of the guide; and
- (b) a facility for obtaining access, in whole or in part, to the programme service or services listed or promoted in the guide;

“relevant ancillary service”, in relation to the main service, means a service or facility provided or made available by the provider of the main service that consists of or gives access to—

- (a) assistance for disabled people in relation to some or all of the programmes included in the main service;
- (b) a service (apart from advertising) which is not an electronic programme guide but relates to the promotion or listing of programmes so included; or
- (c) any other service (apart from advertising) which is ancillary to one or more programmes so included and relates directly to their contents.

Notes

- ¹ Words inserted by Audiovisual Media Services Regulations 2020/1062 Pt 2(2) reg.5(a)(i) (November 1, 2020: insertion has effect subject to transitional provision specified in SI 2020/1062 Pt 7)
- ² Word substituted by Television Licensable Content Services Order 2006/2131 art.2(1)(a) (July 25, 2006)
- ³ Words inserted by Audiovisual Media Services Regulations 2020/1062 Pt 2(2) reg.5(a)(ii) (November 1, 2020: insertion has effect subject to transitional provision specified in SI 2020/1062 Pt 7)
- ⁴ Added by Television Licensable Content Services Order 2006/2131 art.2(1)(c) (July 25, 2006)
- ⁵ Words inserted by Audiovisual Media Services Regulations 2020/1062 Pt 2(2) reg.5(b) (November 1, 2020: insertion has effect subject to transitional provision specified in SI 2020/1062 Pt 7)
- ⁶ Words inserted by Audiovisual Media Services Regulations 2009/2979 reg.6(1) (December 19, 2009)
- ⁷ Words substituted by Audiovisual Media Services Regulations 2020/1062 Pt 2(2) reg.5(c) (November 1, 2020: substitution has effect subject to transitional provision specified in SI 2020/1062 Pt 7)

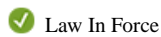
Commencement

Pt 3 c. 2 s. 232(1)-(5)(b): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Extent

Pt 3 c. 2 s. 232-(1)(a), (1)(b)-(5)(b): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

Pt 3 c. 2 s. 232(1)(aa): United Kingdom



Law In Force

233 Services that are not television licensable content services

(1) A service [, or dissociable section of a service,]¹ is not a television licensable content service to the extent that it is provided with a view to its being broadcast by means of a [television multiplex service or a general multiplex service]² .

(2) A service [, or dissociable section of a service,]¹ is not a television licensable content service to the extent that it consists of a service the provision of which is authorised by—

- (a) a licence to provide a television broadcasting service;
- (b) the licence to provide the public teletext service; or
- (c) a licence to provide additional television services.

(3) [...] ³

(4) A service [, or dissociable section of a service,]⁴ is not a television licensable content service if it is a two-way service (within the meaning of section 232).

(5) A service [, or dissociable section of a service,]⁴ is not a television licensable content service if—

- (a) it is distributed by means of an electronic communications network only to persons all of whom are on a single set of premises; and
- (b) that network is wholly within those premises and is not connected to an electronic communications network any part of which is outside those premises.

(6) For the purposes of subsection (5)—

- (a) a set of premises is a single set of premises if, and only if, the same person is the occupier of all the premises; and
- (b) two or more vehicles are capable of constituting a single set of premises if, and only if, they are coupled together.

(7) A service [, or dissociable section of a service,]⁴ is not a television licensable content service if it is provided for the purpose only of being received by persons who have qualified as users of the service by reason of being—

- (a) persons who have a business interest in the programmes included in the service; or
- (b) persons who are to receive the programmes for the purpose only of showing them to persons falling within sub-paragraph (a) or to persons all of whom are on the business premises of the person receiving them.

(8) For the purposes of subsection (7) a person has a business interest in programmes if he has an interest in receiving or watching them—

- (a) for the purposes of a business carried on by him; or

(b) for the purposes of his employment.

(9) In this section—

“business premises”, in relation to a person, means premises at or from which any business of that person is carried on;

[...]⁵

“premises” includes a vehicle;

“vehicle” includes a vessel, aircraft or hovercraft.

(10) References in this section, in relation to a person, to a business include references to—

(a) any business or other activities carried on by a body of which he is a member and the affairs of which are managed by its members; and

(b) the carrying out of any functions conferred on that person, or on any such body, by or under any enactment.

Notes

¹ Words inserted by Audiovisual Media Services Regulations 2020/1062 Pt 2(2) reg.6 (November 1, 2020: insertion has effect subject to transitional provision specified in SI 2020/1062 Pt.7)

² Words substituted by Television Licensable Content Services Order 2006/2131 art.2(2)(a) (July 25, 2006)

³ Repealed by Audiovisual Media Services Regulations 2009/2979 reg.6(2) (December 19, 2009)

⁴ Words inserted by Audiovisual Media Services Regulations 2020/1062 Pt 2(2) reg.6 (November 1, 2020: insertion has effect subject to transitional provision specified in SI 2020/1062 part.7)

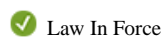
⁵ Definition repealed by Television Licensable Content Services Order 2006/2131 art.2(2)(b) (July 25, 2006)

Commencement

Pt 3 c. 2 s. 233(1)-(10)(b): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Extent

Pt 3 c. 2 s. 233-(10)(b): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)



Law In Force

234 Modification of ss. 232 and 233

(1) The Secretary of State may by order modify any of the provisions of section 232 or 233 if it appears to him appropriate to do so having regard to any one or more of the following—

(a) the protection which, taking account of the means by which the programmes and services are received or may be accessed, is expected by members of the public as respects the contents of television programmes;

(b) the extent to which members of the public are able, before television programmes are watched or accessed, to make use of facilities for exercising control, by reference to the contents of the programmes, over what is watched or accessed;

(c) the practicability of applying different levels of regulation in relation to different services;

(d) the financial impact for providers of particular services of any modification of the provisions of that section; and

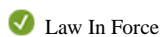
- (e) technological developments that have occurred or are likely to occur.
- (2) The Secretary of State may also by order provide, in cases where it otherwise appears to him appropriate to do so, that a description of service specified in the order is not to be treated as a television licensable content service for the purposes of the provisions of this Act that are so specified.
- (3) No order is to be made containing provision authorised by this section unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

Commencement

Pt 3 c. 2 s. 234(1)-(3): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Extent

Pt 3 c. 2 s. 234-(3): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)



Law In Force

235 Licensing of television licensable content services

- (1) The licence that is required for the purposes of section 13 of the 1990 Act in respect of a television licensable content service is a licence granted under Part 1 of that Act on an application complying with this section.
- (2) An application for a licence to provide a television licensable content service—
- (a) must be made in such manner,
 - (b) must contain such information about the applicant, his business and the service he proposes to provide, and
 - (c) must be accompanied by such fee (if any),
- as OFCOM may determine.
- (3) Where an application is made to OFCOM in accordance with subsection (2) for a licence to provide a television licensable content service, OFCOM are entitled to refuse the application only if—
- (a) they are required to do so by section 3(3) of the 1990 Act (licences to be held only by fit and proper persons);
 - (b) they are required to do so by section 5 of the 1990 Act (restrictions on the holding of licences); or
 - (c) they are satisfied that, if the application were to be granted, the provision of the service would be likely to involve contraventions of—
 - (i) standards set under section 319 of this Act; or
 - (ii) the provisions of a code of practice in force under Part 5 of the 1996 Act (fairness).
- (4) The provision of more than one television licensable content service shall require a separate licence under Part 1 of the 1990 Act to be granted and held in respect of each service.

(5) A single licence to provide a television licensable content service may authorise the provision of a service which consists (to any extent) of different programmes to be broadcast simultaneously, or virtually so.

(6) A licence to provide a television licensable content service shall continue in force until such time as it is surrendered or is revoked in accordance with any of the provisions of this Chapter or of the 1990 Act.

[(7) A licence to provide a television licensable content service must contain such conditions as OFCOM consider appropriate for requiring the licence holder—

(a) on entering into any agreement with the provider of a radio multiplex service for the provision of a television licensable content service to be broadcast by means of that multiplex service, to notify OFCOM—

(i) of the identity of the radio multiplex service;

(ii) of the period during which the service will be provided; and

(iii) where under the agreement he will be entitled to the use of a specified amount of digital capacity, of that amount;

(b) when any such agreement is varied so far as it relates to any of the matters mentioned in paragraph (a)(i), (ii) or (iii), to notify OFCOM of the variation so far as relating to those matters; and

(c) where he is providing a television licensable content service to the provider of a radio multiplex service in accordance with such an agreement as is mentioned in paragraph (a) but intends to cease doing so, to notify OFCOM of that fact.

] ¹

[(8) A licence to provide a television licensable content service which authorises the provision of an electronic programme guide ("the guide") must also include such conditions as OFCOM consider appropriate for ensuring that, at any time when the guide is a regulated electronic programme guide as defined by section 211A, the only television programme services that are listed or promoted by, or which can be accessed through, the guide are television programme services that—

(a) are provided by or under a licence under this Part, or

(b) do not fall, in pursuance of section 211(1) of the Communications Act 2003, to be regulated by OFCOM.

] ²

Notes

¹ Added by Television Licensable Content Services Order 2006/2131 art.3 (July 25, 2006)

² Added by Broadcasting (Amendment) (EU Exit) Regulations 2019/224 Sch.1(3) para.22 (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))

Commencement

Pt 3 c. 2 s. 235(1)-(6): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Extent

Pt 3 c. 2 s. 235-(6), (8)-(8)(b): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI

2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

Pt 3 c. 2 s. 235(7)-(7)(c): United Kingdom

✓ Law In Force

236 Direction to licensee to take remedial action

(1) This section applies if OFCOM are satisfied—

- (a) that the holder of a licence to provide a television licensable content service has contravened a condition of the licence; and
- (b) that the contravention can be appropriately remedied by the inclusion in the licensed service of a correction or a statement of findings (or both).

(2) OFCOM may direct the licence holder to include a correction or a statement of findings (or both) in the licensed service.

(3) A direction may require the correction or statement of findings to be in such form, and to be included in programmes at such time or times, as OFCOM may determine.

(4) OFCOM are not to give a person a direction under this section unless they have given him a reasonable opportunity of making representations to them about the matters appearing to them to provide grounds for the giving of the direction.

(5) Where the holder of a licence includes a correction or a statement of findings in the licensed service in pursuance of a direction under this section, he may announce that he is doing so in pursuance of such a direction.

(6) If OFCOM are satisfied that the inclusion of a programme in a television licensable content service involved a contravention of a condition of the licence to provide that service, they may direct the holder of the licence not to include that programme in that service on any future occasion.

(7) Where OFCOM—

- (a) give a direction to a BBC company under subsection (2), or
- (b) receive representations from a BBC company by virtue of subsection (4),

they must send a copy of the direction or representations to the Secretary of State.

(8) For the purposes of this section a statement of findings, in relation to a case in which OFCOM are satisfied that the holder of a licence has contravened the conditions of his licence, is a statement of OFCOM's findings in relation to that contravention.

Commencement

Pt 3 c. 2 s. 236(1)-(8): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Extent

Pt 3 c. 2 s. 236-(8): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)



Law In Force

237 Penalties for contravention of licence condition or direction

(1) If OFCOM are satisfied that the holder of a licence to provide a television licensable content service—

(a) has contravened a condition of the licence, or

(b) has failed to comply with a direction given by OFCOM under or by virtue of a provision of this Part, Part 1 of the 1990 Act or Part 5 of the 1996 Act,

they may serve on him a notice requiring him to pay them, within a specified period, a specified penalty.

(2) The amount of the penalty under this section must not exceed the maximum penalty given by subsection (3).

(3) The maximum penalty is whichever is the greater of—

(a) £250,000; and

(b) 5 per cent. of the qualifying revenue for the licence holder's last complete accounting period falling within the period for which his licence has been in force ('the relevant period').

(4) In relation to a person whose first complete accounting period falling within the relevant period has not ended when the penalty is imposed, subsection (3) is to be construed as referring to 5 per cent of the amount which OFCOM estimate will be the qualifying revenue for that accounting period.

(5) Section 19(2) to (6) of the 1990 Act and Part 1 of Schedule 7 to that Act (calculation of qualifying revenue), with any necessary modifications, are to apply for the purposes of subsection (3) as they apply for the purposes of Part 1 of that Act.

(6) OFCOM are not to serve a notice on a person under subsection (1) unless they have given him a reasonable opportunity of making representations to them about the matters appearing to them to provide grounds for the service of the notice.

(7) Where OFCOM—

(a) serve a notice on a BBC company under subsection (1), or

(b) receive representations from a BBC company by virtue of subsection (6),

they must send a copy of the notice or representations to the Secretary of State.

(8) An exercise by OFCOM of their powers under subsection (1) does not preclude any exercise by them of their powers under section 236 in respect of the same contravention.

(9) The Secretary of State may by order substitute a different sum for the sum for the time being specified in subsection (3)(a).

(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.

Commencement

Pt 3 c. 2 s. 237(1)-(10): December 29, 2003 subject to the transitional provision specified in SI 2003/3142 art.9 (SI 2003/3142 art. 9)

Extent

Pt 3 c. 2 s. 237(1)-(10): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6

with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

✓ Law In Force

238 Revocation of television licensable content service licence

(1) OFCOM must serve a notice under subsection (2) on the holder of a licence to provide a television licensable content service if they are satisfied—

- (a) that the holder of the licence is in contravention of a condition of the licence or is failing to comply with a direction given by them under or by virtue of any provision of this Part, Part 1 of the 1990 Act or Part 5 of the 1996 Act; and
- (b) that the contravention or failure, if not remedied, would justify the revocation of the licence.

(2) A notice under this subsection must—

- (a) state that OFCOM are satisfied as mentioned in subsection (1);
- (b) specify the respects in which, in their opinion, the licence holder is contravening the condition or failing to comply with the direction; and
- (c) state that OFCOM will revoke the licence unless the licence holder takes, within such period as is specified in the notice, such steps to remedy the failure as are so specified.

(3) If, at the end of the period specified in a notice under subsection (2), OFCOM are satisfied—

- (a) that the person on whom the notice was served has failed to take the steps specified in it, and
 - (b) that it is necessary in the public interest to revoke his licence,
- they shall serve a notice on him revoking his licence.

(4) If OFCOM are satisfied in the case of a licence to provide a television licensable content service—

- (a) that the holder of the licence has ceased to provide the licensed service, and
 - (b) that it is appropriate for them to do so,
- they shall serve a notice on him revoking his licence.

(5) If OFCOM are satisfied—

- (a) that the holder of a licence to provide a television licensable content service has provided them, in connection with his application for the licence, with information which was false in a material particular, or
 - (b) that, in connection with his application for the licence, the holder of such a licence withheld any material information with the intention of causing them to be misled,
- they may serve a notice on him revoking his licence.

(6) A notice under this section revoking a licence to provide a television licensable content service takes effect as from the time when it is served on the licence holder.

(7) OFCOM are not to serve a notice on a person under this section unless they have given him a reasonable opportunity of making representations to them about the matters in respect of which it is served.

(8) Where OFCOM—

- (a) serve a notice on a BBC company under this section, or

(b) receive representations from a BBC company by virtue of subsection (7), they must send a copy of the notice or representations to the Secretary of State.

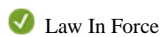
(9) Nothing in this section applies to the revocation of a licence in exercise of the power conferred by section 239.

Commencement

Pt 3 c. 2 s. 238(1)-(9): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Extent

Pt 3 c. 2 s. 238-(9): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)



Law In Force

239 Action against licence holders who incite crime or disorder

(1) OFCOM must serve a notice under subsection (2) on the holder of a licence to provide a television licensable content service if they are satisfied—

- (a) that the holder of the licence has included in the service one or more programmes containing material likely to encourage or to incite the commission of crime, or to lead to disorder;
- (b) that, in doing so, he has contravened conditions contained by virtue of Chapter 4 of this Part in the licence to provide that service; and
- (c) that the contravention is such as to justify the revocation of the licence.

(2) A notice under this subsection must—

- (a) state that OFCOM are satisfied as mentioned in subsection (1);
- (b) specify the respects in which, in their opinion, the licence holder has contravened the condition mentioned in paragraph (b) of that subsection;
- (c) state that OFCOM may revoke the licence after the end of the period of twenty-one days beginning with the day on which the notice is served on the licence holder; and
- (d) inform the licence holder of his right to make representations to OFCOM within that period about the matters appearing to OFCOM to provide grounds for revoking the licence.

(3) The effect of a notice under subsection (2) shall be to suspend the licence as from the time when the notice is served on the licence holder until either—

- (a) the revocation of the licence takes effect; or
- (b) OFCOM decide not to revoke the licence.

(4) If, after considering any representations made to them by the licence holder within the period specified for the purposes of subsection (2)(c), OFCOM are satisfied that it is necessary in the public interest to revoke the licence, they shall serve a notice of revocation on the licence holder.

(5) The revocation of a licence by a notice under subsection (4) takes effect from such time as may be specified in the notice.

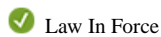
(6) A notice of revocation under subsection (4) must not specify a time for it to take effect that falls before the end of the period of twenty-eight days beginning with the day on which the notice is served on the licence holder.

Commencement

Pt 3 c. 2 s. 239(1)-(6): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Extent

Pt 3 c. 2 s. 239-(6): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)



Law In Force

240 Abolition of separate licences for certain television services

(1) The authorisations that are to be capable of being granted on or after the television transfer date by or under a licence under Part 1 of the 1990 Act do not include the authorisation of the provision, as such, of—

- (a) any satellite television service (as defined, disregarding its repeal by this Act, in section 43(1) of the 1990 Act); or
- (b) any licensable programme service (as defined, disregarding its repeal by this Act, in section 46(1) of that Act).

(2) Subsection (1) does not affect OFCOM's power, by means of a licence authorising the provision of a service falling within section 211(1), to authorise the provision of so much of any formerly regulated television service as is comprised in the licensed service.

(3) So much of any relevant existing licence as authorises the provision of a service which consists in or includes a television licensable content service—

- (a) shall have effect, on and after the television transfer date, as a licence under Part 1 of the 1990 Act authorising the provision of the television licensable content service comprised in the licensed service;
- (b) shall so have effect as a licence which, notwithstanding its terms and conditions, is to continue in force until such time as it is surrendered or is revoked in accordance with provisions of this Chapter or of the 1990 Act; and
- (c) shall otherwise have effect as a licence on the same terms and conditions as those on which it had effect immediately before the television transfer date.

(4) It shall be the duty of OFCOM to exercise their power under section 3 of the 1990 Act to make such variations of any licence having effect in accordance with subsection (3) of this section as (after complying with subsection (4)(b) of that section) they consider appropriate for the purpose of performing their duty under section 263 of this Act.

(5) In this section—

- “formerly regulated television service” means a service mentioned in subsection (1); and
- “relevant existing licence”, means any licence which—

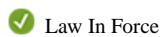
- (a) was granted by the Independent Television Commission under Part 1 of the 1990 Act before the television transfer date; and
- (b) is in force immediately before the television transfer date as a licence authorising the provision of a formerly regulated service.

Commencement

Pt 3 c. 2 s. 240(1)-(5) definition of "relevant existing licence" (b): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Extent

Pt 3 c. 2 s. 240-(5) definition of "relevant existing licence" (b): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

Television multiplex services

Law In Force

241 Television multiplex services

(1) Subject to the following provisions of this section, references in Part 1 of the 1996 Act to a multiplex service, other than those comprised in express references to a general multiplex service, shall have effect as references to any service ("a television multiplex service") which—

- (a) falls within subsection (2); and
- (b) is provided for broadcasting for general reception but otherwise than from a satellite.

(2) A service falls within this subsection if—

- (a) it consists in the packaging together of two or more services which include at least one relevant television service and are provided for inclusion together in the service by a combination of the relevant information in digital form; or
- (b) it is a service provided with a view to its being a service falling within paragraph (a) but is one in the case of which only one service is for the time being comprised in digital form in what is provided.

(3) The provision, at a time after the commencement of this section, of a television multiplex service the provision of which is not authorised by or under a licence under Part 1 of the 1996 Act is not to be an offence under section 13 of the 1990 Act.

(4) Accordingly, after the commencement of this section, a licence under Part 1 of the 1996 Act shall be required for the provision of a television multiplex service only in so far as it is required for the purposes of a limitation falling within subsection (5) that is contained in a wireless telegraphy licence, or is deemed to be so contained.

(5) A limitation falls within this subsection, in relation to a wireless telegraphy licence, if it provides that the only television multiplex services that are authorised to be broadcast using the station or apparatus to which the licence relates are those that are licensed under Part 1 of the 1996 Act.

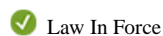
- (6) Where immediately before the coming into force of this section—
- (a) a television multiplex service is licensed under Part 1 of the 1996 Act; and
 - (b) that service is one broadcast using a station or apparatus the use of which is authorised by a wireless telegraphy licence,
- that wireless telegraphy licence shall be deemed to contain a limitation falling within subsection (5).
- (7) In any case where a wireless telegraphy licence is deemed by virtue of subsection (6) to contain a limitation falling within subsection (5) and the person providing the television multiplex service in question—
- (a) ceases to be licensed under Part 1 of the 1996 Act in respect of that service, or
 - (b) ceases to exist,
- OFCOM may revoke the wireless telegraphy licence.
- (8) Subsection (7) is not to be construed as restricting the powers of revocation exercisable apart from this section.
- (9) In subsection (2) “relevant television service” means any of the following—
- (a) any Channel 3 service in digital form;
 - (b) Channel 4 in digital form;
 - (c) Channel 5 in digital form;
 - (d) S4C Digital;
 - (e) any digital television programme service;
 - (f) the digital public teletext service.

Commencement

Pt 3 c. 2 s. 241(1)-(9)(f): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Extent

Pt 3 c. 2 s. 241-(9)(f): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)



Law In Force

242 Composition of services in television multiplexes

- (1) In subsection (1) of section 12 of the 1996 Act—
- (a) in paragraph (c), (digital programmes services included in multiplex must be provided by a licence holder or EEA broadcaster), after “section 18” there shall be inserted “, by the BBC”;
 - (b) in paragraph (d), (digital additional services included in multiplex must be provided by a licence holder or EEA broadcaster), after “section 25” there shall be inserted “, by the BBC”;
 - (c) after that paragraph there shall be inserted—

- “(da) that the only digital sound programme services broadcast under the licence are services provided by the holder of a national digital sound programme licence (within the meaning of section 60) or by the BBC;”
- (d) in paragraph (e), after “digital programme services” there shall be inserted “, digital sound programme services”;
- (e) in paragraph (f), after “digital programme service” there shall be inserted “, a digital sound programme service”; and
- (f) for paragraph (h) (conditions as to composition of multiplex service), there shall be substituted—

“(h) that, while the licence is in force, at least the required percentage of the digital capacity on the frequency or frequencies on which the service is broadcast is used, or left available to be used, for the broadcasting of services falling within subsection (1A).”

(2) After that subsection there shall be inserted—

“(1A) The services falling within this subsection are—

- (a) qualifying services;
- (b) digital programme services licensed under this Part or provided by the BBC;
- (c) digital sound programme services provided by the BBC;
- (d) programme-related services; and
- (e) relevant technical services.”

(3) In subsection (3) of that section—

- (a) after the words “digital programme services”, in the first place where they occur, there shall be inserted “or digital sound programme services”; and
- (b) for “digital programme services broadcast under the licence” there shall be substituted “so much of what is broadcast under the licence as consists of digital programme services, or of such services together with digital sound programme services,”.

(4) In subsection (4) of that section (interpretation of subsection (1)(h))—

- (a) for “(1)(h)” there shall be substituted “(1A)”;
- (b) in paragraph (a), for “the qualifying teletext service” there shall be substituted “the digital public teletext service”;
- (c) in paragraph (b)(i), after “the 1990 Act)” there shall be inserted “, or in one or more digital sound programme services provided by the BBC,”
- (d) in paragraph (c), for “digital programme services” there shall be substituted “services falling within subsection (1A) which are comprised in the multiplex in question”.

(5) After that subsection there shall be inserted—

“(4A) In subsection (1)(h), the reference to the required percentage is a reference to such percentage equal to or more than 90 per cent. as OFCOM—

- (a) consider appropriate; and
- (b) specify in the condition.”


(6) In subsection (5) of that section (power to change percentage in subsection (1)(h)), for “(1)(h)” there shall be substituted “(4A)”.

Commencement

Pt 3 c. 2 s. 242(1)-(6): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Extent

Pt 3 c. 2 s. 242-(6): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

 Law In Force

243 Powers where frequencies reserved for qualifying services

(1) The Secretary of State may by order provide, in relation to the matters mentioned in subsection (2)—

- (a) for any or all of the provisions of sections 7 to 16 and of sections 18 and 19 of the 1996 Act to have effect with the modifications specified in the order; and
- (b) for provision made by the order to have effect in place of any or all of those provisions.

(2) Those matters are—

- (a) licences under Part 1 of the 1996 Act, and
- (b) the awarding and grant of such licences,

in a case in which the licence is, or is to be, a licence to provide a service for broadcasting on any one or more reserved frequencies.

(3) An order under this section may require OFCOM to include conditions falling within subsection (4) in any Broadcasting Act licence to provide a television multiplex service to be broadcast on a reserved frequency.

(4) Conditions falling within this subsection are conditions that OFCOM consider appropriate for securing that, in consideration for the making by any relevant public service broadcaster of such payments as are from time to time—

- (a) agreed between the broadcaster and the holder of the licence to provide the television multiplex service, or
- (b) in default of agreement, determined by OFCOM in accordance with the order,

the holder of that licence will use digital capacity reserved in accordance with conditions imposed under section 12 of the 1996 Act or any order under this section for the broadcasting of services provided by that broadcaster.

(5) Subsection (3) is not to be construed as restricting the provision that may be made under subsection (1).

(6) A frequency is a reserved frequency for the purposes of this section if it is one as respects which OFCOM have made a determination, in exercise of their functions under the enactments relating to the management of the radio spectrum, that the frequency should be reserved for the broadcasting of television multiplex services.

(7) In this section “relevant public service broadcaster” means any of the following—

- (a) the holder of a licence to provide a Channel 3 service;

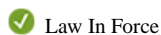
- (b) C4C;
- (c) the holder of a licence to provide Channel 5;
- (d) the Welsh Authority;
- (e) the public teletext provider.

Commencement

Pt 3 c. 2 s. 243(1)-(7)(e): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Extent

Pt 3 c. 2 s. 243-(7)(e): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

Local digital television services

Law In Force

244 Local digital television services

(1) The Secretary of State may by order provide for—

- (a) any of the provisions of this Part (apart from this section and the provisions relating exclusively to sound services), or
- (b) any provision of Part 1 of the 1990 Act or of Part 1 of the 1996 Act (regulation of television services),

to have effect, in relation to services of such descriptions as may be set out in an order under this section, with such modifications as he considers necessary or appropriate for services of that description.

(2) The Secretary of State is not to make an order under this section in relation to a description of services except where—

- (a) the description is of services to be provided in digital form with a view to their being included in a television multiplex service;
- (b) the description is confined to services falling within one or both of subsections (3) and (4); and
- (c) the Secretary of State is satisfied that the making of an order under this section in relation to that description of services will make possible, facilitate or encourage the provision of services so falling.

(3) Services fall within this subsection if they are—

- (a) intended for reception only at a particular establishment or otherwise on particular premises; or
- (b) provided for the purposes only of a particular event.

(4) Services fall within this subsection if the Secretary of State considers that they are services in relation to which all the following conditions are satisfied—

- (a) they are intended for reception only within a particular area or locality;

- (b) their provision meets, or would meet, the needs of the area or locality where they are received;
 - (c) their provision is or would be likely to broaden the range of television programmes available for viewing by persons living or working in that area or locality; and
 - (d) their provision is or would be likely to increase the number and range of the programmes about that area or locality that are available for such viewing, or to increase the number of programmes made in that area or locality that would be so available.
- (5) Services shall be taken for the purposes of subsection (4) to meet the needs of an area or locality if, and only if—
- (a) their provision brings social or economic benefits to the area or locality, or to different categories of persons living or working in that area or locality; or
 - (b) they cater for the tastes, interests and needs of some or all of the different descriptions of people living or working in the area or locality (including, in particular, tastes, interests and needs that are of special relevance in the light of the descriptions of people who do so live and work).
- (6) In subsections (4) and (5), the references to persons living or working in an area or locality include references to persons undergoing education or training in that area or locality.
- (7) An order under this section in relation to a description of services may, in particular, impose prohibitions or limitations on the inclusion of advertisements in services of that description and on the sponsorship of programmes included in the services.
- (8) The power, by an order under this section, to make incidental, supplemental or consequential provision in connection with provision authorised by subsection (1) includes power to make incidental, supplemental or consequential provision modifying provisions of the 1990 Act, the 1996 Act or this Act that are not mentioned in that subsection.
- (9) No order is to be made containing provision authorised by this section unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

Commencement

Pt 3 c. 2 s. 244(1)-(9): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Extent

Pt 3 c. 2 s. 244-(9): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

CHAPTER 3

REGULATORY STRUCTURE FOR INDEPENDENT RADIO SERVICES

Preliminary



Law In Force

245 Regulation of independent radio services

(1) It shall be a function of OFCOM to regulate the following services in accordance with this Act, the 1990 Act and the 1996 Act—

- (a) services specified in subsection (2) that are provided from places in the United Kingdom and otherwise than by the BBC;
- (b) services so specified that do not fall within paragraph (a) but are provided by a person, other than the BBC, whose principal place of business is in the United Kingdom.

(2) The services referred to in subsection (1)(a) are—

- (a) sound broadcasting services to which subsection (3) applies;
- (b) radio licensable content services;
- (c) additional radio services;
- (d) radio multiplex services;
- (e) digital sound programme services;
- (f) digital additional sound services.

(3) This subsection applies to a sound broadcasting service which—

- (a) is provided with a view to its being broadcast otherwise than only from a satellite; and
- (b) is a national service, local service or restricted service.

(4) For the purposes of this section—

- (a) a service is a national service if it is a sound broadcasting service provided as mentioned in subsection (3)(a) with a view to its being broadcast for reception in any such minimum area of the United Kingdom as may be determined in accordance with section 98(2) of the 1990 Act;
- (b) a service is a local service if it is a sound broadcasting service which (without being a national service) is provided as mentioned in subsection (3)(a) with a view to its being broadcast for reception in a particular area or locality in the United Kingdom; and
- (c) a service is a restricted service if it is a sound broadcasting service provided as mentioned in subsection (3)(a) with a view to its being broadcast for reception—
 - (i) within a particular establishment in the United Kingdom or at another defined location in the United Kingdom; or
 - (ii) for the purposes of a particular event taking place within the United Kingdom.

(5) The services that are to be treated for the purposes of this section as provided from places in the United Kingdom include every radio licensable content service which would not fall to be so treated apart from this subsection but which—

- (a) is provided with a view to its being broadcast from a satellite;
- (b) is a service the broadcasting of which involves its transmission to the satellite by means of an electronic communications network from a place in the United Kingdom; and
- (c) is not a service the provision of which is licensed or otherwise authorised under the laws of [an EEA State]¹.

(6) The services that are to be treated as so provided also include every service provided by a BBC company, a C4 company or an S4C company.

(7) A reference in subsection (4)(b) to an area of the United Kingdom does not include an area which comprises or includes the whole of England.

Notes


- ¹ Words substituted by Broadcasting (Amendment) (EU Exit) Regulations 2019/224 Sch.1(3) para.23 (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))

Commencement

Pt 3 c. 3 s. 245(1)-(7): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Extent

Pt 3 c. 3 s. 245-(7): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

 Law In Force

246 Abolition of function of assigning radio frequencies

The Secretary of State shall cease to have any function under the 1990 Act or the 1996 Act of assigning frequencies—

- (a) for any of the purposes of Part 3 of the 1990 Act (regulation of radio services); or
- (b) for the purposes of the provision of any radio multiplex services.

Commencement

Pt 3 c. 3 s. 246(a)-(b): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Extent

Pt 3 c. 3 s. 246-(b): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

Radio licensable content services

 Law In Force

247 Meaning of “radio licensable content services”

(1) In this Part “radio licensable content service” means (subject to section 248) any service falling within subsection (2) in so far as it is provided with a view to its availability for reception by members of the public being secured by one or both of the following means—

- (a) the broadcasting of the service (whether by the person providing it or by another) from a satellite; or

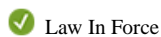
- (b) the distribution of the service (whether by that person or by another) by any means involving the use of an electronic communications network.
- (2) A service falls within this subsection if it—
- (a) consists of sound programmes; and
 - (b) is provided (whether in digital or in analogue form) as a service that is to be made available for reception by members of the public.

Commencement

Pt 3 c. 3 s. 247(1)-(2)(b): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Extent

Pt 3 c. 3 s. 247-(2)(b): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)



Law In Force

248 Services that are not radio licensable content services

- (1) A service is not a radio licensable content service to the extent that—
- (a) it is provided with a view to its being broadcast by means of a multiplex service;
 - (b) it is a sound broadcasting service to which subsection (3) of section 245 applies; or
 - (c) it is comprised in a television licensable content service.
- (2) A service is not a radio licensable content service to the extent that it is provided by means of an electronic communications service if—
- (a) it forms part only of a service provided by means of that electronic communications service or is one of a number of services access to which is made available by means of a service so provided; and
 - (b) the service of which it forms part, or by which it may be accessed, is provided for purposes that do not consist wholly or mainly in making available services of radio programmes or television programmes (or both) for reception by members of the public.
- (3) A service is not a radio licensable content service if it is a two-way service.
- (4) A service is a two-way service for the purposes of subsection (3) if it is provided by means of an electronic communications network and an essential feature of the service is that the purposes for which it is provided involve the use of that network, or a part of it, both—
- (a) for the transmission of sounds by the person providing the service to users of the service; and
 - (b) for the transmission of sounds by those users for reception by the person providing the service or by other users of the service.
- (5) A service is not a radio licensable content service if—
- (a) it is distributed by means of an electronic communications network only to persons all of whom are on a single set of premises; and

- (b) that network is wholly within those premises and is not connected to an electronic communications network any part of which is outside those premises.
- (6) For the purposes of subsection (5)—
- (a) a set of premises is a single set of premises if, and only if, the same person is the occupier of all the premises; and
 - (b) two or more vehicles are capable of constituting a single set of premises if, and only if, they are coupled together.
- (7) A service is not a radio licensable content service if it is provided for the purpose only of being received by persons who have qualified as users of the service by reason of being—
- (a) persons who have a business interest in the programmes included in the service; or
 - (b) persons who are to receive the programmes for the purpose only of allowing them to be listened to by persons falling within sub-paragraph (a) or by persons all of whom are on the business premises of the person receiving them.
- (8) For the purposes of subsection (7) a person has a business interest in programmes if he has an interest in receiving or listening to them—
- (a) for the purposes of a business carried on by him; or
 - (b) for the purposes of his employment.
- (9) In this section—
- “business premises”, in relation to a person, means premises at or from which any business of that person is carried on;
 - “multiplex service” means a television multiplex service, a radio multiplex service or a general multiplex service;
 - “premises” includes a vehicle;
 - “vehicle” includes a vessel, aircraft or hovercraft.
- (10) References in this section, in relation to a person, to a business include references to—
- (a) any business or other activities carried on by a body of which he is a member and the affairs of which are managed by its members; and
 - (b) the carrying out of any functions conferred on that person, or on any such body, by or under any enactment.

Commencement

Pt 3 c. 3 s. 248(1)-(10)(b): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Extent

Pt 3 c. 3 s. 248-(10)(b): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)



Law In Force

249 Modification of ss. 247 and 248

(1) The Secretary of State may by order modify any of the provisions of section 247 or 248 if it appears to him appropriate to do so having regard to any one or more of the following—

- (a) the protection which is expected by members of the public as respects the contents of sound programmes;
- (b) the practicability of applying different levels of regulation in relation to different services;
- (c) the financial impact for providers of particular services of any modification of the provisions of that section; and
- (d) technological developments that have occurred or are likely to occur.

(2) The Secretary of State may also by order provide, in cases where it otherwise appears to him appropriate to do so, that a description of service specified in the order is not to be treated as a radio licensable content service for the purposes of the provisions of this Act that are so specified.

(3) No order is to be made containing provision authorised by this section unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

Commencement

Pt 3 c. 3 s. 249(1)-(3): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Extent

Pt 3 c. 3 s. 249-(3): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)



Law In Force

250 Licensing of radio licensable content services

(1) The licence that is required for the purposes of section 97 of the 1990 Act in respect of a radio licensable content service is a licence granted under Part 3 of that Act on an application complying with this section.

(2) An application for a licence under Part 3 of the 1990 Act to provide a radio licensable content service—

- (a) must be made in such manner,
- (b) must contain such information about the applicant, his business and the service he proposes to provide, and
- (c) must be accompanied by such fee (if any),

as OFCOM may determine.

(3) [Sections 109 to 111B]¹ of the 1990 Act (enforcement of licences) apply in relation to licences for radio licensable content services as they apply in relation to licences under Chapter 2 of Part 3 of the 1990 Act but with—

- (a) the substitution of the word “or” for paragraph (b) of subsection (1) of section 110 (power to shorten licence period); and

(b) the omission of “(b)” in subsection (4) of that section and of subsection (5) of that section (which refer to the power disapplied by paragraph (a) of this subsection).

Notes

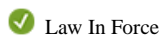
¹ Word substituted by Digital Economy Act 2017 c. 30 Pt 6 s.91(3) (June 27, 2017)

Commencement

Pt 3 c. 3 s. 250(1)-(3)(b): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Extent

Pt 3 c. 3 s. 250-(3)(b): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)



Law In Force

251 Abolition of separate licences for certain sound services

(1) The authorisations that are to be capable of being granted on or after the radio transfer date by or under a licence under Part 3 of the 1990 Act do not include the authorisation of the provision, as such, of—

- (a) any satellite service (as defined, disregarding its repeal by this Act, in section 84(2)(b) of the 1990 Act); or
- (b) any licensable sound programme service (as defined, disregarding its repeal by this Act, in section 112(1) of that Act).

(2) Subsection (1) does not affect OFCOM's power, by means of a licence authorising the provision of a service falling within section 245(1), to authorise the provision of so much of any formerly regulated radio service as is comprised in the licensed service.

(3) So much of any relevant existing licence as authorises the provision of a service which consists in or includes a radio licensable content service—

- (a) shall have effect, on and after the radio transfer date, as a licence under Part 3 of the 1990 Act authorising the provision of the radio licensable content service comprised in the licensed service;
- (b) shall so have effect as a licence which, notwithstanding its terms and conditions, is to continue in force until such time as it is surrendered or is revoked in accordance with provisions of the 1990 Act; and
- (c) shall otherwise have effect as a licence on the same terms and conditions as those on which it had effect immediately before the radio transfer date.

(4) It shall be the duty of OFCOM to exercise their power under section 86 of the 1990 Act to make such variations of any licence having effect in accordance with subsection (3) of this section as (after complying with subsection (5)(b) of that section) they consider appropriate for the purpose of performing their duty under section 263 of this Act.

(5) In this section—

“formerly regulated radio service” means a service mentioned in subsection (1); and

“relevant existing licence” means any licence which—

- (a) was granted by the Radio Authority under Part 3 of the 1990 Act before the radio transfer date; and
- (b) is in force immediately before the radio transfer date as a licence authorising the provision of a formerly regulated service.

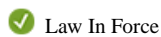
Commencement

Pt 3 c. 3 s. 251(1)-(5) definition of "relevant existing licence" (b): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Extent

Pt 3 c. 3 s. 251-(5) definition of "relevant existing licence" (b): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

Licence periods etc.



Law In Force

252 Extension of licence periods

(1) In subsection (1) of section 86 of the 1990 Act (period of licences), for the words from “for such period” onwards there shall be substituted

“(subject to a suspension of the licence under section 111B)—

- (a) in the case of a licence to provide radio licensable content services, until such time as it is surrendered or is revoked in accordance with any of the following provisions of this Part; and
- (b) in any other case, until whichever is the earlier of any such time or the end of the period specified in the licence.”

(2) For subsection (3) of that section there shall be substituted—

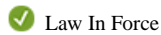
“(3) A licence to provide a local or national service or to provide an additional service must specify a period of no more than twelve years as the period for which it is to be in force.”

Commencement

Pt 3 c. 3 s. 252(1)-(2): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Extent

Pt 3 c. 3 s. 252-(2): United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)



Law In Force

253 Extension and modification of existing licences

- (1) A person who immediately before the radio transfer date holds a pre-transfer national licence or a pre-transfer local licence is entitled, in accordance with the following provisions of this section, to apply to OFCOM for an extension of the licence.
- (2) The period for which a licence may be extended on such an application is a period ending not more than four years after the end of the period for which it was granted originally or (if it has been renewed) for which it was last renewed.
- (3) An application under subsection (1) may only be made in the period which—
 - (a) begins three years before the date on which the licence would otherwise expire; and
 - (b) ends three months before the day that OFCOM have determined to be the day by which they would need to publish a notice under section 98(1) or 104(1) of the 1990 Act if they were proposing to grant a fresh licence to take effect from that date.
- (4) A determination for the purposes of subsection (3)(b)—
 - (a) must be made at least one year before the day determined; and
 - (b) must be notified by OFCOM to the person who holds the licence in question.
- (5) An application under subsection (1)—
 - (a) must be made in such manner,
 - (b) must contain such information about the applicant, his business and the service he proposes to provide, and
 - (c) must be accompanied by such fee (if any),as OFCOM may determine.
- (6) If, on an application for an extension under subsection (1), OFCOM are satisfied as to the matters mentioned in subsection (7), they shall—
 - (a) modify the licence by extending the period for which the licence is to be in force by such period authorised by subsection (2) as they think fit; and
 - (b) make such other modifications as appear to them to be necessary for the purpose of securing that the provisions of the licence correspond to those that would be contained in a national sound broadcasting licence or (as the case may be) a local sound broadcasting licence granted after the radio transfer date.
- (7) Those matters are—
 - (a) the ability of the licence holder to maintain the service for the period of the extension; and
 - (b) the likelihood of a contravention by the licence holder of a requirement imposed by—
 - (i) a condition included in the licence by virtue of section 106 of the 1990 Act; or
 - (ii) a condition of the licence varied in accordance with subsection (8).
- (8) For the purposes of the modification under this section of a national licence, OFCOM—
 - (a) shall determine an amount which is to be payable to OFCOM by the licence holder in respect of the first complete calendar year falling within the period for which the licence is extended; and

- (b) may, in relation to any accounting period of the licence holder during the period of the extension, modify a condition included in the licence in pursuance of section 102(1)(c) of the 1990 Act (additional payments to be made in respect of national licences) by specifying a different percentage of the qualifying revenue for that accounting period from that which was previously specified in the condition.
- (9) The amount determined by OFCOM under subsection (8)(a) must be the amount which, in OFCOM's opinion, would have been the cash bid of the licence holder were the licence (instead of being extended) being granted afresh on an application made in accordance with section 98 of the 1990 Act.
- (10) For the purposes of subsection (8)(b)—
- (a) different percentages may be specified for different accounting periods; and
 - (b) the percentages that may be specified for an accounting period include a nil percentage.
- (11) The modifications set out in accordance with subsection (6)(b) must secure—
- (a) that the amount falling to be paid under the conditions of the licence for each calendar year subsequent to that for which an amount has been determined in accordance with subsection (8)(a) is the amount so determined as increased by the appropriate percentage; and
 - (b) that such adjustments as are appropriate are made as respects sums already paid in respect of any year or accounting period to which a modification under subsection (8) applies.
- (12) Where OFCOM have granted a person's application under this section, the extensions and modifications take effect only if that person—
- (a) has been notified by OFCOM of their proposals for modifications by virtue of subsection (6)(b) or (8)(b), and for the making of a determination under subsection (8)(a); and
 - (b) has consented to the extension on the terms proposed.
- (13) In this section—
- “the appropriate percentage” has the same meaning as in section 102 of the 1990 Act;
 - “national sound broadcasting licence” means a licence under Part 3 of the 1990 Act to provide a sound broadcasting service which, under subsection (4)(a) of section 245 is a national service for the purposes of that section;
 - “pre-transfer licence” means a licence which was granted under Part 3 of the 1990 Act before the radio transfer date and has not been modified under this section or renewed at any time on or after that date;
 - “pre-transfer local licence” means a pre-transfer licence which was granted as a local licence (within the meaning of Part 3 of the 1990 Act, as it had effect without the amendments made by this Act);
 - “pre-transfer national licence” means a pre-transfer licence granted or last renewed as a national licence (within the meaning of Part 3 of the 1990 Act, as it had effect without the amendments made by this Act).

Commencement

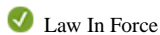
Pt 3 c. 3 s. 253(1)-(13) definition of "pre transfer national licence": January 2, 2004 (SI 2003/3142 art. 4(1))

Extent

Pt 3 c. 3 s. 253(1)-(13) definition of "pre transfer national licence": United Kingdom (may extend to the Isle of Man and the Channel Islands as specified in Orders in Council made under this Act; shall extend to the Bailiwick of Guernsey to the extent specified in SI 2003/3195 art.6 with the modifications set out in SI 2003/3195 Sch.2; shall extend to Jersey to the extent specified in SI 2003/3197 art.6 with the modifications set out in SI 2003/3197 Sch.2)

253A.

This provision is deemed to be inserted by the modification specified in SI 2004/1944 Sch.1 para.10A.



Law In Force

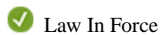
254 Renewal of local licences

In section 104A(5) of the 1990 Act (conditions of renewal of local licence), after paragraph (b) there shall be inserted—

“(c) they are satisfied that the period for which the nominated local digital sound programme service will be available for reception and the times at which it will be available will not be significantly different, week by week, from those for which and at which the licensed local service will be broadcast;”.

Commencement

Pt 3 c. 3 s. 254: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

255 Extension of special application procedure for local licences


In section 104B(1) of the 1990 Act (special application procedure for local licences for areas with 4.5 million residents or fewer)—

- (a) the word “and” shall be inserted at the end of paragraph (a); and
- (b) paragraph (b) (which excludes areas with more than 4.5 million residents) shall cease to have effect.

Commencement

Pt 3 c. 3 s. 255(a)-(b): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Provision of simulcast radio services

 Law In Force

256 Definition of simulcast radio services

(1) In section 41 of the 1996 Act (meaning of simulcast radio service), for subsection (2) there shall be substituted—

“(2) In this Part, a ‘simulcast radio service’ means a service provided by a person for broadcasting in digital form and corresponding to a service which is a national service within the meaning of Part 3 of the 1990 Act and is provided by that person.”

(2) In subsection (1) of section 126 of the 1990 Act (interpretation of Part 3), before the definition of “sound broadcasting service” there shall be inserted—

“‘simulcast radio service’ means a simulcast radio service within the meaning given by section 41(2) of the Broadcasting Act 1996 for the purposes of Part 2 of that Act;”.

(3) After that subsection there shall be inserted—

“(1A) For the purposes of this Part a simulcast radio service corresponds to a national service if, in accordance with section 41(3) of the Broadcasting Act 1996, it falls to be treated as so corresponding for the purposes of Part 2 of that Act.”

Commencement

Pt 3 c. 3 s. 256(1)-(3): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

 Law In Force

257 Promotion of simulcast radio services

(1) Chapter 2 of Part 3 of the 1990 Act (sound broadcasting services) shall be amended as follows.

(2) In section 98(1) (notices of proposals to grant national licences), after paragraph (b)(ii) there shall be inserted—

“(iia) the digital capacity that is likely, in their opinion, to be available from the holders of national radio multiplex licences for the broadcasting of a simulcast radio service corresponding to the service;”.

(3) In section 98(3) (applications for national licences), after paragraph (a) there shall be inserted—

“(aa) the applicant's proposals (if any) for providing a simulcast radio service corresponding to the service;”.

(4) In section 98(7) (construction of section), after “this section” there shall be inserted—

“‘national radio multiplex licence’ has the same meaning as in Part 2 of the Broadcasting Act 1996; and”.

(5) In section 100 (award of national licence to person submitting highest cash bid), for subsection (2) there shall be substituted—

“(1A) If, in a case in which one or more of the applicants has made a proposal to provide a simulcast radio service corresponding to the service to be licensed (a ‘simulcast applicant’), the highest cash bid is made by an applicant who is not a simulcast applicant, OFCOM may—

- (a) disregard the requirement imposed by subsection (1); and
- (b) award the licence to the simulcast applicant whose cash bid is the highest of the bids submitted by simulcast applicants.

(2) Where—

- (a) two or more applicants for a licence have submitted cash bids specifying an identical amount and that amount is higher than the amount of every other bid, or
- (b) two or more simulcast applicants have submitted cash bids specifying an identical amount and that amount is higher than the amount of every other bid submitted by a simulcast applicant,

OFCOM must invite those applicants and (in a case falling within paragraph (b)) every applicant who has made a higher bid to submit further cash bids in respect of that licence.

(2A) OFCOM may decide not to invite an applicant to submit a further cash bid under subsection (2) if—

- (a) the applicant is not a simulcast applicant and they propose to exercise their power under subsection (1A); or
- (b) they propose to exercise their power under subsection (3).

(2B) Subsection (2A) is not to be construed as preventing OFCOM from making a decision to exercise their power under subsection (1A) or (3) after they have received further bids in response to invitations under subsection (2).

(2C) In this Part references to a person's cash bid, in relation to a person who has submitted a further cash bid in pursuance of subsection (2), have effect as references to his further bid.”

(6) After section 100 there shall be inserted—

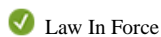
“100A Licence conditions relating to simulcast radio services

Where OFCOM award a national licence to a person whose application for that licence included proposals to provide a simulcast radio service, that licence must include a condition requiring the licence holder—

- (a) to provide, from a date specified in the licence, a simulcast radio service corresponding to the licensed service; and
- (b) to do all that he can to secure the broadcasting of that service.”

Commencement

Pt 3 c. 3 s. 257(1)-(6): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Multiplexes broadcasting sound programmes

Law In Force

258 Radio multiplex services

(1) Subject to the following provisions of this section, references in Part 2 of the 1996 Act to a radio multiplex service shall have effect as references to any service which—

- (a) falls within subsection (2);
- (b) is provided for broadcasting for general reception but otherwise than from a satellite; and
- (c) is not a television multiplex service.

(2) A service falls within this subsection if—

- (a) it consists in the packaging together (with or without other services) of two or more relevant sound services which are provided for inclusion together in that service by a combination of the relevant information in digital form; or
- (b) it is a service provided with a view to its being a service falling within paragraph (a) but is one in the case of which only one relevant sound service is for the time being comprised in digital form in what is provided.

(3) The provision, at a time after the commencement of this section, of a radio multiplex service the provision of which is not authorised by or under a licence under Part 2 of the 1996 Act is not to be an offence under section 97 of the 1990 Act.

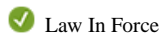
(4) Accordingly, after the commencement of this section, a licence under Part 2 of the 1996 Act shall be required for the provision of a radio multiplex service only in so far as it is required for the purposes of a limitation falling within subsection (5) which is contained in a wireless telegraphy licence, or is deemed to be so contained.

(5) A limitation falls within this subsection, in relation to a wireless telegraphy licence, if it provides that the only radio multiplex services that are authorised to be broadcast using the station or apparatus to which the licence relates are those that are licensed under Part 2 of the 1996 Act.

- (6) Where immediately before the coming into force of this section—
- (a) a radio multiplex service is licensed under Part 2 of the 1996 Act; and
 - (b) that service is one broadcast using a station or apparatus the use of which is authorised by a wireless telegraphy licence,
- that wireless telegraphy licence shall be deemed to contain a limitation falling within subsection (5).
- (7) In any case where a wireless telegraphy licence is deemed by virtue of subsection (6) to contain a limitation falling within subsection (5) and the person providing the radio multiplex service in question—
- (a) ceases to be licensed under Part 2 of the 1996 Act in respect of that service, or
 - (b) ceases to exist,
- OFCOM may revoke the wireless telegraphy licence.
- (8) Subsection (7) is not to be construed as restricting the powers of revocation exercisable apart from this section.
- (9) In subsection (2) “relevant sound service” means any of the following—
- (a) a digital sound programme service;
 - (b) a simulcast radio service; and
 - (c) a digital additional sound service.

Commencement

Pt 3 c. 3 s. 258(1)-(9)(c): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force


[258A Small-scale radio multiplex services

- (1) The Secretary of State may by order make provision about radio multiplex services that are provided for particular areas or localities in the United Kingdom and are of a description specified by the order ("small-scale radio multiplex services").
- (2) An order under this section describing a small-scale radio multiplex service may make provision by reference to the size of the area or locality in relation to which such a service may be provided.
- (3) An order under this section may provide for—
- (a) any provision of Part 2 of the 1996 Act, and
 - (b) any provision of this Part (apart from this section and the provisions relating exclusively to sound broadcasting services or television services),
- to have effect in relation to small-scale radio multiplex services with such modifications as the Secretary of State considers appropriate.
- (4) An order under this section may in particular—
- (a) provide for the duration of a small-scale radio multiplex licence to be determined by OFCOM, within limits specified in the order;

- (b) make provision as to eligibility to hold a small-scale radio multiplex licence, including provision disqualifying persons who have an interest in a national or local radio multiplex service;
 - (c) require small-scale radio multiplex services to be provided on a non-commercial basis;
 - (d) provide for OFCOM to have regard to the effect of awarding a small-scale radio multiplex licence on holders of local radio multiplex licences;
 - (e) provide for capacity on a small-scale radio multiplex service to be reserved for broadcasting services of a description set out in an order under section 262;
 - (f) make provision about the amount of capacity that may be so reserved;
 - (g) make provision about the services broadcast by means of a small-scale radio multiplex service, including provision about broadcasting services licensed by local digital sound programme licences or services of a description set out in an order under section 262.
- (5) The power, by order under this section, to make different provision for different cases includes power to make different provision depending on—
- (a) whether or not, at a particular time, an area or locality is to a significant extent within the coverage area of one or more local radio multiplex services, and
 - (b) the size of the coverage area of that local radio multiplex service or those local radio multiplex services.
- (6) The power, by order under this section, to make incidental, supplemental or consequential provision includes power to make incidental, supplemental or consequential provision modifying provisions of the 1996 Act or this Act not mentioned in subsection (3).
- (7) In this section "small-scale radio multiplex licence" means a licence to provide a small-scale radio multiplex service.
- (8) No order is to be made containing provision authorised by this section unless a draft of the order has been laid before Parliament and approved by a resolution of each House.
- ¹

Notes

- ¹ Added by Broadcasting (Radio Multiplex Services) Act 2017 c. 12 s.1 (June 27, 2017)
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 Law In Force

259 Composition of services in radio multiplexes

- (1) Section 54 of the 1996 Act (conditions attached to radio multiplex licences) shall be amended as follows.
- (2) For paragraph (h) of subsection (1) (conditions as to composition of service) there shall be substituted—
- “(h) that, while the licence is in force, at least the required percentage of the digital capacity on the frequency or frequencies on which the service is broadcast is used, or left available to be used, for the broadcasting of services falling within subsection (1A).”
- (3) After that subsection there shall be inserted—

“(1A) The services falling within this subsection are—
 (a) digital sound programme services;
 (b) simulcast radio services;
 (c) programme-related services; and
 (d) relevant technical services.”

- (4) In subsection (2) (meaning of services referred to in paragraph (h) of subsection (1))—
 (a) for “paragraph (1)(h)” there shall be substituted “subsection (1A)”; and
 (b) in sub-paragraph (i), for the words from “(within” to “1990 Act” there shall be substituted “(within the meaning of section 245 of the Communications Act 2003)”.
- (5) After that subsection there shall be inserted—

“(2A) In subsection (1)(h), the reference to the required percentage is a reference to such percentage equal to or more than 80 per cent. as OFCOM—
 (a) consider appropriate; and
 (b) specify in the condition.”

- (6) In subsection (3) (power to vary percentage in subsection (1)(h))—
 (a) for “subsection (1)” there shall be substituted “subsection (2A)”; and
 (b) for “paragraph (h) of that subsection” there shall be substituted “that subsection”.

Commencement

Pt 3 c. 3 s. 259(1)-(6)(b): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

260 Digital sound services for inclusion in non-radio multiplexes

(1) In section 60(1)(a) of the 1996 Act (national digital sound programme services defined as services broadcast with a view to being broadcast by means of a national radio multiplex service), after “national radio multiplex service” there shall be inserted “, by means of a television multiplex service or by means of a general multiplex service”.

(2) In section 63(1) of the 1996 Act (meaning of digital additional sound service), for paragraph (a) there shall be substituted—

“(a) is provided by a person with a view to its being broadcast in digital form (whether by him or some other person) so as to be available for reception by members of the public;
 (aa) is so provided with a view to the broadcasting being by means of a radio multiplex service or by means of a general multiplex service; and”.

(3) After subsection (3) of section 63 of the 1996 Act there shall be inserted—

“(3A) In this section ‘available for reception by members of the public’ shall be construed in accordance with section 361 of the Communications Act 2003.”

(4) In section 72(1) of the 1996 Act (interpretation of Part 2)—

(a) after the definitions of “digital sound programme service” and “digital sound programme licence” there shall be inserted—

“‘general multiplex service’ has the same meaning as in Part 3 of the Communications Act 2003;”

(b) after the definition of “technical service” there shall be inserted—

“‘television multiplex service’ has the meaning given by section 241 of the Communications Act 2003.”

Commencement

Pt 3 c. 3 s. 260(1)-(4)(b): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

✓ Law In Force

261 Renewal of radio multiplex licences

In section 58(2) of the 1996 Act (renewal for twelve years of radio multiplex licences granted within six years of commencement)—

(a) for “which is granted within six years” there shall be substituted “granted within ten years”; and

(b) for the words from “for a period” onwards there shall be substituted—

“(a) in the case of a licence granted within six years of that commencement, for a period of twelve years beginning with the date on which it would otherwise expire; and

(b) in any other case, for a period of eight years beginning with that date.”

Commencement

Pt 3 c. 3 s. 261(a)-(b): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Community radio

✓ Law In Force

262 Community radio

(1) The Secretary of State may by order provide for—

- (a) any of the provisions of this Part (apart from this section and the provisions relating exclusively to television), or
- (b) any provision of Part 3 of the 1990 Act or of Part 2 of the 1996 Act (regulation of radio services),

to have effect, in relation to services of such descriptions as may be set out in an order under this section, with such modifications as he considers necessary or appropriate for services of that description.

(2) The Secretary of State is not to make an order under this section in relation to a description of services unless—

- (a) the description is of services to be provided primarily for the good of members of the public or of a particular community, rather than for commercial reasons; and
- (b) he considers that the provision of services of that description confer, or would confer, significant benefits on the public or on the communities for which they are provided.

(3) An order under this section in relation to a description of services may, in particular, impose prohibitions or limitations on the inclusion of advertisements in services of that description and on the sponsorship of programmes included in the services.

(4) The power, by an order under this section, to make incidental, supplemental or consequential provision in connection with provision authorised by subsection (1) includes power to make incidental, supplemental or consequential provision modifying provisions of the 1990 Act, the 1996 Act or this Act that are not mentioned in that subsection.

(5) No order is to be made containing provision authorised by this section unless a draft of the order has been laid before Parliament and approved by a resolution of each House.


Commencement

Pt 3 c. 3 s. 262(1)-(5): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

CHAPTER 4

REGULATORY PROVISIONS

Application of regulatory regimes

 Law In Force

263 Application of regulatory regimes

(1) It shall be the duty of OFCOM, by exercising—

- (a) their powers under the 1990 Act and the 1996 Act, and
- (b) their powers under this Part,

to secure that the holder of every Broadcasting Act licence at all times holds his licence on the conditions which are for the time being included, under this Chapter and Chapter 5 of this Part, in the regulatory regime for the licensed service.

(2) It shall also be the duty of OFCOM to do all that they can to secure that the holder of every such licence complies, in relation to the licensed service, with the conditions so included in the regulatory regime for that service.

(3) Where—

(a) the licence for a Channel 3 service, for Channel 4, for Channel 5 or for the public teletext service (“the main service”) authorises or requires a corresponding or additional service to be provided in analogue form, and

(b) the regulatory regime for the main service imposes obligations in relation to programmes and other items included in that service,

those obligations are to apply equally to programmes that are included in the analogue service without being included in the main service.

[(4) The Secretary of State may by order provide for—

(a) a condition included by virtue of this Act in a regulatory regime to be excluded from the regime;

(b) a condition excluded from a regulatory regime by an order under this subsection to be included in the regime again.

(4A) An order under subsection (4) may, in particular, provide for a condition to be included or excluded for a period specified in the order.]¹

(5) No order is to be made containing provision authorised by subsection (4) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

(6) This section does not restrict OFCOM's powers and duties apart from this section to impose obligations by means of the inclusion of conditions in a Broadcasting Act licence.

Notes

¹ S.263(4) and (4A) substituted for s.263(4) by Digital Economy Act 2010 c. 24 s.37 (June 8, 2010)

Commencement

Pt 3 c. 4 s. 263(1)-(6): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

The public service remit for television

 Law In Force

264 OFCOM reports on the fulfilment of the public service remit

(1) It shall be the duty of OFCOM—

(a) as soon as practicable after the end of the period of twelve months beginning with the commencement of this section, and

(b) as soon as practicable after the end of each such subsequent period as may be selected by OFCOM for the purposes of this section, to satisfy, for that period, the review and reporting obligations of subsection (3).

(2) The period selected by OFCOM for the purposes of subsection (1)(b) must be a period of not more than five years beginning with the end of the previous period for which OFCOM have satisfied those review and reporting obligations.

(3) The review and reporting obligations for a period are—

(a) an obligation to carry out a review of the extent to which the public service broadcasters have, during that period, provided relevant television services which (taking them all together over the period as a whole) fulfil the purposes of public service television broadcasting in the United Kingdom; and

(b) an obligation, with a view to maintaining and strengthening the quality of public service television broadcasting in the United Kingdom, to prepare a report on the matters found on the review.

(4) The purposes of public service television broadcasting in the United Kingdom are—

(a) the provision of relevant television services which secure that programmes dealing with a wide range of subject-matters are made available for viewing;

(b) the provision of relevant television services in a manner which (having regard to the days on which they are shown and the times of day at which they are shown) is likely to meet the needs and satisfy the interests of as many different audiences as practicable;

(c) the provision of relevant television services which (taken together and having regard to the same matters) are properly balanced, so far as their nature and subject-matters are concerned, for meeting the needs and satisfying the interests of the available audiences; and

(d) the provision of relevant television services which (taken together) maintain high general standards with respect to the programmes included in them, and, in particular with respect to—

(i) the contents of the programmes;

(ii) the quality of the programme making; and

(iii) the professional skill and editorial integrity applied in the making of the programmes.

(5) When—

(a) determining the extent to which any of the purposes of public service television broadcasting in the United Kingdom are fulfilled, and

(b) reviewing and reporting on that matter,

OFCOM must have regard to the desirability of those purposes being fulfilled in a manner that is compatible with subsection (6).

(6) A manner of fulfilling the purposes of public service television broadcasting in the United Kingdom is compatible with this subsection if it ensures—

(a) that the relevant television services (taken together) comprise a public service for the dissemination of information and for the provision of education and entertainment;

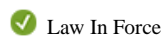
(b) that cultural activity in the United Kingdom, and its diversity, are reflected, supported and stimulated by the representation in those services (taken together) of drama, comedy and music, by the inclusion of feature films in those services and by the treatment of other visual and performing arts;

- (c) that those services (taken together) provide, to the extent that is appropriate for facilitating civic understanding and fair and well-informed debate on news and current affairs, a comprehensive and authoritative coverage of news and current affairs in, and in the different parts of, the United Kingdom and from around the world;
 - (d) that those services (taken together) satisfy a wide range of different sporting and other leisure interests;
 - (e) that those services (taken together) include what appears to OFCOM to be a suitable quantity and range of programmes on educational matters, of programmes of an educational nature and of other programmes of educative value;
 - (f) that those services (taken together) include what appears to OFCOM to be a suitable quantity and range of programmes dealing with each of the following, science, religion and other beliefs, social issues, matters of international significance or interest and matters of specialist interest;
 - (g) that the programmes included in those services that deal with religion and other beliefs include—
 - (i) programmes providing news and other information about different religions and other beliefs;
 - (ii) programmes about the history of different religions and other beliefs; and
 - (iii) programmes showing acts of worship and other ceremonies and practices (including some showing acts of worship and other ceremonies in their entirety);
 - (h) that those services (taken together) include what appears to OFCOM to be a suitable quantity and range of high quality and original programmes for children and young people;
 - (i) that those services (taken together) include what appears to OFCOM to be a sufficient quantity of programmes that reflect the lives and concerns of different communities and cultural interests and traditions within the United Kingdom, and locally in different parts of the United Kingdom;
 - (j) that those services (taken together), so far as they include programmes made in the United Kingdom, include what appears to OFCOM to be an appropriate range and proportion of programmes made outside the M25 area.
- (7) In carrying out a review under this section OFCOM must consider—
- (a) the costs to persons providing relevant television services of the fulfilment of the purposes of public service television broadcasting in a manner compatible with subsection (6); and
 - (b) the sources of income available to each of them for meeting those costs.
- (8) Every report under this section must—
- (a) specify, and comment on, whatever changes appear to OFCOM to have occurred, during the period to which the report relates, in the extent to which the purposes of public service television broadcasting in the United Kingdom have been satisfied;
 - (b) specify, and comment on, whatever changes appear to OFCOM to have occurred, during that period, in the manner in which those purposes are fulfilled;
 - (c) set out the findings of OFCOM on their consideration of the matters mentioned in subsection (7) and any conclusions they have arrived at in relation to those findings; and
 - (d) set out OFCOM's conclusions on the current state of public service television broadcasting in the United Kingdom.
- (9) In performing their duties under this section, OFCOM must have regard, in particular, to—

- (a) every statement of programme or service policy which has been made by virtue of this Chapter by a public service broadcaster, or which is treated as such a statement;
 - (b) every equivalent statement of policy made by the BBC in pursuance of the BBC Charter and Agreement; and
 - (c) such matters arising at times before the coming into force of this section as OFCOM consider material.
- (10) Every report prepared by OFCOM under this section must be published by them—
- (a) as soon as practicable after its preparation is complete; and
 - (b) in such manner as they consider appropriate.
- (11) The following are relevant television services for the purposes of this section—
- (a) the television broadcasting services provided by the BBC;
 - (b) the television programme services that are public services of the Welsh Authority (within the meaning of section 207);
 - (c) every Channel 3 service;
 - (d) Channel 4;
 - (e) Channel 5;
 - (f) the public teletext service.
- (12) The following are public service broadcasters for the purposes of this section—
- (a) the BBC;
 - (b) the Welsh Authority;
 - (c) the providers of the licensed public service channels; and
 - (d) the public teletext provider.
- (13) In this section—
- “belief” means a collective belief in, or other adherence to, a systemised set of ethical or philosophical principles or of mystical or transcendental doctrines; and
 - “drama” includes contemporary and other drama in a variety of different formats.

Commencement

Pt 3 c. 4 s. 264(1)-(13) definition of "drama": July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.4 (SI 2003/1900 art. 2(1), art. 4, Sch. 1 para. 1)



Law In Force

[264A OFCOM reports: wider review and reporting obligations

- (1) When carrying out a review under section 264 for a period, OFCOM must also carry out a review of the extent to which material included in media services during that period (taken together over the period as a whole) contributed towards the fulfilment of the public service objectives.
- (2) Every report under section 264 must—
- (a) include a report on the matters found on the review under this section,

- (b) specify, and comment on, whatever changes appear to OFCOM to have occurred, during the period to which the report relates, in the extent to which the public service objectives have been fulfilled,
 - (c) specify, and comment on, whatever changes appear to OFCOM to have occurred, during that period, in the manner in which those objectives are fulfilled, and
 - (d) set out OFCOM's conclusions on the current state of material included in media services.
- (3) “The public service objectives” are the objectives set out in paragraphs (b) to (j) of section 264(6) (as modified by subsection (4)).
- (4) Paragraphs (b) to (j) of section 264(6) have effect for the purposes of subsection (3) as if—
- (a) references to the relevant television services were to media services, and
 - (b) references to programmes were to material included in such services.
- (5) In this section—
- “material” does not include advertisements;
 - “media services” means any of the following services that are available to members of the public in all or part of the United Kingdom—
- (a) television and radio services,
 - (b) on-demand programme services, and
 - (c) other services provided by means of the internet where there is a person who exercises editorial control over the material included in the service.
- (6) The services that are to be taken for the purposes of this section to be available to members of the public include any service which—
- (a) is available for reception by members of the public (within the meaning of section 361);
 - or
 - (b) is available for use by members of the public (within the meaning of section 368R(4)).

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Notes

¹ Added by Digital Economy Act 2010 c. 24 s.2 (June 8, 2010)

 Law In Force

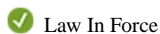
265 Public service remits of licensed providers

- (1) The regulatory regime for every licensed public service channel, and for the public teletext service, includes a condition requiring the provider of the channel or service to fulfil the public service remit for that channel or service.
- (2) The public service remit—
- (a) for every Channel 3 service, and
 - (b) for Channel 5,
- is the provision of a range of high quality and diverse programming.
- (3) The public service remit for Channel 4 is the provision of a broad range of high quality and diverse programming which, in particular—
- (a) demonstrates innovation, experiment and creativity in the form and content of programmes;

- (b) appeals to the tastes and interests of a culturally diverse society;
 - (c) makes a significant contribution to meeting the need for the licensed public service channels to include programmes of an educational nature and other programmes of educative value; and
 - (d) exhibits a distinctive character.
- (4) The public service remit for the public teletext service is the provision of a range of high quality and diverse text material.
- (5) For so long as the public teletext service comprises both—
- (a) an analogue teletext service, and
 - (b) a teletext service provided in digital form,
- the conditions imposed under this section must require the public service remit of the public teletext service to be fulfilled separately in the case of each of those services.

Commencement

Pt 3 c. 4 s. 265(1)-(5)(b): December 28, 2004 (SI 2004/3309 art. 3)



Law In Force

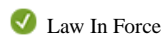
266 Statements of programme policy

- (1) The regulatory regime for every licensed public service channel includes a condition requiring the provider of the channel—
- (a) as soon as practicable after the coming into force of this section and subsequently at annual intervals, to prepare a statement of programme policy; and
 - (b) to monitor his own performance in the carrying out of the proposals contained in the statements made in pursuance of the condition.
- (2) The condition must require every statement of programme policy prepared in accordance with the condition to set out the proposals of the provider of the channel for securing that, during the following year—
- (a) the public service remit for the channel will be fulfilled; and
 - (b) the duties imposed on the provider by virtue of sections 277 to 296 will be performed.
- (3) The condition must also require every such statement to contain a report on the performance of the provider of the channel in the carrying out, during the period since the previous statement, of the proposals contained in that statement.
- (4) The condition must also provide that every such statement—
- (a) must be prepared having regard to guidance given by OFCOM;
 - (b) must be prepared taking account of the reports previously published by OFCOM under sections 264 and 358;
 - (c) must take special account of the most recent such reports;
 - (d) must be published by the provider of the channel in question as soon as practicable after its preparation is complete; and

- (e) must be published in such manner as, having regard to any guidance given by OFCOM, the provider considers appropriate.
- (5) In preparing guidance about the preparation of such a statement, OFCOM must have regard, in particular, to the matters which, in the light of the provisions of section 264(4) and (6), they consider should be included in statements of programme policy.
- (6) It shall be the duty of OFCOM—
- (a) from time to time to review the guidance for the time being in force for the purposes of this section; and
 - (b) to make such revisions of that guidance as they think fit.
- (7) The conditions of a licence to provide a licensed public service channel may provide that a previous statement of policy made by the provider of the channel is to be treated for the purposes of this Part—
- (a) as if it were a statement made in relation to such period as may be so specified; and
 - (b) were a statement of programme policy for the purposes of a condition imposed under this section.
- (8) The reference in subsection (7) to a previous statement of policy is a reference to any statement made by the provider of the channel—
- (a) whether before or after the commencement of this section, for the purposes of his application for a Broadcasting Act licence for the channel; or
 - (b) at any time before the commencement of this section, for any other purpose.
- (9) A condition under subsection (7) cannot contain provision the effect of which is to postpone the time at which a licence holder is required to make the first statement of programme policy which (apart from that subsection) he is required to make in pursuance of a condition imposed under this section.

Commencement

Pt 3 c. 4 s. 266(1)-(9): December 28, 2004 (SI 2004/3309 art. 3)



Law In Force

267 Changes of programme policy

- (1) The regulatory regime for every licensed public service channel includes a condition requiring compliance with subsection (2) in the case of a statement of programme policy containing proposals for a significant change.
- (2) This subsection requires the provider of the channel—
- (a) to consult OFCOM before preparing the statement; and
 - (b) to take account, in the preparation of the statement, of any opinions expressed to the provider of the channel by OFCOM.

(3) A condition imposed under this section must further provide that, if it appears to OFCOM that a statement of programme policy has been prepared by the provider of the channel in contravention of a condition imposed under subsection (1), the provider is—

- (a) to revise that statement in accordance with any directions given to him by OFCOM; and
- (b) to publish a revision of the statement in accordance with any such directions only after the revision has been approved by OFCOM.

(4) A change is a significant change for the purposes of this section if it is a change as a result of which the channel would in any year be materially different in character from in previous years.

(5) In determining for the purposes of any condition under this section whether a change is a significant change—

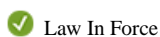
- (a) regard must be had to any guidance issued by OFCOM;
- (b) the changes to be considered include any changes that, together with any proposed change for a particular year, would constitute a change occurring gradually over a period of not more than three years; and
- (c) the previous years with which a comparison is to be made must be those immediately preceding the year in which the change is made, or in which the changes comprised in it began to occur.

(6) It shall be the duty of OFCOM—

- (a) from time to time to review the guidance for the time being in force for the purposes of this section; and
- (b) to make such revisions of that guidance as they think fit.

Commencement

Pt 3 c. 4 s. 267(1)-(6)(b): December 28, 2004 (SI 2004/3309 art. 3)



Law In Force

268 Statements of service policy by the public teletext provider

(1) The regulatory regime for the public teletext service includes a condition requiring the public teletext provider—

- (a) as soon as practicable after the coming into force of this section and subsequently at annual intervals, to prepare a statement of service policy; and
- (b) to monitor his own performance in the carrying out of the proposals contained in statements made in pursuance of the condition.

(2) The condition must require every statement of service policy prepared in accordance with the condition to set out the proposals of the public teletext provider for securing that, during the following year, the public service remit for the public teletext service will be fulfilled.

(3) The condition must also require every such statement to contain a report on the performance of the public teletext provider in the carrying out, during the period since the previous statement, of the proposals contained in that statement.

- (4) The condition must provide that the proposals or report for a period in the course of which the public teletext service will comprise or has comprised both—
- (a) an analogue teletext service, and
 - (b) a teletext service provided in digital form,
- must deal separately with each of those services.
- (5) The condition must also provide that every statement in pursuance of the condition—
- (a) must be prepared having regard to guidance given by OFCOM;
 - (b) must be prepared taking account of the reports previously published by OFCOM under sections 264 and 358;
 - (c) must take special account of the most recent such reports;
 - (d) must be published by the public teletext provider as soon as practicable after its preparation is complete; and
 - (e) must be published in such manner as, having regard to any guidance given by OFCOM, that provider considers appropriate.
- (6) In preparing guidance about the preparation of such a statement, OFCOM must have regard, in particular, to the matters which, in the light of the provisions of section 264(4) and (6), they consider should be included in statements of service policy by the public teletext provider.
- (7) It shall be the duty of OFCOM—
- (a) from time to time to review the guidance for the time being in force for the purposes of this section; and
 - (b) to make such revisions of that guidance as they think fit.
- (8) The conditions of the licence to provide the public teletext service may provide that a previous statement of policy made by the public teletext provider is to be treated for the purposes of this Part—
- (a) as if it were a statement made in relation to such period as may be so specified; and
 - (b) were a statement of service policy for the purposes of a condition imposed under this section.
- (9) The reference in subsection (8) to a previous statement of policy is a reference to any statement made by the public teletext provider—
- (a) whether before or after the commencement of this section, for the purposes of his application for a Broadcasting Act licence for the public teletext service or for the existing service (within the meaning of section 221); or
 - (b) at any time before the commencement of this section, for any other purpose.
- (10) A condition under subsection (8) cannot contain provision the effect of which is to postpone the time at which a licence holder is required to make the first statement of service policy which (apart from that subsection) he is required to make in pursuance of a condition imposed under this section.

Commencement

Pt 3 c. 4 s. 268(1)-(10): December 28, 2004 (SI 2004/3309 art. 3)



Law In Force

269 Changes of service policy

- (1) The regulatory regime for the public teletext service includes a condition requiring compliance with subsection (2) in the case of a statement of service policy containing proposals for a significant change.
- (2) This subsection requires the provider of the service—
- (a) to consult OFCOM before preparing the statement; and
 - (b) to take account, in the preparation of the statement, of any opinions expressed to the provider of the service by OFCOM.
- (3) A condition imposed under this section must further provide that, if it appears to OFCOM that a statement of service policy has been prepared by the public teletext provider in contravention of a condition imposed under subsection (1), that provider is—
- (a) to revise that statement in accordance with any directions given to him by OFCOM; and
 - (b) to publish a revision of the statement in accordance with any such directions only after the revision has been approved by OFCOM.
- (4) A change is a significant change for the purposes of this section if it is a change as a result of which the service would in any year be materially different in character from in previous years.
- (5) In determining for the purposes of any condition under this section whether a change is a significant change—
- (a) regard must be had to any guidance issued by OFCOM;
 - (b) the changes to be considered include any changes that, together with any proposed change for a particular year, would constitute a change occurring gradually over a period of not more than three years;
 - (c) the previous years with which a comparison is to be made must be those immediately preceding the year in which the change is made, or in which the changes comprised in it began to occur; and
 - (d) any change that is a significant change in relation to so much of the public teletext service as is provided in digital form or in relation to so much of it as is provided in analogue form is to be regarded as a significant change in relation to the whole service.
- (6) It shall be the duty of OFCOM—
- (a) from time to time to review the guidance for the time being in force for the purposes of this section; and
 - (b) to make such revisions of that guidance as they think fit.

Commencement

Pt 3 c. 4 s. 269(1)-(6)(b): December 28, 2004 (SI 2004/3309 art. 3)



Law In Force

270 Enforcement of public service remits

(1) This section applies if OFCOM are of the opinion that the provider of a licensed public service channel or the public teletext provider—

- (a) has failed to fulfil the public service remit for that channel or the public teletext service; or
- (b) has failed, in any respect, to make an adequate contribution towards the fulfilment of the purposes of public service television broadcasting in the United Kingdom.

(2) This section does not apply unless—

- (a) OFCOM are of the opinion that the failure of the provider is serious and is not excused by economic or market conditions; and
- (b) OFCOM determine that the situation requires the exercise of their powers under this section.

(3) In making a determination under subsection (2)(b), OFCOM must have regard, in particular, to—

- (a) the public service remit of that provider;
- (b) the statements of programme policy or statements of service policy made (or treated as made) by the provider under section 266 or 268;
- (c) the record generally of the provider in relation to the carrying out of obligations imposed by conditions of licences under the 1990 Act and the 1996 Act (including past obligations);
- (d) the effectiveness and efficiency of the provider in monitoring his own performance; and
- (e) general economic and market conditions affecting generally the providers of television programme services or the providers of television multiplex services, or both of them.

(4) OFCOM shall have power to give directions to the provider to do one or both of the following—

- (a) to revise the provider's latest statement of programme policy, or statement of service policy, in accordance with the directions; and
- (b) to take such steps for remedying the provider's failure as OFCOM may specify in the direction as necessary for that purpose.

(5) A direction given under this section must set out—

- (a) a reasonable timetable for complying with it; and
- (b) the factors that will be taken into account by OFCOM in determining—
 - (i) whether or not a failure of the provider has been remedied; and
 - (ii) whether or not to exercise their powers under subsection (6).

(6) If OFCOM are satisfied—

- (a) that the provider of a public service channel or the public teletext provider has failed to comply with a direction under this section,
- (b) that that provider is still failing to fulfil the public service remit for that channel or service or adequately to contribute to the fulfilment of the purposes of public service television broadcasting in the United Kingdom, and
- (c) that it would be both reasonable and proportionate to the seriousness of that failure to vary the provider's licence in accordance with this subsection,

OFCOM may, by notice to the provider, vary that licence so as to replace self-regulation with detailed regulation.

(7) For the purposes of subsection (6) a variation replacing self-regulation with detailed regulation is a variation which—

- (a) omits the conditions imposed by virtue of sections 265 to 269; and
- (b) replaces those conditions with such specific conditions as OFCOM consider appropriate for securing that the provider—
 - (i) fulfils the public service remit for his service; and
 - (ii) makes an adequate contribution towards the fulfilment of the purposes of public service television broadcasting in the United Kingdom.

(8) If, at any time following a variation in accordance with subsection (6) of a provider's licence, OFCOM consider that detailed regulation is no longer necessary, they may again vary the licence so as, with effect from such time as they may determine—

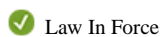
- (a) to provide for the conditions required by virtue of sections 265 to 269 again to be included in the regulatory regime for the service provided by that provider; and
- (b) to remove or modify some or all of the specific conditions inserted under that subsection.

(9) Before giving a direction under this section to a provider or exercising their power under this section to vary a provider's licence, OFCOM must consult that provider.

(10) In accordance with section 265(5), the reference in subsection (1) to a failure to fulfil the public service remit for the public teletext service includes a failure to fulfil that remit as respects only one of the services comprised in that service.

Commencement

Pt 3 c. 4 s. 270(1)-(10): December 28, 2004 (SI 2004/3309 art. 3)



Law In Force

271 Power to amend public service remits

(1) The Secretary of State may by order modify any one or more of the following—

- (a) the public service remit for any licensed public service channel or for the public teletext service;
- (b) the purposes of public service television broadcasting in the United Kingdom (within the meaning given by subsection (4) of section 264);
- (c) the matters to which OFCOM are to have regard under subsections (5) and (6) of that section.

(2) The Secretary of State is not to make an order under this section except where—

- (a) OFCOM have made a recommendation for the making of such an order in their most recent report under section 229 or 264; or
- (b) subsection (3) applies to the order.

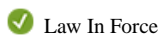
(3) This subsection applies to an order if—

- (a) it is made by the Secretary of State less than twelve months after the date on which he has received a report under section 229;
- (b) he has considered that report; and

- (c) he is satisfied that the making of the order is required, notwithstanding the absence of a recommendation by OFCOM, by circumstances or other matters which are dealt with in that report or which (in his opinion) should have been.
- (4) Before including a recommendation for the making of an order under this section in a report under section 229 or 264, OFCOM must consult—
- (a) members of the public in the United Kingdom;
 - (b) such public service broadcasters as they consider are likely to be affected if the Secretary of State gives effect to the recommendation they are proposing to make; and
 - (c) such of the other persons providing television and radio services as OFCOM consider appropriate.
- (5) Before making an order under this section, the Secretary of State must consult the persons mentioned in subsection (6) about its terms (even if the order is the one recommended by OFCOM).
- (6) Those persons are—
- (a) OFCOM;
 - (b) such public service broadcasters as they consider are likely to be affected by the order; and
 - (c) such of the other persons providing television and radio services as he considers appropriate.
- (7) No order is to be made containing provision authorised by this section unless a draft of the order has been laid before Parliament and approved by a resolution of each House.
- (8) In this section “public service broadcaster” means any of the persons who are public service broadcasters for the purposes of section 264.

Commencement

Pt 3 c. 4 s. 271(1)-(8): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

[271A Remedying failure by C4C to perform media content duties

- (1) This section applies if OFCOM are satisfied—
- (a) that C4C have failed to comply with a direction under section 198D in respect of a failure to perform one or more of their duties under section 198A,
 - (b) that C4C are still failing to perform that duty or those duties, and
 - (c) that it would be both reasonable and proportionate to the seriousness of the failure to vary the licence under which Channel 4 is licensed (“the Channel 4 licence”) in accordance with this section.
- (2) OFCOM may, by notice to C4C, vary the Channel 4 licence by adding such conditions, or making such modifications of conditions, as OFCOM consider appropriate for remedying (entirely or partly) C4C's failure to perform the duty or duties under section 198A.

(3) If, at any time following such a variation, OFCOM consider that any of the additional conditions or modifications is no longer necessary, they may again vary the licence with effect from such time as they may determine.


(4) OFCOM must consult C4C before exercising their power under this section to vary the Channel 4 licence.

] ¹

Notes

¹ Added by Digital Economy Act 2010 c. 24 s.23(2) (June 8, 2010)

Must-offer obligations etc. affecting public service television

 Law In Force

272 Must-offer obligations in relation to networks

(1) The regulatory regime for—

- (a) every licensed public service channel,
- (b) the public teletext service, and
- (c) every licensed television service added by order under section 64 to the list of must-carry services,

includes the conditions that OFCOM consider appropriate for securing the three objectives set out in this section (so far as they are not secured by provision made under section 243).

(2) The first objective is that the channel or other service, so far as it is provided in digital form, is at all times offered as available (subject to the need to agree terms) to be broadcast or distributed by means of every appropriate network.

(3) The second objective is that the person providing the channel or other service does his best to secure that arrangements are entered into, and kept in force, that ensure—

- (a) that the channel or other service, so far as it is provided in digital form, is broadcast or distributed on appropriate networks; and
- (b) that the broadcasting and distribution of the channel or other service, in accordance with those arrangements, result in its being available for reception, by means of appropriate networks, by as many members of its intended audience as practicable.

(4) The third objective is that the arrangements entered into and kept in force for the purpose of securing the second objective prohibit the imposition, for or in connection with the provision of an appropriate network, of any charge that is attributable (whether directly or indirectly) to the conferring of an entitlement to receive the channel or other service in question in an intelligible form by means of that network.

(5) The three objectives apply only in relation to times when the channel or other service in its digital form is included in the list of must-carry services in section 64.

(6) Conditions imposed under this section in relation to a channel or other service must, to such extent as OFCOM consider appropriate—

- (a) require arrangements made or kept in force for the purpose of securing the second objective to apply in the case of every service which is an ancillary service by reference to the channel or other service in question as they apply to the channel or other service itself; and
- (b) provide for the channel or other service to which the conditions apply to be treated, in relation to particular appropriate networks, as constituting such services comprised in or provided with that channel or other service as may be determined by OFCOM.

(7) In this section—

“appropriate network” means (subject to subsection (8)) an electronic communications network by means of which public electronic communications services are provided that are used by a significant number of end-users as their principal means of receiving television programmes;

“intended audience”, in relation to a channel or other service, means—

- (a) if the channel or other service is one provided only for a particular area or locality of the United Kingdom, members of the public in that area or locality;
- (b) if the channel or other service is one provided for members of a particular community, members of that community; and
- (c) in any other case, members of the public in the United Kingdom;

“licensed television service” means a service falling to be licensed under Part 1 of the 1990 Act or Part 1 of the 1996 Act.

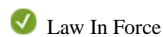
(8) For the purposes of this section an electronic communications network is not an appropriate network in relation to so much of a channel or other service as is provided only for a particular area or locality of the United Kingdom unless it is a network by means of which electronic communications services are provided to persons in that area or locality

(9) In subsection (7) “public electronic communications service” and “end-user” each has the same meaning as in Part 2.

(10) An order under section 411 must not appoint a day for provisions of this section to come into force that falls less than six months after the day on which the order is made.

Commencement

Pt 3 c. 4 s. 272(1)-(10): January 31, 2010 (SI 2009/2130 art. 2; 2003 c. 21 Pt 6 s. 411(2))



Law In Force

273 Must-offer obligations in relation to satellite services

(1) The regulatory regime for—

- (a) every licensed public service channel,
- (b) the public teletext service, and
- (c) every other licensed television service specified for the purposes of this section in an order made by the Secretary of State,

includes the conditions that OFCOM consider appropriate for securing the three objectives set out in this section (so far as they are not secured by conditions imposed under section 272).

(2) The first objective is that the channel or other service, so far as it is provided in digital form, is at all times offered as available (subject to the need to agree terms) to be broadcast by means of every satellite television service that is available for reception by members of the public in the whole or a part of the United Kingdom.

(3) The second objective is that the person providing the channel or other service does his best to secure that arrangements are entered into, and kept in force, that ensure—

(a) that the channel or other service, so far as it is provided in digital form, is broadcast by means of satellite television services that are broadcast so as to be available for reception by members of the public in the United Kingdom; and

(b) that the broadcasting, in accordance with those arrangements, of the channel or other service by means of those satellite television services results in its being available for reception in an intelligible form and by means of those services by as many members of its intended audience as practicable.

(4) The third objective is that the arrangements entered into and kept in force for the purpose of securing the second objective prohibit the imposition, for or in connection with the provision of a satellite television service, of any charge that is attributable (whether directly or indirectly) to the conferring of an entitlement to receive the channel or other service in question in an intelligible form by means of that service.

(5) The three objectives apply only in relation to a time when the channel or service is included, in its digital form, in the list of services that are must-provide services for the purposes of section 274.

(6) Conditions imposed under this section in relation to a channel or other service must, to such extent as OFCOM consider appropriate—

(a) require arrangements made or kept in force for the purpose of securing the second objective to apply in the case of every service which is an ancillary service by reference to the channel or other service in question as they apply to the channel or other service itself; and

(b) provide for the channel or other service to which the conditions apply to be treated, in relation to particular satellite television services, as constituting such services comprised in or provided with the channel or other service as may be determined by OFCOM.

(7) In this section—

“intended audience”, in relation to a channel or other service, means—

(a) if the channel or other service is one provided only for a particular area or locality of the United Kingdom, members of the public in that area or locality;

(b) if the channel or other service is one provided for members of a particular community, members of that community; and

(c) in any other case, members of the public in the United Kingdom;

“licensed television service” means a service falling to be licensed under Part 1 of the 1990 Act or Part 1 of the 1996 Act; and

“satellite television service” means a service which—

(a) consists in or involves the broadcasting of television programme services from a satellite; and

(b) is used by a significant number of the persons by whom the broadcasts are received in an intelligible form as their principal means of receiving television programmes.

(8) An order under section 411 must not appoint a day for provisions of this section to come into force that falls less than six months after the day on which the order is made.

Commencement

Pt 3 c. 4 s. 273(1)-(8): January 31, 2010 (SI 2009/2130 art. 2; 2003 c. 21 Pt 6 s. 411(2))



Not Yet In Force

274 Securing reception of must-provide services in certain areas

(1) The regulatory regime for—

- (a) every licensed public service channel,
- (b) the public teletext service, and
- (c) every licensed television service added by order under section 275 to the list of must-provide services,

includes the conditions that OFCOM consider appropriate for securing that arrangements satisfying the requirements of this section are entered into and maintained by all the persons who provide must-provide services.

(2) The conditions imposed on a person under this section may include the conditions that OFCOM consider appropriate for securing, in a case where—

- (a) the persons providing must-provide services fail to enter into or maintain arrangements satisfying the requirements of this section, and
- (b) OFCOM make and impose arrangements of their own instead,

that the person bound by the conditions is required to act in accordance with arrangements imposed by OFCOM.

(3) The arrangements that are to be entered into, or may be imposed, are arrangements that secure—

- (a) that a facility for receiving each must-provide service is made available to every member of the intended audience for that service who is unable, without the use of that facility, to receive it in an intelligible form and free of charge;
- (b) that the facility is one under which every such member of the intended audience for a must-provide service is entitled, free of charge, to receive in an intelligible form so much of a service broadcast from a satellite as includes that must-provide service;
- (c) that the cost of making that facility available is shared, in appropriate proportions, by all the persons providing must-provide services;
- (d) that procedures are established and maintained for dealing with complaints from persons claiming to be entitled, in accordance with the arrangements, to receive a service free of charge, and for resolving disputes about the existence or extent of such an entitlement;
- (e) that the availability of those procedures is adequately publicised in accordance with guidance given from time to time by OFCOM.

(4) Arrangements entered into by the providers of must-provide services for the purposes of subsection (3), and any modifications of such arrangements made by the parties to them, are to have effect only if approved by OFCOM.

(5) Before imposing any arrangements for the purposes of a condition under subsection (2), OFCOM must consult all the persons who provide must-provide services.

(6) For the purposes of this section the reception of a service is not free of charge—

(a) if reception of the service is made conditional on the acceptance of an entitlement to receive another service in relation to which a charge is imposed (whether directly or indirectly);

(b) if a charge is made for or in connection with the provision of a service which is an ancillary service in relation to the service in question;

(c) if any consideration is required from the persons to whom it is made available for the provision of assistance for disabled people in respect of programmes included in the service; or

(d) if any other consideration is required to be given, by the person entitled to receive it, for or in connection with its provision or availability.

(7) A service is not prevented from being free of charge by a requirement to pay sums in accordance with regulations under section 365.

(8) The quality of reception that is required before someone is to be treated for the purposes of any conditions imposed under this section as able to receive a service in an intelligible form is to be determined by OFCOM.

(9) References in this section to a facility for receiving a must-provide service include references to—

(a) software to be used in giving effect to the entitlement to receive a must-provide service in an intelligible form, and

(b) apparatus to be used in associating apparatus capable of being used for receiving such a service, or for putting it into an intelligible form, with a person having such an entitlement, but do not otherwise include references to apparatus.

(10) In this section—

“intended audience”, in relation to a must-provide service, means—

(a) if the service is one provided only for a particular area or locality of the United Kingdom, members of the public in that area or locality;

(b) if the service is one provided for members of a particular community, members of that community; and

(c) in any other case, members of the public in the United Kingdom;

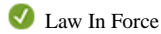
“licensed television service” means a service falling to be licensed under Part 1 of the 1990 Act or Part 1 of the 1996 Act;

“must-provide service” means a service for the time being included in the list of must-provide services in section 275.

(11) An order under section 411 must not appoint a day for provisions of this section to come into force that falls less than six months after the day on which the order is made.

Commencement

Pt 3 c. 4 s. 274(1)-(11): Date to be appointed (not yet in force) (2003 c. 21 Pt 6 s. 411(2))



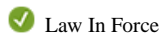
Law In Force

275 Must-provide services for the purposes of s. 274

- (1) For the purposes of section 274 the list of must-provide services is as follows—
- (a) every service of television programmes provided by the BBC so far as it is provided in digital form and is a service in relation to which OFCOM have functions;
 - (b) the Channel 3 services so far as provided in digital form;
 - (c) Channel 4 so far as provided in digital form;
 - (d) Channel 5 so far as provided in digital form;
 - (e) S4C Digital;
 - (f) the digital public teletext service.
- (2) The Secretary of State may by order modify the list of must-provide services in subsection (1).
- (3) In determining whether it is appropriate, by an order under subsection (2), to add a service to the list of must-provide services or to remove a service from that list, the Secretary of State must have regard, in particular, to—
- (a) the public benefit to be secured by the addition of the service to the list, or by its retention in the list;
 - (b) the likely effect of the proposed modification as respects the costs to be borne, under arrangements entered into or imposed under section 274, by the persons who, after the coming into force of the modification, would have to be parties to those arrangements; and
 - (c) the extent to which that effect is proportionate to the benefit mentioned in paragraph (a).

Commencement

Pt 3 c. 4 s. 275(1)-(3)(c): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

276 Co-operation with the public teletext provider

- (1) The regulatory regime for every Channel 3 service and for Channel 4 includes the conditions that OFCOM consider appropriate for securing that [, if there is a public teletext provider, the provider of the Channel 3 service or Channel 4]¹ grants access to the facilities mentioned in subsection (2)—
- (a) to the public teletext provider; and

(b) to any person authorised by virtue of section 220 to provide the whole or a part of the public teletext service on his behalf.

(2) Those facilities are the facilities that are reasonably required by the public teletext provider or the authorised person for the purposes of, or in connection with, the provision of the public teletext service.

(3) A licence holder granting access to facilities in pursuance of a condition imposed under this section may require the public teletext provider or authorised person to pay a reasonable charge in respect of the facilities.

(4) In the event of a dispute, the amount of the charge is to be determined by OFCOM.

Notes

¹ Words substituted by Digital Economy Act 2010 c. 24 s.28(6) (June 8, 2010)

Commencement

Pt 3 c. 4 s. 276(1)-(4): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Programming quotas for public service television

✓ Law In Force

277 Programming quotas for independent productions

(1) The regulatory regime for every licensed public service channel includes the conditions that OFCOM consider appropriate for securing that, in each year, not less than 25 per cent. of the total amount of time allocated to the broadcasting of qualifying programmes included in the channel is allocated to the broadcasting of a range and diversity of independent productions.

(2) In this section—

(a) a reference to qualifying programmes is a reference to programmes of such description as the Secretary of State may by order specify as describing the programmes that are to be qualifying programmes for the purposes of this section;

(b) a reference to independent productions is a reference to programmes of such description as the Secretary of State may by order specify as describing the programmes that are to be independent productions for the purposes of this section; and

(c) a reference to a range of independent productions is a reference to a range of such productions in terms of cost of acquisition as well as in terms of the types of programme involved.

(3) The Secretary of State may by order amend subsection (1) by substituting a different percentage for the percentage for the time being specified in that subsection.

(4) The Secretary of State may also by order provide for the regulatory regime for every licensed public service channel to include conditions falling within subsection (5), either instead of or as well as those falling within subsection (1).

(5) The conditions falling within this subsection are those that OFCOM consider appropriate for securing that, in each year, not less than the percentage specified in the order of the programming budget for that year for that channel is applied in the acquisition of independent productions.

(6) The power to make an order under subsection (4) includes power to provide that conditions that have previously ceased under such an order to be included in the regulatory regime for every licensed public service channel are again so included, in addition to or instead of the conditions already so included (apart from the exercise of that power) by virtue of this section.

(7) The Secretary of State is not to make an order for the regulatory regime of every licensed public service channel to include or exclude conditions falling within subsection (1) or conditions falling within subsection (5) unless—

- (a) OFCOM have made a recommendation to him for those conditions to be included or excluded; and
- (b) the order gives effect to that recommendation.

(8) The regulatory regime for every licensed public service channel also includes a condition requiring the provider of the channel to comply with directions given to him by OFCOM for the purpose of—

- (a) carrying forward to one or more subsequent years determined in accordance with the direction any shortfall for any year in his compliance with the requirements of conditions imposed by virtue of subsection (1) or (4); and
- (b) thereby increasing the percentage applicable for the purposes of those conditions to the subsequent year or years.

(9) For the purposes of conditions imposed by virtue of this section—

- (a) the amount of the programming budget for a licensed public service channel for a year, and
 - (b) the means of determining the amount of that budget that is applied for any purpose,
- are to be computed in accordance with such provision as may be set out in an order made by the Secretary of State, or as may be determined by OFCOM in accordance with such an order.

(10) The powers of the Secretary of State to make orders under this section do not include—

- (a) power to specify different percentages for the purposes of subsection (1), or of a condition falling within subsection (5), for different regional Channel 3 services or for different national Channel 3 services; or
- (b) power to make different provision for different licensed public service channels as to whether conditions falling within subsection (1) or conditions falling within subsection (5), or both, are included in the regulatory regimes for those services.

(11) Before making an order under this section the Secretary of State must consult OFCOM, the BBC and the Welsh Authority.

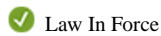
(12) No order is to be made containing provision authorised by this section unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

(13) In this section—

- “acquisition”, in relation to a programme, includes commissioning and the acquisition of a right to include it in a service or to have it broadcast;
- “programme” does not include an advertisement; and
- “programming budget” means the budget for the production and acquisition of qualifying programmes.

Commencement

Pt 3 c. 4 s. 277(1)-(13) definition of "programming budget": December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

278 Programming quotas for original productions

(1) The regulatory regime for every licensed public service channel includes the conditions that OFCOM consider appropriate for securing—

- (a) that the time allocated, in each year, to the broadcasting of original productions included in that channel is no less than what appears to them to be an appropriate proportion of the total amount of time allocated to the broadcasting of all the programmes included in the channel; and
- (b) that the time allocated to the broadcasting of original productions is split in what appears to them to be an appropriate manner between peak viewing times and other times.

(2) The proportion determined by OFCOM for the purposes of subsection (1)—

- (a) must, in the case of each licensed public service channel, be such proportion as OFCOM consider appropriate for ensuring that the channel is consistently of a high quality; and
- (b) may, for the purposes of paragraph (b) of that subsection, be expressed as the cumulative effect of two different minimum proportions, one applying to peak viewing times and the other to other times.

(3) A condition contained in a licence by virtue of this section may provide—

- (a) that specified descriptions of programmes are to be excluded in determining the programmes a proportion of which is to consist of original productions;
- (b) that, in determining for the purposes of the condition whether a programme is of a description of programmes excluded by virtue of paragraph (a), regard is to be had to any guidance prepared and published, and from time to time revised, by OFCOM.

(4) Before imposing a condition under this section, OFCOM must consult the person on whom it is to be imposed.

(5) The requirement to consult is satisfied, in the case of the imposition of a condition by way of a variation of a licence, by compliance with section 3(4)(b) of the 1990 Act (obligation to give opportunity to make representations about variation).

(6) References in this section, in relation to a licensed public service channel, to original productions are references to programmes of such description as the Secretary of State may by order specify as describing the programmes that are to be original productions for the purposes of this section.

(7) The power to specify descriptions of programmes by order under subsection (6) includes power to confer such discretions on OFCOM as the Secretary of State thinks fit.

(8) Before making an order under this section the Secretary of State must consult OFCOM, the BBC and the Welsh Authority.

(9) No order is to be made containing provision authorised by this section unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

(10) In this section—

“peak viewing time”, in relation to a licensed public service channel, means a time that appears to OFCOM to be, or to be likely to be, a peak viewing time for that channel; and
“programme” does not include an advertisement.

(11) Before determining for the purposes of this section what constitutes a peak viewing time for a channel, OFCOM must consult the provider of the channel.

Commencement

Pt 3 c. 4 s. 278(1)-(11): July 1, 2004 by SI 2003/3142 art.4(4)(a) as amended by SI 2004/545 art.2(2) (SI 2003/3142 art. 4(2), art. 4(4)(a), Sch. 2 para. 1; SI 2004/545 art. 2(2))

News provision etc. on public service television



Law In Force

279 News and current affairs programmes

(1) The regulatory regime for every licensed public service channel includes the conditions that OFCOM consider appropriate for securing—

- (a) that the programmes included in the channel include news programmes and current affairs programmes;
- (b) that the news programmes and current affairs programmes included in the service are of high quality and deal with both national and international matters; and
- (c) that the news programmes so included are broadcast for viewing at intervals throughout the period for which the channel is provided.

(2) That regime also includes the conditions that OFCOM consider appropriate for securing that, in each year—

- (a) the time allocated to the broadcasting of news programmes included in the service, and
- (b) the time allocated to the broadcasting of current affairs programmes so included,

each constitutes no less than what appears to OFCOM to be an appropriate proportion of the time allocated to the broadcasting of all the programmes included in the channel.

(3) It further includes the conditions that OFCOM consider appropriate for securing that the time allocated—

- (a) to the broadcasting of news programmes included in the service, and
- (b) to the broadcasting of current affairs programmes so included,

is, in each case, split in what appears to OFCOM to be an appropriate manner between peak viewing times and other times.

(4) The proportion determined by OFCOM for the purposes of subsection (2) may, for the purposes of subsection (3), be expressed as the cumulative effect of two different minimum proportions, one applying to peak viewing times and the other to other times.

(5) In this section “peak viewing time”, in relation to a licensed public service channel, means a time determined by OFCOM to be, or to be likely to be, a peak viewing time for that channel.

(6) Before determining for the purposes of this section—

(a) the proportion of time to be allocated to the broadcasting of news programmes or current affairs programmes; or

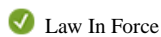
(b) what constitutes a peak viewing time for a channel,

OFCOM must consult the provider of the channel or (as the case may be) the person who is proposing to provide it.

(7) The requirement to consult is satisfied, in the case of the imposition of a condition by way of a variation of a licence, by compliance with section 3(4)(b) of the 1990 Act (obligation to give opportunity to make representations about variation).

Commencement

Pt 3 c. 4 s. 279(1)-(7): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

280 Appointed news providers for Channel 3

(1) The regulatory regime for every regional Channel 3 service includes the conditions that OFCOM consider appropriate for securing the nationwide broadcasting, on the regional Channel 3 services (taken together), of news programmes that are able to compete effectively with other television news programmes broadcast nationwide in the United Kingdom.

(2) The conditions imposed under this section must include a condition requiring the holder of a regional Channel 3 licence to do all that he can to ensure—

(a) that arrangements for the appointment of a single body corporate as the appointed news provider are maintained between all the holders of regional Channel 3 licences; and

(b) that, at all times while he is providing a regional Channel 3 service, there is in force an appointment made in accordance with those arrangements.

(3) The arrangements that are required to be maintained by virtue of conditions imposed under subsection (2) must provide—

(a) for the terms on which a body is appointed as the appointed news provider to include the terms appearing to OFCOM to be appropriate for securing that the body's finances are adequate, throughout the period of its appointment, to ensure that the Channel 3 news obligations are capable of being met; and

(b) for the approval of OFCOM to be required for the purposes of paragraph (a) to the terms on which an appointment is made.

(4) The conditions imposed under this section must include the conditions that OFCOM consider appropriate for securing that arrangements maintained between—

- (a) the holders of regional Channel 3 licences, and
 - (b) the body which is the appointed news provider,
- ensure that that body is subject to an obligation, enforceable by OFCOM, to provide OFCOM with all such information as they may require for the purpose of carrying out their functions.
- (5) The conditions imposed under this section must include a condition requiring the news programmes included in a regional Channel 3 service—
- (a) to be programmes provided by the body which is for the time being the appointed news provider for the purposes of this section; and
 - (b) to be so included in that service as to be broadcast simultaneously with the broadcasting of news programmes included, in accordance with conditions imposed under this subsection, in other regional Channel 3 services.
- (6) Those conditions must also require the news programmes provided by the appointed news provider which, in accordance with a condition imposed under subsection (5), are included in a regional Channel 3 service to be programmes that are presented live.
- (7) OFCOM—
- (a) may issue guidance as to the terms that will satisfy requirements imposed by virtue of subsection (3)(a); and
 - (b) must have regard to guidance for the time being in force under this subsection when considering whether to give an approval for the purposes of provision made by virtue of subsection (3)(b).
- (8) For the purposes of this section the Channel 3 news obligations are—
- (a) the requirements of any conditions imposed in relation to regional Channel 3 services under section 279; and
 - (b) the nationwide broadcasting on the regional Channel 3 services (taken together) of news programmes that are able to compete effectively with other television news programmes broadcast nationwide in the United Kingdom.
- (9) Conditions imposed under this section are not to require arrangements to make provision falling within subsection (3)(a) or (b) or (4) in relation to appointments made before the commencement of this section.
- (10) Section 32 of the 1990 Act (nomination of bodies eligible for appointment as news providers) shall cease to have effect.

Commencement

Pt 3 c. 4 s. 280(1)-(10): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

281 Disqualification from appointment as news provider

- (1) The regulatory regime for every regional Channel 3 service includes the conditions that OFCOM consider appropriate for securing—

- (a) that a body is not appointed as the appointed news provider if it falls within subsection (2); and
- (b) that the appointment of a body as the appointed news provider ceases to have effect if it becomes a body falling within that subsection.

(2) A body falls within this subsection if—

- (a) it is a disqualified person under Part 2 of Schedule 2 to the 1990 Act in relation to a Channel 3 licence; or
- (b) there would be a contravention of Part 1 of Schedule 14 to this Act (whether by that body or by another person) if that body held a licence to provide a Channel 3 service, or held a licence to provide such a service for a particular area for which such a service is provided.

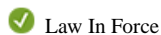
[(3) The reference in subsection (2)(a) to a body which is a disqualified person under Part 2 of Schedule 2 to the 1990 Act in relation to a Channel 3 licence includes a reference to a person who is disqualified by virtue of a disqualification order under section 145 of the 1996 Act.]¹

Notes

- ¹ Added by Media Ownership (Local Radio and Appointed News Provider) Order 2003/3299 Pt 4 art.13(1) (December 29, 2003)

Commencement

Pt 3 c. 4 s. 281(1)-(2)(b): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

282 Power to repeal or modify Channel 3 news provider provisions

- (1) If it appears to the Secretary of State appropriate to do so, he may by order repeal or otherwise modify any of the provisions of section 280 or 281.
- (2) Except in a case to which subsection (3) applies, the Secretary of State must consult OFCOM before making an order under this section.
- (3) Consultation with OFCOM is not required if the order is confined to giving effect to recommendations by OFCOM that are contained in a report of a review under section 391.
- (4) No order is to be made containing provision authorised by this section unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

Commencement

Pt 3 c. 4 s. 282(1)-(4): December 12, 2003 (SI 2003/3142 art. 2)



Law In Force

283 News providers for Channel 5

- (1) If it appears to the Secretary of State appropriate to do so, he may by order make provision requiring news programmes included in Channel 5 to be provided by a person appointed as a news provider in accordance with the order.
- (2) An order under this section may make provision in relation to Channel 5 that corresponds, with such modifications as the Secretary of State thinks fit, to any provision made in relation to regional Channel 3 services by section 280 or 281.
- (3) Subsection (2) applies irrespective of any repeal or other modification by an order under this Act of section 280 or 281.
- (4) An order under this section may include provision for section 194A of the 1990 Act (application of Competition Act 1998 to Channel 3 news provision) to have effect (with such modifications as may be specified in the order) in relation to the appointment of a person as a news provider for Channel 5 as it has effect in relation to the appointment of a body as a news provider for Channel 3.
- (5) The Secretary of State is not to make an order under this section for the imposition of obligations in relation to Channel 5 unless he is satisfied that Channel 5's share of the audience for television broadcasting services is broadly equivalent to that of the services comprising Channel 3.
- (6) An order under this section must require a licence holder to have a reasonable opportunity of making representations to OFCOM before his licence is varied in pursuance of the order.
- (7) Except in a case to which subsection (8) applies, the Secretary of State must consult OFCOM before making an order under this section.
- (8) Consultation with OFCOM is not required if the order is confined to giving effect to recommendations by OFCOM that are contained in a report of a review under section 391.
- (9) No order is to be made containing provision authorised by this section unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

Commencement

Pt 3 c. 4 s. 283(1)-(9): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

284 News provision on the public teletext service

- (1) The regulatory regime for the public teletext service includes the conditions that OFCOM consider appropriate for securing—
- (a) that the service includes what appears to OFCOM to be a suitable quantity and variety of news items; and
 - (b) that the news items included in the service are up to date and regularly revised.

(2) Conditions imposed under this section in relation to a time when the public teletext service comprises both—

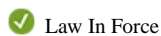
- (a) an analogue teletext service, and
- (b) a teletext service provided in digital form,

must apply to both services but may make different provision for each of them.

Commencement

Pt 3 c. 4 s. 284(1)-(2)(b): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Independent and regional productions and programmes for public service television



Law In Force

285 Code relating to programme commissioning

(1) The regulatory regime for every licensed public service channel includes the conditions that OFCOM consider appropriate for securing that the provider of the channel draws up and from time to time revises a code of practice setting out the principles he will apply when agreeing terms for the commissioning of independent productions.

(2) That regime also includes the conditions that OFCOM consider appropriate for securing that the provider of every licensed public service channel—

- (a) at all times complies with a code of practice which has been drawn up by him by virtue of this section and is for the time being in force; and
- (b) exercises his power to revise his code to take account of revisions from time to time of the guidance issued by OFCOM for the purposes of this section.

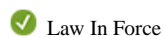
(3) The conditions imposed under this section must ensure that the code for the time being in force in the case of every licensed public service channel secures, in the manner described in guidance issued by OFCOM—

- (a) that a reasonable timetable is applied to negotiations for the commissioning of an independent production and for the conclusion of a binding agreement;
- (b) that there is what appears to OFCOM to be sufficient clarity, when an independent production is commissioned, about the different categories of rights to broadcast or otherwise to make use of or exploit the commissioned production that are being disposed of;
- (c) that there is what appears to OFCOM to be sufficient transparency about the amounts to be paid in respect of each category of rights;
- (d) that what appear to OFCOM to be satisfactory arrangements are made about the duration and exclusivity of those rights;
- (e) that procedures exist for reviewing the arrangements adopted in accordance with the code and for demonstrating compliance with it;
- (f) that those procedures include requirements for the monitoring of the application of the code and for the making of reports to OFCOM;

- (g) that provision is made for resolving disputes arising in respect of the provisions of the code (by independent arbitration or otherwise) in a manner that appears to OFCOM to be appropriate.
- (4) The conditions imposed under this section must also ensure that the drawing up or revision of a code by virtue of this section is in accordance with guidance issued by OFCOM as to—
- (a) the times when the code is to be drawn up or reviewed with a view to revision;
 - (b) the consultation to be undertaken before a code is drawn up or revised; and
 - (c) the publication of every code or revised code.
- (5) The provision that may be included in a condition imposed under this section includes—
- (a) provision requiring a draft of a code or of any revision of a code to be submitted to OFCOM for approval;
 - (b) provision for the code or revision to have effect only if approved by OFCOM; and
 - (c) provision for a code or revision that is approved by OFCOM subject to modifications to have effect with those modifications.
- (6) OFCOM—
- (a) must issue and may from time to time revise guidance for the purposes of this section;
 - (b) must ensure that there is always guidance for those purposes in force;
 - (c) must, before issuing their guidance or revised guidance, consult the providers of licensed public service channels, persons who make independent productions (or persons appearing to OFCOM to represent them), the BBC and the Welsh Authority; and
 - (d) must publish their guidance or revised guidance in such manner as they think appropriate.
- (7) Guidance issued by OFCOM for the purposes of this section must be general guidance and is not to specify particular terms to be included in agreements to which the guidance relates.
- (8) Conditions imposed under this section requiring a code to be drawn up or approved may include transitional provision for treating a code drawn up before the imposition of the condition—
- (a) as satisfying the requirements of that condition; and
 - (b) as a code approved by OFCOM for the purposes of conditions so imposed.
- (9) In this section “independent production” has the same meaning as in section 277.

Commencement

Pt 3 c. 4 s. 285(1)-(9): December 28, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

286 Regional programme-making for Channels 3 and 5

- (1) The regulatory regime for every Channel 3 service includes the conditions (if any) that OFCOM consider appropriate in the case of that service for securing—
- (a) that what appears to OFCOM to be a suitable proportion of Channel 3 programmes made in the United Kingdom are programmes made in the United Kingdom outside the M25 area;

- (b) that the Channel 3 programmes that are made in the United Kingdom outside the M25 area (taken together) constitute what appears to OFCOM to be a suitable range of programmes;
 - (c) that what appears to OFCOM to be a suitable proportion of the expenditure of the providers of Channel 3 services on Channel 3 programmes made in the United Kingdom is referable to programme production at different production centres outside the M25 area; and
 - (d) that the different programme production centres to which that expenditure is referable constitute what appears to OFCOM to be a suitable range of such production centres.
- (2) In the case of a national Channel 3 service, subsection (1) requires the inclusion of conditions in the licence for the service only where OFCOM consider, having regard to the nature of the service, that it would be appropriate for conditions falling within that subsection to be so included.
- (3) The regulatory regime for Channel 5 includes the conditions that OFCOM consider appropriate for securing—
- (a) that what appears to OFCOM to be a suitable proportion of the programmes made in the United Kingdom for viewing on that Channel are programmes made in the United Kingdom outside the M25 area;
 - (b) that the programmes for such viewing that are made in the United Kingdom outside the M25 area (taken together) constitute what appears to OFCOM to be a suitable range of programmes;
 - (c) that what appears to OFCOM to be a suitable proportion of the expenditure of the provider of Channel 5 on programmes made in the United Kingdom for viewing on that Channel is referable to programme production at different production centres outside the M25 area; and
 - (d) that the different programme production centres to which that expenditure is referable constitute what appears to OFCOM to be a suitable range of such production centres.
- (4) Before imposing a condition under this section, OFCOM must consult the person on whom it is to be imposed.
- (5) The requirement to consult is satisfied, in the case of the imposition of a condition by way of a variation of a licence, by compliance with section 3(4)(b) of the 1990 Act (obligation to give opportunity to make representations about variation).
- (6) A proportion is not to be regarded by OFCOM as suitable for the purposes of a provision of this section if it constitutes less than a significant proportion of the programmes or expenditure in question.
- (7) In this section—
- “Channel 3 programmes” means programmes made for viewing on Channel 3 in more than one area for which regional Channel 3 services are provided, including any programme made for viewing on a national Channel 3 service other than a regional programme;
 - “expenditure”, in relation to a programme, means—
 - (a) expenditure which constitutes an investment in or is otherwise attributable to the making of the programme; or
 - (b) expenditure on the commissioning or other acquisition of the programme or on the acquisition of a right to include it in a service or to have it broadcast;
 - “programme” does not include an advertisement; and

“regional programme” means a programme made with a view to its inclusion in a national Channel 3 service as a programme of particular interest to persons living within a particular area of the United Kingdom.

Commencement

Pt 3 c. 4 s. 286(1)-(7) definition of "regional programme": December 28, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

✓ Law In Force

287 Regional programmes on Channel 3

(1) The regulatory regime for every regional Channel 3 service includes the conditions that OFCOM consider appropriate for securing—

- (a) that what appears to OFCOM, in the case of that service, to be a sufficient amount of time is given in the programmes included in the service to what appears to them to be a suitable range of programmes (including regional news programmes) which are of particular interest to persons living within the area for which the service is provided;
- (b) that the regional programmes included in the service are of high quality;
- (c) that what appears to OFCOM, in the case of that service, to be a suitable proportion of the regional programmes included in the service consists of programmes made in that area;
- (d) that the regional news programmes included in the service are broadcast for viewing at intervals throughout the period for which the service is provided and, in particular, at peak viewing times;
- (e) that what appears to OFCOM, in the case of that service, to be a suitable proportion of the other regional programmes that are included in the service consists of programmes broadcast for viewing—
 - (i) at peak viewing times; and
 - (ii) at times immediately preceding or following those times.

(2) The regulatory regime for every local Channel 3 service includes the conditions that OFCOM consider appropriate for securing—

- (a) that what appears to OFCOM, in the case of that service, to be a sufficient amount of time is given in the programmes included in the service to what appears to them to be a suitable range of local programmes;
- (b) that, in the case of each part of an area or each community for which the service is provided, the range of local programmes is a range of programmes (including news programmes) which are of particular interest to persons living within that part of that area or to that community;
- (c) that the local programmes included in the service are of high quality;
- (d) that what appears to OFCOM, in the case of that service, to be a suitable proportion of the local programmes included in the service consists of programmes made in the area for which the service is provided;

- (e) that the local news programmes included in the service are broadcast for viewing at intervals throughout the period for which the service is provided and, in particular, at peak viewing times;
 - (f) that what appears to OFCOM, in the case of that service, to be a suitable proportion of the other local programmes that are included in the service consists of programmes broadcast for viewing—
 - (i) at peak viewing times; and
 - (ii) at times immediately preceding or following those times.
- (3) In the case of a local Channel 3 service, the conditions included in the regulatory regime for the service include conditions falling within subsection (1) to the extent only that it appears to OFCOM that the requirements of subsection (1) are not adequately met by conditions falling within subsection (2).
- (4) In the case of a national Channel 3 service in the case of which OFCOM consider that it would be appropriate to impose conditions under this subsection, the regulatory regime for the service includes the conditions that OFCOM consider appropriate for securing—
- (a) that what appears to OFCOM, in the case of that service, to be a sufficient amount of time is given in the programmes included in the service to what appears to them to be a suitable range of programmes (including regional news programmes) which are of particular interest to persons living within particular areas of the United Kingdom;
 - (b) that the regional programmes included in the service are of high quality;
 - (c) that what appears to OFCOM, in the case of that service, to be a suitable proportion of the regional programmes included in the service consists of programmes made in the area by reference to which they are regional programmes;
 - (d) that the regional news programmes included in the service are broadcast for viewing at intervals throughout the period for which the service is provided and, in particular, at peak viewing times;
 - (e) that what appears to OFCOM, in the case of that service, to be a suitable proportion of the other regional programmes that are included in the service consists of programmes broadcast for viewing—
 - (i) at peak viewing times; and
 - (ii) at times immediately preceding or following those times.
- (5) Before imposing a condition under this section, OFCOM must consult the person on whom it is to be imposed.
- (6) The requirement to consult is satisfied, in the case of the imposition of a condition by way of a variation of a licence, by compliance with section 3(4)(b) of the 1990 Act (obligation to give opportunity to make representations about variation).
- (7) A proportion is not to be regarded by OFCOM as suitable for the purposes of a provision of this section if it constitutes less than a significant proportion of the programmes in question.
- (8) In this section—
- “local Channel 3 service” means a regional Channel 3 service the provision of which includes the provision (in pursuance of a determination under section 14(3) of the 1990 Act) of different programmes for different parts of an area or for different communities living within an area;
 - “local programme” , in relation to a service provided for different parts of an area or for different communities, means a programme included in that service for any of the parts of

that area or for any of those communities, and “local news programme” is to be construed accordingly;

“peak viewing time”, in relation to a service, means a time determined by OFCOM to be, or to be likely to be, a peak viewing time for that service;

“programme” does not include an advertisement;

“regional programme” —

(a) in relation to a regional Channel 3 service, means a programme included in that service with a view to its being of particular interest to persons living within the area for which the service is provided;

(b) in relation to a national Channel 3 service, means a programme included in that service with a view to its being of particular interest to persons living within a particular area of the United Kingdom;

and “regional news programme” is to be construed accordingly.

Commencement

Pt 3 c. 4 s. 287(1)-(8) definition of “regional programme” (b): December 28, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

✓ Law In Force

288 Regional programme-making for Channel 4

(1) The regulatory regime for Channel 4 includes the conditions that OFCOM consider appropriate for securing—

(a) that what appears to OFCOM to be a suitable proportion of programmes made in the United Kingdom for viewing on Channel 4 are programmes made in the United Kingdom outside the M25 area;

(b) that the programmes for such viewing that are made in the United Kingdom outside the M25 area (taken together) constitute what appears to OFCOM to be a suitable range of programmes;

(c) that what appears to OFCOM to be a suitable proportion of the expenditure of C4C on programmes made in the United Kingdom for viewing on Channel 4 is referable to programme production at different production centres outside the M25 area; and

(d) that the different programme production centres to which that expenditure is referable constitute what appears to OFCOM to be a suitable range of such production centres.

(2) Before imposing a condition under this section, OFCOM must consult C4C.

(3) The requirement to consult is satisfied, in the case of the imposition of a condition by way of a variation of a licence, by compliance with section 3(4)(b) of the 1990 Act (obligation to give opportunity to make representations about variation).

(4) A proportion is not to be regarded by OFCOM as suitable for the purposes of a provision of this section if it constitutes less than a significant proportion of the programmes or expenditure in question.

(5) In this section—

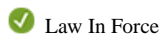
“expenditure”, in relation to a programme, means—

- (a) expenditure which constitutes an investment in or is otherwise attributable to the making of the programme; or
- (b) expenditure on the commissioning or other acquisition of the programme or on the acquisition of a right to include it in a service or to have it broadcast; and

“programme” does not include an advertisement.

Commencement

Pt 3 c. 4 s. 288(1)-(5) definition of "programme": December 28, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

289 Regional matters in the public teletext service

(1) The regulatory regime for the public teletext service includes the conditions that OFCOM consider appropriate for securing that the service includes what appears to them to be an appropriate proportion of material that is of particular interest to persons living in different parts of the United Kingdom.

(2) Conditions imposed under this section in relation to a time when the public teletext service comprises both—

- (a) an analogue teletext service, and
- (b) a teletext service provided in digital form,

must apply to both services but may make different provision for each of them.

Commencement

Pt 3 c. 4 s. 289(1)-(2)(b): December 28, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

[Provision of children's programmes]¹

Notes

¹ Added by Digital Economy Act 2017 c. 30 Pt 6 s.90 (June 27, 2017)



Law In Force

[289A Provision of children's programmes

(1) OFCOM may, if they think fit, publish criteria to be applied in accordance with this section to the provision of children's programmes.

- (2) Where criteria are published by OFCOM, the regulatory regime for every licensed public service channel includes the conditions that OFCOM consider appropriate for securing that the provision of children's programmes meets the criteria.
- (3) Any condition imposed by virtue of this section—
- (a) must relate only to the provision of children's programmes on the licensed public service channel concerned;
 - (b) must take into account OFCOM's assessment of the provision of children's programmes on all related services.
- (4) “Related services” in relation to a Channel 3 service means—
- (a) that service,
 - (b) all other Channel 3 services, and
 - (c) all services within subsection (6) that appear to OFCOM to have a sufficient connection with any Channel 3 service.
- (5) “Related services” in relation to any other licensed public service channel means—
- (a) that channel, and
 - (b) all services within subsection (6) that appear to OFCOM to have a sufficient connection with that channel.
- (6) A service is within this subsection if—
- (a) it is available for reception in the United Kingdom, and
 - (b) it is provided without any consideration being required for its reception, disregarding any requirement to pay sums in accordance with regulations under section 365.
- (7) For the purposes of an assessment under subsection (3)(b) no account is to be taken of whether a programme is provided on a licensed public service channel or on another service.
- (8) Any condition imposed by virtue of this section must be the same for all regional Channel 3 services.
- (9) Any criteria published under this section must be published by OFCOM in a statement setting out the criteria and how they propose to apply them.
- (10) OFCOM may from time to time review and revise or withdraw the criteria by publishing a further statement.
- (11) Where OFCOM revise or withdraw criteria, they must take any steps they consider necessary in consequence in relation to conditions imposed by virtue of this section.
- (12) OFCOM must—
- (a) carry out a public consultation for the purposes of any review under subsection (10);
 - (b) where there are no published criteria for the time being, carry out a public consultation before publishing criteria under this section.
- (13) In this section “children's programme” means a programme made—
- (a) for a television programme service or for an on-demand programme service, and
 - (b) for viewing primarily by persons under the age of sixteen.

]¹

Notes

¹ Added by Digital Economy Act 2017 c. 30 Pt 6 s.90 (June 27, 2017)

Networking arrangements for Channel 3

✓ Law In Force

290 Proposals for arrangements

- (1) An application for a regional Channel 3 licence, in addition to being accompanied by the proposals mentioned in section 15(3)(b) of the 1990 Act, must be accompanied by the applicant's proposals for participating in networking arrangements.
- (2) OFCOM may publish general guidance to applicants for regional Channel 3 licences as to the kinds of proposals which they are likely to consider satisfactory.
- (3) The publication of guidance under subsection (2) is to be in such manner as OFCOM consider appropriate.
- (4) Arrangements are networking arrangements for the purposes of this Part if they—
- (a) apply to all the holders of regional Channel 3 licences;
 - (b) provide for programmes made, commissioned or acquired by or on behalf of one or more of the holders of such licences to be available for broadcasting in all regional Channel 3 services; and
 - (c) are made for the purpose of enabling regional Channel 3 services (taken as a whole) to be a nationwide system of services which is able to compete effectively with other television programme services provided in the United Kingdom.

Commencement

Pt 3 c. 4 s. 290(1)-(4)(c): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

✓ Law In Force

291 Obligation as to making and continuance of approved arrangements

- (1) The regulatory regime for every regional Channel 3 service includes the conditions that OFCOM consider appropriate for securing that the licence holder does all that he can to ensure that approved networking arrangements are in force whenever—
- (a) the licence holder is providing the licensed service; and
 - (b) no networking arrangements imposed by OFCOM under section 292 are in force.
- (2) In this section “approved networking arrangements” means networking arrangements which are for the time being approved by OFCOM in accordance with Schedule 11.
- (3) In paragraph 5 of Schedule 2 to the Competition Act 1998 (c. 41) (exclusion of networking arrangements from Chapter I prohibition), for sub-paragraph (1) there shall be substituted—

“(1) The Chapter I prohibition does not apply in respect of any networking arrangements to the extent that they—

(a) have been approved for the purposes of licence conditions imposed under section 291 of the Communications Act 2003; or

(b) are arrangements that have been considered under Schedule 4 to the Broadcasting Act 1990 and fall to be treated as so approved;

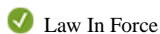
nor does that prohibition apply in respect of things done with a view to arrangements being entered into or approved to the extent that those things have effect for purposes that are directly related to, and necessary for compliance with, conditions so imposed.”

(4) For sub-paragraph (4) of that paragraph there shall be substituted—

“(4) In this paragraph ‘networking arrangements’ has the same meaning as in Part 3 of the Communications Act 2003.”

Commencement

Pt 3 c. 4 s. 291(1)-(4): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

292 OFCOM's power to impose arrangements

(1) This section applies on each occasion on which OFCOM—

(a) are proposing to award one or more regional Channel 3 licences; and

(b) for that purpose publish a notice under section 15(1) of the 1990 Act.

(2) OFCOM must—

(a) determine the date by which the holders of the licences awarded and all other regional Channel 3 providers (if any) must have entered into networking arrangements (the “networking date”); and

(b) set out that date in that notice.

(3) The networking date must be the date by which, in OFCOM's opinion, the networking arrangements must have been entered into if approved networking arrangements are to be fully in force before the persons awarded licences begin to provide their licensed services.

(4) If—

(a) no suitable networking arrangements exist by the networking date, or

(b) the suitable networking arrangements that exist at that date cease to apply to all regional Channel 3 providers on or after that date,

OFCOM may impose on all regional Channel 3 providers the networking arrangements that OFCOM consider appropriate.

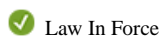
(5) For the purposes of subsection (4) arrangements are suitable networking arrangements if it appears to OFCOM that they—

(a) have been submitted to them for approval or have been approved by them; and

- (b) will be in force as approved networking arrangements when the persons awarded licences begin to provide their licensed services.
- (6) Arrangements imposed under this section come into force on the date determined by OFCOM.
- (7) The regulatory regime for every regional Channel 3 service includes the conditions that OFCOM consider appropriate for securing that the licence holder complies with the provisions of any networking arrangements imposed under this section.
- (8) Where—
- (a) networking arrangements are imposed under this section,
 - (b) other networking arrangements are entered into between the licence holders bound by the imposed arrangements, and
 - (c) the other arrangements entered into are approved by OFCOM,
- the imposed arrangements shall cease to have effect on the coming into force of the other arrangements as approved networking arrangements.
- (9) In this section—
- “approved networking arrangements” has the same meaning as in section 291; and
 - “regional Channel 3 providers” means persons who will be licensed to provide regional Channel 3 services and will be providing such services when the licences to be awarded come into force.

Commencement

Pt 3 c. 4 s. 292(1)-(9) definition of "regional Channel 3 providers": December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

293 Review of approved networking arrangements etc.

- (1) It shall be the duty of OFCOM from time to time to carry out general reviews of the networking arrangements (whether approved or imposed by OFCOM) that are in force.
- (2) The first such review must be carried out no later than six months after the date on which the offers made under section 215(1) close or (if those offers close on different dates) the latest of those dates.
- (3) Every subsequent review must be carried out no more than one year after the previous one.
- (4) OFCOM may also, at any other time, carry out a review of whether those arrangements continue to satisfy one of the two competition tests set out in paragraph 6 of Schedule 11.
- (5) If, on a review under this section, OFCOM are satisfied that modifications are required of the networking arrangements for the time being in force, they may—
- (a) require the holders of regional Channel 3 licences to give effect to the modifications proposed by OFCOM; or
 - (b) in the case of arrangements imposed by OFCOM, make those modifications themselves.

(6) OFCOM must not exercise any of their powers under this Act or the 1990 Act so as to modify the requirements imposed on the holder of a regional Channel 3 licence by approved networking arrangements that are already in force except—

- (a) following a review under this section; or
- (b) with the consent of the licence holder.

(7) The regulatory regime for every Channel 3 service includes the conditions that OFCOM consider appropriate for securing that the licence holder does all that he can to ensure that modifications proposed by OFCOM under this section are given effect to.

(8) In this section “approved networking arrangements” has the same meaning as in section 291.

Commencement

Pt 3 c. 4 s. 293(1)-(8): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

✓ Law In Force

294 Supplemental provision about networking arrangements

(1) Schedule 11 (which makes provision about the approval of networking arrangements and the imposition or modification of such arrangements) shall have effect.

(2) The obligations arising under conditions imposed in accordance with sections 291 to 293 are subject to the rights of appeal conferred by that Schedule.

Commencement

Pt 3 c. 4 s. 294(1)-(2): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Special obligations for Channel 4

✓ Law In Force

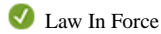
295 Involvement of C4 Corporation in programme-making

(1) The regulatory regime for Channel 4 includes a condition requiring C4C not to be involved, except to such extent as OFCOM may allow, in the making of programmes to be broadcast on Channel 4.

(2) In this section “programme” does not include an advertisement.

Commencement

Pt 3 c. 4 s. 295(1)-(2): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

296 Schools programmes on Channel 4

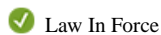
- (1) The regulatory regime for Channel 4 includes the conditions that OFCOM consider appropriate for securing that what appears to them to be a suitable proportion of the programmes which are included in Channel 4 are schools programmes.
- (2) A licence under the 1990 Act to provide Channel 4 may also include conditions authorised by the following provisions of this section.
- (3) The conditions authorised by this section include conditions requiring C4C—
- (a) to finance the production of schools programmes; and
 - (b) to acquire schools programmes provided by other persons.
- (4) The conditions authorised by this section include conditions requiring C4C to ensure that schools programmes on Channel 4—
- (a) are of high quality; and
 - (b) are suitable to meet the needs of schools throughout the United Kingdom.
- (5) The conditions authorised by this section include conditions specifying the minimum number of hours in term time, or within normal school hours, that are to be allocated to the broadcasting of schools programmes on Channel 4.
- (6) The conditions authorised by this section include conditions requiring C4C to provide such material for use in connection with the schools programmes broadcast by them as may be necessary to secure that effective use is made of those programmes in schools.
- (7) The conditions authorised by this section include conditions requiring C4C from time to time to consult such persons who—
- (a) are concerned with schools or with the production of schools programmes, or
 - (b) have an interest in schools or in the production of schools programmes,
- as OFCOM think fit.
- (8) Before imposing a condition under this section, OFCOM must consult C4C.
- (9) The requirement to consult is satisfied, in the case of the imposition of a condition by way of a variation of a licence, by compliance with section 3(4)(b) of the 1990 Act (obligation to give opportunity to make representations about variation).
- (10) In determining for the purposes of subsection (1) what proportion of the programmes included in Channel 4 should be schools programmes, OFCOM must take into account services, facilities and materials which C4C provide to schools, or make available for schools, otherwise than by the inclusion of programmes in Channel 4.

(11) Section 34 of the 1990 Act (requirement as to schools programmes in relation to all licensed public service channels taken together) shall cease to have effect.

(12) In this section “schools programmes” means programmes which are intended for use in schools.

Commencement

Pt 3 c. 4 s. 296(1)-(12): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

297 Channel 4 contribution towards national television archive

(1) Section 185 of the 1990 Act (contributions towards maintenance of the national television archive) shall be amended as follows.

(2) In subsections (1) and (3), after “Channel 3” there shall be inserted “, Channel 4”.

(3) In subsection (5), at the end there shall be inserted—

“‘Channel 4 licence’ means—

(a) the licence referred to in section 231(1)(b) of the Communications Act 2003; and

(b) a licence renewing that licence on the first or any subsequent occasion.”

(4) This section has effect in relation only to financial years beginning after the television transfer date.

Commencement

Pt 3 c. 4 s. 297(1)-(4): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Special obligation for the public teletext provider



Law In Force

298 Conditions prohibiting interference with other services

The regulatory regime for the public teletext service includes the conditions that OFCOM consider appropriate for securing that the provision of so much of the public teletext service as is provided in analogue form does not cause interference with—


(a) the television broadcasting service or services on whose frequency or frequencies it is provided; or

(b) any other wireless telegraphy transmissions.

Commencement

Pt 3 c. 4 s. 298(a)-(b): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Sporting and other events of national interest

 Partially In Force

299 Categorisation of listed events

(1) For subsections (1) and (2) of section 97 of the 1996 Act (listed events), there shall be substituted—

“(1) The Secretary of State may, for the purposes of this Part, maintain a list of sporting and other events of national interest, and an event for the time being included in the list is referred to in this Part as a ‘listed event’.

(1A) A list maintained under subsection (1) must be divided into two categories, and those categories are referred to in this Part as ‘Group A’ and ‘Group B’.

(1B) Each listed event must be allocated either to Group A or to Group B.

(2) Before drawing up such a list, or revising or ceasing to maintain it, the Secretary of State must consult—

- (a) OFCOM,
- (b) the BBC,
- (c) the Welsh Authority, and
- (d) in relation to a relevant event, the person from whom the rights to televise that event may be acquired.

(2A) For the purposes of subsection (2)(d), a relevant event is an event which the Secretary of State proposes—

- (a) to include in a list maintained under subsection (1),
- (b) to omit from such a list, or
- (c) to move from one category in such a list to the other.”

(2) In subsection (3)(b) of that section, the words “by the Commission” and “by them” shall be omitted.

(3) In subsection (5) of that section—

- (a) for the words “addition of any relevant event to” there shall be substituted “inclusion of any event in”; and
- (b) in paragraph (a), for “addition” there shall be substituted “inclusion”.

(4) After that subsection, there shall be inserted—

“(5A) The allocation or transfer of an event to group A does not affect the validity of a contract entered into before the day on which the Secretary of State consulted the persons mentioned in subsection (2) in relation to the proposed allocation or transfer.

(5B) The Secretary of State may direct that, for the transitional purposes set out in the direction, the transfer of a Group B event to Group A is not to affect the application to that event of provisions of this Part relating to a Group B event.”

Commencement

Pt 3 c. 4 s. 299(1), (3)-(4): Date to be appointed (not yet in force) (2003 c. 21 Pt 6 s. 411(2))

Pt 3 c. 4 s. 299(2): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Not Yet In Force

300 Effects of categorisation of listed events

(1) In section 99(1) of the 1996 Act (avoidance of contracts for exclusive rights to televise listed events), for “listed event” there shall be substituted “Group A listed event”.

(2) In section 101 of that Act (restriction on televising of listed events), for subsection (1) there shall be substituted—

“(1) A television programme provider who—

- (a) is providing a service (‘the first service’) falling within either category, and
- (b) is providing it with a view to its being available (within the meaning of Part 3 of the Communications Act 2003) for reception by members of the public in the United Kingdom, or in any area of the United Kingdom,

must not include live coverage of a listed event in that service unless it is authorised by subsection (1A), (1B) or (1C).

(1A) Live coverage of a listed event is authorised by this subsection if—

- (a) a television programme provider (other than the provider of the first service) has acquired the right to include live coverage of the event in his service (‘the second service’); and
- (b) the second service—
 - (i) falls into a different category from the first service, and
 - (ii) is provided for an area that consists of or includes all or almost all of the area for which the first service is provided.

(1B) Live coverage of a listed event is authorised by this subsection if OFCOM have consented in advance to inclusion of that coverage in the first service.

(1C) Live coverage of a listed event is authorised by this subsection if—

- (a) the listed event is a Group B event,
- (b) rights to provide coverage of the event have been acquired by one or more persons in addition to the provider of the first service,

- (c) that additional coverage constitutes adequate alternative coverage of the event, and
- (d) the person or persons who have acquired rights to provide the additional coverage satisfy the requirements in relation to that coverage of any regulations made under section 104ZA for the purposes of this paragraph.

(1D) Subsections (1) to (1C) apply to the coverage of a part of a listed event as they apply to the coverage of the whole of that event.”

(3) In subsection (2) of that section, for “under subsection (1)” there shall be substituted “for the purposes of subsection (1B).”

(4) After subsection (4) of that section there shall be inserted—

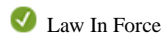
“(5) References in this section to a category of service are references to a category of service set out in section 98(1).”

(5) In section 102(2) of that Act (penalties), for “under subsection (1) of section 101” there shall be substituted “for the purposes of section 101(1B)”.

(6) In section 103(2) of that Act (reports to the Secretary of State), for “under subsection (1) of section 101” there shall be substituted “for the purposes of section 101(1B)”.

Commencement

Pt 3 c. 4 s. 300(1)-(6): Date to be appointed (not yet in force)



Law In Force

301 Code relating to listed events

(1) For subsection (1) of section 104 of the 1996 Act (code in relation to listed events) there shall be substituted—

“(1) OFCOM shall draw up, and may from time to time revise, a code giving guidance—

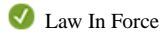
- (a) as to the matters which they will take into account in determining whether to give or to revoke their consent for the purposes of section 101(1B) or section 101B(1); and
- (b) as to the matters which they will take into account in determining for the purposes of section 102(1) or 103(1), whether in all the circumstances it is unreasonable to expect a television programme provider to comply with section 101(1) or section 101B(1).”

(2) Where OFCOM are required to draw up a code by virtue of this section—

- (a) they shall do so as soon as practicable after the commencement of this section; but
- (b) the code shall have no effect in relation to any time before the commencement of section 300 of this Act.

Commencement

Pt 3 c. 4 s. 301(1)-(2)(b): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

302 Regulations about coverage of listed events

(1) After section 104 of the 1996 Act there shall be inserted—

“104ZA Regulations about coverage of listed events

(1) OFCOM may make regulations for determining for the purposes of this Part—

- (a) the circumstances in which the televising of listed events generally, or of a particular listed event, is or is not to be treated as live;
- (b) what (whether generally or in relation to particular circumstances) is to be taken to represent the provision of adequate alternative coverage; and
- (c) the requirements that must be satisfied for the purposes of section 101(1C)(d) by persons who have acquired rights to provide adequate alternative coverage.

(2) The power conferred by subsection (1)(a) does not include power to define ‘live’ for the purposes of section 101B.

(3) Section 403 of the Communications Act 2003 (procedure for regulations and orders made by OFCOM) applies to the power of OFCOM to make regulations under this section.”

(2) In section 105(1) (interpretation of Part 4), before the definition of “Channel 4” there shall be inserted—

“‘adequate alternative coverage’ and ‘live’ are to be construed in accordance with any regulations under section 104ZA;”.

Commencement

Pt 3 c. 4 s. 302(1)-(2): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Television services for [people with disabilities]¹

Notes

¹ Words substituted by Audiovisual Media Services Regulations 2020/1062 Pt 2(2) reg.7 (November 1, 2020: substitution has effect subject to transitional provision specified in SI 2020/1062 Pt.7)



303 Code relating to provision for [people with disabilities]¹

(1) It shall be the duty of OFCOM to draw up, and from time to time to review and revise, a code giving guidance as to—

- (a) the extent to which the services to which this section applies should promote the understanding and enjoyment by [people with disabilities, in particular]² —
 - (i) persons who are deaf or hard of hearing,
 - (ii) persons who are blind or partially-sighted, and
 - (iii) persons with a dual sensory impairment,
- of the programmes to be included in such services; and
- (b) the means by which such understanding and enjoyment should be promoted.

[(1A) The code must include provision—

- (a) encouraging providers of services to which this section applies to develop accessibility action plans with a view to continuously and progressively making such services more accessible to people with disabilities;
- (b) requiring such action plans to be notified to OFCOM;
- (c) requiring providers of services to report annually to OFCOM about the accessibility of such services to people with disabilities.

]³

(2) The code must include provision for securing that every provider of a service to which this section applies ensures that adequate information about the assistance for disabled people that is provided in relation to that service is made available to those who are likely to want to make use of it.

(3) The code must also require that, from the fifth and tenth anniversaries of the relevant date, the obligations in subsections (4) and (5), respectively, must be fulfilled by reference to averages computed over each of the following—

- (a) the twelve month period beginning with the anniversary in question; and
- (b) every twelve month period ending one week after the end of the previous period for which an average fell to be computed.

(4) The obligation to be fulfilled from the fifth anniversary of the relevant date is that at least 60 per cent. of so much of every service which—

- (a) is a service to which this section applies, and
- (b) has a relevant date after the passing of this Act,

as consists of programmes that are not excluded programmes must be accompanied by subtitling.

(5) The obligations to be fulfilled from the tenth anniversary of the relevant date are—

- (a) that at least 90 per cent. of so much of a Channel 3 service or of Channel 4 as consists of programmes that are not excluded programmes must be accompanied by subtitling;
- (b) that at least 80 per cent. of so much of every other service to which this section applies as consists of programmes that are not excluded programmes must be accompanied by subtitling;
- (c) that at least 10 per cent. of so much of every service to which this section applies as consists of programmes that are not excluded programmes must be accompanied by audio-description for the blind; and

- (d) that at least 5 per cent. of so much of every service to which this section applies as consists of programmes that are not excluded programmes must be presented in, or translated into, sign language.
- (6) A reference in subsection (4) or in any paragraph of subsection (5) to excluded programmes is a reference to programmes of the description for the time being set out under subsection (7) in relation to that subsection or paragraph and also in relation to the service in question.
- (7) The code must set out, in relation to subsection (4) and each of the paragraphs of subsection (5), the descriptions of programmes that OFCOM consider should be excluded programmes for the purposes of the requirement contained in that subsection or paragraph.
- (8) In complying with subsection (7), OFCOM must have regard, in particular, to—
- (a) the extent of the benefit which would be conferred by the provision of assistance for disabled people in relation to the programmes;
 - (b) the size of the intended audience for the programmes;
 - (c) the number of persons who would be likely to benefit from the assistance and the extent of the likely benefit in each case;
 - (d) the extent to which members of the intended audience for the programmes are resident in places outside the United Kingdom;
 - (e) the technical difficulty of providing the assistance; and
 - (f) the cost, in the context of the matters mentioned in paragraphs (a) to (e), of providing the assistance.
- (9) The exclusions that may be set out in the code under subsection (7)—
- (a) may include different descriptions of programmes in relation to different services to which this section applies; and
 - (b) in the case of a service which OFCOM are satisfied (having regard to the matters mentioned in subsection (8)) is a special case, may include all the programmes included in the service.
- (10) The requirements that may be imposed by the code include, in particular—
- (a) requirements on persons providing services to which this section applies to meet interim targets falling within subsection (11), from dates falling before an anniversary mentioned in subsection (3);
 - (b) requirements on persons providing such services to meet further targets from dates falling after the anniversary mentioned in subsection (5); and
 - (c) requirements with respect to the provision of assistance for disabled people in relation to excluded programmes, or in relation to a particular description of them.
- (11) The interim targets mentioned in subsection (10)(a) are the targets with respect to the provision of assistance for disabled people which OFCOM consider it appropriate to impose as targets on the way to meeting the targets imposed in pursuance of subsection (3).
- (12) This section applies to the following services—
- (a) S4C Digital or any other television programme service provided by the Welsh Authority for broadcasting in digital form so as to be available for reception by members of the public;
 - (b) any licensed public service channel;
 - (c) a digital television programme service but not an electronic programme guide;
 - (d) a television licensable content service but not an electronic programme guide;
 - (e) a restricted television service.

(13) In this section—

“electronic programme guide” means a service which—

- (a) is or is included in a television licensable content service or a digital television programme service; and
- (b) consists of—
 - (i) the listing or promotion, or both the listing and the promotion, of some or all of the programmes included in any one or more programme services the providers of which are or include persons other than the provider of the guide; and
 - (ii) a facility for obtaining access, in whole or in part, to the programme service or services listed or promoted in the guide;

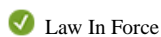
“programme” does not include an advertisement.

Notes

- ¹ Words substituted by Audiovisual Media Services Regulations 2020/1062 Pt 2(2) reg.8(a) (November 1, 2020: substitution has effect subject to transitional provision specified in SI 2020/1062 Pt.7)
- ² Words inserted by Audiovisual Media Services Regulations 2020/1062 Pt 2(2) reg.8(b) (November 1, 2020: insertion has effect subject to transitional provision specified in SI 2020/1062 part.7)
- ³ Added by Audiovisual Media Services Regulations 2020/1062 Pt 2(2) reg.8(c) (November 1, 2020: insertion has effect subject to transitional provision specified in SI 2020/1062 part.7)

Commencement

Pt 3 c. 4 s. 303(1)-(13) definition of "programme": December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

304 Procedure for issuing and revising code under s. 303

(1) Before drawing up a code under section 303 or reviewing or revising it in pursuance of that section, OFCOM must consult—

- (a) such persons appearing to them to represent the interests of [people with disabilities]¹ as OFCOM think fit; and
- (b) such persons providing services to which that section applies as OFCOM think fit.

(2) OFCOM must publish the code drawn up under section 303 , and every revision of it, in such manner as, having regard to the need to make the code or revision accessible to [people with disabilities, in particular]² —

- (a) persons who are deaf or hard of hearing,
- (b) persons who are blind or partially sighted, and
- (c) persons with a dual sensory impairment,

they consider appropriate.

Notes

- ¹ Words substituted by Audiovisual Media Services Regulations 2020/1062 Pt 2(2) reg.9(a) (November 1, 2020: substitution has effect subject to transitional provision specified in SI 2020/1062 Pt 7)
- ² Words inserted by Audiovisual Media Services Regulations 2020/1062 Pt 2(2) reg.9(b) (November 1, 2020: insertion has effect subject to transitional provision specified in SI 2020/1062 Pt 7)

Commencement

Pt 3 c. 4 s. 304(1)-(2)(c): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

✓ Law In Force

305 Meaning of “relevant date” in s. 303

- (1) In relation to a service, the relevant date for the purposes of section 303 is—
- (a) in a case to which any of subsections (2) to (4) applies, the date given by that subsection; and
 - (b) in any other case, the date (whether before or after the passing of this Act) when the provision of that service began or begins.
- (2) In the case of a service the provision of which began before the television transfer date but which is not—
- (a) a service provided by the Welsh Authority,
 - (b) a licensed public service channel, or
 - (c) a digital television programme service,
- the relevant date is the date of the coming into force of this section.
- (3) In the case of—
- (a) a Channel 3 service the provision of which began before the date of the passing of this Act, and
 - (b) Channel 4 and S4C Digital,
- the relevant date is 1st January 2000.
- (4) In the case of Channel 5, so far as it consists of a service the provision of which began before the date of the passing of this Act, the relevant date is 1st January 1998.
- (5) OFCOM may determine that a service provided by a person is to be treated for the purposes of section 303 and this section as a continuation of a service previously provided by him.

Commencement

Pt 3 c. 4 s. 305(1)-(5): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

✓ Law In Force

306 Power to modify targets in s. 303

- (1) Where it appears to the Secretary of State, in the case of services of a particular description, that the obligation specified in section 303(4) has been or is likely to be fulfilled in their case before the anniversary so specified, he may by order modify section 303 so as to do one or both of the following—
- (a) increase the percentage so specified in relation to services of that description;

- (b) substitute a different anniversary for the anniversary by which that obligation must be fulfilled in the case of such services.
- (2) The Secretary of State may by order modify section 303 so as to do one or both of the following—
 - (a) substitute a later anniversary for the anniversary by which the obligations specified in subsection (5) of that section must be fulfilled;
 - (b) substitute a higher percentage for the percentage for the time being specified in any paragraph of that subsection.
- (3) The provision that may be made by an order under this section includes—
 - (a) modifications for requiring the code to set out additional obligations to be fulfilled once the obligations previously required to be set out in the code have been fulfilled; and
 - (b) savings for the obligations previously set out in the code.
- (4) Before making an order under this section the Secretary of State must consult OFCOM.
- (5) No order is to be made containing provision authorised by this section unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

Commencement

Pt 3 c. 4 s. 306(1)-(5): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

✓ Law In Force

307 Observance of code under s. 303

- (1) The regulatory regime for every service to which this section applies includes the conditions that OFCOM consider appropriate for securing that the code maintained by them under section 303 is observed in the provision of those services.
- (2) This section applies to every service to which section 303 applies which is licensed by a Broadcasting Act licence.

Commencement

Pt 3 c. 4 s. 307(1)-(2): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

✓ Law In Force

[307A Disabled people: point of contact

OFCOM must provide a single, easily accessible (including by people with disabilities), online point of contact for providing information and receiving complaints regarding accessibility issues which relate to matters dealt with by sections 303 to 307 and the code drawn up by OFCOM under section 303.]¹

Notes

- ¹ Added by Audiovisual Media Services Regulations 2020/1062 Pt 2(2) reg.10 (November 1, 2020: insertion has effect subject to transitional provision specified in SI 2020/1062 Pt 7)
-

✓ Law In Force

308 Assistance for the visually impaired with the public teletext service

The regulatory regime for the public teletext service includes the conditions that OFCOM consider appropriate for securing, so far as it is reasonable and practicable, by the inclusion of features in that service, to do so, that persons with disabilities affecting their sight are able to make use of the service.

Commencement

Pt 3 c. 4 s. 308: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Programming quotas for digital television programme services

✓ Law In Force

309 Quotas for independent programmes

(1) The regulatory regime for every digital television programme service that is not comprised in a licensed public service channel includes the conditions that OFCOM consider appropriate for securing that, in each year, not less than 10 per cent. of the total amount of time allocated to the broadcasting of qualifying programmes included in the service is allocated to the broadcasting of a range and diversity of independent productions.

(2) In subsection (1)—

- (a) the reference to qualifying programmes is a reference to programmes of such description as the Secretary of State may by order specify as describing the programmes that are to be qualifying programmes for the purposes of that subsection;
- (b) the reference to independent productions is a reference to programmes of such description as the Secretary of State may by order specify as describing the programmes that are to be independent productions for the purposes of that subsection; and
- (c) the reference to a range of independent productions is a reference to a range of such productions in terms of cost of acquisition as well as in terms of the types of programme involved.

(3) The Secretary of State may by order amend subsection (1) by substituting a different percentage for the percentage for the time being specified in that subsection.

(4) Before making an order under this section the Secretary of State must consult OFCOM.

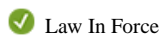
(5) No order is to be made containing provision authorised by this section unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

(6) In this section “programme” does not include an advertisement.

Commencement

Pt 3 c. 4 s. 309(1)-(6): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Regulation of electronic programme guides



Law In Force

310 Code of practice for electronic programme guides

(1) It shall be the duty of OFCOM to draw up, and from time to time to review and revise, a code giving guidance as to the practices to be followed in the provision of electronic programme guides.

(2) The practices required by the code must include the giving, in the manner provided for in the code, of such degree of prominence as OFCOM consider appropriate to—

- (a) the listing or promotion, or both the listing and promotion, for members of its intended audience, of the programmes included in each public service channel; and
- (b) the facilities, in the case of each such channel, for members of its intended audience to select or access the programmes included in it.

(3) The practices required by the code must also include the incorporation of such features in electronic programme guides as OFCOM consider appropriate for securing that persons with disabilities [, in particular those]¹ affecting their sight or hearing or both—

- (a) are able, so far as practicable, to make use of such guides for all the same purposes as persons without [...] ² disabilities; and
- (b) are informed about, and are able to make use of, whatever assistance for disabled people is provided in relation to the programmes listed or promoted.

(4) Subject to subsection (5), in subsection (2) the reference to the public service channels is a reference to any of the following—

- (a) any service of television programmes provided by the BBC in digital form so as to be available for reception by members of the public;
- (b) any Channel 3 service in digital form;
- (c) Channel 4 in digital form;
- (d) Channel 5 in digital form;
- (e) S4C Digital;
- (f) the digital public teletext service [;]³
- [(g) a local digital television programme service;
- (h) a simulcast local service.]³

(5) The Secretary of State may by order—

- (a) add any programme service to the services for the time being specified in subsection (4) as public service channels; or
 - (b) delete a service from that subsection.
- (6) Before making an order under subsection (5) the Secretary of State must consult OFCOM.
- (7) In this section “intended audience”, in relation to a service of any description, means—
- (a) if the service is provided only for a particular area or locality of the United Kingdom, members of the public in that area or locality;
 - (b) if it is provided for members of a particular community, members of that community; and
 - (c) in any other case, members of the public in the United Kingdom.
- (8) In this section “electronic programme guide” means a service which consists of—
- (a) the listing or promotion, or both the listing and the promotion, of some or all of the programmes included in any one or more programme services the providers of which are or include persons other than the provider of the guide; and
 - (b) a facility for obtaining access, in whole or in part, to the programme service or services listed or promoted in the guide.
- [(9) In this section “local digital television programme service” means any service which falls within a description of service in relation to which provision is for the time being made under section 244 (local digital television services).
- (10) In this section “simulcast local service” means a service provided in digital form and corresponding to a local digital television programme service.
- (11) For the purposes of subsection (10), a service corresponds to a local digital television programme service (“the relevant service”) if all of the programmes included in the relevant service are provided at the same time on both services.]⁴

Notes

- ¹ Words inserted by Audiovisual Media Services Regulations 2020/1062 Pt 2(2) reg.11(a) (November 1, 2020: insertion has effect subject to transitional provision specified in SI 2020/1062 Pt 7)
- ² Word repealed by Audiovisual Media Services Regulations 2020/1062 Pt 2(2) reg.11(b) (November 1, 2020: repeal has effect subject to transitional provision specified in SI 2020/1062 Pt 7)
- ³ Added by Code of Practice for Electronic Programme Guides (Addition of Programme Services) Order 2011/3003 art.2(a) (January 31, 2012)
- ⁴ Added by Code of Practice for Electronic Programme Guides (Addition of Programme Services) Order 2011/3003 art.2(b) (January 31, 2012)

Commencement

Pt 3 c. 4 s. 310(1)-(6): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

✓ Law In Force

311 Conditions to comply with code under s. 310

(1) The regulatory regime for every service consisting in or including an electronic programme guide includes whatever conditions (if any) OFCOM consider appropriate for securing that the code maintained by them under section 310 is observed in the provision of those services.

(2) In this section “electronic programme guide” has the same meaning as in section 310.

Commencement

Pt 3 c. 4 s. 311(1)-(2): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

✓ Law In Force

[311A Report on electronic programme guides and public service channels

(1) It is the duty of OFCOM from time to time to prepare and publish a report dealing with—

(a) the provision by electronic programme guides of information about programmes—

(i) included in public service channels, or

(ii) provided by means of on-demand programme services by persons who also provide public service channels, and

(b) the facilities provided by such guides for the selection of, and access to, such programmes.

(2) When preparing the report OFCOM must consult such persons as appear to them appropriate.

(3) In this section “electronic programme guide” and “public service channel” have the same meanings as in section 310.

] ¹

Notes

¹ Added by Digital Economy Act 2017 c. 30 Pt 6 s.95(1) (July 31, 2017)

Character and coverage of radio services

✓ Law In Force

312 Character and coverage of sound broadcasting services

(1) Section 106 of the 1990 Act (requirements as to character and coverage of local and national radio services) shall be amended as follows.

(2) In subsection (1), the words from “except” onwards shall be omitted.

(3) After subsection (1) (duty to ensure character preserved subject to departures that do not restrict service) there shall be inserted—

“(1A) Conditions included in a licence for the purposes of subsection (1) may provide that OFCOM may consent to a departure from the character of the licensed service if, and only if, they are satisfied—

- (a) that the departure would not substantially alter the character of the service;
- (b) that the departure would not narrow the range of programmes available by way of relevant independent radio services to persons living in the area or locality for which the service is licensed to be provided;
- (c) that, in the case of a local licence, the departure would be conducive to the maintenance or promotion of fair and effective competition in that area or locality; or
- (d) that, in the case of a local licence, there is evidence that, amongst persons living in that area or locality, there is a significant demand for, or significant support for, the change that would result from the departure.

(1B) The matters to which OFCOM must have regard in determining for the purposes of this section the character of a service provided under a local licence include, in particular, the selection of spoken material and music in programmes included in the service.”

(4) For subsection (5) (restriction on power to extend licence to new area or locality) there shall be substituted—

“(5) OFCOM shall only exercise the power conferred on them by subsection (4) if it appears to them—

- (a) that to do so would not result in a significant increase of the area or locality for which the service in question is licensed to be provided; or
- (b) that the increase that would result is justifiable in the exceptional circumstances of the case.”

(5) After subsection (6) of that section there shall be inserted—

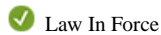
“(7) In this section ‘relevant independent radio services’ means the following services so far as they are services falling to be regulated under section 245 of the Communications Act 2003—

- (a) sound broadcasting services;
- (b) radio licensable content services;
- (c) additional services;

but, in relation to a departure from the character of a service provided under a local licence, does not include a service that is provided otherwise than wholly or mainly for reception by persons living and working in the area or locality in question.”

Commencement

Pt 3 c. 4 s. 312(1)-(5): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



313 Consultation about change of character of local services

After section 106 of the 1990 Act there shall be inserted—

“106ZA Consultation about change of character of local services

(1) Before deciding for the purposes of a condition imposed under subsection (1A) of section 106 whether to consent to a departure from the character of a service provided under a local licence on any of the grounds mentioned in paragraphs (b) to (d) of that subsection, OFCOM must publish a notice specifying—

- (a) the proposed departure; and
- (b) the period in which representations may be made to OFCOM about the proposal.

(2) That period must end not less than 28 days after the date of publication of the notice.

(3) The notice must be published in such manner as appears to OFCOM to be appropriate for bringing it to the attention of the persons who, in OFCOM's opinion, are likely to be affected by the departure.

(4) OFCOM—

- (a) are not required to publish a notice under this section, and
- (b) may specify a period of less than 28 days in such a notice as the period for representations,

if they consider that the publication of the notice, or allowing a longer period for representations, would result in a delay that would be likely prejudicially to affect the interests of the licence holder.

(5) OFCOM are not required under this section—

- (a) to publish any matter that is confidential in accordance with subsection (6) or (7); or
- (b) to publish anything that it would not be reasonably practicable to publish without disclosing such a matter.

(6) A matter is confidential under this subsection if—

- (a) it relates specifically to the affairs of a particular body; and
- (b) its publication would or might, in OFCOM's opinion, seriously and prejudicially affect the interests of that body.

(7) A matter is confidential under this subsection if—

- (a) it relates specifically to the private affairs of an individual; and
- (b) its publication would or might, in OFCOM's opinion, seriously and prejudicially affect the interests of that individual.”

Commencement

Pt 3 c. 4 s. 313: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

314 Local content and character of local sound broadcasting services

(1) It shall be the duty of OFCOM to carry out their functions in relation to local sound broadcasting services in the manner that they consider is best calculated to secure—

- (a) that programmes consisting of or including local material are included in such services [...] ¹; and
- (b) that, where such programmes are included in such a service, what appears to OFCOM to be a suitable proportion of them consists of locally-made programmes.

[(1A) Paragraphs (a) and (b) of subsection (1) apply in the case of each local sound broadcasting service only if and to the extent (if any) that OFCOM consider it appropriate in that case.] ²

(2) OFCOM must—

- (a) draw up guidance as to how they consider the requirements of subsection (1)(a) and (b) should be satisfied; and
- (b) have regard to that guidance in carrying out their functions in relation to local sound broadcasting services.

(3) The guidance may be different for different descriptions of services.

(4) OFCOM may revise the guidance from time to time.

(5) Before drawing up or revising the guidance, OFCOM must consult—

- (a) such persons as appear to them to represent the interests of persons for whom local sound broadcasting services are or would be provided;
- (b) persons holding licences to provide local sound broadcasting services or persons appearing to represent such persons, or both; and
- (c) such other persons as they consider appropriate.

(6) OFCOM must publish the guidance and every revision of it in such manner as they consider appropriate.

(7) In this section—

[“approved area”, in relation to programmes included in a local sound broadcasting service, means an area approved by OFCOM for the purposes of this section that includes the area or locality for which the service is provided;] ³

“local material”, in relation to a local sound broadcasting service, means material which is of particular interest—

- (a) to persons living or working within the area or locality for which the service is provided;
- (b) to persons living or working within a part of that area or locality; or
- (c) to particular communities living or working within that area or locality or a part of it;

“locally-made”, in relation to programmes included in a local sound broadcasting service, means made wholly or partly at premises in the area or locality for which that service is provided [or, if there is an approved area for the programmes, that area] ⁴;

“material” includes news, information and other spoken material and music; and

“programme” does not include an advertisement.

(8) References in this section to persons living or working within an area or locality include references to persons undergoing education or training in that area or locality.

[(9) Before approving an area for the purposes of this section, OFCOM must publish a document specifying—

- (a) the area that they propose to approve, and
- (b) a period in which representations may be made to OFCOM about the proposals.

(10) OFCOM may withdraw their approval of all or part of an area at any time if the holder of the licence to provide the local sound broadcasting service concerned consents.

(11) Where OFCOM approve an area or withdraw their approval of an area, they must publish, in such manner as they consider appropriate, a notice giving details of the area.]⁵

Notes

¹ Words repealed by Digital Economy Act 2010 c. 24 Sch.2 para.1 (June 8, 2010: as 2010 c.24)

² Added by Digital Economy Act 2010 c. 24 s.34(4) (June 8, 2010)

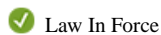
³ Definition inserted by Digital Economy Act 2010 c. 24 s.34(5)(a) (June 8, 2010)

⁴ Words inserted by Digital Economy Act 2010 c. 24 s.34(5)(b) (June 8, 2010)

⁵ Added by Digital Economy Act 2010 c. 24 s.34(6) (June 8, 2010)

Commencement

Pt 3 c. 4 s. 314(1)-(8): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

315 Variations of radio multiplex licences affecting service characteristics

For subsection (6) of section 54 of the 1996 Act (variations of radio multiplex licence affecting service characteristics) there shall be substituted—

- “(6) Where the licence holder applies to OFCOM for the variation of a condition which—
- (a) was imposed under subsection (1)(b), and
 - (b) relates to the characteristics of digital sound programme services to be broadcast under the licence,

then (subject to subsections (6A) and (6B)) OFCOM must vary the condition in accordance with the application.

(6A) OFCOM are not to vary a national radio multiplex licence in accordance with an application under subsection (6) if it appears to them that, if the application were granted, the capacity of the digital sound programme services broadcast under the licence to appeal to a variety of tastes and interests would be unacceptably diminished.

(6B) OFCOM are to vary a local radio multiplex licence in accordance with such an application only if they are satisfied—

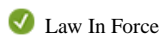
- (a) that the variation would not unacceptably narrow the range of programmes available by way of local digital sound programme services to persons living in the area or locality for which the licensed multiplex service is provided;
- (b) that the variation would be conducive to the maintenance or promotion of fair and effective competition in that area or locality; or

- (c) that there is evidence that, amongst persons living in that area or locality, there is a significant demand for, or significant support for, the change that would result from the variation.”

Commencement

Pt 3 c. 4 s. 315: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Competition between licensed providers etc.



Law In Force

316 Conditions relating to competition matters

(1) The regulatory regime for every licensed service includes the conditions (if any) that OFCOM consider appropriate for ensuring fair and effective competition in the provision of licensed services or of connected services.

(2) Those conditions must include the conditions (if any) that OFCOM consider appropriate for securing that the provider of the service does not—

- (a) enter into or maintain any arrangements, or
- (b) engage in any practice,

which OFCOM consider, or would consider, to be prejudicial to fair and effective competition in the provision of licensed services or of connected services.

(3) A condition imposed under this section may require a licence holder to comply with one or both of the following—

- (a) a code for the time being approved by OFCOM for the purposes of the conditions; and
- (b) directions given to him by OFCOM for those purposes.

(4) In this section—

“connected services”, in relation to licensed services, means the provision of programmes for inclusion in licensed services and any other services provided for purposes connected with, or with the provision of, licensed services; and

“licensed service” means a service licensed by a Broadcasting Act licence.

Commencement

Pt 3 c. 4 s. 316(1)-(4) definition of "licensed service": December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

317 Exercise of Broadcasting Act powers for a competition purpose

- (1) This section applies to the following powers of OFCOM (their “Broadcasting Act powers”)—
- (a) their powers under this Part of this Act and under the 1990 Act and the 1996 Act to impose or vary the conditions of a Broadcasting Act licence;
 - (b) every power of theirs to give an approval for the purposes of provision contained in the conditions of such a licence;
 - (c) every power of theirs to give a direction to a person who is required to comply with it by the conditions of such a licence; and
 - (d) every power of theirs that is exercisable for the purpose of enforcing an obligation imposed by the conditions of such a licence.
- (2) Before exercising any of their Broadcasting Act powers for a competition purpose, OFCOM must consider whether a more appropriate way of proceeding in relation to some or all of the matters in question would be under the Competition Act 1998 (c. 41).
- (3) If OFCOM decide that a more appropriate way of proceeding in relation to a matter would be under the Competition Act 1998, they are not, to the extent of that decision, to exercise their Broadcasting Act powers in relation to that matter.
- (4) If OFCOM have decided to exercise any of their Broadcasting Act powers for a competition purpose, they must, on or before doing so, give a notification of their decision.
- (5) A notification under subsection (4) must—
- (a) be given to such persons, or published in such manner, as appears to OFCOM to be appropriate for bringing it to the attention of the persons who, in OFCOM's opinion, are likely to be affected by their decision; and
 - (b) must describe the rights conferred by subsection (6) on the persons affected by that decision.
- (6) A person affected by a decision by OFCOM to exercise any of their Broadcasting Act powers for a competition purpose may appeal to the Competition Appeal Tribunal against so much of that decision as relates to the exercise of that power for that purpose.
- [(7) Sections 192(3) to (5), (7) and (8), 194A and 196 apply in the case of an appeal under subsection (6) as they apply in the case of an appeal under section 192(2).]¹
- (8) The jurisdiction of the Competition Appeal Tribunal on an appeal under subsection (6) excludes—
- (a) whether OFCOM have complied with subsection (2); and
 - (b) whether any of OFCOM's Broadcasting Act powers have been exercised in contravention of subsection (3);
- and, accordingly, those decisions by OFCOM on those matters fall to be questioned only in proceedings for judicial review.
- (9) For the purposes of this section a power is exercised by OFCOM for a competition purpose if the only or main reason for exercising it is to secure that the holder of a Broadcasting Act licence does not—
- (a) enter into or maintain arrangements, or
 - (b) engage in a practice,
- which OFCOM consider, or would consider, to be prejudicial to fair and effective competition in the provision of licensed services or of connected services.

(10) Nothing in this section applies to—

- (a) the exercise by OFCOM of any of their powers under sections 290 to 294 or Schedule 11;
- (b) the exercise by them of any power for the purposes of any provision of a condition included in a licence in accordance with any of those sections;
- (c) the exercise by them of any power for the purpose of enforcing such a condition.

(11) In subsection (9) “connected services” and “licensed service” each has the same meaning as in section 316.

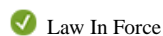
(12) References in this section to the exercise of a power include references to an exercise of a power in pursuance of a duty imposed on OFCOM by or under an enactment.

Notes

- ¹ Substituted by Digital Economy Act 2017 c. 30 Pt 6 s.87(11) (July 31, 2017: substitution has effect subject to savings as specified in 2017 c.30 s.87(12))

Commencement

Pt 3 c. 4 s. 317(1)-(12): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

318 Review of powers exercised for competition purposes

(1) It shall be the duty of OFCOM, at such intervals as they consider appropriate, to carry out a review of so much of each of the following as has effect for a competition purpose—

- (a) every code made or approved by them under or for the purposes of a broadcasting provision;
- (b) the guidance issued by them under or for the purposes of broadcasting provisions; and
- (c) every direction given by them under or for the purposes of a broadcasting provision.

(2) Before modifying or revoking, or withdrawing their approval from, anything which is subject to periodic review under this section, OFCOM must consult such persons as they consider appropriate.

(3) Subsection (2) applies irrespective of whether the modification, revocation or withdrawal is in consequence of a review under this section.

(4) For the purposes of this section a provision has effect for a competition purpose to the extent that its only or main purpose is to secure that the holder of a Broadcasting Act licence does not—

- (a) enter into or maintain arrangements, or
- (b) engage in a practice,

which OFCOM consider, or would consider, to be prejudicial to fair and effective competition in the provision of licensed services or of connected services.

(5) In this section “broadcasting provision” means—

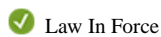
- (a) a provision of this Part of this Act, of the 1990 Act or of the 1996 Act, or
- (b) any provision of a Broadcasting Act licence,

other than provision contained in any of sections 290 to 294 of this Act or Schedule 11 to this Act.

Commencement

Pt 3 c. 4 s. 318(1)-(5)(b): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Programme and fairness standards for television and radio



Law In Force

319 OFCOM's standards code

(1) It shall be the duty of OFCOM to set, and from time to time to review and revise, such standards for the content of programmes to be included in television and radio services as appear to them best calculated to secure the standards objectives.

(2) The standards objectives are—

- (a) that persons under the age of eighteen are protected;
- (b) that material likely to encourage or to incite the commission of crime or to lead to disorder is not included in television and radio services;
- (c) that news included in television and radio services is presented with due impartiality and that the impartiality requirements of section 320 are complied with;
- (d) that news included in television and radio services is reported with due accuracy;
- (e) that the proper degree of responsibility is exercised with respect to the content of programmes which are religious programmes;
- (f) that generally accepted standards are applied to the contents of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of offensive and harmful material;
[(fa) that the product placement requirements referred to in section 321(3A) are met in relation to programmes included in a television programme service (other than advertisements);]¹
- (g) that advertising that contravenes the prohibition on political advertising set out in section 321(2) is not included in television or radio services;
- (h) that the inclusion of advertising which may be misleading, harmful or offensive in television and radio services is prevented;
[(ha) that the requirements of any EU directives, as they had effect immediately before [IP completion day]³, with respect to advertising included in television and radio services are complied with;]²
- (i) that the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with;
- (j) that the unsuitable sponsorship of programmes included in television and radio services is prevented;
- (k) that there is no undue discrimination between advertisers who seek to have advertisements included in television and radio services; and

- (1) that there is no use of techniques which exploit the possibility of conveying a message to viewers or listeners, or of otherwise influencing their minds, without their being aware, or fully aware, of what has occurred.
- (3) The standards set by OFCOM under this section must be contained in one or more codes.
- (4) In setting or revising any standards under this section, OFCOM must have regard, in particular and to such extent as appears to them to be relevant to the securing of the standards objectives, to each of the following matters—
- (a) the degree of harm or offence likely to be caused by the inclusion of any particular sort of material in programmes generally, or in programmes of a particular description;
 - (b) the likely size and composition of the potential audience for programmes included in television and radio services generally, or in television and radio services of a particular description;
 - (c) the likely expectation of the audience as to the nature of a programme's content and the extent to which the nature of a programme's content can be brought to the attention of potential members of the audience;
 - (d) the likelihood of persons who are unaware of the nature of a programme's content being unintentionally exposed, by their own actions, to that content;
 - (e) the desirability of securing that the content of services identifies when there is a change affecting the nature of a service that is being watched or listened to and, in particular, a change that is relevant to the application of the standards set under this section; and
 - (f) the desirability of maintaining the independence of editorial control over programme content.
- (5) OFCOM must ensure that the standards from time to time in force under this section include—
- (a) minimum standards applicable to all programmes included in television and radio services; and
 - (b) such other standards applicable to particular descriptions of programmes, or of television and radio services, as appear to them appropriate for securing the standards objectives.
- (6) Standards set to secure the standards objective specified in subsection (2)(e) shall, in particular, contain provision designed to secure that religious programmes do not involve—
- (a) any improper exploitation of any susceptibilities of the audience for such a programme; or
 - (b) any abusive treatment of the religious views and beliefs of those belonging to a particular religion or religious denomination.
- (7) In setting standards under this section, OFCOM must take account of such of the international obligations of the United Kingdom as the Secretary of State may notify to them for the purposes of this section.
- (8) In this section “news” means news in whatever form it is included in a service.
- [(9) [Subject to [subsections (10) to (12)]⁶ , subsection]⁵ (2)(fa) applies only in relation to programmes the production of which begins after 19th December 2009.]⁴
- [(10) So far as relating to product placement falling within paragraph 4(ba) of Schedule 11A (electronic cigarettes and electronic cigarette refill containers), subsection (2)(fa) applies only in relation to programmes the production of which begins after 19th May 2016.]⁷

[(11) So far as relating to product placement falling within paragraph 4(bb) of Schedule 11A⁹ (undertakings whose principal activity is the manufacture or sale of electronic cigarettes or electronic cigarette refill containers), subsection (2)(fa) applies only in relation to programmes the production of which begins after 31 October 2020.

(12) Subsection (2)(fa) applies in relation to a programme the production of which began before 1 November 2020 as if, in Schedule 11A (which contains the product placement requirements referred to in section 321(3A))—

- (a) paragraph 3(1)(b) to (d) were omitted,
- (b) in paragraph 6(1) there were inserted, as paragraph (a): "the programme is a religious, consumer affairs or current affairs programme;", and
- (c) paragraph 7 included a condition that the programme in which the product, service or trademark, or the reference to it, is included is—
 - (i) a film made for cinema,
 - (ii) a film or series made for a television programme service or for an on-demand programme service,
 - (iii) a sports programme, or
 - (iv) a light entertainment programme.

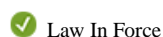
] ⁸

Notes

- ¹ Added by Audiovisual Media Services (Product Placement) Regulations 2010/831 reg.2(2) (April 16, 2010)
- ² Added by Broadcasting (Amendment) (EU Exit) Regulations 2019/224 Sch.1(3) para.24 (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))
- ³ Words substituted by Broadcasting (Amendment) (EU Exit) Regulations 2019/224 Sch.1(3) para.24 (December 31, 2020: commenced by an amendment)
- ⁴ Added by Audiovisual Media Services (Product Placement) Regulations 2010/831 reg.2(3) (April 16, 2010)
- ⁵ Words inserted by Tobacco and Related Products Regulations 2016/507 Pt 7 reg.45(1)(a) (May 20, 2016: insertion has effect subject to saving specified in SI 2016/507 reg.57)
- ⁶ Words substituted by Audiovisual Media Services Regulations 2020/1062 Pt 2(2) reg.12(a) (November 1, 2020: substitution has effect subject to transitional provision specified in SI 2020/1062 Pt 7)
- ⁷ Added by Tobacco and Related Products Regulations 2016/507 Pt 7 reg.45(1)(b) (May 20, 2016: insertion has effect subject to saving specified in SI 2016/507 reg.57)
- ⁸ Added by Audiovisual Media Services Regulations 2020/1062 Pt 2(2) reg.12(b) (November 1, 2020: insertion has effect subject to transitional provision specified in SI 2020/1062 Pt 7)
- ⁹ Schedule 11A was inserted by S.I. 2010/831 and amended by S.I. 2016/507; there are other amending instruments but none is relevant.

Commencement

Pt 3 c. 4 s. 319(1)-(8): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

320 Special impartiality requirements

(1) The requirements of this section are—

- (a) the exclusion, in the case of television and radio services (other than a restricted service within the meaning of section 245), from programmes included in any of those services of

all expressions of the views or opinions of the person providing the service on any of the matters mentioned in subsection (2);

(b) the preservation, in the case of every television programme service, teletext service, national radio service and national digital sound programme service, of due impartiality, on the part of the person providing the service, as respects all of those matters;

(c) the prevention, in the case of every local radio service, local digital sound programme service or radio licensable content service, of the giving of undue prominence in the programmes included in the service to the views and opinions of particular persons or bodies on any of those matters.

(2) Those matters are—

- (a) matters of political or industrial controversy; and
- (b) matters relating to current public policy.

(3) Subsection (1)(a) does not require—

- (a) the exclusion from television programmes of views or opinions relating to the provision of programme services; or
- (b) the exclusion from radio programmes of views or opinions relating to the provision of programme services.

(4) For the purposes of this section—

- (a) the requirement specified in subsection (1)(b) is one that (subject to any rules under subsection (5)) may be satisfied by being satisfied in relation to a series of programmes taken as a whole;
- (b) the requirement specified in subsection (1)(c) is one that needs to be satisfied only in relation to all the programmes included in the service in question, taken as a whole.

(5) OFCOM's standards code shall contain provision setting out the rules to be observed in connection with the following matters—

- (a) the application of the requirement specified in subsection (1)(b);
- (b) the determination of what, in relation to that requirement, constitutes a series of programmes for the purposes of subsection (4)(a);
- (c) the application of the requirement in subsection (1)(c).

(6) Any provision made for the purposes of subsection (5)(a) must, in particular, take account of the need to ensure the preservation of impartiality in relation to the following matters (taking each matter separately)—

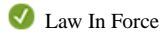
- (a) matters of major political or industrial controversy, and
- (b) major matters relating to current public policy,

as well as of the need to ensure that the requirement specified in subsection (1)(b) is satisfied generally in relation to a series of programmes taken as a whole.

(7) In this section “national radio service” and “local radio service” mean, respectively, a sound broadcasting service which is a national service within the meaning of section 245 and a sound broadcasting service which is a local service within the meaning of that section.

Commencement

Pt 3 c. 4 s. 320(1)-(7): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

321 [Objectives for advertisements, sponsorship and product placement]¹

(1) Standards set by OFCOM to secure the objectives mentioned in [section 319(2)(a) and (fa) to (j)]²—

(a) must include general provision governing standards and practice in advertising and in the sponsoring of programmes [and, in relation to television programme services, general provision governing standards and practice in product placement]³ ; [...] ⁴

(b) may include provision prohibiting advertisements and forms and methods of advertising or sponsorship (whether generally or in particular circumstances) [; and]⁵

[(c) in relation to television programme services, may include provision prohibiting forms and methods of product placement (including product placement of products, services or trade marks of any description) (whether generally or in particular circumstances).]⁵

(2) For the purposes of section 319(2)(g) an advertisement contravenes the prohibition on political advertising if it is—

(a) an advertisement which is inserted by or on behalf of a body whose objects are wholly or mainly of a political nature;

(b) an advertisement which is directed towards a political end; or

(c) an advertisement which has a connection with an industrial dispute.

(3) For the purposes of this section objects of a political nature and political ends include each of the following—

(a) influencing the outcome of elections or referendums, whether in the United Kingdom or elsewhere;

(b) bringing about changes of the law in the whole or a part of the United Kingdom or elsewhere, or otherwise influencing the legislative process in any country or territory;

(c) influencing the policies or decisions of local, regional or national governments, whether in the United Kingdom or elsewhere;

(d) influencing the policies or decisions of persons on whom public functions are conferred by or under the law of the United Kingdom or of a country or territory outside the United Kingdom;

(e) influencing the policies or decisions of persons on whom functions are conferred by or under international agreements;

(f) influencing public opinion on a matter which, in the United Kingdom, is a matter of public controversy;

(g) promoting the interests of a party or other group of persons organised, in the United Kingdom or elsewhere, for political ends.

[(3A) For the purposes of section 319(2)(fa) the product placement requirements are the requirements set out in Schedule 11A.]⁶

(4) OFCOM—

(a) [shall—

(i) in relation to programme services, have a general responsibility with respect to advertisements and methods of advertising and sponsorship; and

(ii) in relation to television programme services, have a general responsibility with respect to methods of product placement; and]⁷

(b) in the discharge of that responsibility may include conditions in any licence which is granted by them for any such service that enable OFCOM to impose requirements with respect to any of those matters that go beyond the provisions of OFCOM's standards code.

(5) OFCOM must, from time to time, consult the Secretary of State about—

(a) the descriptions of advertisements that should not be included in programme services; [...]⁸

(b) the forms and methods of advertising and sponsorship that should not be employed in, or in connection with, the provision of such services [; and]⁹

[(c) the forms and methods of product placement that should not be employed in the provision of a television programme service (including the descriptions of products, services or trade marks for which product placement should not be employed).]⁹

(6) The Secretary of State may give OFCOM directions as to the matters mentioned in subsection (5); and it shall be the duty of OFCOM to comply with any such direction.

(7) Provision included by virtue of this section in standards set under section 319 is not to apply to, or to be construed as prohibiting the inclusion in a programme service of—

(a) an advertisement of a public service nature inserted by, or on behalf of, a government department; or

(b) a party political or referendum campaign broadcast the inclusion of which is required by a condition imposed under section 333 or by paragraph 18 of Schedule 12 to this Act.

(8) In this section “programme service” does not include a service provided by the BBC [(except in the expression “television programme service”)]¹⁰.

Notes

¹ Words substituted by Audiovisual Media Services (Product Placement) Regulations 2010/831 reg.3(2) (April 16, 2010)

² Word substituted by Audiovisual Media Services (Product Placement) Regulations 2010/831 reg.3(3)(a) (April 16, 2010)

³ Words inserted by Audiovisual Media Services (Product Placement) Regulations 2010/831 reg.3(3)(b) (April 16, 2010)

⁴ Word repealed by Audiovisual Media Services (Product Placement) Regulations 2010/831 reg.3(3)(c) (April 16, 2010)

⁵ Added by Audiovisual Media Services (Product Placement) Regulations 2010/831 reg.3(3)(d) (April 16, 2010)

⁶ Added by Audiovisual Media Services (Product Placement) Regulations 2010/831 reg.3(4) (April 16, 2010)

⁷ Existing text renumbered as s.321(4)(a)(i), words are inserted and s.321(4)(a)(ii) is added by Audiovisual Media Services (Product Placement) Regulations 2010/831 reg.3(5) (April 16, 2010)

⁸ Word repealed by Audiovisual Media Services (Product Placement) Regulations 2010/831 reg.3(6)(a) (April 16, 2010)

⁹ Added by Audiovisual Media Services (Product Placement) Regulations 2010/831 reg.3(6)(b) (April 16, 2010)

¹⁰ Words inserted by Audiovisual Media Services (Product Placement) Regulations 2010/831 reg.3(7) (April 16, 2010)

Commencement

Pt 3 c. 4 s. 321(1)-(8): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

✓ Law In Force

322 Supplementary powers relating to advertising

(1) The regulatory regime for each of the following—

- (a) every television programme service licensed by a Broadcasting Act licence,
- (b) the public teletext service, and
- (c) every other teletext service so licensed that consists in an additional television service or a digital additional television service,

includes a condition requiring the person providing the service to comply with every direction given to him by OFCOM with respect to any of the matters mentioned in subsection (2).

(2) Those matters are—

- (a) the maximum amount of time to be given to advertisements in any hour or other period;
- (b) the minimum interval which must elapse between any two periods given over to advertisements;
- (c) the number of such periods to be allowed in any programme or in any hour or day; and
- (d) the exclusion of advertisements from a specified part of a licensed service.

(3) Directions under this section—

- (a) may be either general or specific;
- (b) may be qualified or unqualified; and
- (c) may make different provision for different parts of the day, different days of the week, different types of programmes or for other differing circumstances.

(4) In giving a direction under this section, OFCOM must take account of such of the international obligations of the United Kingdom as the Secretary of State may notify to them for the purposes of this section.

Commencement

Pt 3 c. 4 s. 322(1)-(4): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

✓ Law In Force

323 Modification of matters to be taken into account under s. 319

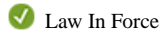
(1) The Secretary of State may by order modify the list of matters in section 319(4) to which OFCOM are to have regard when setting or revising standards.

(2) Before making an order under this section, the Secretary of State must consult OFCOM.

(3) No order is to be made containing provision authorised by subsection (1) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

Commencement

Pt 3 c. 4 s. 323(1)-(3): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

324 Setting and publication of standards

- (1) Before setting standards under section 319, OFCOM must publish, in such manner as they think fit, a draft of the proposed code containing those standards.
- (2) After publishing the draft code and before setting the standards, OFCOM must consult every person who holds a relevant licence and such of the following as they think fit—
- (a) persons appearing to OFCOM to represent the interests of those who watch television programmes;
 - (b) persons appearing to OFCOM to represent the interests of those who make use of teletext services; and
 - (c) persons appearing to OFCOM to represent the interests of those who listen to sound programmes.
- (3) After publishing the draft code and before setting the standards, OFCOM must also consult—
- (a) the Welsh Authority, about so much of the draft code as relates to television programme services;
 - (b) the BBC, about so much of the draft code as contains standards other than those for advertising or sponsorship; and
 - (c) such of the persons mentioned in subsection (4) as OFCOM think fit, about so much of the draft code as contains standards for advertising or sponsorship [or for product placement]¹ .
- (4) Those persons are—
- (a) persons appearing to OFCOM to represent the interests of those who will have to take account of the contents of the proposed standards for advertising or sponsorship [or for product placement]¹ ;
 - (b) bodies and associations appearing to OFCOM to be concerned with the application of standards of conduct in advertising; and
 - (c) professional organisations appearing to OFCOM to be qualified to give relevant advice in relation to the advertising of particular products.
- (5) If it appears to OFCOM that a body exists which represents the interests of a number of the persons who hold relevant licences, they may perform their duty under subsection (2) of consulting such persons, so far as it relates to the persons whose interests are so represented, by consulting that body.
- (6) OFCOM may set standards under section 319 either—
- (a) in the terms proposed in a draft code published under subsection (1); or
 - (b) with such modifications as OFCOM consider appropriate in the light of the consultation carried out as a result of subsections (2) to (5).

(7) Subsections (1) to (6) apply to a proposal by OFCOM to revise standards set under section 319 as they apply to a proposal to set such standards.

(8) Where OFCOM set standards under section 319, they must publish the code containing the standards 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 the standards.

(9) Where OFCOM revise standards set under section 319, they shall so publish the code containing the standards as revised.

(10) Where OFCOM publish a code under subsection (8) or (9), they shall send a copy of it—

- (a) to the Secretary of State;
- (b) except in the case of a code containing standards for advertising or sponsorship, to the BBC; and
- (c) if the code relates to television programme services, to the Welsh Authority.

(11) A code (or draft code) contains standards for advertising or sponsorship for the purposes of this section to the extent that it sets standards under section 319 for securing any of the objectives mentioned in any of paragraphs (g) to (k) of subsection (2) of that section.

[(11A) A code (or draft code) contains standards for product placement for the purposes of this section to the extent that it sets standards under section 319 for securing the objective mentioned in paragraph (fa) of subsection (2) of that section.]²

(12) In this section “relevant licence”, in relation to a draft code, means—

- (a) to the extent that the draft code relates to
 - (i) television programme services,
 - (ii) the public teletext service, or
 - (iii) an additional television service,

a licence under Part 1 of the 1990 Act (independent television services), under section 18 of the 1996 Act (digital television programme services) under section 25 of that Act (digital additional television services) or under section 219 of this Act; and

- (b) to the extent that the draft code relates to radio programme services, any licence under Part 3 of the 1990 Act (independent radio services), under section 60 of the 1996 Act (digital sound programme service) or under section 64 of that Act (digital additional services).

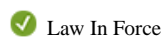
Notes

¹ Words inserted by Audiovisual Media Services (Product Placement) Regulations 2010/831 reg.4(2) (April 16, 2010)

² Added by Audiovisual Media Services (Product Placement) Regulations 2010/831 reg.4(3) (April 16, 2010)

Commencement

Pt 3 c. 4 s. 324(1)-(12)(b): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

325 Observance of standards code

(1) The regulatory regime for every programme service licensed by a Broadcasting Act licence includes conditions for securing—

- (a) that standards set under section 319 are observed in the provision of that service; and
 - (b) that procedures for the handling and resolution of complaints about the observance of those standards are established and maintained.
- (2) It shall be the duty of OFCOM themselves to establish procedures for the handling and resolution of complaints about the observance of standards set under section 319.
- (3) OFCOM may from time to time make a report to the Secretary of State on any issues with respect to OFCOM's standards code which—
- (a) have been identified by them in the course of carrying out their functions; and
 - (b) appear to them to raise questions of general broadcasting policy.
- (4) The conditions of a licence which is granted by OFCOM for a programme service must, for the purpose of securing compliance—
- (a) with OFCOM's standards code, so far as it relates to advertising [, the sponsorship of programmes and product placement]¹ , and
 - (b) with any such requirements as are mentioned in section 321(4) which relate to advertising [, sponsorship and product placement]² but go beyond that code,
- include a condition requiring the licence holder to comply with every direction given to him by OFCOM with respect to any of the matters mentioned in subsection (5).
- (5) Those matters are—
- (a) the exclusion from the service of a particular advertisement, or its exclusion in particular circumstances;
 - (b) the descriptions of advertisements and methods of advertising to be excluded from the service (whether generally or in particular circumstances); [...]³
 - (c) the forms and methods of sponsorship to be excluded from the service (whether generally or in particular circumstances) [; and]⁴
 - [(d) in the case of a television programme service, the forms and methods of product placement to be excluded from the service (including descriptions of products, services or trade marks product placement of which is to be excluded) (whether generally or in particular circumstances).]⁴
- (6) OFCOM's powers and duties under this section are not to be construed as restricting any power of theirs, apart from this section—
- (a) to include conditions with respect to the content of programmes included in any service in the licence to provide that service; or
 - (b) to include conditions in a licence requiring the holder of a licence to comply with directions given by OFCOM or by any other person.

Notes

¹ Words substituted by Audiovisual Media Services (Product Placement) Regulations 2010/831 reg.5(2)(a) (April 16, 2010)

² Words substituted by Audiovisual Media Services (Product Placement) Regulations 2010/831 reg.5(2)(b) (April 16, 2010)

³ Word repealed by Audiovisual Media Services (Product Placement) Regulations 2010/831 reg.5(3)(a) (April 16, 2010)

⁴ Added by Audiovisual Media Services (Product Placement) Regulations 2010/831 reg.5(3)(b) (April 16, 2010)

Commencement

Pt 3 c. 4 s. 325(1)-(6)(b): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

✓ Law In Force

326 Duty to observe fairness code

The regulatory regime for every programme service licensed by a Broadcasting Act licence includes the conditions that OFCOM consider appropriate for securing observance—

- (a) in connection with the provision of that service, and
 - (b) in relation to the programmes included in that service,
- of the code for the time being in force under section 107 of the 1996 Act (the fairness code).
-

Commencement

Pt 3 c. 4 s. 326(a)-(b): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

✓ Law In Force

327 Standards with respect to fairness

(1) Part 5 of the 1996 Act (functions of the Broadcasting Standards Commission which are transferred to OFCOM so far as they relate to codes of practice and complaints with respect to fairness and privacy) shall be amended as follows.

(2) No person shall be entitled to make a standards complaint under that Part at any time after the coming into force of this section, and no person shall be required to entertain any such complaint that is so made.

(3) In section 115 (consideration of fairness complaint)—

- (a) in subsection (4) (matters to be provided in response to a fairness complaint), after paragraph (d) there shall be inserted—

“(da) to provide OFCOM with such other things appearing to OFCOM to be relevant to their consideration of the complaint, and to be in the possession of the relevant person, as may be specified or described by OFCOM;”

- (b) in subsection (7) (requests in relation to which the relevant person is required to secure the compliance of another), after paragraph (c) there shall be inserted—

“(ca) a request to provide OFCOM with such other things appearing to OFCOM to be relevant to their consideration of the complaint, and to be in the possession of the person requested, as may be specified or described by OFCOM;”.

(4) For subsection (7) of section 119 (directions on determination of fairness complaint) there shall be substituted—

“(7) The regulatory regime for every licensed service includes the conditions that OFCOM consider appropriate for securing that the licence holder complies with every direction given to him under this section.

(7A) Section 263 of the Communications Act 2003 applies in relation to conditions included by virtue of subsection (7) in the regulatory regime for a licensed service as it applies in relation to conditions which are so included by virtue of a provision of Chapter 4 of Part 3 of that Act.

(7B) It is hereby declared that, where—

- (a) OFCOM exercise their powers under this Part to adjudicate upon a fairness complaint or to give a direction under subsection (1), and
- (b) it appears to them that the matters to which the complaint in question relates consist in or include a contravention of the conditions of the licence for a licensed service,

the exercise by OFCOM of their powers under this Part is not to preclude the exercise by them of their powers under any other enactment in respect of the contravention.

(7C) Where OFCOM are proposing to exercise any of their powers in respect of a contravention of a licence condition in a case in which the contravention relates to matters that have been the subject-matter of a fairness complaint—

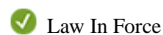
- (a) OFCOM may have regard, in the exercise of those powers, to any matters considered or steps taken by them for the purpose of adjudicating upon that complaint and to any direction given by them under this section; but
- (b) steps taken for the purposes of this Part do not satisfy a requirement to give the licence holder in relation to whom those powers are to be exercised a reasonable opportunity, before they are exercised, of making representations to OFCOM.”

(5) For subsection (2) of section 120 of that Act (reports on supplementary action taken in response to findings on fairness complaint) there shall be substituted—

“(2) Where the relevant programme was included in a licensed service, the licence holder shall send to OFCOM a report of any supplementary action taken by him or by any other person responsible for the making or provision of the relevant programme.”

Commencement

Pt 3 c. 4 s. 327(1)-(5): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

328 Duty to publicise OFCOM's functions in relation to complaints

(1) The regulatory regime for every programme service licensed by a Broadcasting Act licence includes the conditions that OFCOM consider appropriate for securing that—

- (a) the procedures which, by virtue of section 325, are established and maintained for handling and resolving complaints about the observance of standards set under section 319, and

(b) their functions under Part 5 of the 1996 Act in relation to that service, are brought to the attention of the public (whether by means of broadcasts or otherwise).

(2) Conditions included in a licence by virtue of subsection (1) may require the holder of the licence to comply with every direction given to him by OFCOM for the purpose mentioned in that subsection.

Commencement

Pt 3 c. 4 s. 328(1)-(2): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Power to proscribe unacceptable foreign television and radio services

✓ Law In Force

329 Proscription orders

(1) Where—

- (a) a foreign service to which this section applies comes to OFCOM's attention, and
- (b) they consider that the service is unacceptable and should be the subject of an order under this section,

they must send a notification to the Secretary of State giving details of the service and their reasons for considering that an order should be made.

(2) A service is not to be considered unacceptable by OFCOM unless they are satisfied that—

- (a) programmes containing objectionable matter are included in the service; and
- (b) that the inclusion of objectionable matter in programmes so included is occurring repeatedly.

(3) Matter is objectionable for the purposes of subsection (2) only if—

- (a) it offends against taste or decency;
- (b) it is likely to encourage or to incite the commission of crime;
- (c) it is likely to lead to disorder; or
- (d) it is likely to be offensive to public feeling.

(4) Where the Secretary of State has received a notification under this section in the case of a service, he may make an order—

- (a) identifying the service in such manner as he thinks fit; and
- (b) proscribing it.

(5) The Secretary of State is not to make an order proscribing a service unless he is satisfied that the making of the order is—

- (a) in the public interest; and
- (b) compatible with the international obligations of the United Kingdom.

(6) The television and sound services to which this section applies are—

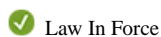
- (a) television licensable content services provided otherwise than by broadcasting from a satellite;
 - (b) digital television programme services;
 - (c) digital additional television services;
 - (d) radio licensable sound services provided otherwise than by being broadcast from a satellite;
 - (e) digital sound programme services; and
 - (f) digital additional sound services.
- (7) A service to which this section applies is a foreign service if it—
- (a) is a service capable of being received in the United Kingdom for the provision of which no Broadcasting Act licence is either in force or required to be in force; but
 - (b) is also a service for the provision of which such a licence would be required—
 - (i) in the case of a service falling within subsection (6)(a) to (c), if the person providing it were [within the jurisdiction of the United Kingdom for the purposes of the European Convention on Transfrontier Television]¹; and
 - (ii) in any other case, if the person providing it provided it from a place in the United Kingdom or were a person whose principal place of business is in the United Kingdom.

Notes

- ¹ Words substituted by Broadcasting (Amendment) (EU Exit) Regulations 2019/224 Sch.1(3) para.25 (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))

Commencement

Pt 3 c. 4 s. 329(1)-(7)(b)(ii): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

330 Effect of proscription order

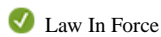
- (1) This section applies where a service is for the time being proscribed by an order under section 329.
- (2) The proscribed service is not to be included in—
- (a) a multiplex service; or
 - (b) a cable package.
- (3) In this section “multiplex service” means a television multiplex service, a radio multiplex service or a general multiplex service.
- (4) In this section “cable package” means (subject to subsection (5)) a service by means of which programme services are packaged together with a view to their being distributed—
- (a) by means of an electronic communications service;
 - (b) so as to be available for reception by members of the public in the United Kingdom; and
 - (c) without the final delivery of the programme services to the persons to whom they are distributed being by wireless telegraphy.

(5) Programme services distributed by means of an electronic communications service do not form part of a cable package if—

- (a) the distribution of those services forms only part of a service provided by means of that electronic communications service; and
- (b) the purposes for which the service of which it forms a part is provided do not consist wholly or mainly in making available television programmes or radio programmes (or both) for reception by members of the public.

Commencement

Pt 3 c. 4 s. 330(1)-(5)(b): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

331 Notification for enforcing proscription

(1) Where OFCOM determine that there are reasonable grounds for believing that there has been a contravention of section 330 in relation to a multiplex service or a cable package, they may give a notification under this section to—

- (a) the provider of that multiplex service; or
- (b) the person providing the cable package.

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

- (a) sets out the determination made by OFCOM; and
- (b) requires the person to whom it is given to secure that the proscribed service (so long as it remains proscribed) is not—
 - (i) included in the notified person's multiplex service, or
 - (ii) distributed as part of his cable package,at any time more than seven days after the day of the giving of the notification.

(3) If it is reasonably practicable for a person to whom a notification is given under this section to secure that the proscribed service ceases to be included in that person's multiplex service, or to be distributed as part of his cable package, before the end of that seven days, then he must do so.

(4) It shall be the duty of a person to whom a notification is given under this section to comply with the requirements imposed by the notification and by subsection (3).

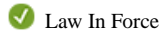
(5) That duty shall be enforceable in civil proceedings by OFCOM—

- (a) for an injunction;
- (b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988 (c. 36); or
- (c) for any other appropriate remedy or relief.

(6) In this section “cable package” and “multiplex service” each has the same meaning as in section 330.

Commencement

Pt 3 c. 4 s. 331(1)-(6): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

332 Penalties for contravention of notification under s. 331

- (1) OFCOM may impose a penalty on a person who contravenes a requirement imposed on him by or under section 331.
- (2) Before imposing a penalty on a person under this section OFCOM must give him a reasonable opportunity of making representations to them about their proposal to impose the penalty.
- (3) The amount of the penalty imposed on a person is to be such amount not exceeding £5,000 as OFCOM determine to be—
 - (a) appropriate; and
 - (b) proportionate to the contravention in respect of which it is imposed.
- (4) In making that determination OFCOM must have regard to—
 - (a) any representations made to them by the person notified under section 331; and
 - (b) any steps taken by him for complying with the requirements imposed on him under that section.
- (5) Where OFCOM impose a penalty on a person under this section, they shall—
 - (a) notify the person penalised; and
 - (b) in that notification, fix a reasonable period after it is given as the period within which the penalty is to be paid.
- (6) A penalty imposed under this section must be paid to OFCOM within the period fixed by them.
- (7) 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 (3).
- (8) No order is to be made containing provision authorised by subsection (7) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.
- (9) For the purposes of this section there is a separate contravention in respect of every day on which the proscribed service is at any time included in a person's multiplex service or distributed as part of his cable package.
- (10) In this section “multiplex service” and “cable package” each has the same meaning as in section 330.

Commencement

Pt 3 c. 4 s. 332(1)-(10): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Party political broadcasts on television and radio

✓ Law In Force

333 Party political broadcasts

(1) The regulatory regime for every licensed public service channel, and the regulatory regime for every national radio service, includes—

- (a) conditions requiring the inclusion in that channel or service of party political broadcasts and of referendum campaign broadcasts; and
- (b) conditions requiring that licence holder to observe such rules with respect to party political broadcasts and referendum campaign broadcasts as may be made by OFCOM.

(2) The rules made by OFCOM for the purposes of this section may, in particular, include provision for determining—

- (a) the political parties on whose behalf party political broadcasts may be made;
- (b) in relation to each political party on whose behalf such broadcasts may be made, the length and frequency of the broadcasts; and
- (c) in relation to each designated organisation on whose behalf referendum campaign broadcasts are required to be broadcast, the length and frequency of such broadcasts.

(3) Those rules are to have effect subject to sections 37 and 127 of the Political Parties, Elections and Referendums Act 2000 (c. 41) (only registered parties and designated organisations to be entitled to party political broadcasts or referendum campaign broadcasts).

(4) Rules made by OFCOM for the purposes of this section may make different provision for different cases.

(5) Before making any rules for the purposes of this section, OFCOM must have regard to any views expressed by the Electoral Commission.

(6) In this section—

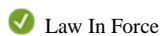
“designated organisation”, in relation to a referendum, means a person or body designated by the Electoral Commission under section 108 of the Political Parties, Elections and Referendums Act 2000 (c. 41) in respect of that referendum;

“national radio service” means a national service within the meaning of section 245 of this Act; and

“referendum campaign broadcast” has the meaning given by section 127 of that Act.

Commencement

Pt 3 c. 4 s. 333(1)-(6) definition of "referendum campaign broadcast": December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Monitoring of programmes

Law In Force

334 Retention and production of recordings

(1) The regulatory regime for every programme service licensed by a Broadcasting Act licence includes conditions imposing on the provider of the service—

- (a) a requirement in respect of every programme included in the service to retain a recording of the programme in a specified form and for a specified period after its inclusion;
- (b) a requirement to comply with any request by OFCOM to produce to them for examination or reproduction a recording retained in pursuance of the conditions in the licence; and
- (c) a requirement, if the provider is able to do so, to comply with any request by OFCOM to produce to them a script or transcript of a programme included in the programme service.

(2) The period specified for the purposes of a condition under subsection (1)(a) must be—

- (a) in the case of a programme included in a television programme service, a period not exceeding ninety days; and
- (b) in the case of a programme included in a radio programme service, a period not exceeding forty-two days.

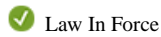
(3) For the purpose of maintaining supervision of the programmes included in programme services, OFCOM may themselves make and use recordings of those programmes or any part of them.

(4) Nothing in this Part is to be construed as requiring OFCOM, in the carrying out of their functions under this Part as respects programme services and the programmes included in them, to view or listen to programmes in advance of their being included in such services.

Commencement

Pt 3 c. 4 s. 334(1)-(4): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

International obligations



Law In Force

335 Conditions securing compliance with international obligations

(1) The regulatory regime for every service to which this section applies includes the conditions that OFCOM consider appropriate for securing that the relevant international obligations of the United Kingdom are complied with.

(2) In this section “relevant international obligations of the United Kingdom” means the international obligations of the United Kingdom which have been notified to OFCOM by the Secretary of State for the purposes of this section.

[(2A) The reference in subsection (2) to the international obligations of the United Kingdom includes a reference to Articles 16(1) and (2), 17 and 18 of the Audiovisual Media Services Directive, together with the interpretative provisions in Article 1 of that Directive so far as relevant to those Articles.

(2B) The provisions of the Audiovisual Media Services Directive mentioned in subsection (2A) are to be read for the purposes of this section as if—

(b) in Articles 16(1) and (2) and 17, references to the Member States were references to the United Kingdom, and

(b) in Article 16(2), the second subparagraph were omitted.

]¹

(3) This section applies to the following services—

- (a) any Channel 3 service;
- (b) Channel 4;
- (c) Channel 5;
- (d) the public teletext service;
- (e) any television licensable content service;
- (f) any digital television programme service;
- (g) any additional television service;
- (h) any digital additional television service;
- (i) any restricted television service.

(4) The conditions included in any licence in accordance with the other provisions of this Chapter are in addition to any conditions included in that licence in pursuance of this section and have effect subject to them.

Notes

¹ Added by Broadcasting (Amendment) (EU Exit) Regulations 2019/224 Sch.1(3) para.26 (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))

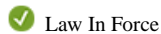
Commencement

Pt 3 c. 4 s. 335(1)-(4): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

[Co-operation with other parties to European Convention on Transfrontier Television]¹

Notes

- ¹ Added by Audiovisual Media Services Regulations 2009/2979 reg.7 (December 19, 2009)
- ² Heading substituted by Broadcasting (Amendment) (EU Exit) Regulations 2019/224 Sch.1(3) para.27 (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))
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Law In Force

[335A. Co-operation with other parties to European Convention on Transfrontier Television
OFCOM may do any of the things that paragraph 3 of Article 19 of the European Convention on Transfrontier Television requires to be done by an authority designated under paragraph 2 of that Article.]¹

Notes

- ¹ Substituted by Broadcasting (Amendment) (EU Exit) Regulations 2019/224 Sch.1(3) para.27 (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))
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Law In Force With Amendments Pending

[335B Maintenance of list of providers

- (1) OFCOM must establish and maintain an up to date list of persons providing—
- (a) a television programme service, or
 - (b) a digital additional television service,
- who are under the jurisdiction of the United Kingdom for the purposes of the Audiovisual Media Services Directive.
- (2) The list must indicate in respect of each person which of the criteria set out in paragraphs 2 to 5 of Article 2 of the Audiovisual Media Services Directive is the basis for the decision that they are under the jurisdiction of the United Kingdom.
- (3) OFCOM must notify the European Commission of the contents of the list and of any updates to it.
- (4) The regulatory regime for each service mentioned in subsection (1) must include the condition that the persons providing the service must notify OFCOM of any changes that may affect the determination of jurisdiction in accordance with paragraphs 2, 3 and 4 of Article 2 of the Audiovisual Media Services Directive.
-] ¹

Notes

- ¹ Added by Audiovisual Media Services Regulations 2020/1062 Pt 2(2) reg.15 (November 1, 2020: insertion has effect subject to transitional provision specified in SI 2020/1062 Pt 7)
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Proposed Draft Amendments

Pt 3 c. 4 s. 335B(1): words substituted by Audiovisual Media Services (Amendment) Regulations 2021 (Draft) reg. 5(a) (Published, February 26, 2021) (date to be appointed)

Pt 3 c. 4 s. 335B(1A): added by Audiovisual Media Services (Amendment) Regulations 2021 (Draft) reg. 5(b) (Published, February 26, 2021) (date to be appointed)

Pt 3 c. 4 s. 335B(2): repealed by Audiovisual Media Services (Amendment) Regulations 2021 (Draft) reg. 5(c) (Published, February 26, 2021) (date to be appointed)

Pt 3 c. 4 s. 335B(3): substituted by Audiovisual Media Services (Amendment) Regulations 2021 (Draft) reg. 5(d) (Published, February 26, 2021) (date to be appointed)

Pt 3 c. 4 s. 335B(4): words inserted by Audiovisual Media Services (Amendment) Regulations 2021 (Draft) reg. 5(e)(i) (Published, February 26, 2021) (date to be appointed)

Pt 3 c. 4 s. 335B(4): words substituted by Audiovisual Media Services (Amendment) Regulations 2021 (Draft) reg. 5(e)(ii) (Published, February 26, 2021) (date to be appointed)

Government requirements for licensed services

✓ Law In Force

336 Government requirements for licensed services

(1) If it appears to the Secretary of State or any other Minister of the Crown to be appropriate to do so in connection with any of his functions, the Secretary of State or that Minister may at any time by notice require OFCOM to give a direction under subsection (2).

(2) A direction under this subsection is a direction to the holders of the Broadcasting Act licences specified in the notice under subsection (1) to include an announcement so specified in their licensed services.

[(3) The direction—

(a) may specify the times at which the announcement is to be broadcast or otherwise transmitted; and

(b) where the announcement relates to an emergency, including a natural disaster, must require the information given in the announcement to be provided in a manner which is accessible to people with disabilities.

] ¹

(4) Where the holder of a Broadcasting Act licence includes an announcement in his licensed service in pursuance of a direction under this section, he may announce that he is doing so in pursuance of such a direction.

(5) The Secretary of State may, at any time, by notice require OFCOM to direct the holders of the Broadcasting Act licences specified in the notice to refrain from including in their licensed services any matter, or description of matter, specified in the notice.

(6) Where—

- (a) OFCOM have given the holder of a Broadcasting Act licence a direction in accordance with a notice under subsection (5),
- (b) in consequence of the revocation by the Secretary of State of such a notice, OFCOM have revoked such a direction, or
- (c) such a notice has expired,

the holder of the licence in question may include in the licensed service an announcement of the giving or revocation of the direction or of the expiration of the notice, as the case may be.

(7) OFCOM must comply with every requirement contained in a notice under this section.

(8) The powers conferred by this section are in addition to any powers specifically conferred on the Secretary of State by or under this Act or any other enactment.

(9) In this section “Minister of the Crown” includes the Treasury.

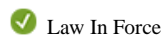
Notes

- ¹ Substituted by Audiovisual Media Services Regulations 2020/1062 Pt 2(2) reg.16 (November 1, 2020: substitution has effect subject to transitional provision specified in SI 2020/1062 Pt 7)

Commencement

Pt 3 c. 4 s. 336(1)-(9): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Equal opportunities and training



Law In Force

337 Promotion of equal opportunities and training

(1) The regulatory regime for every service to which this section applies includes the conditions that OFCOM consider appropriate for requiring the licence holder to make arrangements for promoting, in relation to employment with the licence holder, equality of opportunity—

- (a) between men and women; and
- (b) between persons of different racial groups.

(2) That regime includes conditions requiring the licence holder to make arrangements for promoting, in relation to employment with the licence holder, the equalisation of opportunities for disabled persons.

(3) The regulatory regime for every service to which this section applies includes the conditions that OFCOM consider appropriate for requiring the licence holder to make arrangements for the training and retraining of persons whom he employs, in or in connection with—

- (a) the provision of the licensed service; or
- (b) the making of programmes to be included in that service.

(4) The conditions imposed by virtue of subsections (1) to (3) must contain provision, in relation to the arrangements made in pursuance of those conditions, requiring the person providing the service in question—

- (a) to take appropriate steps to make those affected by the arrangements aware of them (including such publication of the arrangements as may be required in accordance with the conditions);
 - (b) from time to time, to review the arrangements; and
 - (c) from time to time (and at least annually) to publish, in such manner as he considers appropriate, his observations on the current operation and effectiveness of the arrangements.
- (5) The conditions imposed by virtue of this section may include provision for treating obligations to make the arrangements mentioned in subsections (1) to (3), or to do anything mentioned in subsection (4), as discharged where a member of a group of companies to which the licence holder belongs—
 - (a) has made the required arrangements in relation to employment with the licence holder; or
 - (b) has done anything required by subsection (4) in relation to those arrangements.
- (6) This section applies to a service if—
 - (a) it is a service the provision of which is authorised by a Broadcasting Act licence; and
 - (b) the requirements of both subsections (7) and (8) are satisfied in the case of that service.
- (7) The requirements of this subsection are satisfied in the case of a service provided by a person if—
 - (a) that person employs, or is likely to employ, more than the threshold number of individuals in connection with the provision of licensed services; or
 - (b) the threshold number is exceeded by the aggregate number of individuals who are, or are likely to be, employed in that connection by members of a group of companies comprising that person and one or more other bodies corporate.
- (8) The requirements of this subsection are satisfied in the case of a service if the licence authorising the provision of that service authorises either that service or another service authorised by that licence to be provided on a number of days in any year which exceeds the threshold number of days (whether or not the service is in fact provided on those days).
- (9) In this section—
 - “disabled” has the same meaning as in [the Equality Act 2010 or, in Northern Ireland,]¹ the Disability Discrimination Act 1995 (c. 50);
 - “licensed service”, in relation to an employee or likely employee of a person, means a service the provision of which—
 - (a) by that person, or
 - (b) by a body corporate which is a member of the same group of companies as that person,is authorised by a Broadcasting Act licence;
 - “racial group” has the same meaning as in the [Equality Act 2010]² or, in Northern Ireland, the Race Relations (Northern Ireland) Order 1997 (S.I. 1997/869 (N.I. 6));
 - “the threshold number” means—
 - (a) in relation to individuals, twenty; and
 - (b) in relation to days, thirty-one.
- (10) For the purposes of this section a person is a member of a group of companies to which a person licensed to provide a service belongs if, and only if, both of them are bodies corporate and either—
 - (a) one of them is controlled by the other; or

(b) both of them are controlled by the same person.

(11) In subsection (10) “controlled” has the same meaning as in Part 1 of Schedule 2 to the 1990 Act.

(12) The Secretary of State may, by order—

- (a) amend subsection (1) by adding any other form of equality of opportunity that he considers appropriate;
- (b) amend the definition of “the threshold number” in subsection (9).

(13) No order is to be made containing provision authorised by subsection (12) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.


Notes

- ¹ Words inserted by Equality Act 2010 c. 15 Sch.26(1) para.55(a) (October 1, 2010: commenced by an amendment; insertion has effect subject to savings and transitional provisions specified in SI 2010/2317 arts 5-22 and Schs 1-7)
- ² Words substituted by Equality Act 2010 c. 15 Sch.26(1) para.55(b) (October 1, 2010: commenced by an amendment; substitution has effect subject to savings and transitional provisions specified in SI 2010/2317 arts 5-22 and Schs 1-7)

Commencement

Pt 3 c. 4 s. 337(1)-(13): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Corresponding rules for the BBC and Welsh Authority

 Partially In Force

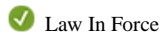
338 Corresponding rules for the BBC and the Welsh Authority

Schedule 12 (which provides for the imposition on the BBC and the Welsh Authority of obligations corresponding to obligations included in the regulatory regime for licensed providers) shall have effect.

Commencement

Pt 3 c. 4 s. 338: December 29, 2003 for provisions specified in SI 2003/3142 art.3(1); April 1, 2004 for the provision specified in SI 2003/3142 art.4(2) and Sch.2; not yet in force otherwise (SI 2003/3142 art. 3(1), art. 4(2), Sch. 1 para. 1, Sch. 2 para. 1)

Enforcement against the Welsh Authority



Law In Force

339 Review of fulfilment by Welsh Authority of public service remits

- (1) The Secretary of State may carry out a review of the performance by the Welsh Authority of their duty to secure that each of the following public service remits—
- (a) that for S4C;
 - (b) that for S4C Digital; and
 - (c) that for each of the television programme services provided by them with the approval of the Secretary of State under section 205,
- is fulfilled in relation the services to which it applies.
- (2) The first review carried out under this section—
- (a) shall be a review relating to the period since the passing of this Act; and
 - (b) must not be carried out before the end of the period of five years beginning with the day of the passing of this Act.
- (3) A subsequent review—
- (a) shall be a review relating to the period since the end of the period to which the previous review related; and
 - (b) must not be carried out less than five years after the day of the publication of the report of the previous review.
- (4) On a review under this section the Secretary of State—
- (a) shall consult the National Assembly for Wales and the Welsh Authority on the matters under review; and
 - (b) shall have regard to their opinions when reaching his conclusions.
- (5) The Secretary of State shall also consult such other persons as he considers are likely to be affected by whether, and in what manner, the Welsh Authority perform the duty mentioned in subsection (1).
- (6) As soon as practicable after the conclusion of a review under this section the Secretary of State must publish a report of his conclusions.

Commencement

Pt 3 c. 4 s. 339(1)-(6): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

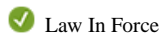
340 Directions to Welsh Authority to take remedial action

- (1) This section applies if the Secretary of State's conclusions on a review under section 339 include a finding—
- (a) that the Welsh Authority has failed in any respect to perform their duty to secure that the public service remit for a service mentioned in that section is fulfilled; and
 - (b) that there is no reasonable excuse for the failure.

- (2) The Secretary of State may give the Welsh Authority general or specific directions requiring them to take the steps that he considers will ensure that the Authority perform their duty properly in future.
- (3) The Secretary of State is not to give a direction under this section unless a draft of the proposed direction has been laid before Parliament and approved by a resolution of each House.
- (4) Before laying a proposed direction before Parliament, the Secretary of State must consult the Welsh Authority.
- (5) It shall be the duty of the Welsh Authority to comply with every direction under this section.

Commencement

Pt 3 c. 4 s. 340(1)-(5): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

341 Imposition of penalties on the Welsh Authority

- (1) This section applies to the following requirements so far as they are imposed on the Welsh Authority in relation to services provided by them—
- (a) the requirements imposed by or under paragraphs 7 and 8 of Schedule 12 (programme quotas);
 - (b) the requirements imposed by paragraph 9(1) and (3) of that Schedule (news and current affairs);
 - (c) the requirements imposed by paragraph 10 of that Schedule (code relating to programme commissioning) or by a direction under sub-paragraph (3)(d) of that paragraph;
 - (d) the requirement imposed by virtue of paragraph 12 of that Schedule to comply with standards set under section 319, so far as that requirement relates to standards set otherwise than for the purpose of securing the objectives set out in subsection (2)(c) or (d) of that section;
 - (e) the requirements imposed by paragraphs 14 and 16 of that Schedule (advertising or sponsorship) to comply with a direction under those paragraphs;
 - (f) the requirement imposed by paragraph 17 of that Schedule (observance of the fairness code);
 - (g) the requirement imposed by paragraph 19 of that Schedule (publicising complaints procedure);
 - (h) the requirement imposed by paragraph 20 of that Schedule (monitoring of programmes);
 - (i) the requirement imposed by paragraph 21 of that Schedule (international obligations) to comply with a direction under that paragraph;
 - (j) the requirement under paragraph 22 of that Schedule (assistance for disabled people) to comply with the code for the time being in force under section 303;
 - [(ja) the requirement imposed by paragraph 23A of that Schedule (complaints procedures for on-demand programme services) to comply with a direction under that paragraph;
 - [(jb) the requirements imposed by section 368CB, section 368D and section 368E(4) (on-demand programme services), except—

- (i) the requirements imposed by section 368D(1) and section 368E(4) so far as they relate to advertising, and
- (ii) the requirement imposed by section 368D(3)(za);

]²
]¹

- (k) the requirement to comply with a direction under section 119(1) of the 1996 Act (directions in respect of fairness matters).

(2) If OFCOM are satisfied that there has been a contravention of a requirement to which this section applies, they may serve on the Welsh Authority a notice requiring the Authority, within the specified period, to pay OFCOM a specified penalty.

(3) The amount of the penalty must not exceed £250,000.

(4) OFCOM are not to serve a notice on the Welsh Authority under this section unless they have given them a reasonable opportunity of making representations to OFCOM about the matters appearing to OFCOM to provide grounds for the service of the notice.

(5) An exercise by OFCOM of their powers under this section does not preclude any exercise by them of their powers under paragraph 15 of Schedule 12 in respect of the same contravention.

(6) The Secretary of State may by order substitute a different sum for the sum for the time being specified in subsection (3).

(7) No order is to be made containing provision authorised by subsection (6) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

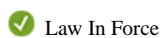
Notes

¹ Added by Audiovisual Media Services Regulations 2009/2979 reg.5 (December 19, 2009)

² Substituted by Audiovisual Media Services Regulations 2020/1062 Pt 3 reg.21 (November 1, 2020: substitution has effect subject to transitional provision specified in SI 2020/1062 Pt 7)

Commencement

Pt 3 c. 4 s. 341(1)-(7): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

342 Contraventions recorded in Welsh Authority's annual report

In paragraph 13 of Schedule 6 to the 1990 Act (annual report of the Welsh Authority)—

- (a) in sub-paragraph (2), the words from “and shall include” onwards shall be omitted; and
- (b) after that sub-paragraph there shall be inserted—

“(3) The report shall also—

- (a) set out every contravention notification given by OFCOM to the Authority during the year; and
- (b) include such other information (including information relating to the Authority's financial position) as the Secretary of State may from time to time direct.

(4) In sub-paragraph (3), ‘contravention notification’ means a notification of a determination by OFCOM of a contravention by the Authority of any obligation imposed by or under this Act, the 1996 Act or Part 3 of the Communications Act 2003.”

Commencement

Pt 3 c. 4 s. 342(a)-(b): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

✓ Law In Force

343 Provision of information by Welsh Authority

(1) It shall be the duty of the Welsh Authority to comply with every direction given to them by OFCOM to provide OFCOM with information falling within subsection (2).

(2) The information that the Welsh Authority may be directed to provide is any information which OFCOM may reasonably require for the purposes of carrying out their functions in relation to the Welsh Authority under this Act, the 1990 Act or the 1996 Act.

(3) Information that is required to be provided by a direction under this section must be provided in such manner and at such times as may be required by the direction.

Commencement

Pt 3 c. 4 s. 343(1)-(3): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Enforcement of licence conditions

✓ Law In Force

344 Transmission of statement of findings

(1) Sections 40 and 109 of the 1990 Act (power to direct licensee to broadcast correction or apology) shall be amended as follows.

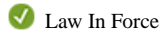
(2) For “apology”, wherever occurring, there shall be substituted “a statement of findings”.

(3) After subsection (5), there shall be inserted—

“(6) For the purposes of this section a statement of findings, in relation to a case in which OFCOM are satisfied that the holder of a licence has contravened the conditions of his licence, is a statement of OFCOM's findings in relation to that contravention.”

Commencement

Pt 3 c. 4 s. 344(1)-(3): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

345 Financial penalties imposable on licence holders

Schedule 13 (which modifies the maximum penalties that may be imposed on the holders of Broadcasting Act licences) shall have effect.

Commencement

Pt 3 c. 4 s. 345: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

346 Recovery of fees and penalties

(1) This section applies to the following amounts—

- (a) any amount payable to OFCOM under a Broadcasting Act licence;
- (b) the amount of a penalty imposed by OFCOM under Part 1 or 3 of the 1990 Act, Part 1 or 2 of the 1996 Act or this Part of this Act.

(2) Every amount to which this section applies shall be recoverable by OFCOM as a debt due to them from the person obliged to pay it.

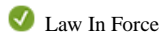
(3) The following liabilities—

- (a) a person's liability to have a penalty imposed on him under Part 1 or 3 of the 1990 Act, Part 1 or 2 of the 1996 Act or this Part in respect of acts or omissions of his occurring while he was the holder of a Broadcasting Act licence, and
- (b) a liability of a person as the holder of such a licence to pay an amount to which this section applies,

are not affected by that person's Broadcasting Act licence having ceased (for any reason) to be in force before the imposition of the penalty or the payment of that amount.

Commencement

Pt 3 c. 4 s. 346(1)-(3)(b): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Broadcasting Act licence fees

Law In Force

347 Statement of charging principles

(1) OFCOM are not to fix a tariff under section 4(3) or 87(3) of the 1990 Act or under section 4(3) or 43(3) of the 1996 Act (tariffs for fees payable under Broadcasting Act licences for recovering OFCOM's costs) unless—

- (a) at the time they do so, there is in force a statement of the principles that OFCOM are proposing to apply in fixing that tariff; and
- (b) the tariff is fixed in accordance with those principles.

(2) Those principles must be such as appear to OFCOM to be likely to secure, on the basis of such estimates of the likely costs that it is practicable for them to make—

- (a) that the aggregate amount of the Broadcasting Act licence fees that are required to be paid to OFCOM during a financial year is sufficient to enable them to meet, but does not exceed, the cost to them of the carrying out during that year of their functions relating to the regulation of broadcasting;
- (b) that the requirement imposed by virtue of paragraph (a) is satisfied by the application to such fees of tariffs that are justifiable and proportionate to the matters in respect of which they are imposed; and
- (c) that the relationship between meeting the cost of carrying out those functions and the tariffs applied to such fees is transparent.

(3) Before making or revising a statement of principles OFCOM must consult such of the persons who, in OFCOM's opinion, are likely to be affected by those principles as they think fit.

(4) The making or revision of a statement of principles for the purposes of this section has to be by the publication of the statement, or revised statement, in such manner as OFCOM consider appropriate for bringing it to the attention of the persons who, in their opinion, are likely to be affected by it.

(5) As soon as reasonably practicable after the end of each financial year, OFCOM must publish a statement setting out, for that year—

- (a) the aggregate amount received by them during that year in respect of Broadcasting Act licence fees required to be paid during that year;
- (b) the aggregate amount outstanding and likely to be paid or recovered in respect of Broadcasting Act licence fees that are required to be so paid; and
- (c) the cost to OFCOM of the carrying out during that year of their functions relating to the regulation of broadcasting.

(6) Any deficit or surplus shown (after applying this subsection for all previous years) by a statement under subsection (5) shall be—

- (a) carried forward; and
- (b) taken into account in determining what is required to satisfy the requirement imposed by virtue of subsection (2)(a) in relation to the following year.

(7) References in this section to OFCOM's functions relating to the regulation of broadcasting do not include references to any of their functions in relation to the BBC or the Welsh Authority.

(8) In this section—

“Broadcasting Act licence fee” means a fee required to be paid to OFCOM in pursuance of conditions included in a Broadcasting Act licence under any of the following provisions—

(a) section 4(1)(b) or 87(1)(c) of the 1990 Act; or

(b) section 4(1)(b) or 43(1)(c) of the 1996 Act;

“financial year” means a period of twelve months ending with 31st March.

Commencement

Pt 3 c. 4 s. 347(1)-(8) definition of "financial year": December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

CHAPTER 4A [...]¹

Notes

¹ Repealed by Audiovisual Media Services Regulations 2020/1062 Pt 5 reg.49 (December 31, 2020)

 Repealed

347A.— [...]¹

Notes

¹ Repealed by Audiovisual Media Services Regulations 2020/1062 Pt 5 reg.49 (December 31, 2020)

 Repealed

347B. [...]¹

Notes

¹ Repealed by Audiovisual Media Services Regulations 2020/1062 Pt 5 reg.49 (December 31, 2020)

 Repealed

347C. [...]¹

Notes

¹ Repealed by Audiovisual Media Services Regulations 2020/1062 Pt 5 reg.49 (December 31, 2020)

 Repealed

347D.— [...]¹

Notes

¹ Repealed by Audiovisual Media Services Regulations 2020/1062 Pt 5 reg.49 (December 31, 2020)

 Repealed

347E.— [...]¹

Notes

¹ Repealed by Audiovisual Media Services Regulations 2020/1062 Pt 5 reg.49 (December 31, 2020)

 Repealed

347F.— [...]¹

Notes

¹ Repealed by Audiovisual Media Services Regulations 2020/1062 Pt 5 reg.49 (December 31, 2020)

CHAPTER 5

MEDIA OWNERSHIP AND CONTROL

Restrictions on licence holders

 Law In Force

348 Modification of disqualification provisions

(1) In Part 2 of Schedule 2 to the 1990 Act (disqualification from holding licences), paragraphs (a) and (b) of paragraph 1(1) (individuals and bodies from outside the member States) shall cease to have effect.

(2) In sub-paragraph (1) of paragraph 2 of that Part (disqualification of religious bodies etc.), for the words before paragraph (a) there shall be substituted—

“2

(1) The following persons are disqualified persons in relation only to licences falling within sub-paragraph (1A)—”.

(3) For sub-paragraphs (2) and (3) of that paragraph there shall be substituted—

“(1A) A licence falls within this sub-paragraph if it is—

(a) a Channel 3 licence;

- (b) a Channel 5 licence;
- (c) a national sound broadcasting licence;
- (d) a public teletext licence;
- (e) an additional television service licence;
- (f) a television multiplex licence; or
- (g) a radio multiplex licence.

(1B) In this paragraph—

`additional television service licence' means a licence under Part 1 of this Act to provide an additional television service within the meaning of Part 3 of the Communications Act 2003;

`Channel 3 licence' and `Channel 5 licence' each has the same meaning as in Part 1 of this Act;

`national sound broadcasting licence' means a licence to provide a sound broadcasting service (within the meaning of Part 3 of this Act) which is a national service (within the meaning of that Part);

`public teletext licence' means a licence to provide the public teletext service (within the meaning of Part 3 of the Communications Act 2003);

`radio multiplex licence' means a licence under Part 2 of the Broadcasting Act 1996 to provide a radio multiplex service within the meaning of that Part; and

`television multiplex licence' means a licence under Part 1 of the Broadcasting Act 1996 to provide a multiplex service within the meaning of that Part.”

(4) In paragraph 4(2)(b) of that Part (bodies that are relevant bodies for the purposes of general disqualification on grounds of undue influence) for “as mentioned in paragraph (a)(i) or (ii) above” there shall be substituted—

“(i) by a person falling within paragraph 1(1)(c) to (g) above;

(ii) by a person falling within paragraph 3 above; or

(iii) by two or more persons taken together each of whom falls within sub-paragraph (i) or (ii) (whether or not they all fall within the same sub-paragraph).”

(5) The Secretary of State may by order make provision—

(a) for repealing paragraph 2 of Part 2 of Schedule 2 to the 1990 Act; or

(b) for making such other modifications of that paragraph and any enactment referring to it as he thinks fit.

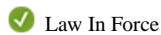
(6) Before making an order under subsection (5) (other than one that is confined to giving effect to recommendations made by OFCOM in a report of a review under section 391), the Secretary of State must consult OFCOM.

(7) No order is to be made containing provision authorised by subsection (5) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

Commencement

Pt 3 c. 5 s. 348(1), (4): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Pt 3 c. 5 s. 348(2)-(3), (5)-(7): September 18, 2003 subject to transitional provisions specified in SI 2003/1900 art.5; December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003.3142 art.3(1) (SI 2003/1900 art. 2(2), art. 5, Sch. 2 para. 1)



Law In Force

349 Licence holding by local authorities

(1) In Part 2 of Schedule 2 to the 1990 Act (disqualification from holding licences), in paragraph 1 (which includes a disqualification for local authorities)—

- (a) in sub-paragraph (1), for “sub-paragraph (2)” there shall be substituted “sub-paragraph (1A)”; and
- (b) after that sub-paragraph there shall be inserted—

“(1A) Where a service is provided exclusively for the purposes of the carrying out of the functions of a local authority under section 142 of the Local Government Act 1972 (provision by local authorities of information relating to their activities), a person is disqualified by virtue of sub-paragraph (1) in relation to a licence to provide that service only if he would be so disqualified disregarding paragraph (c) of that sub-paragraph.”

(2) In section 142 of the Local Government Act 1972 (c. 70) (provision by local authorities of information relating to their activities), after subsection (1A) there shall be inserted—

“(1AA) A local authority may—

- (a) for the purpose of broadcasting or distributing information falling within subsection (1AB), provide an electronic communications network or electronic communications service, or
- (b) arrange with the provider of such a network or service for the broadcasting or distribution of such information by means of the network or service.

(1AB) Information falls within this subsection, in relation to a local authority, if it is one or both of the following—

- (a) information concerning the services within the area of the authority that are provided either by the authority themselves or by other authorities mentioned in subsection (1B) below;
- (b) information relating to the functions of the authority.

(1AC) Nothing in subsection (1AA) entitles a local authority to do anything in contravention of a requirement or restriction imposed by or under—

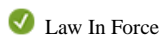
- (a) the Wireless Telegraphy Act 1949,
- (b) the Broadcasting Act 1990,
- (c) the Broadcasting Act 1996, or

(d) the Communications Act 2003,
and in that subsection 'electronic communications network' and 'electronic communications service' each has the same meaning as in the Communications Act 2003.”

(3) In section 2(1) of the Local Government Act 1986 (c. 10) (restriction on publication by a local authority of material designed to affect support for a political party), after “publish” there shall be inserted “, or arrange for the publication of,”.

Commencement

Pt 3 c. 5 s. 349(1)-(3): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

350 Relaxation of licence-holding restrictions

(1) Parts 3 to 5 of Schedule 2 to the 1990 Act (restrictions on accumulations of interests and on licence holding by newspaper proprietors and public telecommunications providers) shall cease to have effect.

(2) In each of sections 5 and 88 of the 1990 Act and of sections 5 and 44 of the 1996 Act (under which the provisions of Schedule 2 to the 1990 Act are given effect), for paragraph (b) of subsection (1) there shall be substituted—

“(b) that a person does not become the holder of a licence if requirements imposed by or under Schedule 14 to the Communications Act 2003 would be contravened were he to do so; and

(c) that those requirements are not contravened in the case of a person who already holds a licence.”

(3) Schedule 14 (which provides for the imposition of requirements which, in the case of Channel 3 services and certain radio services, replace those imposed by or under Parts 3 and 4 of Schedule 2 to the 1990 Act and requires approval for the holding of certain licences by religious bodies etc.) shall have effect.

(4) The Secretary of State must not by order under section 411 appoint a day falling before the commencement day for paragraph 11 of Schedule 14 as the day for the coming into force of the repeal by this Act of any of the provisions of Parts 3 and 4 of Schedule 2 to the 1990 Act so far as they relate to the holding of licences for the provision of any local services (within the meaning of Part 3 of that Act).

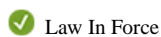
(5) The Secretary of State must not by order under section 411 appoint a day falling before the commencement day for paragraph 12 of Schedule 14 as the day for the coming into force of the repeal by this Act of any of the provisions of Parts 3 and 4 of Schedule 2 to the 1990 Act so far as they relate to the holding of local digital sound programme licences or the provision of local digital sound programme services.

(6) In this section “the commencement day”, in relation paragraph 11 or 12 of Schedule 14, means the day on which the first order to be made under that paragraph comes into force.

Commencement

Pt 3 c. 5 s. 350(1)-(2), (4)-(6): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Pt 3 c. 5 s. 350(3): September 18, 2003 for provisions specified in SI 2003/1900 Sch.2; December 29, 2003 otherwise (SI 2003/1900 art. 2(2), Sch. 2 para. 1; SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Changes of control

Law In Force

351 Changes of control of Channel 3 services

- (1) The regulatory regime for every Channel 3 service provided by a body corporate includes—
 - (a) a condition requiring the licence holder to give OFCOM advance notification of any proposals known to the body that may give rise to a relevant change of control; and
 - (b) a condition requiring the licence holder to provide OFCOM, in such manner and at such times as they may reasonably require, with such information as they consider necessary for the purposes of exercising their functions under this section and section 352.
- (2) OFCOM must carry out a review where—
 - (a) they receive notification, in accordance with a condition of a Channel 3 licence, of proposals that may give rise to a relevant change of control; or
 - (b) a relevant change of control takes place (whether or not that change has been previously notified to OFCOM).
- (3) The review shall be a review of the effects or likely effects, in relation to the matters mentioned in subsections (4) to (7), of—
 - (a) the change to which the proposals may give rise; or
 - (b) the change that has taken place.
- (4) The matters mentioned in this subsection are—
 - (a) the extent to which time available for broadcasting programmes included in the service is allocated to programmes of each of the following descriptions—
 - (i) original productions;
 - (ii) news programmes; and
 - (iii) current affairs programmes;
 - (b) the extent to which programmes of each of those descriptions that are included in the service are broadcast at peak viewing times.
- (5) The matters mentioned in this subsection are—
 - (a) the extent to which Channel 3 programmes made in the United Kingdom that are included in the service are programmes made outside the M25 area;
 - (b) the range of Channel 3 programmes made in the United Kingdom outside that area that are included in the service;

- (c) the extent to which the expenditure of the provider of the service on Channel 3 programmes is referable to programme production at different production centres outside the M25 area;
 - (d) the range of different such production centres to which that expenditure is referable.
- (6) The matters mentioned in this subsection are—
 - (a) the quality and range of regional programmes included in the service;
 - (b) the quality and range of other programmes included in the service which contribute to the regional character of the service;
 - (c) the quality and range of the programmes made available by the licence holder for the purposes of inclusion in the nationwide system of services referred to in section 14(1) of the 1990 Act (nationwide Channel 3 service).
- (7) The matters mentioned in this subsection are—
 - (a) the amount of time given, in the programmes included in the service—
 - (i) to regional programmes; and
 - (ii) to programmes included in the service which contribute to the regional character of the service;
 - (b) the proportion of regional programmes included in the service which are made within the area for which the service is provided;
 - (c) the extent of the use, in connection with the service, of the services of persons employed (whether by the licence holder or any other person) within that area;
 - (d) the extent to which managerial or editorial decisions relating to programmes to be included in the service are taken by persons so employed within that area.
- (8) In relation to a national Channel 3 service, subsections (3) to (7) have effect as if—
 - (a) subsection (5) applied only where the service is subject to conditions imposed by virtue of a decision of OFCOM under section 286(2) or OFCOM otherwise consider, having regard to the nature of the service, that it is appropriate to consider the matters mentioned in that subsection;
 - (b) references to regional programmes were references to programmes which are regional programmes (within the meaning of section 287) in relation to that service and are included in it in accordance with a condition imposed under subsection (4)(a) of that section;
 - (c) references to the regional character of the service were references to the regional character of parts of the service;
 - (d) subsection (6)(c) of this section were omitted; and
 - (e) references, in relation to programmes such as are mentioned in paragraph (b), to the area for which the service is provided were references to the part of that area where the people are living to whom those programmes are likely to be of particular interest.
- (9) Where OFCOM carry out a review under subsection (2), they must publish a report of that review—
 - (a) setting out their conclusions; and
 - (b) specifying any steps which they propose to take under section 352.
- (10) In this section—
 - “Channel 3 programmes” and “expenditure” each has the same meaning as in section 286;
 - “original production” has the same meaning as in section 278;
 - “peak viewing time” —

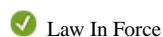
- (a) in relation to original productions, means a time determined by OFCOM for the purposes of section 278 to be a peak viewing time for the service in question; and
- (b) in relation to news programmes or current affairs programmes, means a time so determined for the purposes of section 279;
- “regional programme”, in relation to a Channel 3 service, means (subject to subsection (8)) a programme (including a news programme) which is of particular interest—
 - (a) to persons living within the area for which the service is provided;
 - (b) to persons living within a part of that area; or
 - (c) to particular communities living within that area;
- “relevant change of control” means a change in the persons having control over—
 - (a) a body holding the licence to provide a Channel 3 service; or
 - (b) any body which—
 - (i) is connected with a body holding such a licence; and
 - (ii) is involved, to a substantial extent, in the provision of the programmes included in the service provided under that licence, or is likely to become so involved.

(11) Expressions used in this section and in Part 1 of Schedule 2 to the 1990 Act (restrictions on licence holders) have the same meanings in this section as in that Part.

Commencement

Pt 3 c. 5 s. 351(1)-(4)(a), (4)(a)(ii)-(10) definition of "Channel 3 programmes", (10) definition of "peak viewing time", (10) definition of "peak viewing time" (b)-(11): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Pt 3 c. 5 s. 351(4)(a)(i), (10) definition of "original production", (10) definition of "peak viewing time" (a): July 1, 2004 by SI 2003/3142 art.4(4)(b) as amended by SI 2004/545 art.2(2) (SI 2003/3142 art. 4(2), art. 4(4)(b), Sch. 2 para. 1; SI 2004/545 art. 2(2))



Law In Force

352 Action following review under s. 351

- (1) If, on a review under subsection (2) of section 351, it appears to OFCOM that the relevant change of control is or would be prejudicial to one or more of the matters mentioned in subsections (4) to (6) of that section, they shall vary the licence in accordance with subsection (2).
- (2) The variation—
 - (a) must be made with a view to ensuring that the relevant change of control is not prejudicial to any of the matters so mentioned; and
 - (b) must be a variation for the inclusion in the licence of such conditions relating to any of those matters as they consider appropriate.
- (3) If it appears to OFCOM, having regard to the matters mentioned in subsection (7) of section 351—
 - (a) that the proposed change of control would be prejudicial to the regional character of the service or (as the case may be) of any parts of it, or
 - (b) that the actual change of control is so prejudicial,

they may vary the licence so as to include in it such conditions relating to any of those matters as they consider appropriate.

(4) Subject to subsection (5), any new or varied condition imposed under this section in relation to any matter may be more onerous than the conditions relating to that matter having effect before the relevant change of control.

(5) A variation under this section must not provide for the inclusion of a new or varied condition in a licence unless the new condition, or the condition as varied, is one which (with any necessary modifications) would have been satisfied by the licence holder throughout the twelve months immediately before the relevant date.

(6) In subsection (5) “the relevant date” is the date of the relevant change of control or, if earlier, the date on which OFCOM exercise their powers under this section.

(7) A variation of a licence under this section shall be effected by the service of a notice of the variation on the licence holder.

(8) OFCOM are not to serve a notice of a variation under this section unless they have given the body on whom it is served a reasonable opportunity, after the publication of the report of the review under section 351, of making representations to them about the variation.

(9) Where, in a case of a proposed change of control, a notice varying a licence under this section is served before the change to which it relates takes place, the variation is not to take effect until the change takes place.

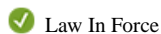
(10) A condition included in a licence by a variation under this section may be further varied by OFCOM either—

- (a) with the consent of the licence holder; or
- (b) in any other case, after complying with the requirements of section 3(4)(b) of the 1990 Act (variation after giving opportunity for representations by the licence holder).

(11) Expressions used in this section and section 351 have the same meanings in this section as in that.

Commencement

Pt 3 c. 5 s. 352(1)-(11): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

353 Changes of control of Channel 5

(1) The regulatory regime for Channel 5 includes, in every case where it is provided by a body corporate—

- (a) a condition requiring the licence holder to give OFCOM advance notification of any proposals known to the body that may give rise to a relevant change of control; and
- (b) a condition requiring the licence holder to provide OFCOM, in such manner and at such times as they may reasonably require, with such information as they consider necessary for the purposes of exercising their functions under this section and section 354.

- (2) OFCOM must carry out a review where—
- (a) they receive notification, in accordance with a condition of the licence to provide Channel 5, of proposals that may give rise to a relevant change of control; or
 - (b) a relevant change of control takes place (whether or not that change has been previously notified to OFCOM).
- (3) The review shall be a review of the effects or likely effects, in relation to the matters mentioned in subsections (4) and (5), of—
- (a) the change to which the proposals may give rise; or
 - (b) the change that has taken place.
- (4) The matters mentioned in this subsection are—
- (a) the extent to which time available for broadcasting programmes included in Channel 5 is allocated to programmes of each of the following descriptions—
 - (i) original productions;
 - (ii) news programmes; and
 - (iii) current affairs programmes;
 - (b) the extent to which programmes of each of those descriptions that are included in that Channel are broadcast at peak viewing times.
- (5) The matters mentioned in this subsection are—
- (a) the extent to which programmes made in the United Kingdom that are included in the service are programmes made outside the M25 area;
 - (b) the range of programmes made in the United Kingdom outside that area that are included in Channel 5;
 - (c) the extent to which the expenditure of the provider of Channel 5 on programmes made in the United Kingdom is referable to programme production at different production centres outside the M25 area;
 - (d) the range of different such production centres to which that expenditure is referable.
- (6) Where OFCOM carry out a review under subsection (2), they must publish a report of that review—
- (a) setting out their conclusions; and
 - (b) specifying any steps which they propose to take under section 354.
- (7) In this section—
- “expenditure”, in relation to a programme, means—
 - (a) expenditure which constitutes an investment in or is otherwise attributable to the making of the programme; or
 - (b) expenditure on the commissioning or other acquisition of the programme or on the acquisition of a right to include it in a service or to have it broadcast;
 - “original production” has the same meaning as in section 278;
 - “peak viewing time” —
 - (a) in relation to original productions, means a time determined by OFCOM for the purposes of section 278 to be a peak viewing time for Channel 5; and
 - (b) in relation to news programmes or current affairs programmes, means a time so determined for the purposes of section 279;
 - “relevant change of control” means a change in the persons having control over—
 - (a) a body holding a licence to provide Channel 5; or
 - (b) any body which—

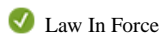
- (i) is connected with a body holding such a licence; and
- (ii) is involved, to a substantial extent, in the provision of the programmes included in that channel, or is likely to become so involved.

(8) Expressions used in this section and in Part 1 of Schedule 2 to the 1990 Act (restrictions on licence holders) have the same meanings in this section as in that Part.

Commencement

Pt 3 c. 5 s. 353(1)-(4)(a), (4)(a)(ii)-(7) definition of "expenditure" (b), (7) definition of "peak viewing time", (7) definition of "peak viewing time" (b)-(8): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Pt 3 c. 5 s. 353(4)(a)(i), (7) definition of "original production", (7) definition of "peak viewing time" (a): July 1, 2004 by SI 2003/3142 art.4(4)(b) as amended by SI 2004/545 art.2(2) (SI 2003/3142 art. 4(2), art. 4(4)(b), Sch. 2 para. 1; SI 2004/545 art. 2(2))



Law In Force

354 Action following review under s. 353

(1) If, on a review under subsection (2) of section 353, it appears to OFCOM that the relevant change of control is or would be prejudicial to one or more of the matters mentioned in subsections (4) and (5) of that section, they shall vary the licence in accordance with subsection (2).

(2) The variation—

- (a) must be made with a view to ensuring that the relevant change of control is not prejudicial to any of the matters so mentioned; and
- (b) must be a variation for the inclusion in the licence of such conditions relating to any of those matters as they consider appropriate.

(3) Subject to subsection (4), any new or varied condition imposed under this section in relation to any matter may be more onerous than the conditions relating to that matter having effect before the relevant change of control.

(4) A variation under this section must not provide for the inclusion of a new or varied condition in a licence unless the new condition, or the condition as varied, is one which (with any necessary modifications) would have been satisfied by the licence holder throughout the twelve months immediately before the relevant date.

(5) In subsection (4) "the relevant date" is the date of the relevant change of control or, if earlier, the date on which OFCOM exercise their powers under this section.

(6) A variation of a licence under this section shall be effected by the service of a notice of the variation on the licence holder.

(7) OFCOM are not to serve a notice of a variation under this section unless they have given the body on whom it is served a reasonable opportunity, after the publication of the report of the review under section 353, of making representations to them about the variation.

(8) Where, in a case of a proposed change of control, a notice varying a licence under this section is served before the change to which it relates takes place, the variation is not to take effect until the change takes place.

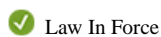
(9) A condition included in a licence by a variation under this section may be further varied by OFCOM either—

- (a) with the consent of the licence holder; or
- (b) in any other case, after complying with the requirements of section 3(4)(b) of the 1990 Act (variation after giving opportunity for representations by the licence holder).

(10) Expressions used in this section and section 353 have the same meanings in this section as in that.

Commencement

Pt 3 c. 5 s. 354(1)-(10): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

355 Variation of local licence following change of control

(1) The regulatory regime for every local sound broadcasting service provided by a body corporate includes—

- (a) a condition requiring the licence holder to give OFCOM advance notification of any proposals known to it that may give rise to a relevant change of control; and
- (b) a condition requiring the licence holder to provide OFCOM, in such manner and at such times as they may reasonably require, with such information as they consider necessary for the purposes of exercising their functions under this section and section 356.

(2) OFCOM must carry out a review where—

- (a) they receive notification, in accordance with a condition of a local sound broadcasting licence, of proposals that may give rise to a relevant change of control; or
- (b) a relevant change of control takes place (whether or not that change has been previously notified to OFCOM).

(3) The review shall be a review of the effects or likely effects, in relation to the matters mentioned in subsection (4), of—

- (a) the change to which the proposals may give rise; or
- (b) the change that has taken place.

(4) Those matters are—

- (a) the quality and range of programmes included in the service;
- (b) the character of the service;
- (c) the extent to which OFCOM's duty under section 314 is performed in relation to the service.

(5) The matters to which OFCOM must have regard in determining for the purposes of this section the character of a local sound broadcasting service, include, in particular, the selection of spoken material and music in programmes included in the service.

(6) Where OFCOM carry out a review under subsection (2), they must publish a report of that review—

- (a) setting out their conclusions; and
- (b) specifying any steps which they propose to take under section 356.

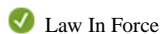
(7) In this section “relevant change of control” means a change in the persons having control over—

- (a) a body holding the licence to provide a local sound broadcasting service; or
- (b) any body which—
 - (i) is connected with a body holding such a licence; and
 - (ii) is involved, to a substantial extent, in the provision of the programmes included in the service provided under that licence, or is likely to become so involved.

(8) Expressions used in this section and in Schedule 2 to the 1990 Act (restrictions on licence holders) have the same meanings in this section as in that Schedule.

Commencement

Pt 3 c. 5 s. 355(1)-(8): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

356 Action following review under s. 355

(1) If, on a review under section 355, it appears to OFCOM that the relevant change of control is or would be prejudicial to one or more of the matters mentioned in subsection (4) of that section, they must vary the local licence in accordance with subsection (2).

(2) The variation—

- (a) must be made with a view to ensuring that the relevant change of control is not prejudicial to any of the matters so mentioned; and
- (b) must be a variation for the inclusion in the licence of such conditions relating to any of those matters as they consider appropriate.

(3) Subject to subsection (4), any new or varied condition imposed under this section in relation to any matter may be more onerous than the conditions relating to that matter having effect before the relevant change of control.

(4) A variation under this section must not provide for the inclusion of any new or varied condition in a licence unless the new condition, or the condition as varied, is one which (with any necessary modifications) would have been satisfied by the licence holder throughout—

- (a) the three months immediately before the relevant date; or
- (b) such other three month period as has been notified under subsection (5).

(5) If OFCOM consider that the performance of the licence holder during the three month period immediately preceding the relevant date is not typical of his performance during the twelve months before the relevant date they—

- (a) may determine that subsection (4) is to apply by reference to such other three month period falling within those twelve months as they may determine; and
- (b) must notify any determination under this subsection to the licence holder.

- (6) In subsection (4) “the relevant date” is the date of the relevant change of control or, if earlier, the date on which OFCOM exercise their powers under this section.
- (7) A variation of a licence under this section shall be effected by the service of a notice of the variation on the licence holder.
- (8) OFCOM are not to serve a notice of a variation under this section unless they have given the body on whom it is served a reasonable opportunity, after the publication of the report of the review under section 355, of making representations to them about the variation.
- (9) Where, in a case of a proposed change of control, a notice varying a licence under this section is served before the change to which it relates takes place, the variation is not to take effect until that change takes place.
- (10) A condition included in a licence by a variation under this section may be further varied by OFCOM either—
- (a) with the consent of the licence holder; or
 - (b) in any other case, after complying with the requirements of section 86(5)(b) of the 1990 Act (variation after giving opportunity for representations by the licence holder).
- (11) Expressions used in this section and section 355 have the same meanings in this section as in that.

Commencement

Pt 3 c. 5 s. 356(1)-(11): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Meaning of control



Law In Force

357 Meaning of “control”

- (1) In paragraph 1(3)(b) of Part 1 of Schedule 2 to the 1990 Act (control where a person will be able, without having at least a 50 per cent. interest in it, to have the affairs of a body conducted in accordance with his wishes)—
- (a) for “will be able” there shall be substituted “would (if he chose to) be able in most cases or in significant respects”; and
 - (b) for “the affairs” there shall be substituted “affairs”.
- (2) It shall be the duty of OFCOM to publish guidance setting out their intentions concerning the inclusion of particular matters in the matters that they will take into account when determining whether a person has control of a body, within the meaning of paragraph 1(3)(b) of Part 1 of Schedule 2 to the 1990 Act.
- (3) OFCOM may from time to time revise the guidance issued by them under this section.

(4) OFCOM must publish the guidance and, where they revise it, the revised guidance 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.

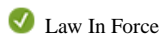
Commencement

Pt 3 c. 5 s. 357(1)-(4): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

CHAPTER 6

OTHER PROVISIONS ABOUT TELEVISION AND RADIO SERVICES

Annual report on television and radio



Law In Force

358 Annual factual and statistical report

(1) It shall be the duty of OFCOM—

- (a) as soon as practicable after the end of the period of twelve months beginning with the commencement of this section, and
 - (b) as soon as practicable after the end of every subsequent period of twelve months,
- to satisfy for that period the review and reporting requirements of this section.

(2) For any period those obligations are—

- (a) to carry out a review of the provision of the television and radio services available for reception by members of the public in the United Kingdom during that period; and
- (b) to prepare a factual and statistical report for that period on the provision of those services and on the state of the market in which they are provided.

(3) In carrying out a review for any period under this section, OFCOM must consider, in particular, each of the following—

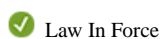
- (a) the extent to which programmes included during that period in television and radio services are representative of what OFCOM consider to be the principal genres for such programmes;
- (b) the extent to which codes made by OFCOM under this Part or Part 4 or 5 of the 1996 Act (listed events and fairness) have been complied with during that period;
- (c) the extent to which any guidance given by OFCOM under section 314 has been followed during that period;
- (d) any trends appearing or operating during that period in the size and behaviour of the audience for radio and television services;
- (e) the financial condition during that period of the market in which those services are provided and of the market in which programmes for such services are produced;

- (f) what it is appropriate to achieve by conditions and duties under section 277 and paragraphs 1 and 7 of Schedule 12 and the effectiveness for that purpose of the conditions and duties for the time being in force;
 - (g) whether it would be appropriate to recommend to the Secretary of State that he exercises any of his powers under that section or those paragraphs;
 - (h) the extent to which work on independent productions (within the meaning of that section and those paragraphs) that are produced in the United Kingdom is done in a range of production centres outside the M25 area;
 - (i) any issues relating to intellectual property in programmes that have arisen or been of significance during that period;
 - (j) developments in technology that have occurred or become important during that period and are relevant to the provision, broadcasting or distribution of television and radio programmes;
 - (k) the availability during that period of persons with skills that are used or likely to be useful in connection with the provision of television and radio services and the production of programmes for inclusion in such services;
 - (l) the availability during that period of facilities for the provision of training in such skills.
- (4) Every report under this section must set out OFCOM's findings on their consideration of the matters mentioned in subsection (3).
- (5) Every report prepared by OFCOM under this section must be published by them—
- (a) as soon as practicable after its preparation is complete; and
 - (b) in such manner as they consider appropriate.
- (6) OFCOM's duties under this section are in addition to their duties under section 264.

Commencement

Pt 3 c. 6 s. 358(1)-(6): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Community radio and local digital television



Law In Force

359 Grants to providers

- (1) OFCOM may make such grants as they consider appropriate to the provider of any service of a description of service in relation to which provision is for the time being in force under section 262.
- (2) The Secretary of State may by order provide that OFCOM may also make such grants as they consider appropriate to the provider of any service of a description of service in relation to which provision is for the time being in force under section 244.

(3) A grant made by virtue of this section may be made on such terms and conditions, and shall become repayable to OFCOM in such circumstances, as may be specified by OFCOM when making the grant.

(4) A person is not—

- (a) by reason of the making to him of a grant by virtue of this section, or
- (b) by reason of any terms or conditions (including any provisions for repayment) subject to which such a grant is or has been made to him,

to be a disqualified person by virtue of any provision of Schedule 2 to the 1990 Act in relation to a licence mentioned in subsection (5).

(5) Those licences are—

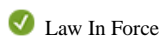
- (a) a licence under Part 1 of the 1990 Act, or under Part 1 of the 1996 Act, which is granted in accordance with any provision made by an order under section 244 of this Act; and
- (b) a licence under Part 3 of the 1990 Act, or under Part 2 of the 1996 Act, which is granted in accordance with any provision made by an order under section 262 of this Act.

(6) No order is to be made containing provision authorised by this section unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

Commencement

Pt 3 c. 6 s. 359(1)-(6): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Supplemental provisions of Part 3



Law In Force

360 Amendments of the 1990 and 1996 Acts

(1) In section 201 of the 1990 Act (programme services), in subsection (1)—

(a) for paragraphs (a) to (bb) there shall be substituted—

“(aa) any service which is a programme service within the meaning of the Communications Act 2003;”

(b) in paragraph (c), for “a telecommunication system” there shall be substituted “an electronic communications network (within the meaning of the Communications Act 2003)”.

(2) For subsection (2) of that section there shall be substituted—

“(2A) Subsection (1)(c) does not apply to so much of a service consisting only of sound programmes as—

- (a) is a two-way service (within the meaning of section 248(4) of the Communications Act 2003);
- (b) satisfies the conditions in section 248(5) of that Act; or

(c) is provided for the purpose only of being received by persons who have qualified as users of the service by reason of being persons who fall within paragraph (a) or (b) of section 248(7) of that Act.

(2B) Subsection (1)(c) does not apply to so much of a service not consisting only of sound programmes as—

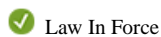
- (a) is a two-way service (within the meaning of section 232 of the Communications Act 2003);
- (b) satisfies the conditions in section 233(5) of that Act; or
- (c) is provided for the purpose only of being received by persons who have qualified as users of the service by reason of being persons who fall within paragraph (a) or (b) of section 233(7) of that Act.”

(3) Schedule 15 (which makes minor and consequential amendments of the 1990 Act and the 1996 Act for purposes connected with the other provisions of this Chapter) shall have effect.

Commencement

Pt 3 c. 6 s. 360(1)-(2): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Pt 3 c. 6 s. 360(3): July 25, 2003 for provisions specified in SI 2003/1900 Sch.1; September 18, 2003 for provisions specified in SI 2003/1900 Sch.2; December 29, 2003 otherwise (SI 2003/1900 art. 2(1), art. 2(2), Sch. 1 para. 1, Sch. 2 para. 1; SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

361 Meaning of “available for reception by members of the public”

(1) The services that are to be taken for the purposes of this Part to be available for reception by members of the public include (subject to subsection (2)) any service which—

- (a) is made available for reception, or is made available for reception in an intelligible form, only to persons who subscribe to the service (whether for a period or in relation to a particular occasion) or who otherwise request its provision; but
- (b) is a service the facility of subscribing to which, or of otherwise requesting its provision, is offered or made available to members of the public.

[(2) A service is not to be treated as available for reception by members of the public if it is an on-demand programme service.]¹

(6) References in this section to members of the public are references to members of the public in, or in any area of, any one or more countries or territories (which may or may not include the United Kingdom).

(7) The Secretary of State may by order modify any of the provisions of this section if it appears to him appropriate to do so having regard to any one or more of the following—

- (a) the protection which, taking account of the means by which the programmes and services are received or may be accessed, is expected by members of the public as respects the contents of television programmes or sound programmes;

- (b) the extent to which members of the public are able, before television programmes are watched or accessed, to make use of facilities for exercising control, by reference to the contents of the programmes, over what is watched or accessed;
- (c) the practicability of applying different levels of regulation in relation to different services;
- (d) the financial impact for providers of particular services of any modification of the provisions of that section; and
- (e) technological developments that have occurred or are likely to occur.

(8) No order is to be made containing provision authorised by subsection (7) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

(9) [...] ²

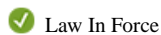
Notes

¹ S.361(2) substituted for s.361(2)-(5) by Audiovisual Media Services Regulations 2009/2979 reg.9(a) (December 19, 2009)

² Repealed by Audiovisual Media Services Regulations 2009/2979 reg.9(b) (December 19, 2009)

Commencement

Pt 3 c. 6 s. 361(1)-(9): July 25, 2003 (SI 2003/1900 art. 2(1), Sch. 1 para. 1)



362 Interpretation of Part 3

(1) In this Part—

“additional radio service” means an additional service within the meaning given by section 114(1) of the 1990 Act for the purposes of Part 3 of that Act;

“additional television service” (except in the expression “digital additional television service”) means an additional service within the meaning given by section 48 of the 1990 Act for the purposes of Part 1 of the 1990 Act;

“analogue teletext service” is to be construed in accordance with section 218(4);

“ancillary service” has the same meaning as it has, by virtue of section 24(2) of the 1996 Act, in Part 1 of that Act;

“assistance for disabled people” [includes, in particular,] ¹ any of the following—

- (a) subtitling;
- (b) audio-description for the blind and partially sighted; and
- (c) presentation in, or translation into, sign language;

“available for reception by members of the public” is to be construed in accordance with section 361;

“the BBC Charter and Agreement” means the following documents, or any one or more of them, so far as they are for the time being in force—

- (a) a Royal Charter for the continuance of the BBC;
- (b) supplemental Charters obtained by the BBC under such a Royal Charter;
- (c) an agreement between the BBC and the Secretary of State entered into (whether before or after the passing of this Act) for purposes that include the regulation of activities carried on by the BBC;

“BBC company” means—

- (a) a body corporate which is controlled by the BBC; or
- (b) a body corporate in which the BBC or a body corporate controlled by the BBC is (to any extent) a participant;

“C4 company” means—

- (a) a body corporate which is controlled by C4C; or
- (b) a body corporate in which C4C or a body corporate controlled by C4C is (to any extent) a participant;

“Channel 3”, “Channel 4” and “Channel 5” each has the same meaning as in Part 1 of the 1990 Act (see section 71 of that Act);

“Channel 3 licence” means a licence to provide a Channel 3 service;

“a Channel 3 service” means a television broadcasting service comprised in Channel 3;

“digital additional sound service” means a digital additional service within the meaning given by section 63 of the 1996 Act for the purposes of Part 2 of that Act;

“digital additional television service” means a digital additional service within the meaning given by section 24(1) of the 1996 Act for the purposes of Part 1 of that Act;

“the digital public teletext service” means so much of the public teletext service as consists of a service provided in digital form;

“digital sound programme licence” and “digital sound programme service” each has the same meaning as in Part 2 of the 1996 Act (see sections 40 and 72 of that Act);

“digital television programme service” means a digital programme service within the meaning given by section 1(4) of the 1996 Act for the purposes of Part 1 of that Act;

[“EEA State” has the meaning given by Schedule 1 to the Interpretation Act 1978[...]³;]²
[“the European Convention on Transfrontier Television” means the Council of Europe Convention on Transfrontier Television which was opened for signature at Strasbourg on 5th May 1989, as amended by the Protocol which was opened for signature at Strasbourg on 1st October 1998;]⁴

“general multiplex service” means a multiplex service within the meaning of section 175 which is neither a television multiplex service nor a radio multiplex service;

“initial expiry date” has the meaning given by section 224;

“licensed public service channel” means any of the following services (whether provided for broadcasting in digital or in analogue form)—

- (a) any Channel 3 service;
- (b) Channel 4;
- (c) Channel 5;

“local digital sound programme licence” and “local digital sound programme service” each has the same meaning as in Part 2 of the 1996 Act (see sections 60 and 72 of that Act);

“local radio multiplex licence” and “local radio multiplex service” each has the same meaning as in Part 2 of the 1996 Act (see sections 40 and 72 of that Act);

“local sound broadcasting licence” means a licence under Part 3 of the 1990 Act to provide a local sound broadcasting service;

“local sound broadcasting service” means a sound broadcasting service which, under subsection (4)(b) of section 245, is a local service for the purposes of that section;

“the M25 area” means the area the outer boundary of which is represented by the London Orbital Motorway (M25);

“national Channel 3 service” means a Channel 3 service provided between particular times of the day for more than one area for which regional Channel 3 services are provided;

“national digital sound programme service” has the same meaning as in Part 2 of the 1996 Act;

“national radio multiplex licence” and “national radio multiplex service” each has the same meaning as in Part 2 of the 1996 Act (see sections 40 and 72 of that Act);

“networking arrangements” has the meaning given by section 290;

“OFCOM's standards code” means any code or codes for the time being in force containing standards set by OFCOM under section 319 (whether originally or by way of any revision of any standards previously so set);

[“product placement” has the meaning given by paragraph 1 of Schedule 11A;]⁵

“provision”, in relation to a service, is to be construed (subject to subsection (3)) in accordance with subsection (2), and cognate expressions are to be construed accordingly;

“the public teletext provider” means—

(a) subject to paragraph (b), the person holding the licence under section 219 to provide the public teletext service; and

(b) in relation to a time before the grant of the first licence to be granted under that section, the person holding the Broadcasting Act licence to provide the existing service (within the meaning of section 221);

“the public teletext service” means the service the provision of which [is or may be]⁶ secured in accordance with section 218;

“qualifying service” has the same meaning as in Part 1 of the 1996 Act (see section 2(2) of that Act);

“radio licensable content service” has the meaning given by section 247;

“radio multiplex service” has the same meaning as (by virtue of section 258 of this Act) it has in Part 2 of the 1996 Act;

“radio programme service” means any of the following—

(a) a service the provision of which is licensed under Part 3 of the 1990 Act;

(b) a digital sound programme service the provision of which is licensed under Part 2 of the 1996 Act;

(c) a digital additional sound service the provision of which is licensed under section 64 of the 1996 Act;

“regional Channel 3 licence” means a licence under Part 1 of the 1990 Act to provide a regional Channel 3 service;

“regional Channel 3 service” means a Channel 3 service provided for a particular area determined under section 14(2) of the 1990 Act;

“restricted television service” means any restricted service within the meaning given by section 42A of the 1990 Act for the purposes of Part 1 of that Act;

“S4C” and “S4C Digital” means the services so described in section 204(3);

“S4C company” means—

(a) a body corporate which is controlled by the Welsh Authority; or

(b) a body corporate in which that Authority or a body corporate controlled by that Authority is (to any extent) a participant;

“simulcast radio service” means any simulcast radio service within the meaning given by section 41(2) of the 1996 Act for the purposes of Part 2 of that Act;

“sound broadcasting service” has the same meaning as in Part 3 of the 1990 Act (see section 126 of that Act);

“standards objectives” has the meaning given by section 319(2);

“subtitling” means subtitling for the deaf or hard of hearing, whether provided by means of a teletext service or otherwise;

“television broadcasting service” means (subject to subsection (4)) a service [(or a dissociable section of a service)]⁷ which—

- (a) consists in a service of television programmes provided with a view to its being broadcast (whether in digital or in analogue form);
- (b) is provided so as to be available for reception by members of the public; and
- (c) is not—
 - (i) a restricted television service;
 - (ii) a television multiplex service;
 - (iii) a service provided under the authority of a licence under Part 1 of the 1990 Act to provide a television licensable content service; or
 - (iv) a service provided under the authority of a licence under Part 1 of the 1996 Act to provide a digital television programme service;

“television licensable content service” has the meaning given by section 232 of this Act;

“television multiplex service” has meaning given by section 241(1) of this Act to a multiplex service within the meaning of Part 1 of the 1996 Act;

“television programme service” means any of the following—

- (a) a television broadcasting service;
- (b) a television licensable content service;
- (c) a digital television programme service;
- (d) a restricted television service;

[...]⁸

“text service” means any teletext service or other service in the case of which the visual images broadcast or distributed by means of the service consist wholly or mainly of non-representational images.

(2) In the case of any of the following services—

- (a) a television broadcasting service or sound broadcasting service,
- (b) the public teletext service;
- (c) a television licensable content service or radio licensable content service,
- (d) a digital television programme service or digital sound programme service,
- (e) a restricted television service,
- (f) an additional television service or additional radio service,
- (g) a digital additional television service or a digital additional sound service,

the person, and the only person, who is to be treated for the purposes of this Part as providing the service is the person with general control over which programmes and other services and facilities are comprised in the service (whether or not he has control of the content of individual programmes or of the broadcasting or distribution of the service).

(3) For the purposes of this Part—

- (a) the provision of a service by the BBC does not include its provision by a BBC company;
- (b) the provision of a service by C4C does not include its provision by a C4 company;
- (c) the provision of a service by the Welsh Authority does not include its provision by an S4C company;

and, accordingly, control that is or is capable of being exercised by the BBC, C4C or the Welsh Authority over decisions by a BBC company, C4 company or S4C company about what is to be comprised in a service shall be disregarded for the purposes of subsection (2).

(4) References in this Part to a television broadcasting service do not include references to any text service.

(5) References in this Part to imposing a charge on a person in respect of his reception of a service in, or in a part of, the United Kingdom include references to imposing charges—

- (a) for his use of the service at a place in the United Kingdom or in that part of it;
- (b) for an entitlement of his to receive it at such place;
- (c) for the use of a facility by means of which he exercises such an entitlement; or
- (d) for the service's being made available for reception by him at such a place.

(6) In subsection (1) “controlled” and “participant” each has the same meaning as in Schedule 2 to the 1990 Act.

(7) In this section “non-representational images” means visual images which are neither still pictures nor comprised within sequences of visual images capable of being seen as moving pictures.

Notes

- ¹ Word substituted by Audiovisual Media Services Regulations 2020/1062 Pt 2(2) reg.17(a) (November 1, 2020: substitution has effect subject to transitional provision specified in SI 2020/1062 Pt 7)
- ² Definition substituted by Broadcasting and Communications (Amendment) Regulations 2013/2217 reg.7 (October 1, 2013)
- ³ Words repealed by Broadcasting (Amendment) (EU Exit) Regulations 2019/224 Sch.1(3) para.28(a) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))
- ⁴ Definition inserted by Broadcasting (Amendment) (EU Exit) Regulations 2019/224 Sch.1(3) para.28(b) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))
- ⁵ Definition inserted by Audiovisual Media Services (Product Placement) Regulations 2010/831 reg.6 (April 16, 2010)
- ⁶ Words substituted by Digital Economy Act 2010 c. 24 s.28(7) (June 8, 2010)
- ⁷ Words inserted by Audiovisual Media Services Regulations 2020/1062 Pt 2(2) reg.17(b) (November 1, 2020: insertion has effect subject to transitional provision specified in SI 2020/1062 Pt 7)
- ⁸ Definition repealed by Audiovisual Media Services Regulations 2009/2979 reg.10 (December 19, 2009)

Commencement

Pt 3 c. 6 s. 362(1)-(1) definition of "the Television without Frontiers Dire": July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.6 (SI 2003/1900 art. 2(1), art. 6, Sch. 1 para. 1)

Pt 3 c. 6 s. 362(2)-(7): July 25, 2003

PART 4

LICENSING OF TV RECEPTION



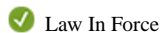
Law In Force

363 Licence required for use of TV receiver

- (1) A television receiver must not be installed or used unless the installation and use of the receiver is authorised by a licence under this Part.
- (2) A person who installs or uses a television receiver in contravention of subsection (1) is guilty of an offence.
- (3) A person with a television receiver in his possession or under his control who—
- (a) intends to install or use it in contravention of subsection (1), or
 - (b) knows, or has reasonable grounds for believing, that another person intends to install or use it in contravention of that subsection,
- is guilty of an offence.
- (4) A person guilty of an offence under this section shall be liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.
- (5) Subsection (1) is not contravened by anything done in the course of the business of a dealer in television receivers solely for one or more of the following purposes—
- (a) installing a television receiver on delivery;
 - (b) demonstrating, testing or repairing a television receiver.
- (6) The Secretary of State may by regulations exempt from the requirement of a licence under subsection (1) the installation or use of television receivers—
- (a) of such descriptions,
 - (b) by such persons,
 - (c) in such circumstances, and
 - (d) for such purposes,
- as may be provided for in the regulations.
- (7) Regulations under subsection (6) may make any exemption for which such regulations provide subject to compliance with such conditions as may be specified in the regulations.

Commencement

Pt 4 s. 363(1)-(7): April 1, 2004 (SI 2003/3142 art. 4(2), Sch. 2 para. 1)



Law In Force

364 TV licences

- (1) A licence for the purposes of section 363 (“a TV licence”)—
- (a) may be issued by the BBC subject to such restrictions and conditions as the BBC think fit; and
 - (b) must be issued subject to such restrictions and conditions as the Secretary of State may require by a direction to the BBC.
- (2) The matters to which the restrictions and conditions subject to which a TV licence may be issued may relate include, in particular—


- (a) the description of television receivers that may be installed and used under the licence;
 - (b) the persons authorised by the licence to install and use a television receiver;
 - (c) the places where the installation and use of the television receiver is authorised by the licence;
 - (d) the circumstances in which the installation and use of such a receiver is so authorised;
 - (e) the purposes for which the installation and use of such a receiver is so authorised;
 - (f) the use of such receiver in a manner that causes, or may cause, interference (within the meaning of [the Wireless Telegraphy Act 2006]¹) with wireless telegraphy.
- (3) The restrictions and conditions subject to which a TV licence may be issued do not include—
- (a) a provision conferring a power of entry to any premises; or
 - (b) a provision prohibited by a direction to the BBC by the Secretary of State.
- (4) A TV licence shall continue in force, unless previously revoked by the BBC, for such period as may be specified in the licence.
- (5) The BBC may revoke or modify a TV licence, or the restrictions or conditions of such a licence—
- (a) by a notice to the holder of the licence; or
 - (b) by a general notice published in such manner as may be specified in the licence.
- (6) It shall be the duty of the BBC to exercise their power under subsection (5) to revoke or modify a TV licence, or any of its restrictions or conditions, if they are directed to do so by the Secretary of State.
- (7) A direction by the Secretary of State under this section may be given either generally in relation to all TV licences (or all TV licences of a particular description) or in relation to a particular licence.
- (8) A notice under subsection (5)(a) must be given—
- (a) in the manner specified in the licence; or
 - (b) if no manner of service is so specified, in the manner authorised by section 394.
- (9) For the purposes of the application, in relation to the giving of such a notice, of—
- (a) section 394; and
 - (b) section 7 of the Interpretation Act 1978 (c. 30) (service by post) in its application for the purposes of that section,
- a person's proper address is any address where he is authorised by a TV licence to install or use a TV receiver or, if there is no such address, his last known address.

Notes

¹ Words substituted by Wireless Telegraphy Act 2006 c. 36 Sch.7 para.29 (February 8, 2007)

Commencement

Pt 4 s. 364(1)-(9)(b): April 1, 2004 (SI 2003/3142 art. 4(2), Sch. 2 para. 1)

 Law In Force

365 TV licence fees

- (1) A person to whom a TV licence is issued shall be liable to pay—
- (a) on the issue of the licence (whether initially or by way of renewal), and

(b) in such other circumstances as regulations made by the Secretary of State may provide, such sum (if any) as may be provided for by any such regulations.

[(1A) Liability to pay a sum under regulations under subsection (1) is subject to any concession applying in accordance with a determination by the BBC under section 365A.]¹

(2) Sums which a person is liable to pay by virtue of regulations under subsection (1) must be paid to the BBC and are to be recoverable by them accordingly.

(3) The BBC are entitled, in such cases as they may determine, to make refunds of sums received by them by virtue of regulations under this section.

(4) Regulations under this section may include provision—

- (a) for the means by which an entitlement to a concession [provided for by the regulations]² must be established; and
- (b) for the payment of sums by means of an instalment scheme set out in the regulations.

(5) [A reference in this section or section 365A to a concession]³ is a reference to any concession under which a person is, on the satisfaction of specified requirements—

- (a) exempted from the liability to pay a sum in respect of a TV licence; or
- (b) required to pay only a reduced sum in respect of such a licence.

[(5A) Regulations under this section may not provide for a concession that requires the person to whom the TV licence is issued, or another person, to be of or above a specified age, unless—

- (a) the age specified is below 65, and
- (b) the requirement is not satisfied if the person concerned is 65 or over at the end of the month in which the licence is issued.

(5B) Subsection (5A) does not apply to—

- (a) the concession provided for by regulation 3(d) of and Schedule 4 to the Communications (Television Licensing) Regulations 2004 (S.I. 2004/692) (accommodation for residential care), or
- (b) a concession in substantially the same form.

] ⁴

(6) The consent of the Treasury shall be required for the making of any regulations under this section by the Secretary of State.

(7) Subject to subsection (8), sums received by the BBC by virtue of any regulations under this section must be paid into the Consolidated Fund.

(8) The BBC may retain, out of the sums received by them by virtue of regulations under this section, any sums they require for making refunds of sums so received.

Notes

¹ Added by Digital Economy Act 2017 c. 30 Pt 6 s.89(3) (June 1, 2020)

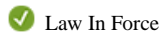
² Words inserted by Digital Economy Act 2017 c. 30 Pt 6 s.89(4) (June 1, 2020)

³ Words substituted by Digital Economy Act 2017 c. 30 Pt 6 s.89(5) (June 1, 2020)

⁴ Added by Digital Economy Act 2017 c. 30 Pt 6 s.89(6) (June 1, 2020)

Commencement

Pt 4 s. 365(1)-(8): April 1, 2004 (SI 2003/3142 art. 4(2), Sch. 2 para. 1)



Law In Force

[365A TV licence fee concessions by reference to age

- (1) For the purposes of section 365(1A) the BBC may determine that a concession in specified terms is to apply.
- (2) Any concession under this section must include a requirement that the person to whom the TV licence is issued, or another person, is of or above a specified age, which must be 65 or higher, at or before the end of the month in which the licence is issued.
- (3) A determination under this section—
- (a) may in particular provide for a concession to apply, subject to subsection (2), in circumstances where a concession has ceased to have effect by virtue of section 365(5A), but
 - (b) may not provide for a concession to apply in the same circumstances as a concession within section 365(5B).
- (4) A determination under this section may include provision for the means by which an entitlement to a concession must be established.
- (5) A determination under this section—
- (a) may make different provision for different cases (including different provision in respect of different areas);
 - (b) may include transitional provision.
- (6) A determination under this section—
- (a) must be in writing;
 - (b) must be published in whatever way the BBC considers appropriate.
- (7) The BBC—
- (a) may vary a determination by a further determination under this section;
 - (b) may determine that a concession is to cease to apply (and accordingly revoke a determination under this section).
- (8) Before making, varying or revoking a determination the BBC must consult any persons it considers appropriate.

] ¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Pt 6 s.89(7) (June 1, 2020)
-



Law In Force

366 Powers to enforce TV licensing

- (1) If a justice of the peace, a sheriff in Scotland or a lay magistrate in Northern Ireland is satisfied by information on oath that there are reasonable grounds for believing—
- (a) that an offence under section 363 has been or is being committed,

(b) that evidence of the commission of the offence is likely to be on premises specified in the information, or in a vehicle so specified, and
(c) that one or more of the conditions set out in subsection (3) is satisfied,
he may grant a warrant under this section.

(2) A warrant under this section is a warrant authorising any one or more persons authorised for the purpose by the BBC or by OFCOM—

- (a) to enter the premises or vehicle at any time (either alone or in the company of one or more constables); and
- (b) to search the premises or vehicle and examine and test any television receiver found there.

(3) Those conditions are—

- (a) that there is no person entitled to grant entry to the premises or vehicle with whom it is practicable to communicate;
- (b) that there is no person entitled to grant access to the evidence with whom it is practicable to communicate;
- (c) that entry to the premises or vehicle will not be granted unless a warrant is produced;
- (d) that the purpose of the search may be frustrated or seriously prejudiced unless the search is carried out by a person who secures entry immediately upon arriving at the premises or vehicle.

(4) A person is not to enter premises or a vehicle in pursuance of a warrant under this section at any time more than one month after the day on which the warrant was granted.

(5) The powers conferred by a warrant under this section on a person authorised by OFCOM are exercisable in relation only to a contravention or suspected contravention of a condition of a TV licence relating to interference with wireless telegraphy.

(6) A person authorised by the BBC, or by OFCOM, to exercise a power conferred by a warrant under this section may (if necessary) use such force as may be reasonable in the exercise of that power.

(7) Where a person has the power by virtue of a warrant under this section to examine or test any television receiver found on any premises, or in any vehicle, it shall be the duty—

- (a) of a person who is on the premises or in the vehicle, and
 - (b) in the case of a vehicle, of a person who has charge of it or is present when it is searched,
- to give the person carrying out the examination or test all such assistance as that person may reasonably require for carrying it out.

(8) A person is guilty of an offence if he—

- (a) intentionally obstructs a person in the exercise of any power conferred on that person by virtue of a warrant under this section; or
- (b) without reasonable excuse, fails to give any assistance that he is under a duty to give by virtue of subsection (7).

(9) A person guilty of an offence under subsection (8) shall be liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

(10) In this section—

“interference”, in relation to wireless telegraphy, has the same meaning as in [the Wireless Telegraphy Act 2006]¹; and

“vehicle” includes vessel, aircraft or hovercraft.

(11) In the application of this section to Scotland, the reference in subsection (1) to information on oath shall have effect as a reference to evidence on oath.

(12) In the application of this section to Northern Ireland, the reference in subsection (1) to a lay magistrate shall have effect, in relation to times before the coming into force of sections 9 and 10 of the Justice (Northern Ireland) Act 2002 (c. 26), as a reference to a justice of the peace.

Notes

¹ Words substituted by Wireless Telegraphy Act 2006 c. 36 Sch.7 para.30 (February 8, 2007)

Commencement


Pt 4 s. 366(1)-(12): April 1, 2004 (SI 2003/3142 art. 4(2), Sch. 2 para. 1)

 Repealed

367 [...] ¹

Notes

¹ Repealed by Enterprise and Regulatory Reform Act 2013 c. 24 Sch.21(1) para.2 (June 25, 2013)

 Law In Force

368 Meanings of “television receiver” and “use”

(1) In this Part “television receiver” means any apparatus of a description specified in regulations made by the Secretary of State setting out the descriptions of apparatus that are to be television receivers for the purposes of this Part.

(2) Regulations under this section defining a television receiver may provide for references to such a receiver to include references to software used in association with apparatus.

[(3) References in this Part to using a television receiver are references to using it for—

- (a) receiving all or any part of any television programme, or
- (b) receiving all or any part of a programme included in an on-demand programme service which is provided by the BBC,

and that reference to the provision of an on-demand programme service by the BBC is to be read in accordance with section 368R(5) and (6).

] ¹

(4) The power to make regulations under this section defining a television receiver includes power to modify subsection (3).

Notes

¹ Substituted by Communications (Television Licensing) (Amendment) Regulations 2016/704 reg.9(1) (September 1, 2016: substitution has effect subject to SI 2016/704 reg.9(2))

Commencement

Pt 4 s. 368(1)-(4): April 1, 2004 (SI 2003/3142 art. 4(2), Sch. 2 para. 1)

[PART 4A**ON-DEMAND PROGRAMME SERVICES**

] ¹

Notes

¹ Added by Audiovisual Media Services Regulations 2009/2979 reg.2 (December 19, 2009)

[Preliminary] ¹

Notes

¹ Added by Audiovisual Media Services Regulations 2009/2979 reg.2 (December 19, 2009)

✓ Law In Force

[368ZA Audiovisual programmes

This Part applies in relation to the provision of programmes with or without sounds which consist of moving or still images, or of legible text, or of a combination of those things.] ¹

Notes

¹ Added by Audiovisual Media Services Regulations 2020/1062 Pt 3 reg.22 (November 1, 2020: insertion has effect subject to transitional provision specified in SI 2020/1062 Pt 7)

✓ Law In Force

[368A Meaning of “on-demand programme service”

(1) For the purposes of this Act, a service [(or a dissociable section of a service)] ² is an “on-demand programme service” if—

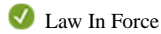
- (a) its principal purpose is the provision of programmes [(as described in section 368ZA)] ³
;
- (b) access to it is on-demand;
- (c) there is a person who has editorial responsibility for it;
- (d) it is made available by that person for use by members of the public; [...] ⁴
[(e) that person's head office is in the United Kingdom; and
- (f) editorial decisions about the service are taken in the United Kingdom.] ⁵

- (2) Access to a service [(or dissociable section of a service)]⁶ is on-demand if—
- (a) the service [(or dissociable section of the service)]⁷ enables the user to view, at a time chosen by the user, programmes selected by the user from among the programmes included in the service [(or dissociable section of the service)]⁷; and
 - (b) the programmes viewed by the user are received by the user by means of an electronic communications network (whether before or after the user has selected which programmes to view).
- (3) For the purposes of subsection (2)(a), the fact that a programme may be viewed only within a period specified by the provider of the service [(or dissociable section of the service)]⁸ does not prevent the time at which it is viewed being one chosen by the user.
- (4) A person has editorial responsibility for a service [(or dissociable section of a service)]⁹ if that person has general control—
- (a) over what programmes are included in the range of programmes offered to users; and
 - (b) over the manner in which the programmes are organised in that range;
- and the person need not have control of the content of individual programmes or of the broadcasting or distribution of the service [(or dissociable section of the service)]¹⁰ (and see section 368R(6)).
- (5) If an on-demand programme service (“the main service”) offers users access to a relevant ancillary service, the relevant ancillary service is to be treated for the purposes of this Part as a part of the main service.
- (6) In subsection (5), “relevant ancillary service” means a service or facility that consists of or gives access to assistance for disabled people in relation to some or all of the programmes included in the main service.
- (7) In this section “assistance for disabled people” has the same meaning as in Part 3.
-]

Notes

- ¹ Added by Audiovisual Media Services Regulations 2009/2979 reg.2 (December 19, 2009)
- ² Words inserted by Audiovisual Media Services Regulations 2020/1062 Pt 3 reg.23(a)(i) (November 1, 2020: insertion has effect subject to transitional provision specified in SI 2020/1062 Pt 7)
- ³ Words substituted by Audiovisual Media Services Regulations 2020/1062 Pt 3 reg.23(a)(ii) (November 1, 2020: substitution has effect subject to transitional provision specified in SI 2020/1062 Pt 7)
- ⁴ Word repealed by Broadcasting (Amendment) (EU Exit) Regulations 2019/224 Sch.1(3) para.29(a) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))
- ⁵ S.368A(e) and (f) substituted for s.368A(e) by Broadcasting (Amendment) (EU Exit) Regulations 2019/224 Sch.1(3) para.29(b) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))
- ⁶ Words inserted by Audiovisual Media Services Regulations 2020/1062 Pt 3 reg.23(b)(i) (November 1, 2020: insertion has effect subject to transitional provision specified in SI 2020/1062 Pt 7)
- ⁷ Words inserted by Audiovisual Media Services Regulations 2020/1062 Pt 3 reg.23(b)(ii) (November 1, 2020: insertion has effect subject to transitional provision specified in SI 2020/1062 Pt 7)
- ⁸ Words inserted by Audiovisual Media Services Regulations 2020/1062 Pt 3 reg.23(c) (November 1, 2020: insertion has effect subject to transitional provision specified in SI 2020/1062 Pt 7)
- ⁹ Words inserted by Audiovisual Media Services Regulations 2020/1062 Pt 3 reg.23(d)(i) (November 1, 2020: insertion has effect subject to transitional provision specified in SI 2020/1062 Pt 7)

¹⁰ Words inserted by Audiovisual Media Services Regulations 2020/1062 Pt 3 reg.23(d)(ii) (November 1, 2020: insertion has effect subject to transitional provision specified in SI 2020/1062 Pt 7)



[368B The appropriate regulatory authority

[(A1) OFCOM is the appropriate regulatory authority for all purposes of this Part in relation to the BBC (and, in relation to the BBC, OFCOM may not designate any other body to be the appropriate regulatory authority for any of those purposes).]²

(1) OFCOM may designate any body corporate to be, to the extent provided by the designation, the appropriate regulatory authority for the purposes of any provision of this Part, subject to [subsections (A1) and (9)]³ .

(2) To the extent that no body is designated for a purpose, OFCOM is the appropriate regulatory authority for that purpose.

(3) Where a body is designated for a purpose, OFCOM may act as the appropriate regulatory authority for that purpose concurrently with or in place of that body.

(4) OFCOM may provide a designated body with assistance in connection with any of the functions of the body under this Part.

(5) A designation may in particular—

(a) provide for a body to be the appropriate regulatory authority in relation to on-demand programme services of a specified description;

(b) provide that a function of the appropriate regulatory authority is exercisable by the designated body—

(i) to such extent as may be specified;

(ii) either generally or in such circumstances as may be specified; and

(iii) either unconditionally or subject to such conditions as may be specified.

(6) The conditions that may be specified pursuant to subsection [(5)(b)(iii)]⁴ include a condition to the effect that a function may, generally or in specified circumstances, be exercised by the body only with the agreement of OFCOM.

(7) A designation has effect for such period as may be specified and may be revoked by OFCOM at any time.

(8) OFCOM must publish any designation 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.

(9) OFCOM may not designate a body unless, as respects that designation, they are satisfied that the body—

(a) is a fit and proper body to be designated;

(b) has consented to being designated;

(c) has access to financial resources that are adequate to ensure the effective performance of its functions as the appropriate regulatory authority;

(d) is sufficiently independent of providers of on-demand programme services; and

(e) will, in performing any function to which the designation relates, have regard in all cases—

- (i) to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed; and
- (ii) to such of the matters mentioned in section 3(4) as appear to the body to be relevant in the circumstances.

(10) Subject to any enactment or rule of law restricting the disclosure or use of information by OFCOM or by a designated body—

- (a) a designated body may supply information to another designated body for use by that other body in connection with any of its functions as the appropriate regulatory authority;
- (b) a designated body may supply information to OFCOM for use by OFCOM in connection with any of their functions under this Part;
- (c) OFCOM may supply information to a designated body for use by that body in connection with any of its functions as the appropriate regulatory authority [;]⁵
- [(d) OFCOM may supply information to the video works authority, within the meaning of section 368E, for use by the video works authority in connection with functions of OFCOM as the appropriate regulatory authority;
- (e) a designated body may supply information to the video works authority, within the meaning of section 368E, for use by the video works authority in connection with functions of the designated body as the appropriate regulatory authority.]⁵

(11) In carrying out their functions as the appropriate regulatory authority, a designated body may carry out, commission or support (financially or otherwise) research.

(12) In this section—

- “designation” means a designation under this section and cognate expressions are to be construed accordingly;
- “specified” means specified in a designation.

] ¹

Notes

- ¹ Added by Audiovisual Media Services Regulations 2009/2979 reg.2 (December 19, 2009)
 - ² Added by Audiovisual Media Services Regulations 2020/1062 Pt 3 reg.24(a) (November 1, 2020: insertion has effect subject to transitional provision specified in SI 2020/1062 Pt 7)
 - ³ Words substituted by Audiovisual Media Services Regulations 2020/1062 Pt 3 reg.24(b) (November 1, 2020: substitution has effect subject to transitional provision specified in SI 2020/1062 Pt 7)
 - ⁴ Word substituted by Audiovisual Media Services Regulations 2010/419 reg.3(2) (March 18, 2010)
 - ⁵ Added by Audiovisual Media Services Regulations 2014/2916 reg.3 (December 1, 2014)
-

[List of providers]¹

Notes

- ¹ Added by Audiovisual Media Services Regulations 2020/1062 Pt 3 reg.25 (November 1, 2020: insertion has effect subject to transitional provision specified in SI 2020/1062 Pt 7)
-

**[368BZA Maintenance of list of providers**

(1) OFCOM must establish and maintain an up to date list of persons providing an on-demand programme service.

(2) The list must indicate in respect of each person which of the criteria set out in paragraphs 2 to 5 of Article 2 of the Audiovisual Media Services Directive is the basis for the decision that they are under the jurisdiction of the United Kingdom (see section 368A(1)(e)).

(3) OFCOM must notify the European Commission of the contents of the list and of any updates to it.

] ¹

Notes

¹ Added by Audiovisual Media Services Regulations 2020/1062 Pt 3 reg.25 (November 1, 2020: insertion has effect subject to transitional provision specified in SI 2020/1062 Pt 7)

Proposed Draft Amendments

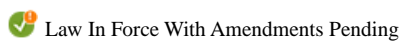
Pt 4A s. 368BZA(2): repealed by Audiovisual Media Services (Amendment) Regulations 2021 (Draft) reg. 6(a) (Published, February 26, 2021) (date to be appointed)

Pt 4A s. 368BZA(3): substituted by Audiovisual Media Services (Amendment) Regulations 2021 (Draft) reg. 6(b) (Published, February 26, 2021) (date to be appointed)

[Notification by providers] ¹

Notes

¹ Added by Audiovisual Media Services Regulations 2010/419 reg.4 (March 18, 2010)

**[368BA Advance notification to appropriate regulatory authority**

(1) A person must not provide an on-demand programme service unless, before beginning to provide it, that person has given a notification to the appropriate regulatory authority of the person's intention to provide that service.

(2) A person who has given a notification for the purposes of subsection (1) must, before—

(a) providing the notified service with any significant differences; or

(b) ceasing to provide it,

give a notification to the appropriate regulatory authority of the differences or (as the case may be) of an intention to cease to provide the service.

(3) A notification for the purposes of this section must—

- (a) be sent to the appropriate regulatory authority in such manner as the authority may require; and
- (b) contain all such information as the authority may require.

[(4) In this section, "significant differences" includes any change that may affect the determination of jurisdiction in accordance with paragraphs 2, 3 and 4 of Article 2 of the Audiovisual Media Services Directive.]²
]¹


Notes

¹ Added by Audiovisual Media Services Regulations 2010/419 reg.4 (March 18, 2010)

² Added by Audiovisual Media Services Regulations 2020/1062 Pt 3 reg.26 (April 6, 2021: insertion has effect subject to transitional provision specified in SI 2020/1062 Pt 7)

Proposed Draft Amendments

Pt 4A s. 368BA(4): words substituted by Audiovisual Media Services (Amendment) Regulations 2021 (Draft) reg. 7 (Published, February 26, 2021) (April 6, 2021)

 Law In Force

[368BB Enforcement of section 368BA

- (1) Where the appropriate regulatory authority determine that the provider of an on-demand programme service has contravened section 368BA, they may do one or both of the following—
 - (a) give the provider an enforcement notification under this section;
 - (b) impose a penalty on the provider in accordance with section 368J.
- (2) The appropriate regulatory authority must not make a determination as mentioned in subsection (1) unless there are reasonable grounds for believing that a contravention of section 368BA has occurred and they have allowed the provider an opportunity to make representations about that apparent contravention.
- (3) An enforcement notification under this section is a notification which specifies the determination made as mentioned in subsection (1) and imposes a requirement on the provider to take all such steps for remedying the contravention of section 368BA as may be specified in the notification.
- (4) An enforcement notification must—
 - (a) include reasons for the appropriate regulatory authority's decision to give the enforcement notification, and
 - (b) fix a reasonable period for taking the steps required by the notification.
- (5) It is the duty of a person to whom an enforcement notification has been given to comply with it.
- (6) That duty is enforceable in civil proceedings by the appropriate regulatory authority—
 - (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.

] ¹


Notes

¹ Added by Audiovisual Media Services Regulations 2010/419 reg.4 (March 18, 2010)

[Accessibility] ¹

Notes

¹ Added by Digital Economy Act 2017 c. 30 Pt 6 s.93(2) (July 31, 2017)

 Law In Force

[368BC Accessibility for people with disabilities

(1) The Secretary of State may by regulations impose requirements on providers of on-demand programme services for the purpose of ensuring that [such services] ² are accessible to people with disabilities [, including, in particular, people with disabilities affecting their sight or hearing, or both] ³ .

(2) The requirements that may be imposed include—

- (a) requirements for programmes included in the services to be accompanied by subtitling;
- (b) requirements for such programmes to be accompanied by audio-description for the blind;
- (c) requirements for such programmes to be presented in, or translated into, sign language [;] ⁴

[(d) requirements for providers of on-demand programme services to report annually to the appropriate regulatory authority about the accessibility of such services.] ⁴

(3) The steps set out in subsections (4) to (6) must be taken before regulations are made under this section.

(4) The Secretary of State must ask the appropriate regulatory authority to consult such persons as appear to the authority likely to be affected by regulations under this section, including—

- (a) providers of on-demand programme services, and
- (b) representatives of people with disabilities [...] ⁵ .

(5) The appropriate regulatory authority must inform the Secretary of State of—

- (a) the outcome of the consultation, and
- (b) any other matters that they think should be taken into account by the Secretary of State for the purposes of the regulations.


(6) Where OFCOM are not the appropriate regulatory authority, the Secretary of State must consult OFCOM.

(7) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

] ¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Pt 6 s.93(2) (July 31, 2017)
- ² Words substituted by Audiovisual Media Services Regulations 2020/1062 Pt 3 reg.27(a)(i) (November 1, 2020: substitution has effect subject to transitional provision specified in SI 2020/1062 Pt 7)
- ³ Words substituted by Audiovisual Media Services Regulations 2020/1062 Pt 3 reg.27(a)(ii) (November 1, 2020: substitution has effect subject to transitional provision specified in SI 2020/1062 Pt 7)
- ⁴ Added by Audiovisual Media Services Regulations 2020/1062 Pt 3 reg.27(b) (November 1, 2020: insertion has effect subject to transitional provision specified in SI 2020/1062 Pt 7)
- ⁵ Words repealed by Audiovisual Media Services Regulations 2020/1062 Pt 3 reg.27(c) (November 1, 2020: repeal has effect subject to transitional provision specified in SI 2020/1062 Pt 7)
-

 Law In Force

[368BD Enforcement of regulations under section 368BC

(1) Where the appropriate regulatory authority determine that a provider of an on-demand programme service is contravening or has contravened regulations under section 368BC, they may do one or both of the following—

- (a) give the provider an enforcement notification under this section;
- (b) impose a penalty on the provider in accordance with section 368J.

(2) The appropriate regulatory authority must not make a determination as mentioned in subsection (1) unless there are reasonable grounds for believing that a contravention of the regulations is occurring or has occurred and they have allowed the provider an opportunity to make representations about that apparent contravention.

(3) An enforcement notification under this section is a notification which specifies the determination made as mentioned in subsection (1) and imposes a requirement on the provider to take all such steps for complying with the regulations and for remedying the consequences of the contravention of the regulations as may be specified in the notification.

(4) An enforcement notification must—

- (a) include reasons for the appropriate regulatory authority's decision to give the enforcement notification, and
- (b) fix a reasonable period for taking the steps required by the notification.

(5) It is the duty of a provider to whom an enforcement notification is given to comply with it.

(6) That duty is enforceable in civil proceedings by the appropriate regulatory authority—

- (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) If a provider to whom an enforcement notification has been given does not comply with it within the period fixed by the appropriate regulatory authority in that enforcement notification the appropriate regulatory authority may impose a financial penalty on the provider in accordance with section 368J."


] ¹**Notes**

¹ Added by Digital Economy Act 2017 c. 30 Pt 6 s.93(2) (July 31, 2017)

[Duties of the appropriate regulatory authority] ¹

Notes

¹ Added by Audiovisual Media Services Regulations 2009/2979 reg.2 (December 19, 2009)

 Law In Force

[368C Duties of the appropriate regulatory authority

(1) It is the duty of the appropriate regulatory authority to take such steps as appear to them best calculated to secure that every provider of an on-demand programme service complies with the requirements of [sections 368CB and 368D] ².

[(2) The appropriate regulatory authority must encourage providers of on-demand programme services to develop accessibility action plans with a view to continuously and progressively making such services more accessible to people with disabilities.

(2A) The appropriate regulatory authority must provide a single, easily accessible (including by people with disabilities), online point of contact for providing information and receiving complaints regarding accessibility of on-demand programme services to people with disabilities.] ³

(3) [...] ⁴

(4) The appropriate regulatory authority must encourage providers of on-demand programme services to develop codes of conduct regarding standards concerning the appropriate promotion of food or beverages by sponsorship of, or in advertising which accompanies or is included in, children's programmes.

[(5) The appropriate regulatory authority must draw up, and from time to time review and revise, guidance for providers of on-demand programme services concerning measures that may be appropriate for the purposes of section 368E(4) (ensuring specially restricted material is not available to under-18s).] ⁵

] ¹**Notes**


¹ Added by Audiovisual Media Services Regulations 2009/2979 reg.2 (December 19, 2009)

² Words substituted by Audiovisual Media Services Regulations 2020/1062 Pt 3 reg.28(a) (November 1, 2020: substitution has effect subject to transitional provision specified in SI 2020/1062 Pt 7)

³ S.368C(2) and (2A) substituted for s.368C(2) by Audiovisual Media Services Regulations 2020/1062 Pt 3 reg.28(b) (November 1, 2020: substitution has effect subject to transitional provision specified in SI 2020/1062 Pt 7)

⁴ Repealed by Audiovisual Media Services Regulations 2020/1062 Pt 3 reg.28(c) (November 1, 2020: repeal has effect subject to transitional provision specified in SI 2020/1062 Pt 7)

- ⁵ Added by Audiovisual Media Services Regulations 2020/1062 Pt 3 reg.28(d) (November 1, 2020: insertion has effect subject to transitional provision specified in SI 2020/1062 Pt 7)
-

 Law In Force

[368CA Code on accessibility for people with disabilities

(1) It is the duty of the appropriate regulatory authority to draw up, and from time to time review and revise, a code giving guidance as to—

- (a) the steps to be taken by providers of on-demand programme services so as to meet the requirements of regulations under section 368BC, and
- (b) other steps to be taken by providers who are subject to requirements under the regulations to ensure that [on-demand programme services]² are made progressively more accessible to people with disabilities [...]³ .

(2) The appropriate regulatory authority must publish the code drawn up under this section, and every revision of it, in such manner as, having regard to the need to make the code or revision accessible to [people with disabilities, in particular]⁴ —

- (a) persons who are deaf or hard of hearing,
- (b) persons who are blind or partially sighted, and
- (c) persons with a dual sensory impairment,

they consider appropriate.

] ¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Pt 6 s.93(4) (July 31, 2017)
 - ² Words substituted by Audiovisual Media Services Regulations 2020/1062 Pt 3 reg.29(a)(i) (November 1, 2020: substitution has effect subject to transitional provision specified in SI 2020/1062 Pt 7)
 - ³ Words repealed by Audiovisual Media Services Regulations 2020/1062 Pt 3 reg.29(a)(ii) (November 1, 2020: repeal has effect subject to transitional provision specified in SI 2020/1062 Pt 7)
 - ⁴ Words inserted by Audiovisual Media Services Regulations 2020/1062 Pt 3 reg.29(b) (November 1, 2020: insertion has effect subject to transitional provision specified in SI 2020/1062 Pt 7)
-

[Duties of service providers]¹

Notes

- ¹ Added by Audiovisual Media Services Regulations 2009/2979 reg.2 (December 19, 2009)
-

 Law In Force With Amendments Pending

[368CB.— Quota for European works

(1) A person providing an on-demand programme service must secure that, in each year, on average at least 30% of the programmes included in the service are European works.

(2) A person providing an on-demand programme service must ensure the prominence of European works in the service.

(3) Subsections (1) and (2) do not apply to a person providing an on-demand programme service in relation to any period throughout which—

- (a) the service has a low turnover or a low audience, or
- (b) it is impracticable or unjustified for those subsections to apply because of the nature or theme of the service.

(4) An exemption under subsection (3)(b) is at the discretion of the appropriate regulatory authority.

(5) Where a person does not provide an on-demand programme service for a whole year, compliance with subsection (1) is to be assessed in relation to the period in that year during which the person does provide the service.

(6) In assessing a provider's compliance with subsection (1), any period for which an exemption under subsection (3)(a) or (b) applies to the provider is to be discounted.

(7) In this section—

"European works" has the same meaning as in the Audiovisual Media Services Directive (see Article 1(1)(n), (2) and (3) of that Directive) and includes works deemed to be European works by Article 1(4) of that Directive;

"programmes" does not include advertisements, news programmes, sports events, games, teletext services or teleshopping.

(8) This section is to be interpreted in accordance with the Communication from the European Commission (2020/C223/03) "Guidelines pursuant to Article 13(7) of the Audiovisual Media Services Directive on the calculation of the share of European works in on-demand catalogues and on the definition of low audience and low turnover" published in Volume 63 of the Official Journal of the European Union on 7 July 2020².

] ¹

Notes

¹ Added by Audiovisual Media Services Regulations 2020/1062 Pt 3 reg.30 (November 1, 2020: insertion has effect subject to transitional provision specified in SI 2020/1062 Pt 7)

² OJ No. C 223, 7.7.2020, p. 10.

Proposed Draft Amendments

Pt 4A s. 368CB(7) definition of "European works": words inserted by Audiovisual Media Services (Amendment) Regulations 2021 (Draft) reg. 8(a) (Published, February 26, 2021) (date to be appointed)

Pt 4A s. 368CB(8): words inserted by Audiovisual Media Services (Amendment) Regulations 2021 (Draft) reg. 8(b) (Published, February 26, 2021) (date to be appointed)



[368D Duties of service providers

(1) The provider of an on-demand programme service must ensure that the service complies with the requirements of [368E(1) and (2) and 368F to 368H]².

(2) The provider of an on-demand programme service (“P”) must supply the following information to users of the service—

- (a) P's name;
- (b) P's address;
- (c) P's electronic address;

[(ca) a statement that P is under the jurisdiction of the United Kingdom for the purposes of the Audiovisual Media Services Directive;]³

(d) the name, address and electronic address of any body which is the appropriate regulatory authority for any purpose in relation to P or [the on-demand programme service]⁴ that P provides.

(3) The provider of an on-demand programme service must—

[(zza) provide the appropriate regulatory authority with a copy of any accessibility action plan drawn up by the provider as mentioned in section 368C(2);]⁵

[(za) pay to the appropriate regulatory authority such fee as that authority may require under section 368NA;

(zb) retain a copy of every programme included in the service for at least forty-two days after the day on which the programme ceases to be available for viewing;]⁶

(a) comply with any requirement under section 368O (provision of information);

(b) co-operate fully with the appropriate authority for any purpose within section 368O(2) or (3).

[(3A) A copy of a programme retained for the purposes of subsection (3)(zb) must be of a standard and in a format which allows the programme to be viewed as it was made available for viewing.]⁷

(4) In this section “electronic address” means an electronic address to which users may send electronic communications, and includes any number or address used for the purposes of receiving such communications.

] ¹

Notes

¹ Added by Audiovisual Media Services Regulations 2009/2979 reg.2 (December 19, 2009)

² Words substituted by Audiovisual Media Services Regulations 2020/1062 Pt 3 reg.31(a) (November 1, 2020: substitution has effect subject to transitional provision specified in SI 2020/1062 Pt 7)

³ Added by Audiovisual Media Services Regulations 2020/1062 Pt 3 reg.31(b)(i) (November 1, 2020: insertion has effect subject to transitional provision specified in SI 2020/1062 Pt 7)

⁴ Words substituted by Audiovisual Media Services Regulations 2020/1062 Pt 3 reg.31(b)(ii) (November 1, 2020: substitution has effect subject to transitional provision specified in SI 2020/1062 Pt 7)


⁵ Added by Audiovisual Media Services Regulations 2020/1062 Pt 3 reg.31(c) (November 1, 2020: insertion has effect subject to transitional provision specified in SI 2020/1062 Pt 7)

⁶ Added by Audiovisual Media Services Regulations 2010/419 reg.5 (March 18, 2010)

⁷ Possible drafting error - s.368D(3A) is purportedly inserted before s.368D(3)(a) but instead has been inserted after s.368D(3)(b) in order to preserve the logical numbering of the provision by Audiovisual Media Services Regulations 2010/419 reg.5 (March 18, 2010)

Proposed Draft Amendments

Pt 4A s. 368D(2)(a): words substituted by Audiovisual Media Services (Amendment) Regulations 2021 (Draft) reg. 9 (Published, February 26, 2021) (date to be appointed)

 Law In Force With Amendments Pending

[368E Harmful material

(1) An on-demand programme service must not contain any material likely to incite [violence or hatred against a group of persons or a member of a group of persons based on any of the grounds referred to in Article 21 of the Charter of Fundamental Rights of the European Union of 7 December 2000, as adopted at Strasbourg on 12 December 2007³.]²

[(2) An on-demand programme service must not contain any prohibited material.

(3) “Prohibited material” means—

[(za) material the inclusion of which in an on-demand programme service would be conduct required by any of the following to be punishable as a criminal offence—

(i) Article 5 of Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism⁶,

(ii) Article 5(4) of Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography⁷, or

(iii) Article 1 of Council Framework Decision (2008/913/JHA) of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law⁸,

] ⁵

(a) a video work which the video works authority has determined for the purposes of the 1984 Act not to be suitable for a classification certificate to be issued in respect of it, or

(b) material whose nature is such that it is reasonable to expect that, if the material were contained in a video work submitted to the video works authority for a classification certificate, the video works authority would determine for those purposes that the video work was not suitable for a classification certificate to be issued in respect of it.

[(4) A person providing an on-demand programme service must take appropriate measures to ensure that any specially restricted material is made available by the service in a manner which secures that persons under the age of 18 will not normally see or hear it.

(4A) The measures are to be proportionate to the potential of the material to harm the physical, mental or moral development of such persons.]⁹

(5) “Specially restricted material” means—

(a) a video work in respect of which the video works authority has issued a R18 classification certificate,

(b) material whose nature is such that it is reasonable to expect that, if the material were contained in a video work submitted to the video works authority for a classification certificate, the video works authority would issue a R18 classification certificate, or

(c) other material that might [...] ¹⁰ impair the physical, mental or moral development of persons under the age of 18.

(6) In determining whether any material falls within subsection (3)(b) or (5)(b), regard must be had to any guidelines issued by the video works authority as to its policy in relation to the issue of classification certificates.

(7) In this section—

“the 1984 Act” means the Video Recordings Act 1984;

“classification certificate” has the same meaning as in the 1984 Act (see section 7 of that Act);

“R18 classification certificate” means a classification certificate containing the statement mentioned in section 7(2)(c) of the 1984 Act that no video recording containing the video work is to be supplied other than in a licensed sex shop;

“the video works authority” means the person or persons designated under section 4(1) of the 1984 Act as the authority responsible for making arrangements in respect of video works other than video games;

“video work” has the same meaning as in the 1984 Act (see section 1(2) of that Act).

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] ¹

Notes

- ¹ Added by Audiovisual Media Services Regulations 2009/2979 reg.2 (December 19, 2009)
- ² Words substituted by Audiovisual Media Services Regulations 2020/1062 Pt 3 reg.32(a) (November 1, 2020: substitution has effect subject to transitional provision specified in SI 2020/1062 Pt 7)
- ³ OJ No. C 303, 14.12.2007, p.1.
- ⁴ S.368E(2)-(7) substituted for s.368E(2) by Audiovisual Media Services Regulations 2014/2916 reg.2 (December 1, 2014)
- ⁵ Added by Audiovisual Media Services Regulations 2020/1062 Pt 3 reg.32(b) (November 1, 2020: insertion has effect subject to transitional provision specified in SI 2020/1062 Pt 7)
- ⁶ OJ No. L 88, 31.3.2017, p. 6.
- ⁷ OJ No. L 335, 17.12.2011, p. 1.
- ⁸ OJ No. L 328, 6.12.2008, p. 55.
- ⁹ S.368E(4) and (4A) substituted for s.368E(4) by Audiovisual Media Services Regulations 2020/1062 Pt 3 reg.32(c) (November 1, 2020: substitution has effect subject to transitional provision specified in SI 2020/1062 Pt 7)
- ¹⁰ Word repealed by Audiovisual Media Services Regulations 2020/1062 Pt 3 reg.32(d) (November 1, 2020: repeal has effect subject to transitional provision specified in SI 2020/1062 Pt 7)

Amendments Pending

Pt 4A s. 368E(7) definition of "18 certificate": definition inserted by Digital Economy Act 2017 c. 30, Pt 6 s. 94(5) (date to be appointed)

Pt 4A s. 368E(6): words inserted by Digital Economy Act 2017 c. 30, Pt 6 s. 94(4) (date to be appointed)

Pt 4A s. 368E(5)(d)-(e): added by Digital Economy Act 2017 c. 30, Pt 6 s. 94(3) (date to be appointed)

Pt 4A s. 368E(5)(b): word repealed by Digital Economy Act 2017 c. 30, Pt 6 s. 94(2) (date to be appointed)

Proposed Draft Amendments

Pt 4A s. 368E(1): words substituted by Audiovisual Media Services (Amendment) Regulations 2021 (Draft) reg. 10(a) (Published, February 26, 2021) (date to be appointed)

Pt 4A s. 368E(3)(zza): added by Audiovisual Media Services (Amendment) Regulations 2021 (Draft) reg. 10(b) (Published, February 26, 2021) (date to be appointed)

Pt 4A s. 368E(3)(za): words substituted by Audiovisual Media Services (Amendment) Regulations 2021 (Draft) reg. 10(c)(i) (Published, February 26, 2021) (date to be appointed)

Pt 4A s. 368E(3)(za)(i): repealed by Audiovisual Media Services (Amendment) Regulations 2021 (Draft) reg. 10(c)(ii) (Published, February 26, 2021) (date to be appointed)

✓ Law In Force

[368F Advertising

(1) Advertising of the following products is prohibited in on-demand programme services—

- (a) cigarettes or other tobacco products;
- [(aa) electronic cigarettes or electronic cigarette refill containers;]²
- (b) any prescription-only medicine.

[(2) Advertising of alcoholic drinks is only permitted in on-demand programme services if—

- (a) it is not aimed specifically at persons under the age of eighteen, nor does it, in particular, depict such persons consuming alcoholic drinks;
- (b) it does not link the consumption of alcohol to enhanced physical performance or to driving;
- (c) it does not create the impression that the consumption of alcohol contributes towards social or sexual success;
- (d) it does not claim that alcohol has therapeutic qualities or that it is a stimulant, a sedative or a means of resolving personal conflicts;
- (e) it does not encourage immoderate consumption of alcohol or present abstinence or moderation in a negative light; and
- (f) it does not place emphasis on high alcoholic content as being a positive quality of alcoholic drinks.

] ³

(3) Advertising included in an on-demand programme service—

- (a) must be readily recognisable as such, and
- (b) must not use techniques which exploit the possibility of conveying a message subliminally or surreptitiously.

(4) Advertising included in an on-demand programme service must not—


- (a) prejudice respect for human dignity;
- (b) include or promote discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation;
- (c) encourage behaviour prejudicial to health or safety;
- (d) encourage behaviour grossly prejudicial to the protection of the environment;
- (e) cause physical [, mental] ⁴ or moral detriment to persons under the age of eighteen;

- (f) directly exhort such persons to purchase or rent goods or services in a manner which exploits their inexperience or credulity;
- (g) directly encourage such persons to persuade their parents or others to purchase or rent goods or services;
- (h) exploit the trust of such persons in parents, teachers or others; or
- (i) unreasonably show such persons in dangerous situations.

] ¹

Notes

- ¹ Added by Audiovisual Media Services Regulations 2009/2979 reg.2 (December 19, 2009)
- ² Added by Tobacco and Related Products Regulations 2016/507 Pt 7 reg.46(2) (May 20, 2016: insertion has effect subject to saving specified in SI 2016/507 reg.57)
- ³ Substituted by Audiovisual Media Services Regulations 2020/1062 Pt 3 reg.33(a) (November 1, 2020: substitution has effect subject to transitional provision specified in SI 2020/1062 Pt 7)
- ⁴ Word inserted by Audiovisual Media Services Regulations 2020/1062 Pt 3 reg.33(b) (November 1, 2020: insertion has effect subject to transitional provision specified in SI 2020/1062 Pt 7)

 Law In Force

[368G Sponsorship

- (1) An on-demand programme service or a programme included in an on-demand programme service must not be sponsored—
- (a) for the purpose of promoting cigarettes or other tobacco products, or
 - (b) by an undertaking whose principal activity is the manufacture or sale of cigarettes or other tobacco products.

- [(1A) An on-demand programme service or a programme included in an on-demand programme service must not be sponsored—
- (a) for the purpose of promoting electronic cigarettes or electronic cigarette refill containers, or
 - (b) by an undertaking whose principal activity is the manufacture or sale of electronic cigarettes or electronic cigarette refill containers.

] ²

- (2) An on-demand programme service or a programme included in an on-demand programme service must not be sponsored for the purpose of promoting a [prescription-only] ³ medicine.
- (3) An on-demand programme service may not include a news programme or current affairs programme that is sponsored.
- (4) Subsections (5) to (11) apply to an on-demand programme service that is sponsored or that includes any programme that is sponsored.
- (5) The sponsoring of a service or programme must not influence the content of that service or programme in a way that affects the editorial independence of the provider of the service.
- (6) Where a service or programme is sponsored for the purpose of promoting goods or services, the sponsored service or programme and sponsorship announcements relating to it must not directly

encourage the purchase or rental of the goods or services, whether by making promotional reference to them or otherwise.

(7) Where a service or programme is sponsored for the purpose of promoting an alcoholic drink, the service or programme and sponsorship announcements relating to it must not—

- (a) be aimed specifically at persons under the age of eighteen; or
- (b) encourage the immoderate consumption of such drinks.

(8) A sponsored service must clearly inform users of the existence of a sponsorship agreement.

(9) The name of the sponsor and the logo or other symbol (if any) of the sponsor must be displayed at the beginning or end of a sponsored programme.

(10) Techniques which exploit the possibility of conveying a message subliminally or surreptitiously must not be used in a sponsorship announcement.

(11) A sponsorship announcement must not—

- (a) prejudice respect for human dignity;
- (b) include or promote discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation;
- (c) encourage behaviour prejudicial to health or safety;
- (d) encourage behaviour grossly prejudicial to the protection of the environment;
- (e) cause physical [, mental]⁴ or moral detriment to persons under the age of eighteen; [(ea) directly exhort such persons to purchase or rent goods or services in a manner which exploits their inexperience or credulity;]⁵
- (f) directly encourage such persons to persuade their parents or others to purchase or rent goods or services;
- (g) exploit the trust of such persons in parents, teachers or others; or
- (h) unreasonably show such persons in dangerous situations.

(12) For the purposes of this Part a programme included in an on-demand programme service is “sponsored” if a person (“the sponsor”) other than—

- (a) the provider of that service, or
- (b) the producer of that programme,

has met some or all of the costs of the programme for the purpose of promoting the name, trademark, image, activities, services or products of the sponsor or of another person.

(13) But a programme is not sponsored if it falls within this section only by virtue of the inclusion of product placement (see section 368H(1)) or prop placement (see section 368H(2)).

(14) For the purposes of subsection (12) a person meets some or all of the costs of a programme included in a service only if that person makes a payment or provides other resources for the purpose of meeting or saving some or all of the costs of—

- (a) producing that programme;
- (b) transmitting that programme; or
- (c) making that programme available as part of the service.

(15) For the purposes of this Part an on-demand programme service is “sponsored” if a person (“the sponsor”) other than the provider of the service has met some or all of the costs of providing the service for the purpose of promoting the name, trademark, image, activities, services or products of the sponsor or another person.

(16) For the purposes of subsection (15) a person is not to be taken to have met some or all of the costs of providing a service only because a programme included in the service is sponsored by that person.

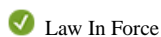
(17) In this section a “sponsorship announcement” means —

- (a) anything included for the purpose of complying with subsection (8) or (9), and
- (b) anything included at the same time as or otherwise in conjunction with anything within paragraph (a).

] ¹

Notes

- ¹ Added by Audiovisual Media Services Regulations 2009/2979 reg.2 (December 19, 2009)
- ² Substituted by Audiovisual Media Services Regulations 2020/1062 Pt 3 reg.34(a) (November 1, 2020: substitution has effect subject to transitional provision specified in SI 2020/1062 Pt 7)
- ³ Words substituted by Audiovisual Media Services Regulations 2010/419 reg.6 (March 18, 2010)
- ⁴ Word inserted by Audiovisual Media Services Regulations 2020/1062 Pt 3 reg.34(b)(i) (November 1, 2020: insertion has effect subject to transitional provision specified in SI 2020/1062 Pt 7)
- ⁵ Added by Audiovisual Media Services Regulations 2020/1062 Pt 3 reg.34(b)(ii) (November 1, 2020: insertion has effect subject to transitional provision specified in SI 2020/1062 Pt 7)



Law In Force

[368H Prohibition of product placement and exceptions

(1) “Product placement”, in relation to a programme included in an on-demand programme service, means the inclusion in the programme of, or of a reference to, a product, service or trade mark, where the inclusion—

- (a) is for a commercial purpose,
- (b) is in return for the making of any payment, or the giving of other valuable consideration, to any relevant provider or any connected person, and
- (c) is not prop placement.

(2) “Prop placement”, in relation to a programme included in an on-demand programme service, means the inclusion in the programme of, or of a reference to, a product, service or trade mark where—

- (a) the provision of the product, service or trade mark has no significant value; and
- (b) no relevant provider, or person connected with a relevant provider, has received any payment or other valuable consideration in relation to its inclusion in, or the reference to it in, the programme, disregarding the costs saved by including the product, service or trademark, or a reference to it, in the programme.

[(3) Product placement is prohibited in any of the following included in on-demand programme services—

- (a) children's programmes;
- (b) news and current affairs programmes;
- (c) consumer affairs programmes;
- (d) religious programmes.

] ²

- (4) Product placement is prohibited in on-demand programme services if—
- (a) it is of cigarettes or other tobacco products,
 - (b) it is by or on behalf of an undertaking whose principal activity is the manufacture or sale of cigarettes or other tobacco products, [...] ³
 - [(ba) it is of electronic cigarettes or electronic cigarette refill containers, [...] ⁵] ⁴
 - [(bb) it is by or on behalf of an undertaking whose principal activity is the manufacture or sale of electronic cigarettes or electronic cigarette refill containers, or] ⁶
 - (c) it is of prescription-only medicines.
- (5) Product placement of alcoholic drinks must not —
- (a) be aimed specifically at persons under the age of eighteen;
 - (b) encourage immoderate consumption of such drinks.
- (6) Product placement is otherwise permitted in programmes included in on-demand programme services provided that—
- (a) conditions [B] ⁷ to F are met, and
 - (b) if subsection (14) applies, condition G is also met.
- (7) [...] ⁸
- (8) Condition B is that the product placement has not influenced the content of the programme in a way that affects the editorial independence of the provider of the service.
- (9) Condition C is that the product placement does not directly encourage the purchase or rental of goods or services, whether by making promotional reference to those goods or services or otherwise.
- (10) Condition D is that the programme does not give undue prominence to the products, services or trade marks concerned.
- (11) Condition E is that the product placement does not use techniques which exploit the possibility of conveying a message subliminally or surreptitiously.
- (12) Condition F is that the way in which the product, service or trade mark, or the reference to it, is included in the programme by way of product placement does not—
- (a) prejudice respect for human dignity;
 - (b) promote discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation;
 - (c) encourage behaviour prejudicial to health or safety;
 - (d) encourage behaviour grossly prejudicial to the protection of the environment;
 - (e) cause physical [, mental] ⁹ or moral detriment to persons under the age of eighteen;
 - [(ea) directly exhort such persons to purchase or rent goods or services in a manner which exploits their inexperience or credulity;] ¹⁰
 - (f) directly encourage such persons to persuade their parents or others to purchase or rent goods or services;
 - (g) exploit the trust of such persons in parents, teachers or others; or
 - (h) unreasonably show such persons in dangerous situations.
- (13) Condition G is that the on-demand programme service in question signals appropriately the fact that product placement is contained in a programme, no less frequently than—
- (a) at the start and end of such a programme, and
 - (b) in the case of an on-demand programme service which includes advertising breaks within it, at the recommencement of the programme after each such advertising break.

(14) This subsection applies where the programme featuring the product placement has been produced or commissioned by the provider of the service or any connected person.

(15) [Subject to [subsections (15A), (15B) and (15C)] ¹², this] ¹¹ section applies only in relation to programmes the production of which begins after 19th December 2009.

[(15A) Subsection (4)(ba) applies only in relation to programmes the production of which begins after 19th May 2016.] ¹³

[(15B) Subsection (4)(bb) applies only in relation to programmes the production of which begins after 31 October 2020.

(15C) This section applies in relation to a programme the production of which began before 1 November 2020 as if—

(a) subsection (3)(b) to (d) were omitted, and

(b) subsection (6)(a) included a reference to a condition that the programme in which the product, service or trademark, or the reference to it, is included is—

(i) a film made for cinema,

(ii) a film or series made for a television programme service or for an on-demand programme service,

(iii) a sports programme, or

(iv) a light entertainment programme.

] ¹⁴

(16) In this section—

“connected” has the same meaning as it has in the Broadcasting Act 1990 by virtue of section 202 of that Act;

“film made for cinema” means a film made with a view to its being shown to the general public first in a cinema;

“producer”, in relation to a programme, means the person by whom the arrangements necessary for the making of the programme are undertaken;

[“programme” does not include an advertisement;] ¹⁵

“relevant provider”, in relation to a programme, means —

(a) the provider of the on-demand programme service in which the programme is included; and

(b) the producer of the programme;

“residual value” means any monetary or other economic value in the hands of the relevant provider other than the cost saving of including the product, service or trademark, or a reference to it, in a programme;

“significant value” means a residual value that is more than trivial; and

“trade mark”, in relation to a business, includes any image (such as a logo) or sound commonly associated with that business or its products or services.

] ¹

Notes

¹ Added by Audiovisual Media Services Regulations 2009/2979 reg.2 (December 19, 2009)

² Substituted by Audiovisual Media Services Regulations 2020/1062 Pt 3 reg.35(a) (November 1, 2020: substitution has effect subject to transitional provision specified in SI 2020/1062 Pt 7)

³ Word repealed by Tobacco and Related Products Regulations 2016/507 Pt 7 reg.46(4)(a) (May 20, 2016: repeal has effect subject to saving specified in SI 2016/507 reg.57)

- ⁴ Added by Tobacco and Related Products Regulations 2016/507 Pt 7 reg.46(4)(b) (May 20, 2016: insertion has effect subject to saving specified in SI 2016/507 reg.57)
 - ⁵ Word repealed by Audiovisual Media Services Regulations 2020/1062 Pt 3 reg.35(b)(i) (November 1, 2020: repeal has effect subject to transitional provision specified in SI 2020/1062 Pt 7)
 - ⁶ Added by Audiovisual Media Services Regulations 2020/1062 Pt 3 reg.35(b)(ii) (November 1, 2020: insertion has effect subject to transitional provision specified in SI 2020/1062 Pt 7)
 - ⁷ Word substituted by Audiovisual Media Services Regulations 2020/1062 Pt 3 reg.35(c) (November 1, 2020: substitution has effect subject to transitional provision specified in SI 2020/1062 Pt 7)
 - ⁸ Repealed by Audiovisual Media Services Regulations 2020/1062 Pt 3 reg.35(d) (November 1, 2020: repeal has effect subject to transitional provision specified in SI 2020/1062 Pt 7)
 - ⁹ Word inserted by Audiovisual Media Services Regulations 2020/1062 Pt 3 reg.35(e) (November 1, 2020: insertion has effect subject to transitional provision specified in SI 2020/1062 Pt 7)
 - ¹⁰ Added by Audiovisual Media Services Regulations 2020/1062 Pt 3 reg.35(f) (November 1, 2020: insertion has effect subject to transitional provision specified in SI 2020/1062 Pt 7)
 - ¹¹ Words inserted by Tobacco and Related Products Regulations 2016/507 Pt 7 reg.46(4)(c) (May 20, 2016: insertion has effect subject to saving specified in SI 2016/507 reg.57)
 - ¹² Words substituted by Audiovisual Media Services Regulations 2020/1062 Pt 3 reg.35(g) (November 1, 2020: substitution has effect subject to transitional provision specified in SI 2020/1062 Pt 7)
 - ¹³ Added by Tobacco and Related Products Regulations 2016/507 Pt 7 reg.46(4)(d) (May 20, 2016: insertion has effect subject to saving specified in SI 2016/507 reg.57)
 - ¹⁴ Added by Audiovisual Media Services Regulations 2020/1062 Pt 3 reg.35(h) (November 1, 2020: insertion has effect subject to transitional provision specified in SI 2020/1062 Pt 7)
 - ¹⁵ Definition inserted by Audiovisual Media Services (Product Placement) Regulations 2010/831 reg.7 (April 16, 2010)
-



[368I Enforcement of [section 368CB and 368D]²

(1) Where the appropriate regulatory authority determine that a provider of an on-demand programme service is contravening or has contravened [section 368CB or]³ section 368D they may do one or both of the following—

- (a) give the provider an enforcement notification under this section;
- (b) impose a financial penalty on the provider in accordance with section 368J.

(2) The appropriate regulatory authority must not make a determination as mentioned in subsection (1) unless there are reasonable grounds for believing that a contravention of [section 368CB or]⁴ section 368D is occurring or has occurred and they have allowed the provider an opportunity to make representations about that apparent contravention.

(3) An enforcement notification under this section is a notification which specifies the determination made as mentioned in subsection (1) and imposes requirements on the provider to take such steps for complying with [section 368CB or]⁵ section 368D and for remedying the consequences of the contravention [...] ⁶ as may be specified in the notification.

(4) The requirements specified in an enforcement notification may in particular include requirements to do one or more of the following—

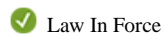
- (a) cease providing or restrict access to—
 - (i) a specified programme, or
 - (ii) programmes of a specified description;

- (b) cease showing or restrict access to—
 - (i) a specified advertisement, or
 - (ii) advertisements of a specified description;
 - (c) provide additional information to users of the service prior to the selection of a specified programme by the user for viewing;
 - (d) show an advertisement only with specified modifications;
 - (e) publish a correction in the form and place and at the time specified; or
 - (f) publish a statement of the findings of the appropriate regulatory authority in the form and place and at the time specified.
- (5) An enforcement notification must—
- (a) include reasons for the appropriate regulatory authority's decision to give the enforcement notification, and
 - (b) fix a reasonable period for the taking of the steps required by the notification.
- (6) Where a provider is required by an enforcement notification to publish a correction or a statement of findings, the provider may publish with the correction or statement of findings a statement that it is published in pursuance of the enforcement notification.
- (7) It is the duty of a provider to whom an enforcement notification has been given to comply with it.
- (8) That duty is enforceable in civil proceedings by the appropriate regulatory authority—
- (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.
- (9) If a provider to whom an enforcement notification has been given does not comply with it within the period fixed by the appropriate regulatory authority in that enforcement notification the appropriate regulatory authority may impose a financial penalty on that provider in accordance with section 368J.
- [(10) A financial penalty may not be imposed on a provider of an on-demand programme service under subsection (1) or (9) in respect of an act or omission if the provider has been convicted of a criminal offence in respect of that act or omission.]⁷
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Notes

- ¹ Added by Audiovisual Media Services Regulations 2009/2979 reg.2 (December 19, 2009)
- ² Words substituted by Audiovisual Media Services Regulations 2020/1062 Pt 3 reg.36(a) (November 1, 2020: substitution has effect subject to transitional provision specified in SI 2020/1062 Pt 7)
- ³ Words inserted by Audiovisual Media Services Regulations 2020/1062 Pt 3 reg.36(b) (November 1, 2020: insertion has effect subject to transitional provision specified in SI 2020/1062 Pt 7)
- ⁴ Words inserted by Audiovisual Media Services Regulations 2020/1062 Pt 3 reg.36(c) (November 1, 2020: insertion has effect subject to transitional provision specified in SI 2020/1062 Pt 7)
- ⁵ Words inserted by Audiovisual Media Services Regulations 2020/1062 Pt 3 reg.36(d)(i) (November 1, 2020: insertion has effect subject to transitional provision specified in SI 2020/1062 Pt 7)
- ⁶ Words repealed by Audiovisual Media Services Regulations 2020/1062 Pt 3 reg.36(d)(ii) (November 1, 2020: repeal has effect subject to transitional provision specified in SI 2020/1062 Pt 7)

⁷ Added by Audiovisual Media Services Regulations 2020/1062 Pt 3 reg.36(e) (November 1, 2020: insertion has effect subject to transitional provision specified in SI 2020/1062 Pt 7)



[368IA.— Enforcement of section 368E(4)

(1) Where the appropriate regulatory authority determine that a provider of an on-demand programme service has failed to take a measure which the authority consider to be appropriate in relation to that service for the purpose mentioned in section 368E(4), or has failed to implement such a measure effectively, the authority may do one or both of the following—

- (a) give the provider an enforcement notification under this section;
- (b) impose a financial penalty on the provider in accordance with section 368J.

(2) The appropriate regulatory authority must not make a determination as mentioned in subsection (1) unless there are reasonable grounds for believing that a failure as mentioned in that subsection is occurring or has occurred and they have allowed the provider an opportunity to make representations about that apparent failure.

(3) An enforcement notification under this section is a notification which specifies the determination made as mentioned in subsection (1) and imposes requirements on the provider to take such steps for complying with section 368E(4) and for remedying the failure as may be specified in the notification.

(4) The requirements specified in an enforcement notification may in particular include requirements to do one or more of the following—

- (a) cease providing or restrict access to—
 - (i) a specified programme, or
 - (ii) programmes of a specified description;
- (b) cease showing or restrict access to—
 - (i) a specified advertisement, or
 - (ii) advertisements of a specified description;
- (c) provide additional information to users of the service prior to the selection of a specified programme by the user for viewing;
- (d) take a specified measure that the appropriate regulatory authority consider to be appropriate for the purpose mentioned in section 368E(4);
- (e) make specified changes to the way in which a provider implements a measure it has taken for that purpose;
- (f) show an advertisement only with specified modifications;
- (g) publish a correction in the form and place and at the time specified; or
- (h) publish a statement of the findings of the appropriate regulatory authority in the form and place and for the time period specified.

(5) An enforcement notification must—

- (a) include reasons for the appropriate regulatory authority's decision to give the enforcement notification, and
- (b) fix a reasonable period for the taking of the steps required by the notification.

(6) Where a person is required by an enforcement notification to publish a correction or a statement of findings, the person may publish with the correction or statement of findings a statement that it is published in pursuance of the enforcement notification.

(7) It is the duty of a person to whom an enforcement notification has been given to comply with it.

(8) That duty is enforceable in civil proceedings by the appropriate regulatory authority—

- (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.

(9) If a person to whom an enforcement notification has been given does not comply with it within the period fixed by the appropriate regulatory authority in that enforcement notification, the appropriate regulatory authority may impose a financial penalty on that person in accordance with section 368J.

] ¹

Notes

- ¹ Added by Audiovisual Media Services Regulations 2020/1062 Pt 3 reg.37 (November 1, 2020: insertion has effect subject to transitional provision specified in SI 2020/1062 Pt 7)
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[Financial penalties] ¹

Notes

- ¹ Added by Audiovisual Media Services Regulations 2009/2979 reg.2 (December 19, 2009)
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✓ Law In Force

[368J Financial penalties

(1) The amount of a penalty imposed on a provider under [section 368BB [,] ³ [368BD, 368I or 368IA] ⁴] ² is to be such amount not exceeding 5 per cent. of the provider's applicable qualifying revenue or £250,000 whichever is the greater amount, as the appropriate regulatory authority determine to be—

- (a) appropriate; and
- (b) proportionate to the contravention [or failure] ⁵ in respect of which it is imposed.

[(1A) Where the provider in question is the BBC, the amount of the penalty is to be such amount not exceeding the amount for the time being specified in an order under section 198(6) or, if no such order is in force, £250,000, as OFCOM determine to be—

- (a) appropriate; and
- (b) proportionate to the contravention or failure in respect of which it is imposed.

] ⁶

(2) In determining the amount of a penalty under subsection (1) [or (1A)]⁷ the appropriate regulatory authority must have regard to any statement published by OFCOM under section 392 (guidelines to be followed in determining amount of penalties).

(3) The “applicable qualifying revenue”, in relation to a provider, means —

- (a) the qualifying revenue for the provider's last complete accounting period falling within the period during which the provider has been providing the service to which the contravention [or failure]⁸ relates; or
- (b) in relation to a person whose first complete accounting period falling within that period has not ended when the penalty is imposed, the amount that the appropriate regulatory authority estimate to be the qualifying revenue for that period.

(4) For the purposes of subsection (3) the “qualifying revenue” for an accounting period consists of the aggregate of all the amounts received or to be received by the provider of the service to which the contravention [or failure]⁹ relates or by any connected person in the accounting period —

- (a) for the inclusion in that service of advertisements, product placement and sponsorship; and
- (b) in respect of charges made in that period for the provision of programmes included in that service.

(5) For the purposes of subsection (4), “connected” has the same meaning as it has in the Broadcasting Act 1990 by virtue of section 202 of that Act.

(6) A financial penalty imposed under this section—

- (a) must be paid into the appropriate Consolidated Fund; and
- (b) if not paid within the period fixed by the appropriate regulatory authority, is to be recoverable by the appropriate regulatory authority as a debt due to them from the person obliged to pay it.

(7) For the purposes of subsections (3) and (6)—

- (a) the amount of a person's qualifying revenue for an accounting period, or
- (b) the amount of any payment to be made into the appropriate Consolidated Fund by any person in respect of any such revenue,

is, in the event of a disagreement between the appropriate regulatory authority and that person, the amount determined by the appropriate regulatory authority.

(8) The references in this section to the payment of an amount into the appropriate Consolidated Fund—

- (a) in the case of an amount received in respect of matters appearing to OFCOM to have no connection with Northern Ireland, is a reference to the payment of the amount into the Consolidated Fund of the United Kingdom;
- (b) in the case of an amount received in respect of matters appearing to OFCOM to have a connection with Northern Ireland but no connection with the rest of the United Kingdom, is a reference to the payment of the amount into the Consolidated Fund of Northern Ireland; and
- (c) in any other case, is a reference to the payment of the amount, in such proportions as OFCOM consider appropriate, into each of those Funds.

]¹

Notes


¹ Added by Audiovisual Media Services Regulations 2009/2979 reg.2 (December 19, 2009)

- ² Words inserted by Audiovisual Media Services Regulations 2010/419 reg.7 (March 18, 2010)
- ³ Word inserted by Digital Economy Act 2017 c. 30 Pt 6 s.93(5) (July 31, 2017)
- ⁴ Words substituted by Audiovisual Media Services Regulations 2020/1062 Pt 3 reg.38(a)(i) (November 1, 2020: substitution has effect subject to transitional provision specified in SI 2020/1062 Pt 7)
- ⁵ Words inserted by Audiovisual Media Services Regulations 2020/1062 Pt 3 reg.38(a)(ii) (November 1, 2020: insertion has effect subject to transitional provision specified in SI 2020/1062 Pt 7)
- ⁶ Added by Audiovisual Media Services Regulations 2020/1062 Pt 3 reg.38(b) (November 1, 2020: insertion has effect subject to transitional provision specified in SI 2020/1062 Pt 7)
- ⁷ Words inserted by Audiovisual Media Services Regulations 2020/1062 Pt 3 reg.38(c) (November 1, 2020: insertion has effect subject to transitional provision specified in SI 2020/1062 Pt 7)
- ⁸ Words inserted by Audiovisual Media Services Regulations 2020/1062 Pt 3 reg.38(d) (November 1, 2020: insertion has effect subject to transitional provision specified in SI 2020/1062 Pt 7)
- ⁹ Words inserted by Audiovisual Media Services Regulations 2020/1062 Pt 3 reg.38(e) (November 1, 2020: insertion has effect subject to transitional provision specified in SI 2020/1062 Pt 7)

[Suspension or restriction of service]¹

Notes

- ¹ Added by Audiovisual Media Services Regulations 2009/2979 reg.2 (December 19, 2009)
-

 Law In Force

[368K Suspension or restriction of service for contraventions [or failures]²

(1) The appropriate regulatory authority must serve a notice under subsection (2) on a provider of an on-demand programme service if they are satisfied—

- (a) that the provider is in contravention of [section 368BA [, 368CB]⁴ or 368D]³ [, or of regulations under section 368BC]⁵;
- [(b) that the imposition of one or more financial penalties or enforcement notifications under section 368BB, 368BD, 368I or 368IA has not resulted in the remedying of the contravention or failure in question; and]⁶
- (c) that the giving of a direction under this section would be appropriate and proportionate to the seriousness of the contravention [or failure]⁷ .

(2) A notice under this subsection must—

- (a) state that the appropriate regulatory authority are satisfied as mentioned in subsection (1);
- (b) state the reasons why they are satisfied as mentioned in subsection (1);
- (c) state that the appropriate regulatory authority will give a direction under this section unless the provider takes, within a period specified in the notice, such steps to remedy the contravention [or failure]⁷ within subsection (1)(a) as are so specified;
- (d) specify any conditions that the appropriate regulatory authority propose to impose in the direction under section 368M(5)(b); and
- (e) inform the provider that the provider has the right to make representations to the appropriate regulatory authority about the matters appearing to the authority to provide

grounds for giving the proposed direction within the period specified for the purposes of paragraph (c).

(3) If, after considering any representations made to them by the provider within that period, the appropriate regulatory authority are satisfied that the provider has failed to take the steps specified in the notice for remedying the contravention [or failure]⁷ and that it is necessary in the public interest to give a direction under this section, the appropriate regulatory authority must give such of the following as appears to them appropriate and proportionate as mentioned in subsection (1)(c)—

- (a) a direction that the entitlement of the provider to provide an on-demand programme service is suspended (either generally or in relation to a particular service);
- (b) a direction that that entitlement is restricted in the respects set out in the direction.

] ¹

Notes

- ¹ Added by Audiovisual Media Services Regulations 2009/2979 reg.2 (December 19, 2009)
- ² Words inserted by Audiovisual Media Services Regulations 2020/1062 Pt 3 reg.39(a) (November 1, 2020: insertion has effect subject to transitional provision specified in SI 2020/1062 Pt 7)
- ³ Words inserted by Audiovisual Media Services Regulations 2010/419 reg.8(2) (March 18, 2010)
- ⁴ Word inserted by Audiovisual Media Services Regulations 2020/1062 Pt 3 reg.39(b)(i) (November 1, 2020: insertion has effect subject to transitional provision specified in SI 2020/1062 Pt 7)
- ⁵ Words inserted by Digital Economy Act 2017 c. 30 Pt 6 s.93(6)(a) (July 31, 2017)
- ⁶ Substituted by Audiovisual Media Services Regulations 2020/1062 Pt 3 reg.39(c) (November 1, 2020: substitution has effect subject to transitional provision specified in SI 2020/1062 Pt 7)
- ⁷ Words inserted by Audiovisual Media Services Regulations 2020/1062 Pt 3 reg.39(d) (November 1, 2020: insertion has effect subject to transitional provision specified in SI 2020/1062 Pt 7)

✓ Law In Force

[368L Suspension or restriction of service for inciting crime or disorder

(1) The appropriate regulatory authority must serve a notice under subsection (2) on a provider of an on-demand programme service if they are satisfied—

[(a) that—

- (i) the service has failed to comply with any requirement of section 368E(1) or (2) or sections 368F to 368H and that accordingly the provider has contravened section 368D(1), or
- (ii) the provider has failed to take a measure which the authority consider to be appropriate in relation to that service for the purpose mentioned in section 368E(4), or has failed to implement such a measure effectively;

] ²

- (b) that the failure is due to [, or has resulted in,]³ the inclusion in the service of material likely to encourage or to incite the commission of crime, or to lead to disorder; and
- (c) that the contravention [or failure]⁴ is such as to justify the giving of a direction under this section.

(2) A notice under this subsection must—

- (a) state that the appropriate regulatory authority are satisfied as mentioned in subsection (1);
 - [(b) give details about the matters which, in their opinion, constitute the contravention or failure in question;]⁵
 - (c) specify the effect of the notice in accordance with subsection (3);
 - (d) state that the appropriate regulatory authority may give a direction under this section after the end of the period of twenty-one days beginning with the day on which the notice is served on the provider; and
 - (e) inform the provider of the provider's right to make representations to the appropriate regulatory authority within that period about the matters appearing to the appropriate regulatory authority to provide grounds for giving a direction under this section.
- (3) A notice under subsection (2) has the effect specified under subsection (2)(c), which may be either—
- (a) that the entitlement of the provider to provide an on-demand programme service is suspended (either generally or in relation to a particular service), or
 - (b) that that entitlement is restricted in the respects set out in the notice.
- (4) The suspension or restriction has effect as from the time when the notice is served on the provider until either—
- (a) a direction given under this section takes effect; or
 - (b) the appropriate regulatory authority decide not to give such a direction.
- (5) If, after considering any representations made to them by the provider within the period mentioned in subsection (2)(d), the appropriate regulatory authority are satisfied that it is necessary in the public interest to give a direction under this section, they must give such of the following as appears to them justified as mentioned in subsection (1)(c)—
- (a) a direction that the entitlement of the provider to provide an on-demand programme service is suspended (either generally or in relation to a particular service);
 - (b) a direction that that entitlement is restricted in the respects set out in the direction.

] ¹

Notes

- ¹ Added by Audiovisual Media Services Regulations 2009/2979 reg.2 (December 19, 2009)
- ² Substituted by Audiovisual Media Services Regulations 2020/1062 Pt 3 reg.40(a) (November 1, 2020: substitution has effect subject to transitional provision specified in SI 2020/1062 Pt 7)
- ³ Words inserted by Audiovisual Media Services Regulations 2020/1062 Pt 3 reg.40(b) (November 1, 2020: insertion has effect subject to transitional provision specified in SI 2020/1062 Pt 7)
- ⁴ Words inserted by Audiovisual Media Services Regulations 2020/1062 Pt 3 reg.40(c) (November 1, 2020: insertion has effect subject to transitional provision specified in SI 2020/1062 Pt 7)
- ⁵ Substituted by Audiovisual Media Services Regulations 2020/1062 Pt 3 reg.40(d) (November 1, 2020: substitution has effect subject to transitional provision specified in SI 2020/1062 Pt 7)



Law In Force

[368M Supplementary provision about directions

- (1) This section applies to a direction given to a provider under section 368K or 368L.

(2) A direction must specify the service to which it relates or specify that it relates to any on-demand programme service provided or to be provided by the provider.

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

(4) A direction under section 368L must specify a time for it to take effect, and that time must not fall before the end of twenty-eight days beginning with the day on which the direction is notified to the provider.

(5) A direction—

(a) may provide for the effect of a suspension or restriction to be postponed by specifying that it takes 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 provider as appear to the appropriate regulatory authority to be appropriate for the purpose of protecting that provider's customers.

(6) If the appropriate regulatory authority consider it appropriate to do so (whether or not in consequence of representations or proposals made to them), they may revoke a direction 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 as they may determine.

] ¹

Notes

¹ Added by Audiovisual Media Services Regulations 2009/2979 reg.2 (December 19, 2009)

 Law In Force

[368N Enforcement of directions under section 368K or 368L

(1) A person (“P”) is guilty of an offence if P provides an on-demand programme service—

(a) while P's entitlement to do so is suspended by a direction under section 368K or 368L,
or

(b) in contravention of a restriction contained in such a direction.

(2) A person guilty of an offence under this section is liable—

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

(b) on conviction on indictment, to a fine.

] ¹

Notes

¹ Added by Audiovisual Media Services Regulations 2009/2979 reg.2 (December 19, 2009)

*[Fees]¹***Notes**

¹ Added by Audiovisual Media Services Regulations 2010/419 reg.9 (March 18, 2010)

✓ Law In Force

[368NA Fees

- (1) In this section “the authority” means each of these—
 - (a) the appropriate regulatory authority;
 - (b) (where they are not the appropriate regulatory authority) OFCOM.
- (2) The authority may require a provider of an on-demand programme service to pay them a fee.
- (3) The authority must be satisfied that the amount of any fee required under subsection (2)—
 - (a) represents the appropriate contribution of the provider towards meeting the likely costs described in subsection (5)(a), and
 - (b) is justifiable and proportionate having regard to the provider who will be required to pay it and the functions in respect of which it is imposed.
- (4) A different fee may be required in relation to different cases or circumstances.
- (5) The authority must, for each financial year—
 - (a) prepare such estimate as it is practicable for them to make of the likely costs of carrying out the relevant functions during that year;
 - (b) ensure that the aggregate amount of the fees that are required to be paid to them under subsection (2) during that year is sufficient to enable them to meet, but not exceed, the costs estimated under paragraph (a);
 - (c) consult in such manner as they consider appropriate the providers likely to be required to pay them a fee under subsection (2) during that year;
 - (d) publish in such manner as they consider appropriate the amount of the fees they will require providers to pay to them under subsection (2) during that year.
- (6) As soon as reasonably practicable after the end of the financial year, the authority must publish a statement setting out, for that year—
 - (a) the aggregate amount received by them during that year in respect of fees required to be paid under subsection (2);
 - (b) the aggregate amount outstanding and likely to be paid or recovered in respect of fees that were required to be so paid under subsection (2); and
 - (c) the costs to them of carrying out the relevant functions during that year.
- (7) Any deficit or surplus shown (after applying this subsection for all previous years) by a statement under subsection (6) is to be—
 - (a) carried forward; and
 - (b) taken into account in determining what is required to satisfy the requirement imposed by virtue of subsection (5)(b) in relation to the following year.
- (8) The authority may repay to a person some or all of a fee paid to them by a person under subsection (2) if—

- (a) that person has ceased to provide an on-demand programme service at some time during the period to which the fee relates;
 - (b) before ceasing to provide that service, that person gave the appropriate regulatory authority a notification under section 368BA(2); and
 - (c) that person did not cease to provide the service following a direction given by the appropriate regulatory authority under section 368K or 368L.
- (9) The authority may make arrangements with any body designated under section 368B for that body to provide the authority with assistance in connection with the collection or repayment of fees required by them under this section.
- (10) For the purposes of this section—
- (a) the authority's costs of carrying out the relevant functions during a financial year include their costs of preparing to carry out the relevant functions incurred during that year; and
 - (b) the authority's costs of preparing to carry out the relevant functions incurred after 19 December 2009 but before the financial year in which those functions were first carried out by them are to be treated as if they were incurred during that year.
- (11) In this section “relevant functions” means—
- (a) in relation to the appropriate regulatory authority, their functions as the appropriate regulatory authority;
 - (b) in relation to OFCOM (where they are not the appropriate regulatory authority), their other functions under this Part.
- (12) In this section “financial year” means a period of 12 months ending with 31 March.
-]¹

Notes

- ¹ Added by Audiovisual Media Services Regulations 2010/419 reg.9 (March 18, 2010)
-

[Information]¹

Notes

- ¹ Added by Audiovisual Media Services Regulations 2009/2979 reg.2 (December 19, 2009)
-

 Law In Force

[368O Power to demand information

- (1) The appropriate regulatory authority may require a person who appears to them to be or to have been a provider of an on-demand programme service and to have information that they require for a purpose within subsection (2) to provide them with all such information as they consider necessary for that purpose.
- (2) The following are within this subsection—
- (a) the purposes of an investigation which the appropriate regulatory authority are carrying out in order for it to be determined whether a contravention of [section 368BA [, 368CB

or 368D]³]² [, or of regulations under [section 368BC]⁵ ,]⁴ has occurred or is occurring, where—

- (i) the investigation relates to a matter about which they have received a complaint, or
- (ii) they otherwise have reason to suspect that there has been [such a contravention]⁶ ;

[(aa) the purposes of an investigation which the appropriate regulatory authority are carrying out in order to determine whether a person who appears to them to be or to have been a provider of an on-demand programme service has failed to take an appropriate measure in relation to that service for the purpose mentioned in section 368E(4), or has failed to implement such a measure effectively, where—

- (i) the investigation relates to a matter about which they have received a complaint, or
- (ii) they otherwise have reason to suspect that there has been such a failure;

] ⁷

(b) the purpose of ascertaining or calculating applicable qualifying revenue under section 368J.

(3) [...] ⁸

(4) The appropriate regulatory authority may not require the provision of information under this section unless they have given the person from whom it is required an opportunity of making representations to them about the matters appearing to them to provide grounds for making the request.

(5) The appropriate regulatory authority must not require the provision of information under this section except by a demand for the information contained in a notice served on the person from whom the information is required that describes the required information and sets out the appropriate regulatory authority's reasons for requiring it.

(6) A person who is required to provide information under this section must provide it in such manner and within such reasonable period as may be specified by the appropriate regulatory authority in the demand for information.

(7) Sections 368I and 368K apply in relation to a failure to comply with a demand for information imposed under this section as if that failure were a contravention of a requirement of section 368D.

(8) In this section “information” includes copies of programmes.

] ¹

Notes

¹ Added by Audiovisual Media Services Regulations 2009/2979 reg.2 (December 19, 2009)

² Words inserted by Audiovisual Media Services Regulations 2010/419 reg.10 (March 18, 2010)

³ Words substituted by Audiovisual Media Services Regulations 2020/1062 Pt 3 reg.41(a)(i) (November 1, 2020: substitution has effect subject to transitional provision specified in SI 2020/1062 Pt 7)

⁴ Words inserted by Digital Economy Act 2017 c. 30 Pt 6 s.93(7) (July 31, 2017)

⁵ Word substituted by Audiovisual Media Services Regulations 2020/1062 Pt 3 reg.41(a)(ii) (November 1, 2020: substitution has effect subject to transitional provision specified in SI 2020/1062 Pt 7)

⁶ Words substituted by Audiovisual Media Services Regulations 2020/1062 Pt 3 reg.41(a)(iii) (November 1, 2020: substitution has effect subject to transitional provision specified in SI 2020/1062 Pt 7)

- ⁷ Added by Audiovisual Media Services Regulations 2020/1062 Pt 3 reg.41(b) (November 1, 2020: insertion has effect subject to transitional provision specified in SI 2020/1062 Pt 7)
- ⁸ Repealed by Broadcasting (Amendment) (EU Exit) Regulations 2019/224 Sch.1(3) para.30 (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))



Law In Force With Amendments Pending

[368OA Co-operation with member States and the European Commission

(1) OFCOM must take all necessary steps to provide such information and assistance to member States and to the European Commission as is required in order to comply with the Audiovisual Media Services Directive as it applies in relation to providers of on-demand programme services, in particular Articles 2, 3, 4 and 30a of the Directive.

(2) Where OFCOM—

(a) receive a request from a member State under Article 4 of the Audiovisual Media Services Directive relating to a provider of an on-demand programme service, and

(b) consider that the request is substantiated under that Article,

they must ask the provider to comply with the rule identified in that request.

] ¹

Notes

- ¹ Added by Audiovisual Media Services Regulations 2020/1062 Pt 3 reg.42 (November 1, 2020: insertion has effect subject to transitional provision specified in SI 2020/1062 Pt 7)

Proposed Draft Amendments

Pt 4A s. 368OA: substituted by Audiovisual Media Services (Amendment) Regulations 2021 (Draft) reg. 11 (Published, February 26, 2021) (date to be appointed)

[Application and interpretation of Part 4A] ¹

Notes

- ¹ Added by Audiovisual Media Services Regulations 2009/2979 reg.2 (December 19, 2009)



Law In Force

[368P Application of Part 4A in relation to the BBC

[(A1) Section 368BA (advance notification) does not apply in relation to an on-demand programme service provided or to be provided by the BBC.] ²

[(1) The following provisions do not apply to the BBC—

[(a) section 368D(3)(za) and (zb) (duties of providers of on-demand programme services);] ⁴

- (b) section 368F (advertising);
- (c) section 368G (sponsorship);
- (d) section 368NA (fees).

] ³

(2) In the following provisions references to a provider of an on-demand programme service do not include references to the BBC—

- (a) [section 368C(4) (codes of conduct: food and beverage promotion and children's programmes)] ⁵ ;
- (b)-(c) [...] ⁶
- (d) [...] ⁷
- (e) section 368K (suspension or restriction of service for contraventions);
- (f) section 368L (suspension or restriction of service for inciting crime or disorder) [.] ⁷
- (g) [...] ⁷

(3) Paragraph 2(2)(b) of Schedule 12 includes provision imposing obligations on the BBC in relation to on-demand programme services.

] ¹

Notes

- ¹ Added by Audiovisual Media Services Regulations 2009/2979 reg.2 (December 19, 2009)
- ² Added by Audiovisual Media Services Regulations 2010/419 reg.11(a) (March 18, 2010)
- ³ Substituted by Audiovisual Media Services Regulations 2010/419 reg.11(b) (March 18, 2010)
- ⁴ Substituted by Audiovisual Media Services Regulations 2020/1062 Pt 3 reg.43(a) (November 1, 2020: substitution has effect subject to transitional provision specified in SI 2020/1062 Pt 7)
- ⁵ Words substituted by Audiovisual Media Services Regulations 2020/1062 Pt 3 reg.43(b)(i) (November 1, 2020: substitution has effect subject to transitional provision specified in SI 2020/1062 Pt 7)
- ⁶ Repealed by Audiovisual Media Services Regulations 2010/419 reg.11(c) (March 18, 2010)
- ⁷ Repealed by Audiovisual Media Services Regulations 2020/1062 Pt 3 reg.43(b)(ii) (November 1, 2020: repeal has effect subject to transitional provision specified in SI 2020/1062 Pt 7)



Law In Force With Amendments Pending

[368Q Application of Part 4A in relation to the Welsh Authority

[(A1) Section 368BA (advance notification) does not apply in relation to an on-demand programme service provided or to be provided by the Welsh Authority, other than a service that includes advertising.] ²

[(1) In section 368C (duties of appropriate regulatory authority), references to a provider of an on-demand programme service only include references to the Welsh Authority in the following subsections —

- (a) subsection (1), so far as it relates to section 368CB,
- (b) subsection (2), and
- (c) subsection (5).

] ³

(2) It is the duty of the appropriate regulatory authority—

- (a) to take such steps as appear to them best calculated to secure that the requirements of sections 368E and 368F are complied with by the Welsh Authority in relation to advertising, and
- (b) to encourage the Welsh Authority to develop the codes of conduct referred to in section 368C(4) so far as it relates to advertising.

(3) [...] ⁴

(4) Section 368D(3) [(zb), (a), and (b) (duties of providers of on-demand programme services) do] ⁵ not apply to the Welsh Authority except in relation to advertising or in relation to the inclusion of advertising in on-demand programme services provided by the Welsh Authority.

[(5) Section 368I (enforcement of sections 368CB and 368D) applies in relation to the Welsh Authority only in the following cases—

- (a) a contravention of section 368D(1) consisting of a contravention of section 368E or 368F that relates to advertising;
- (b) a contravention of section 368D(3)(za).

(5A) Section 368IA (enforcement of section 368E(4)) applies in relation to the Welsh Authority only in relation to a failure to take or implement a measure as mentioned in section 368IA(1) that relates to advertising.

(5B) Sections 368K (suspension or restriction of service for contraventions) and 368L (suspension or restriction of service for inciting crime or disorder) apply in relation to the Welsh Authority only in a case mentioned in subsection (5)(a) or (b) or subsection (5A).] ⁶

(6) Section 368O does not apply in relation to information held by the Welsh Authority except where that information is required by the appropriate regulatory authority for the purposes of—

- (a) an investigation which the appropriate regulatory authority are carrying out (whether or not following receipt by them of a complaint) into a matter relating to compliance by the Welsh Authority with section 368E or 368F in relation to advertising; or
- (b) securing compliance with the international obligations of the United Kingdom under the Audiovisual Media Services Directive in relation to advertising.

(7) Part 2 of Schedule 12 includes provision imposing obligations on the Welsh Authority in relation to on-demand programme services.

] ¹

Notes

¹ Added by Audiovisual Media Services Regulations 2009/2979 reg.2 (December 19, 2009)

² Added by Audiovisual Media Services Regulations 2010/419 reg.12(1) (March 18, 2010)

³ Substituted by Audiovisual Media Services Regulations 2020/1062 Pt 3 reg.44(a) (November 1, 2020: substitution has effect subject to transitional provision specified in SI 2020/1062 Pt 7)

⁴ Repealed by Audiovisual Media Services Regulations 2020/1062 Pt 3 reg.44(b) (November 1, 2020: repeal has effect subject to transitional provision specified in SI 2020/1062 Pt 7)

⁵ Words substituted by Audiovisual Media Services Regulations 2010/419 reg.12(2) (March 18, 2010)

⁶ S.368Q(5), (5A) and (5B) substituted for s.368Q(5) by Audiovisual Media Services Regulations 2020/1062 Pt 3 reg.44(c) (November 1, 2020: substitution has effect subject to transitional provision specified in SI 2020/1062 Pt 7)

Proposed Draft Amendments

Pt 4A s. 368Q(6)(b): repealed by Audiovisual Media Services (Amendment) Regulations 2021 (Draft) reg. 12 (Published, February 26, 2021) (date to be appointed)

✓ Law In Force

[368R Interpretation of Part 4A

(1) In this Part—

- “appropriate regulatory authority” is to be construed in accordance with 368B;

[• “children’s programme” means a programme made—

- (a) for a television programme service or for an on-demand programme service, and
- (b) for viewing primarily by persons under the age of sixteen;

] ²

[“electronic cigarette” means a product that—

- (a) can be used for the consumption of nicotine-containing vapour via a mouth piece, or any component of that product, including a cartridge, a tank and the device without cartridge or tank (regardless of whether the product is disposable or refillable by means of a refill container and a tank, or rechargeable with single use cartridges), and
- (b) is not a medicinal product within the meaning of regulation 2 of the Human Medicines Regulations 2012 (S.I. 2012/1916) or a medical device within the meaning of regulation 2 of the Medical Devices Regulations 2002 (S.I. 2002/618);

“electronic cigarette refill container” means a receptacle that—

- (a) contains a nicotine-containing liquid, which can be used to refill an electronic cigarette, and
- (b) is not a medicinal product within the meaning of regulation 2 of the Human Medicines Regulations 2012 or a medical device within the meaning of regulation 2 of the Medical Devices Regulations 2002;

] ³

[“prescription-only medicine” means a prescription only medicine within the meaning of regulation 5(3) of the Human Medicines Regulations 2012;] ⁴

- “product placement” has the meaning given by section 368H(1);
- “sponsorship” is to be construed in accordance with section 368G;
- “tobacco product” has the meaning given in section 1 of the Tobacco Advertising and Promotion Act 2002.

(2) For the purposes of this Part, a programme is included in an on-demand programme service if it is included in the range of programmes the service offers to users.

(3) For the purposes of this Part, advertising is included in an on-demand programme service if it can be viewed by a user of the service as a result of the user selecting a programme to view.

(4) The services that are to be taken for the purposes of this Part to be available for use by members of the public include any service which—

- (a) is made available for use only to persons who subscribe to the service (whether for a period or in relation to a particular occasion) or who otherwise request its provision; but
- (b) is a service the facility of subscribing to which, or of otherwise requesting its provision, is offered or made available to members of the public.

(5) The person, and the only person, who is to be treated for the purposes of this Part as providing an on-demand programme service is the person who has editorial responsibility for the service (see section 368A(4)).

(6) For the purposes of this Part—

- (a) the provision of a service by the BBC does not include its provision by a BBC company;
- (b) the provision of a service by the Welsh Authority does not include its provision by an S4C company;

and, accordingly, control that is or is capable of being exercised by the BBC or the Welsh Authority over decisions by a BBC company or an S4C company about what is to be comprised in a service is to be disregarded for the purposes of determining who has editorial responsibility for the service.

] ¹

Notes

- ¹ Added by Audiovisual Media Services Regulations 2009/2979 reg.2 (December 19, 2009)
 - ² Definition substituted by Audiovisual Media Services (Product Placement) Regulations 2010/831 reg.8 (April 16, 2010)
 - ³ Definitions inserted by Tobacco and Related Products Regulations 2016/507 Pt 7 reg.46(5) (May 20, 2016: insertion has effect subject to saving specified in SI 2016/507 reg.57)
 - ⁴ Definition substituted by Human Medicines Regulations 2012/1916 Sch.34(2) para.44 (August 14, 2012)
-

[PART 4B

VIDEO-SHARING PLATFORM SERVICES

] ¹

Notes

- ¹ Added by Audiovisual Media Services Regulations 2020/1062 Pt 4 reg.47 (November 1, 2020: insertion has effect on November 1, 2020 as specified in SI 2020/1062 reg.1(2) subject to transitional provision specified in SI 2020/1062 Pt 7)
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[Preliminary] ¹

Notes

- ¹ Added by Audiovisual Media Services Regulations 2020/1062 Pt 4 reg.47 (November 1, 2020: insertion has effect on November 1, 2020 as specified in SI 2020/1062 reg.1(2) subject to transitional provision specified in SI 2020/1062 Pt 7)
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Law In Force

[368S.— Meaning of "video-sharing platform service"

(1) In this Part "video-sharing platform service" means a service or dissociable section of a service which meets the conditions in subsection (2), where the provision of videos to members of the public is—

- (a) the principal purpose of the service or of the dissociable section of the service, or
- (b) an essential functionality of the service.

(2) The conditions in relation to the service or dissociable section of the service are—

- (a) it is provided by means of an electronic communications network;
- (b) it is provided on a commercial basis;
- (c) the person providing it—
 - (i) does not have general control over what videos are available on it, but
 - (ii) does have general control over the manner in which videos are organised on it (and in this sub-paragraph "organised" includes being organised automatically or by way of algorithms, in particular by displaying, tagging and sequencing); and
- [(d) the person providing it has the required connection with the United Kingdom.]²

[(3) For that purpose, the person providing the service or the dissociable section of the service (P) has the required connection with the United Kingdom in either of the following cases.

(4) Case A is where P provides the service, or the dissociable section of the service, using a fixed establishment in the United Kingdom for an indefinite period and effectively pursues an economic activity in doing so.

(5) Case B is where—

- (a) P is not under the jurisdiction of an EEA State for the purposes of the Audiovisual Media Services Directive⁴; and
- (b) a group undertaking of P is established in the United Kingdom.

(6) For the purposes of subsection (4)—

- (a) the presence and use of the technical means and technologies required to provide the service, or the dissociable section of the service, do not in themselves constitute an establishment of P; and
- (b) in a case where it cannot be determined from which of a number of places of establishment in the EEA or the United Kingdom a particular service, or a particular dissociable section of a service, is provided, that service or dissociable section of a service is to be regarded as provided from the place of establishment which is the centre of P's activities relating to that service or dissociable section of a service.

(7) In subsection (5) "undertaking" and "group undertaking" each has the meaning given by section 1161 of the Companies Act 2006, except that "group undertaking" also includes all other undertakings having economic and legal organisational links to P.


(8) For the purposes of this section a person is "not under the jurisdiction of an EEA State" if OFCOM knows, or has reasonable grounds for believing, that the person—

- (a) is not established on the territory of an EEA State in accordance with paragraph (1) of Article 28a of the Audiovisual Media Services Directive, and
- (b) is not deemed to be established on the territory of any EEA State in accordance with paragraphs (2) to (4) of that Article.

(9) The references in this section to the Audiovisual Media Services Directive are to that Directive as it has effect from time to time in EU law.]³
]¹

Notes

- ¹ Added by Audiovisual Media Services Regulations 2020/1062 Pt 4 reg.47 (November 1, 2020: insertion has effect on November 1, 2020 as specified in SI 2020/1062 reg.1(2) subject to transitional provision specified in SI 2020/1062 Pt 7)
- ² Substituted by Audiovisual Media Services (Amendment) (EU Exit) Regulations 2020/1536 reg.4(2) (December 31, 2020: shall come into force on IP completion day)
- ³ Added by Audiovisual Media Services (Amendment) (EU Exit) Regulations 2020/1536 reg.4(3) (December 31, 2020: shall come into force on IP completion day)
- ⁴ OJ No. L 95, 15.4.2010, p. 1; amended by Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 (OJ No. L 303, 28.11.2018, p. 69).
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 Law In Force

[368T.— The appropriate regulatory authority

- (1) OFCOM may designate any body corporate to be, to the extent provided by the designation, the appropriate regulatory authority for the purposes of any provision of this Part, subject to subsection (9).
- (2) To the extent that no body is designated for a purpose, OFCOM is the appropriate regulatory authority for that purpose.
- (3) Where a body is designated for a purpose, OFCOM may act as the appropriate regulatory authority for that purpose concurrently with or in place of that body.
- (4) OFCOM may provide a designated body with assistance in connection with any of the functions of the body under this Part.
- (5) A designation may in particular—
- (a) provide for a body to be the appropriate regulatory authority in relation to video-sharing platform services of a specified description;
 - (b) provide that a function of the appropriate regulatory authority is exercisable by the designated body—
 - (i) to such extent as may be specified;
 - (ii) either generally or in such circumstances as may be specified; and
 - (iii) either unconditionally or subject to such conditions as may be specified.
- (6) The conditions that may be specified pursuant to subsection (5)(b)(iii) include a condition to the effect that a function may, generally or in specified circumstances, be exercised by the body only with the agreement of OFCOM.
- (7) A designation has effect for such period as may be specified and may be revoked by OFCOM at any time.
- (8) OFCOM must publish any designation 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.

(9) OFCOM may not designate a body unless, as respects that designation, they are satisfied that the body—

- (a) is a fit and proper body to be designated;
- (b) has consented to being designated;
- (c) has access to financial resources that are adequate to ensure the effective performance of its functions as the appropriate regulatory authority;
- (e) is sufficiently independent of providers of video-sharing platform services; and
- (f) will, in performing any function to which the designation relates, have regard in all cases—
 - (i) to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed; and
 - (ii) to such of the matters mentioned in section 3(4) as appear to the body to be relevant in the circumstances.

(10) Subject to any enactment or rule of law restricting the disclosure or use of information by OFCOM or by a designated body—

- (a) a designated body may supply information to another designated body for use by that other body in connection with any of its functions as the appropriate regulatory authority;
- (b) a designated body may supply information to OFCOM for use by OFCOM in connection with any of their functions under this Part;
- (c) OFCOM may supply information to a designated body for use by that body in connection with any of its functions as the appropriate regulatory authority;
- (d) OFCOM may supply information to the video works authority, within the meaning of section 368E, for use by the video works authority in connection with functions of OFCOM as the appropriate regulatory authority;
- (e) a designated body may supply information to the video works authority, within the meaning of section 368E, for use by the video works authority in connection with functions of the designated body as the appropriate regulatory authority.

(11) In carrying out their functions as the appropriate regulatory authority, a designated body may carry out, commission or support (financially or otherwise) research.

(12) In this section—

"designation" means a designation under this section and cognate expressions are to be construed accordingly;

"specified" means specified in a designation.

] ¹

Notes

¹ Added by Audiovisual Media Services Regulations 2020/1062 Pt 4 reg.47 (November 1, 2020: insertion has effect on November 1, 2020 as specified in SI 2020/1062 reg.1(2) subject to transitional provision specified in SI 2020/1062 Pt 7)

[List of providers]¹

Notes

- ¹ Added by Audiovisual Media Services Regulations 2020/1062 Pt 4 reg.47 (November 1, 2020: insertion has effect on November 1, 2020 as specified in SI 2020/1062 reg.1(2) subject to transitional provision specified in SI 2020/1062 Pt 7)
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Law In Force With Amendments Pending

[368U.— Maintenance of list of providers

- (1) OFCOM must establish and maintain an up to date list of persons providing a video-sharing platform service.
- (2) The list must indicate in respect of each person which of the criteria set out in paragraphs 1 to 4 of Article 28a of the Audiovisual Media Services Directive is the basis for the decision that they are under the jurisdiction of the United Kingdom (see section 368S(2)(d)).
- (3) OFCOM must notify the European Commission of the contents of the list and of any updates to it.
-] ¹**
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Notes

- ¹ Added by Audiovisual Media Services Regulations 2020/1062 Pt 4 reg.47 (November 1, 2020: insertion has effect on November 1, 2020 as specified in SI 2020/1062 reg.1(2) subject to transitional provision specified in SI 2020/1062 Pt 7)
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Proposed Draft Amendments

Pt 4B s. 368U(2): repealed by Audiovisual Media Services (Amendment) Regulations 2021 (Draft) reg. 13(a) (Published, February 26, 2021) (date to be appointed)

Pt 4B s. 368U(3): substituted by Audiovisual Media Services (Amendment) Regulations 2021 (Draft) reg. 13(b) (Published, February 26, 2021) (date to be appointed)

[Notification by providers]¹

Notes

- ¹ Added by Audiovisual Media Services Regulations 2020/1062 Pt 4 reg.47 (November 1, 2020: insertion has effect on November 1, 2020 as specified in SI 2020/1062 reg.1(2) subject to transitional provision specified in SI 2020/1062 Pt 7)
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**[368V.— Advance notification to appropriate regulatory authority**

(1) A person must not provide a video-sharing platform service unless, before beginning to provide it, that person has given a notification to the appropriate regulatory authority of the person's intention to provide that service.

(2) A person who has given a notification for the purposes of subsection (1) must, before—

- (a) providing the notified service with any significant differences; or
- (b) ceasing to provide it,

give a notification to the appropriate regulatory authority of the differences or (as the case may be) of the intention to cease to provide the service.

(3) A notification for the purposes of this section must—

- (a) be sent to the appropriate regulatory authority in such manner as the authority may require; and
- (b) contain all such information as the authority may require.

(4) In this section, "significant differences" includes any change that may affect the determination of jurisdiction in accordance with paragraphs 1 to 4 of Article 28a of the Audiovisual Media Services Directive.

] ¹

Notes

- ¹ Added by Audiovisual Media Services Regulations 2020/1062 Pt 4 reg.47 (April 6, 2021: insertion has effect on April 6, 2021 as specified in SI 2020/1062 reg.1(3)(b) subject to transitional provision specified in SI 2020/1062 Pt 7)
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Proposed Draft Amendments

Pt 4B s. 368V(4): words substituted by Audiovisual Media Services (Amendment) Regulations 2021 (Draft) reg. 14 (Published, February 26, 2021) (April 6, 2021)

**[368W.— Enforcement of section 368V**

(1) Where the appropriate regulatory authority determine that a provider of a video-sharing platform service has contravened section 368V, they may do one or both of the following—

- (a) give the provider an enforcement notification under this section;
- (b) impose a financial penalty on the provider in accordance with section 368Z4.

(2) The appropriate regulatory authority must not make a determination as mentioned in subsection (1) unless there are reasonable grounds for believing that a contravention of section 368V has occurred and they have allowed the provider an opportunity to make representations about that apparent contravention.

- (3) An enforcement notification under this section is a notification which specifies the determination made as mentioned in subsection (1) and imposes a requirement on the provider to take all such steps for remedying the contravention of section 368V as may be specified in the notification.
- (4) An enforcement notification must—
- (a) include reasons for the appropriate regulatory authority's decision to give the enforcement notification, and
 - (b) fix a reasonable period for taking the steps required by the notification.
- (5) It is the duty of a person to whom an enforcement notification has been given to comply with it.
- (6) That duty is enforceable in civil proceedings by the appropriate regulatory authority—
- (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.

] ¹

Notes

- ¹ Added by Audiovisual Media Services Regulations 2020/1062 Pt 4 reg.47 (November 1, 2020: insertion has effect on November 1, 2020 as specified in SI 2020/1062 reg.1(2) subject to transitional provision specified in SI 2020/1062 Pt 7)
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[Duties of the appropriate regulatory authority] ¹

Notes

- ¹ Added by Audiovisual Media Services Regulations 2020/1062 Pt 4 reg.47 (November 1, 2020: insertion has effect on November 1, 2020 as specified in SI 2020/1062 reg.1(2) subject to transitional provision specified in SI 2020/1062 Pt 7)
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✓ Law In Force

[368X.— Duties of the appropriate regulatory authority

- (1) It is the duty of the appropriate regulatory authority to take such steps as appear to them best calculated to secure that every provider of a video-sharing platform service complies with the requirements of sections 368Y and 368Z1(6) and (7).
- (2) The appropriate regulatory authority must encourage providers of video-sharing platform services to develop codes of conduct regarding standards concerning the appropriate promotion of food or beverages in audiovisual commercial communications which are included in, or accompany, videos containing material which is likely to appeal to children.
- (3) The appropriate regulatory authority must draw up, and from time to time review and revise, guidance for providers of video-sharing platform services concerning the measures set out in

Schedule 15A which may be appropriate for the purposes mentioned in section 368Z1(1), and the implementation of such measures.

] ¹

Notes

- ¹ Added by Audiovisual Media Services Regulations 2020/1062 Pt 4 reg.47 (November 1, 2020: insertion has effect on November 1, 2020 as specified in SI 2020/1062 reg.1(2) subject to transitional provision specified in SI 2020/1062 Pt 7)
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[Duties of service providers] ¹

Notes

- ¹ Added by Audiovisual Media Services Regulations 2020/1062 Pt 4 reg.47 (November 1, 2020: insertion has effect on November 1, 2020 as specified in SI 2020/1062 reg.1(2) subject to transitional provision specified in SI 2020/1062 Pt 7)
-



Law In Force With Amendments Pending

[368Y.— Duties of service providers

(1) The provider of a video-sharing platform service must ensure that the service complies with the requirements of section 368Z.

(2) The provider of a video-sharing platform service ("P") must publish the following information on a publicly accessible part of that service's website—

- (a) P's name;
- (b) P's address;
- (c) P's electronic address;
- (d) a statement that P is under the jurisdiction of the United Kingdom for the purposes of the Audiovisual Media Services Directive;
- (e) the name, address and electronic address of any body which is the appropriate regulatory authority for any purpose in relation to P or the video-sharing platform service that P provides.

(3) The provider of a video-sharing platform service must—

- (a) pay to the appropriate regulatory authority such fee as that authority may require under section 368Z9;
- (b) comply with any requirement under section 368Z10;
- (c) co-operate fully with the appropriate regulatory authority for any purpose mentioned in section 368Z10(3).

(4) In this section "electronic address" means an electronic address to which electronic communications may be sent, and includes any number or address used for the purposes of receiving such communications.

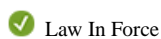
] ¹

Notes

- ¹ Added by Audiovisual Media Services Regulations 2020/1062 Pt 4 reg.47 (November 1, 2020: insertion has effect on November 1, 2020 as specified in SI 2020/1062 reg.1(2) subject to transitional provision specified in SI 2020/1062 Pt 7)
-

Proposed Draft Amendments

Pt 4B s. 368Y(2)(d): words substituted by Audiovisual Media Services (Amendment) Regulations 2021 (Draft) reg. 15 (Published, February 26, 2021) (date to be appointed)



Law In Force

[368Z.— Advertising etc controlled by service providers

- (1) In this section, references to audiovisual commercial communications, in relation to a video-sharing platform service, are to audiovisual commercial communications that are marketed, sold or arranged by the person providing that service.
- (2) Audiovisual commercial communications for the following products are prohibited in a video-sharing platform service—
- (a) cigarettes or other tobacco products;
 - (b) electronic cigarettes or electronic cigarette refill containers;
 - (c) any prescription-only medicine.
- (3) Audiovisual commercial communications for alcoholic drinks are only permitted in a video-sharing platform service if—
- (a) they are not aimed specifically at persons under the age of 18, and
 - (b) they do not encourage immoderate consumption of alcohol.
- (4) Audiovisual commercial communications included in a video-sharing platform service—
- (a) must be readily recognisable as such, and
 - (b) must not use techniques which exploit the possibility of conveying a message subliminally or surreptitiously.
- (5) Audiovisual commercial communications included in a video-sharing platform service must not—
- (a) prejudice respect for human dignity;
 - (b) include or promote discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation;
 - (c) encourage behaviour prejudicial to health or safety;
 - (d) encourage behaviour grossly prejudicial to the protection of the environment;
 - (e) cause physical, mental or moral detriment to persons under the age of 18;
 - (f) directly exhort such persons to purchase or rent goods or services in a manner which exploits their inexperience or credulity;
 - (g) directly encourage such persons to persuade their parents or others to purchase or rent goods or services;
 - (h) exploit the trust of such persons in parents, teachers or others; or

- (i) unreasonably show such persons in dangerous situations.

(6) In this section—

"electronic cigarette" means a product that—

- (a) can be used for the consumption of nicotine-containing vapour via a mouth piece, or any component of that product, including a cartridge, a tank and the device without cartridge or tank (regardless of whether the product is disposable or refillable by means of a refill container and a tank, or rechargeable with single use cartridges), and
- (b) is not a medicinal product within the meaning of regulation 2 of the Human Medicines Regulations 2012 (S.I. 2012/1916)² or a medical device within the meaning of regulation 2 of the Medical Devices Regulations 2002 (S.I. 2002/618)³;

"electronic cigarette refill container" means a receptacle that—

- (a) contains a nicotine-containing liquid, which can be used to refill an electronic cigarette, and
- (b) is not a medicinal product within the meaning of regulation 2 of the Human Medicines Regulations 2012 or a medical device within the meaning of regulation 2 of the Medical Devices Regulations 2002;

"prescription-only medicine" means a prescription only medicine within the meaning of regulation 5(3) of the Human Medicines Regulations 2012;

"tobacco product" has the meaning given in section 1 of the Tobacco Advertising and Promotion Act 2002.

]¹

Notes

¹ Added by Audiovisual Media Services Regulations 2020/1062 Pt 4 reg.47 (November 1, 2020: insertion has effect on November 1, 2020 as specified in SI 2020/1062 reg.1(2) subject to transitional provision specified in SI 2020/1062 Pt 7)

² S.I. 2012/1916; there are amending instruments but none is relevant.

³ S.I. 2002/618; there are amending instruments but none is relevant.



Law In Force With Amendments Pending

[368Z1.— Duty to take appropriate measures

(1) A person who provides a video-sharing platform service must, in relation to that service, take such of the measures set out in Schedule 15A as are appropriate for the purposes of—

- (a) protecting persons under the age of 18 from videos and audiovisual commercial communications containing restricted material;
- (b) protecting the general public from videos and audiovisual commercial communications containing relevant harmful material; and
- (c) in relation to audiovisual commercial communications that are not marketed, sold or arranged by the person providing the service, ensuring that—
 - (i) audiovisual commercial communications for a product mentioned in section 368Z(2) are not included in the service,
 - (ii) audiovisual commercial communications for alcoholic drinks are only included in the service if they meet the requirements in section 368Z(3), (4) and (5), and

(iii) audiovisual commercial communications for anything else are only included in the service if they meet the requirements in section 368Z(4) and (5).

(2) Where a provider of a video-sharing platform service takes a measure set out in Schedule 15A, the provider must implement the measure in such a way as to carry out the purpose or purposes mentioned in subsection (1) for which the measure is appropriate.

(3) The requirement in subsection (2) is not to be regarded as imposing on a provider of a video-sharing platform service a general obligation of the description given in Article 15(1) of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market².

(4) Whether a measure is appropriate for any of the purposes mentioned in subsection (1) must be determined by whether it is practicable and proportionate for the measure to be taken, taking into account—

- (a) the size and nature of the video-sharing platform service;
- (b) the nature of the material in question;
- (c) the harm the material in question may cause;
- (d) the characteristics of the category of persons to be protected;
- (e) in relation to audiovisual commercial communications that are not marketed, sold or arranged by a person providing a video-sharing platform service, the fact that the provider exercises limited control over such communications;
- (f) the rights and legitimate interests at stake, including those of the person providing the video-sharing platform service and the persons having created or uploaded the material, as well as the general public interest;
- (g) any other measures which have been taken, or are to be taken.

(5) When determining whether a measure is appropriate for the purpose mentioned in subsection (1)(a), the principle that restricted material that has the most potential to harm the physical, mental or moral development of persons under the age of 18 must be subject to the strictest access control measures must be applied.

(6) Where a person uploading a video to a video-sharing platform service declares that the video contains an audiovisual commercial communication, or the provider of the service knows that such a video contains an audiovisual commercial communication, the provider must clearly inform viewers that the video contains an audiovisual commercial communication.

(7) A person who provides a video-sharing platform service must provide for an impartial out-of-court procedure for the resolution of any dispute between a person using the service and the provider relating to—

- (a) the implementation of any measure set out in Schedule 15A, or
- (b) a decision to take, or not to take, any such measure,

but the provision of or use of this procedure must not affect the ability of a person using the service to bring a claim in civil proceedings.

(8) In this section—

"access control measures" means measures designed to control whether or how individuals are able to access videos or audiovisual commercial communications included in a video-sharing platform service;

"relevant harmful material" means—

- (a) material referred to in section 368E(1), or
 - (b) material referred to in section 368E(3)(za) (read as if the reference to an on-demand programme service were to a video-sharing platform service);
- "restricted material" means—
- (a) material which is prohibited material within the meaning of section 368E by virtue of falling within paragraph (a) or (b) of subsection (3) of that section, or
 - (b) specially restricted material within the meaning of section 368E (see subsection (5) of that section).

] ¹

Notes

- ¹ Added by Audiovisual Media Services Regulations 2020/1062 Pt 4 reg.47 (November 1, 2020: insertion has effect on November 1, 2020 as specified in SI 2020/1062 reg.1(2) subject to transitional provision specified in SI 2020/1062 Pt 7)
- ² OJ No. L 178, 17.7.2000, p. 1.

Proposed Draft Amendments

Pt 4B s. 368Z1(3): words substituted by Audiovisual Media Services (Amendment) Regulations 2021 (Draft) reg. 16 (Published, February 26, 2021) (April 3, 2021)

[Enforcement] ¹

Notes

- ¹ Added by Audiovisual Media Services Regulations 2020/1062 Pt 4 reg.47 (November 1, 2020: insertion has effect on November 1, 2020 as specified in SI 2020/1062 reg.1(2) subject to transitional provision specified in SI 2020/1062 Pt 7)



Law In Force

[368Z2.— Enforcement of sections 368Y and 368Z1(6) and (7)]

(1) Where the appropriate regulatory authority determine that a provider of a video-sharing platform service is contravening or has contravened section 368Y or 368Z1(6) or (7) they may do one or both of the following—

- (a) give the provider an enforcement notification under this section;
- (b) impose a financial penalty on the provider in accordance with section 368Z4.

(2) The appropriate regulatory authority must not make a determination as mentioned in subsection (1) unless there are reasonable grounds for believing that a contravention of section 368Y or 368Z1(6) or (7) is occurring or has occurred and they have allowed the provider an opportunity to make representations about that apparent contravention.

(3) An enforcement notification under this section is a notification which specifies the determination made as mentioned in subsection (1) and imposes requirements on the provider to take such steps

for complying with section 368Y or 368Z1(6) or (7) and for remedying the consequences of the contravention as may be specified in the notification.

(4) The requirements specified in an enforcement notification may in particular include requirements to do one or more of the following—

- (a) cease providing or restrict access to—
 - (i) a specified video, or
 - (ii) videos of a specified description;
- (b) cease showing or restrict access to—
 - (i) a specified audiovisual commercial communication, or
 - (ii) audiovisual commercial communications of a specified description;
- (c) provide additional information about the content of a specified video or videos of a specified description prior to the selection of that video or a video of that description by an individual for viewing;
- (d) provide an out-of-court procedure of a specified description for resolving disputes between the provider and a person using the service;
- (e) show an audiovisual commercial communication marketed, sold or arranged by the provider on the service only with specified modifications; or
- (f) publish a statement of the findings of the appropriate regulatory authority in the form and place and for the time period specified.

(5) An enforcement notification must—

- (a) include reasons for the appropriate regulatory authority's decision to give the enforcement notification, and
- (b) fix a reasonable period for taking the steps required by the notification.

(6) Where a person is required by an enforcement notification to publish a statement of findings, the person may publish with the statement of findings a statement that it is published in pursuance of the enforcement notification.

(7) It is the duty of a person to whom an enforcement notification has been given to comply with it.

(8) That duty is enforceable in civil proceedings by the appropriate regulatory authority—

- (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.

(9) If a person to whom an enforcement notification has been given does not comply with it within the period fixed by the appropriate regulatory authority in that enforcement notification, the appropriate regulatory authority may impose a financial penalty on that person in accordance with section 368Z4.

] ¹

Notes

¹ Added by Audiovisual Media Services Regulations 2020/1062 Pt 4 reg.47 (November 1, 2020: insertion has effect on November 1, 2020 as specified in SI 2020/1062 reg.1(2) subject to transitional provision specified in SI 2020/1062 Pt 7)



Law In Force

[368Z3.— Enforcement of section 368Z1(1) and (2)

(1) Where the appropriate regulatory authority determine that a provider of a video-sharing platform service—

(a) has failed to take a measure set out in Schedule 15A which the authority consider to be appropriate in relation to that service for any of the purposes mentioned in subsection (1) of section 368Z1, or

(b) has failed to comply with subsection (2) of that section,

the authority may take one or both of the actions mentioned in subsection (2).

(2) The actions are—

(a) give the provider an enforcement notification under this section;

(b) impose a financial penalty on the provider in accordance with section 368Z4.

(3) The appropriate regulatory authority must not make a determination as mentioned in subsection (1) unless there are reasonable grounds for believing that a failure mentioned in paragraph (a) or (b) of subsection (1) is occurring or has occurred and they have allowed the provider an opportunity to make representations about that apparent failure.

(4) An enforcement notification under this section is a notification which specifies the determination made as mentioned in subsection (1) and imposes requirements on the provider to take such steps for complying with section 368Z1(1) or (2) and for remedying the failure as may be specified in the notification.

(5) The requirements specified in an enforcement notification may in particular include requirements to do one or more of the following—

(a) cease providing or restrict access to—

(i) a specified video, or

(ii) videos of a specified description;

(b) cease showing or restrict access to—

(i) a specified audiovisual commercial communication, or

(ii) audiovisual commercial communications of a specified description;

(c) provide additional information about the content of a specified video or videos of a specified description prior to the selection of that video or a video of that description by an individual for viewing;

(d) provide additional information about the content of a specified audiovisual commercial communication or audiovisual commercial communications of a specified description included in or accompanying a video prior to the selection of that video by an individual for viewing;

(e) take a specified measure set out in Schedule 15A that the appropriate regulatory authority consider to be appropriate for any of the purposes mentioned in section 368Z1(1);

(f) make specified changes to the way in which a provider implements a measure set out in Schedule 15A;

(g) show a video or an audiovisual commercial communication on the service only with specified modifications; or

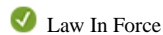
(h) publish a statement of the findings of the appropriate regulatory authority in the form and place and for the time period specified.

(6) An enforcement notification must—

- (a) include reasons for the appropriate regulatory authority's decision to give the enforcement notification, and
 - (b) fix a reasonable period for taking the steps required by the notification.
- (7) Where a person is required by an enforcement notification to publish a statement of findings, the person may publish with the statement of findings a statement that it is published in pursuance of the enforcement notification.
- (8) It is the duty of a person to whom an enforcement notification has been given to comply with it.
- (9) That duty is enforceable in civil proceedings by the appropriate regulatory authority—
- (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.
- (10) If a person to whom an enforcement notification has been given does not comply with it within the period fixed by the appropriate regulatory authority in that enforcement notification, the appropriate regulatory authority may impose a financial penalty on that person in accordance with section 368Z4.
- 1¹**

Notes

- ¹ Added by Audiovisual Media Services Regulations 2020/1062 Pt 4 reg.47 (November 1, 2020: insertion has effect on November 1, 2020 as specified in SI 2020/1062 reg.1(2) subject to transitional provision specified in SI 2020/1062 Pt 7)
-



Law In Force

[368Z4.— Financial penalties

- (1) The amount of a penalty imposed on a provider of a video-sharing platform service under section 368W, 368Z2 or 368Z3 is to be such amount not exceeding 5% of the provider's applicable qualifying revenue or £250,000, whichever is the greater amount, as the appropriate regulatory authority determine to be—
- (a) appropriate; and
 - (b) proportionate to the contravention or failure in respect of which it is imposed.
- (2) In determining the amount of a penalty under subsection (1) the appropriate regulatory authority must have regard to any statement published by OFCOM under section 392 (guidelines to be followed in determining amount of penalties).
- (3) The "applicable qualifying revenue", in relation to a provider, means—
- (a) the qualifying revenue for the provider's last complete accounting period falling within the period during which the provider has been providing the service to which the contravention or failure relates; or
 - (b) in relation to a person whose first complete accounting period falling within that period has not ended when the penalty is imposed, the amount that the appropriate regulatory authority estimate to be the qualifying revenue for that period.

(4) For the purposes of subsection (3) the "qualifying revenue" for an accounting period consists of the aggregate of all the amounts received or to be received by the provider of the service to which the contravention or failure relates or by any connected person in the accounting period—

- (a) for the inclusion in that service of audiovisual commercial communications;
- (b) in respect of charges made in that period for the provision of videos by that service; and
- (c) which in any other way arise from the provision of that service.

(5) For the purposes of subsection (4), "connected" has the same meaning as it has in the Broadcasting Act 1990 by virtue of section 202² of that Act.

(6) A financial penalty imposed under this section must be paid into the appropriate Consolidated Fund.

(7) For the purposes of subsections (3) and (6)—

- (a) the amount of a person's qualifying revenue for an accounting period, or
- (b) the amount of any payment to be made into the appropriate Consolidated Fund by any person in respect of any such revenue,

is, in the event of a disagreement between the appropriate regulatory authority and that person, the amount determined by the appropriate regulatory authority.

(8) The references in this section to the payment of an amount into the appropriate Consolidated Fund—

- (a) in the case of an amount received in respect of matters appearing to OFCOM to have no connection with Northern Ireland, is a reference to the payment of the amount into the Consolidated Fund of the United Kingdom;
- (b) in the case of an amount received in respect of matters appearing to OFCOM to have a connection with Northern Ireland but no connection with the rest of the United Kingdom, is a reference to the payment of the amount into the Consolidated Fund of Northern Ireland; and
- (c) in any other case, is a reference to the payment of the amount, in such proportions as OFCOM consider appropriate, into each of those Funds.

]¹

Notes

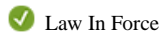
¹ Added by Audiovisual Media Services Regulations 2020/1062 Pt 4 reg.47 (November 1, 2020: insertion has effect on November 1, 2020 as specified in SI 2020/1062 reg.1(2) subject to transitional provision specified in SI 2020/1062 Pt 7)

² 1990 c. 42. The definition of "connected" in section 202 was amended by paragraph 21 of Schedule 10 to the Broadcasting Act 1996 (c. 55); there are other amendments to section 202 but none is relevant.

[Suspension or restriction of service]¹

Notes

¹ Added by Audiovisual Media Services Regulations 2020/1062 Pt 4 reg.47 (November 1, 2020: insertion has effect on November 1, 2020 as specified in SI 2020/1062 reg.1(2) subject to transitional provision specified in SI 2020/1062 Pt 7)

**[368Z5.— Suspension or restriction of service for contraventions or failures**

(1) The appropriate regulatory authority must serve a notice under subsection (2) on a provider of a video-sharing platform service if they are satisfied—

(a) that the provider—

(i) has contravened section 368V, 368Y or 368Z1(6) or (7),

(ii) has failed to take a measure which the authority consider to be appropriate in relation to that service for any of the purposes mentioned in section 368Z1(1), or

(iii) has failed to implement such a measure as mentioned in section 368Z1(2);

(b) that the imposition of one or more financial penalties or enforcement notifications under section 368W, 368Z2 or 368Z3 has not resulted in the remedying of the contravention or failure in question; and

(c) that the giving of a direction under this section would be appropriate and proportionate to the seriousness of the contravention or failure.

(2) A notice under this subsection must—

(a) state that the appropriate regulatory authority are satisfied as mentioned in subsection (1);

(b) state the reasons why they are satisfied as mentioned in subsection (1);

(c) state that the appropriate regulatory authority will give a direction under this section unless the provider takes, within a period specified in the notice, such steps to remedy the contravention or failure within subsection (1)(a) as are so specified;

(d) specify any conditions that the appropriate regulatory authority propose to impose in the proposed direction under section 368Z7(5)(b); and

(e) inform the provider that the provider has the right to make representations to the appropriate regulatory authority about the matters appearing to the authority to provide grounds for giving the proposed direction within the period specified for the purposes of paragraph (c).

(3) If, after considering any representations made to them by the provider within that period, the appropriate regulatory authority are satisfied that the provider has failed to take the steps specified in the notice for remedying the contravention or failure and that it is necessary in the public interest to give a direction under this section, the appropriate regulatory authority must give such of the following as appears to them appropriate and proportionate as mentioned in subsection (1)(c)—

(a) a direction that the entitlement of the provider to provide a video-sharing platform service is suspended (either generally or in relation to a particular service);

(b) a direction that that entitlement is restricted in the respects set out in the direction.

]¹

Notes

¹ Added by Audiovisual Media Services Regulations 2020/1062 Pt 4 reg.47 (November 1, 2020: insertion has effect on November 1, 2020 as specified in SI 2020/1062 reg.1(2) subject to transitional provision specified in SI 2020/1062 Pt 7)

**[368Z6.— Suspension or restriction of service for inciting crime or disorder**

(1) The appropriate regulatory authority must serve a notice under subsection (2) on a provider of a video-sharing platform service if they are satisfied—

(a) that—

- (i) the service has failed to comply with a requirement of section 368Z and that accordingly the provider has contravened section 368Y(1),
- (ii) the provider has failed to take a measure which the authority consider to be appropriate in relation to that service for any of the purposes mentioned in section 368Z1(1), or
- (iii) the provider has failed to implement such a measure as mentioned in section 368Z1(2);

(b) that the failure is due to, or has resulted in, the inclusion in the service of material likely to encourage or to incite the commission of crime, or to lead to disorder; and

(c) that the contravention or failure is such as to justify the giving of a direction under this section.

(2) A notice under this subsection must—

- (a) state that the appropriate regulatory authority are satisfied as mentioned in subsection (1);
- (b) give details about the matters which, in their opinion, constitute the contravention or failure in question;
- (c) specify the effect of the notice in accordance with subsection (3);
- (d) state that the appropriate regulatory authority may give a direction under this section after the end of the period of 21 days beginning with the day on which the notice is served on the provider; and
- (e) inform the provider of the provider's right to make representations to the appropriate regulatory authority within that period about the matters appearing to the appropriate regulatory authority to provide grounds for giving a direction under this section.

(3) A notice under subsection (2) has the effect specified under subsection (2)(c), which may be either—

- (a) that the entitlement of the provider to provide a video-sharing platform service is suspended (either generally or in relation to a particular service), or
- (b) that that entitlement is restricted in the respects set out in the notice.

(4) The suspension or restriction has effect as from the time when the notice is served on the provider until either—

- (a) a direction given under this section takes effect; or
- (b) the appropriate regulatory authority decide not to give such a direction.

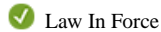
(5) If, after considering any representations made to them by the provider within the period mentioned in subsection (2)(d), the appropriate regulatory authority are satisfied that it is necessary in the public interest to give a direction under this section, they must give such of the following as appears to them justified as mentioned in subsection (1)(c)—

- (a) a direction that the entitlement of the provider to provide a video-sharing platform service is suspended (either generally or in relation to a particular service);
- (b) a direction that that entitlement is restricted in the respects set out in the direction.

]¹

Notes

- ¹ Added by Audiovisual Media Services Regulations 2020/1062 Pt 4 reg.47 (November 1, 2020: insertion has effect on November 1, 2020 as specified in SI 2020/1062 reg.1(2) subject to transitional provision specified in SI 2020/1062 Pt 7)
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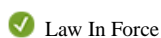

[368Z7.— Supplementary provision about directions

- (1) This section applies to a direction given to a provider under section 368Z5 or 368Z6.
- (2) A direction must specify the service to which it relates or specify that it relates to any video-sharing platform service provided or to be provided by the provider.
- (3) A direction, except so far as it otherwise provides, takes effect for an indefinite period beginning with the time at which it is notified to the provider.
- (4) A direction under section 368Z6 must specify a time for it to take effect, and that time must not fall before the end of 28 days beginning with the day on which the direction is notified to the provider.
- (5) A direction—
 - (a) may provide for the effect of a suspension or restriction to be postponed by specifying that it takes 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 provider as appear to the appropriate regulatory authority to be appropriate for the purpose of protecting individuals using the provider's service.
- (6) If the appropriate regulatory authority consider it appropriate to do so (whether or not in consequence of representations or proposals made to them), they may revoke a direction 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 as they may determine.

] ¹

Notes

- ¹ Added by Audiovisual Media Services Regulations 2020/1062 Pt 4 reg.47 (November 1, 2020: insertion has effect on November 1, 2020 as specified in SI 2020/1062 reg.1(2) subject to transitional provision specified in SI 2020/1062 Pt 7)
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[368Z8.— Enforcement of directions under section 368Z5 or 368Z6

- (1) A person ("P") is guilty of an offence if P provides a video-sharing platform service—

- (a) while P's entitlement to do so is suspended by a direction under section 368Z5 or 368Z6, or
 - (b) in contravention of a restriction contained in such a direction.
- (2) A person guilty of an offence under this section is liable—
- (a) on summary conviction—
 - (i) in England and Wales, to a fine;
 - (ii) in Scotland, to a fine not exceeding £5,000;
 - (iii) in Northern Ireland, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to a fine.

] ¹


Notes

- ¹ Added by Audiovisual Media Services Regulations 2020/1062 Pt 4 reg.47 (November 1, 2020: insertion has effect on November 1, 2020 as specified in SI 2020/1062 reg.1(2) subject to transitional provision specified in SI 2020/1062 Pt 7)
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[Fees] ¹

Notes

- ¹ Added by Audiovisual Media Services Regulations 2020/1062 Pt 4 reg.47 (November 1, 2020: insertion has effect on November 1, 2020 as specified in SI 2020/1062 reg.1(2) subject to transitional provision specified in SI 2020/1062 Pt 7)
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 Law In Force

[368Z9.— Fees

- (1) In this section "the authority" means each of these—
- (a) the appropriate regulatory authority;
 - (b) (where they are not the appropriate regulatory authority) OFCOM.
- (2) The authority may require a provider of a video-sharing platform service to pay them a fee.
- (3) The authority must be satisfied that the amount of any fee required under subsection (2)—
- (a) represents the appropriate contribution of the provider towards meeting the likely costs described in subsection (5)(a), and
 - (b) is justifiable and proportionate having regard to the provider who will be required to pay it and the functions in respect of which it is imposed.
- (4) A different fee may be required in relation to different cases or circumstances.
- (5) The authority must, for each financial year—
- (a) prepare such estimate as it is practicable for them to make of the likely costs of carrying out the relevant functions during that year;

- (b) ensure that the aggregate amount of the fees that are required to be paid to them under subsection (2) during that year is sufficient to enable them to meet, but not exceed, the costs estimated under paragraph (a);
 - (c) consult in such manner as they consider appropriate the providers likely to be required to pay them a fee under subsection (2) during that year;
 - (d) publish in such manner as they consider appropriate the amount of the fees they will require providers to pay to them under subsection (2) during that year.
- (6) As soon as reasonably practicable after the end of the financial year, the authority must publish a statement setting out, for that year—
- (a) the aggregate amount received by them during that year in respect of fees required to be paid under subsection (2);
 - (b) the aggregate amount outstanding and likely to be paid or recovered in respect of fees that were required to be so paid under subsection (2); and
 - (c) the costs to them of carrying out the relevant functions during that year.
- (7) Any deficit or surplus shown (after applying this subsection for all previous years) by a statement under subsection (6) is to be—
- (a) carried forward; and
 - (b) taken into account in determining what is required to satisfy the requirement imposed by virtue of subsection (5)(b) in relation to the following year.
- (8) The authority may repay to a person some or all of a fee paid to them by a person under subsection (2) if—
- (a) that person has ceased to provide a video-sharing platform service at some time during the period to which the fee relates;
 - (b) before ceasing to provide that service, that person gave the appropriate regulatory authority a notification under section 368V(2); and
 - (c) that person did not cease to provide the service following a direction given by the appropriate regulatory authority under section 368Z5 or 368Z6.
- (9) The authority may make arrangements with any body designated under section 368T for that body to provide the authority with assistance in connection with the collection or repayment of fees required by them under this section.
- (10) For the purposes of this section, the authority's costs of carrying out the relevant functions during a financial year include their costs of preparing to carry out the relevant functions incurred during that year.
- (11) In this section "relevant functions" means—
- (a) in relation to the appropriate regulatory authority, their functions as the appropriate regulatory authority;
 - (b) in relation to OFCOM (where they are not the appropriate regulatory authority), their other functions under this Part.
- (12) In this section "financial year" means a period of 12 months ending with 31 March.
- (13) The authority may not charge a fee for any period in relation to a financial year which begins before 1 April 2022.

]¹

Notes

- ¹ Added by Audiovisual Media Services Regulations 2020/1062 Pt 4 reg.47 (November 1, 2020: insertion has effect on November 1, 2020 as specified in SI 2020/1062 reg.1(2) subject to transitional provision specified in SI 2020/1062 Pt 7)
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[Information and reports]¹

Notes

- ¹ Added by Audiovisual Media Services Regulations 2020/1062 Pt 4 reg.47 (November 1, 2020: insertion has effect on November 1, 2020 as specified in SI 2020/1062 reg.1(2) subject to transitional provision specified in SI 2020/1062 Pt 7)
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Law In Force With Amendments Pending

[368Z10.— Power to demand information

(1) The appropriate regulatory authority may require a person who appears to be or to have been a provider of a video-sharing platform service to provide them with all such information relating to that service as the authority require for the purpose of carrying out their functions under this Part.

(2) The appropriate regulatory authority may also require a person who appears to have or to be able to generate information that the authority reasonably require for the purpose of carrying out their functions under this Part to provide them with that information.

(3) The information that may be required by the appropriate regulatory authority under subsection (1) or (2) includes, in particular, information that they require for any one or more of the following purposes—

- (a) the purpose of determining whether a person falls under the jurisdiction of the United Kingdom for the purposes of the Audiovisual Media Services Directive;
- (b) the purpose of determining whether there has been any change of circumstance that may affect a determination mentioned in paragraph (a);
- (c) the purpose of determining the appropriate fee that a provider of a video-sharing platform service is required to pay under section 368Z9;
- (d) the purpose of assessing compliance with section 368V, 368Y or 368Z1(1), (2), (6) or (7);
- (e) the purpose of determining which of the measures set out in Schedule 15A the authority consider to be appropriate in relation to a video-sharing platform service for any of the purposes mentioned in section 368Z1(1);
- (f) the purposes of an investigation being carried out by the authority to determine—
 - (i) whether a contravention of section 368V, 368Y or 368Z1(6) or (7) has occurred or is occurring,
 - (ii) whether a provider of a video-sharing platform service has failed to take a measure set out in Schedule 15A which the authority consider to be appropriate in

- relation to that service for any of the purposes mentioned in subsection (1) of section 368Z1, or
- (iii) whether a provider of a video-sharing platform service has failed to comply with subsection (2) of section 368Z1;
- (g) the purpose of monitoring which of the measures set out in Schedule 15A are taken by providers of video-sharing platform services for the purposes mentioned in section 368Z1(1), and how such measures are implemented;
- (h) the purpose of producing a report under section 368Z11;
- (i) the purpose of ascertaining or calculating applicable qualifying revenue under section 368Z4.
- (4) A requirement imposed on a person to provide information under this section includes a requirement that the person must, if necessary, generate the information.
- (5) The appropriate regulatory authority may only require the provision of information under this section if—
- (a) the demand for the information is contained in a notice served on the person from whom the information is required that describes the required information and sets out the purpose or purposes for which it is required,
- (b) the demand for the information is proportionate to the use to which the information is to be put in the carrying out of the authority's functions, and
- (c) the authority have given the person from whom the information is required the opportunity to make representations to the authority concerning the demand.
- (6) A person who is required to provide information under this section must provide it in such manner and form and within such reasonable period as may be specified by the authority in the demand for information.
- (7) Sections 368Z2 and 368Z5 apply in relation to a failure by a provider of a video-sharing platform service to comply with a demand for information under this section as if that failure were a contravention of section 368Y.
- (8) Section 368Z2 applies in relation to a failure by a person other than a provider of a video-sharing platform service to comply with a demand for information under this section as if that failure were a contravention of section 368Y, but where section 368Z2 applies by virtue of this subsection—
- (a) references in that section and in section 368Z4 to a provider of a video-sharing platform service are to be read as references to the person who has failed to comply with the demand for information, and
- (b) section 368Z4(1) is to apply as if, for the words "5% of the provider's applicable qualifying revenue or £250,000, whichever is the greater amount," there were substituted "£250,000".
- (9) In this section "information" includes technical information and material such as videos, audiovisual commercial communications, screenshots and archived material.


]¹

Notes

¹ Added by Audiovisual Media Services Regulations 2020/1062 Pt 4 reg.47 (November 1, 2020: insertion has effect on November 1, 2020 as specified in SI 2020/1062 reg.1(2) subject to transitional provision specified in SI 2020/1062 Pt 7)

Proposed Draft Amendments

Pt 4B s. 368Z10(3)(a): words substituted by Audiovisual Media Services (Amendment) Regulations 2021 (Draft) reg. 17 (Published, February 26, 2021) (April 2, 2021)

 Law In Force

[368Z11.— Reports by OFCOM

- (1) OFCOM may from time to time produce and publish reports about—
- (a) the steps taken by providers of video-sharing platform services to comply with sections 368Y and 368Z1(6) and (7);
 - (b) the measures taken by providers for the purposes mentioned in section 368Z1(1), and the ways in which such measures are implemented so as to carry out those purposes;
 - (c) the systems adopted by providers for the reporting, flagging or rating of material on the service and the handling of complaints or the resolution of disputes relating to the service.
- (2) In publishing a report under this section, OFCOM must have regard to the need to exclude from publication, so far as that is practicable, the matters which are confidential in accordance with subsections (3) and (4).
- (3) A matter is confidential under this subsection if—
- (a) it relates specifically to the affairs of a particular body, and
 - (b) publication of that matter would or might, in OFCOM's opinion, seriously and prejudicially affect the interests of that body.
- (4) A matter is confidential under this subsection if—
- (a) it relates to the private affairs of an individual, and
 - (b) publication of that matter would or might, in OFCOM's opinion, seriously and prejudicially affect the interests of that individual.

] ¹

Notes

- ¹ Added by Audiovisual Media Services Regulations 2020/1062 Pt 4 reg.47 (November 1, 2020: insertion has effect on November 1, 2020 as specified in SI 2020/1062 reg.1(2) subject to transitional provision specified in SI 2020/1062 Pt 7)
-

 Law In Force With Amendments Pending

[368Z12. Co-operation with member States and the European Commission

OFCOM must take all necessary steps to provide such information and assistance to member States and to the European Commission as is required in order to comply with the Audiovisual Media Services Directive as it applies in relation to providers of video-sharing platform services.] ¹

Notes

- ¹ Added by Audiovisual Media Services Regulations 2020/1062 Pt 4 reg.47 (November 1, 2020: insertion has effect on November 1, 2020 as specified in SI 2020/1062 reg.1(2) subject to transitional provision specified in SI 2020/1062 Pt 7)
-

Proposed Draft Amendments

Pt 4B s. 368Z12: substituted by Audiovisual Media Services (Amendment) Regulations 2021 (Draft) reg. 18 (Published, February 26, 2021) (date to be appointed)

[Interpretation of Part 4B]¹

Notes

- ¹ Added by Audiovisual Media Services Regulations 2020/1062 Pt 4 reg.47 (November 1, 2020: insertion has effect on November 1, 2020 as specified in SI 2020/1062 reg.1(2) subject to transitional provision specified in SI 2020/1062 Pt 7)
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Law In Force

[368Z13. Interpretation of Part 4B

In this Part—

"appropriate regulatory authority" is to be construed in accordance with section 368T;

"audiovisual commercial communication" means a set of moving or still images, or of legible text, or of a combination of those things (with or without sounds), which—

- (a) is designed to promote (directly or indirectly) the goods, services or image of a person pursuing an economic activity, and
- (b) accompanies or is included in a video in return for payment, or for other valuable consideration, or for self-promotional purposes,

and forms of audiovisual commercial communication include advertising, sponsorship, teleshopping and product placement;

"product placement" means the inclusion of, or of a reference to, a product, a service or a trade mark within a video in return for payment or for other valuable consideration;

"sponsorship" means any contribution made by a person not engaged in providing video-sharing platform services to the financing of video-sharing platform services or videos with a view to promoting the name, trade mark, image, activities, services or products of that person or another person;

"teleshopping" means direct offers broadcast to the public for the supply of goods, services, immovable property, rights or obligations, in return for payment;

"trade mark", in relation to a person, includes any image (such as a logo) or sound commonly associated with that person, or that person's products or services;

"video" means a set of moving or still images, or of legible text, or of a combination of those things (with or without sounds), which constitutes an individual item irrespective of its length (and which is not an audiovisual commercial communication);
 "video-sharing platform service" has the meaning given by section 368S.

] ¹

Notes

- ¹ Added by Audiovisual Media Services Regulations 2020/1062 Pt 4 reg.47 (November 1, 2020: insertion has effect on November 1, 2020 as specified in SI 2020/1062 reg.1(2) subject to transitional provision specified in SI 2020/1062 Pt 7)

PART 5

COMPETITION IN COMMUNICATIONS MARKETS

CHAPTER 1

FUNCTIONS OF OFCOM UNDER COMPETITION LEGISLATION

✓ Law In Force

369 Matters in relation to which OFCOM have competition functions

(1) In this Chapter references to communications matters are references to any one or more of the following—

- (a) the provision of electronic communications networks;
- (b) the provision of electronic communications services;
- (c) the provision or making available of services or facilities which are provided or made available—
 - (i) by means of, or in association with the provision (by the same person or another) of, an electronic communications network or electronic communications service;
 - or
 - (ii) for the purpose of facilitating the use of any such network or service (whether provided by the same person or another);
- (d) apparatus used for providing or making available anything mentioned in the preceding paragraphs;
- (e) broadcasting and related matters [;] ¹
- [(f) the provision of postal services.] ¹

(2) The Secretary of State may by order make such amendments of subsection (1) as he may consider appropriate for the purpose of modifying the description of activities in respect of which any of the provisions of this Part—

- (a) confer functions on OFCOM under Part 1 of the Competition Act 1998 (c. 41) or relate to the carrying out by OFCOM of those functions; or

(b) confer functions on OFCOM under Part 4 of the Enterprise Act 2002 (c. 40) or relate to the carrying out by OFCOM of those functions.

(3) No order is to be made containing provision authorised by this section unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

Notes

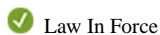
¹ Added by Postal Services Act 2011 c. 5 Sch.12(2) para.62 (October 1, 2011)

Commencement

Pt 5 c. 1 s. 369(1): July 25, 2003

Pt 5 c. 1 s. 369(1)(a)-(1)(d), (2)-(3): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Pt 5 c. 1 s. 369(1)(e): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

370 OFCOM's functions under Part 4 of the Enterprise Act 2002

(1) The functions to which subsection (2) applies shall be concurrent functions of OFCOM and the [Competition and Markets Authority (referred to in this Part as “the CMA”)]¹ .

(2) This subsection applies to the functions of the [CMA]² under Part 4 of the Enterprise Act 2002 (market investigations) (other than [sections 166, 171 and 174E]³) so far as [those functions—]⁴

[(a) are exercisable by the CMA Board (within the meaning of Schedule 4 to the Enterprise and Regulatory Reform Act 2013), and

(b) relate to commercial activities connected with communications matters.]⁴

(3) So far as necessary for the purposes of, or in connection with, subsections [(1) and (2)—]⁵

[(a) references in Part 4 of the Enterprise Act 2002 to the CMA (including references in provisions of that Act applied by that Part) shall be construed as including references to OFCOM (except in sections 166, 171 and 174E and where the context otherwise requires);

(b) references in that Part to the CMA carrying out functions under section 5 of the Enterprise Act 2002 are to be construed as including references to OFCOM exercising powers under section 1(3) of this Act to obtain, compile and keep under review information about matters relating to the carrying out of its functions.]⁵

(a)-(b) [...] ⁵

[(3A) Section 130A of the Enterprise Act 2002 is to have effect in its application in relation to OFCOM by virtue of subsections (1) and (2)—

(a) as if for subsection (1) of that section there were substituted—

“(1) Where the Office of Communications—

(a) is proposing to fulfil its duties under section 3(1) of the Communications Act 2003 by obtaining, compiling and keeping under review information in relation to a matter for the purposes mentioned in subsection (2), and

- (b) considers that the matter is one in respect of which it would be appropriate for it to exercise its powers under section 174 (investigation) in connection with deciding whether to make a reference under section 131, the Office of Communications must publish a notice under this section (referred to in this Part as a “market study notice”).”, and
- (b) as if in subsection (2)(a) of that section, for “the acquisition or supply of goods or services of one or more than one description in the United Kingdom” there were substituted “commercial activities connected with communications matters (within the meaning given by section 369(1) of the Communications Act 2003)”.
-] ⁶
- (4) In [subsections (2) and (3A) the references] ⁷ to activities connected with communications matters, so far as [they are references] ⁸ to activities connected with any apparatus falling within paragraph (d) of section 369(1) , [include] ⁹ a reference to—
- (a) the supply and export of any such apparatus; and
 - (b) the production or acquisition of any such apparatus for supply or export.
- (5) Before the [CMA] ¹⁰ or OFCOM first exercises in relation to any matter functions which are exercisable concurrently by virtue of this section, that person shall consult the other.
- (6) Neither the [CMA] ¹⁰ nor OFCOM shall exercise in relation to any matter functions which are exercisable concurrently by virtue of this section if functions which are so exercisable have been exercised in relation to that matter by the other.
- (7) It shall be the duty of OFCOM, for the purpose of assisting [a CMA group] ¹¹ in carrying out an investigation on a [market investigation reference made by OFCOM (under section 131 of the Enterprise Act 2002)] ¹² by virtue of subsection (1), to give to the [group] ¹³ —
- (a) any information which is in OFCOM's possession and relates to matters falling within the scope of the investigation and—
 - (i) is requested by the [group] ¹³ for that purpose, or
 - (ii) is information which, in OFCOM's opinion, it would be appropriate for that purpose to give to the [group] ¹³ without any such request;
- and
- (b) any other assistance which the [group] ¹³ may require, and which it is within OFCOM's power to give, in relation to any such matters,
- and the [group] ¹³ , for the purposes of carrying out any such investigation, shall take into account any information given to it for that purpose under this subsection.
- [(7A) In subsection (7) “CMA group” has the same meaning as in Schedule 4 to the Enterprise and Regulatory Reform Act 2013.] ¹⁴
- (8) If any question arises as to whether, by virtue of this section, any functions fall to be, or are capable of being, carried out by OFCOM in relation to any particular case, that question shall be referred to and determined by the Secretary of State.
- (9) No objection shall be taken to anything done under Part 4 of the Enterprise Act 2002 (c. 40) by or in relation to OFCOM on the ground that it should have been done by or in relation to the [CMA] ¹⁵ .
- (10) Section 117 of the Enterprise Act 2002 (offences of supplying false or misleading information) as applied by section 180 of that Act shall have effect so far as relating to functions exercisable by

OFCOM by virtue of this section as if the references in section 117(1)(a) and (2) to the [CMA]¹⁵ included references to OFCOM.

(11) Subject to subsection (12), [section 3 of this Act (general duties) and section 29 of the Postal Services Act 2011 (duty to secure provision of universal postal service) do not]¹⁶ apply in relation to anything done by OFCOM in the carrying out of their functions by virtue of this section.

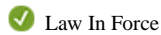
(12) In the carrying out of any functions by virtue of this section OFCOM may nevertheless have regard to any of the matters in respect of which a duty is imposed by [section 3(1) to (4) of this Act or section 29 of the Postal Services Act 2011]¹⁷ if it is a matter to which the [CMA]¹⁵ is entitled to have regard in the carrying out of those functions.

Notes

- ¹ Words substituted by Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014/892 Sch.1(2) para.161(2) (April 1, 2014)
- ² Words substituted by Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014/892 Sch.1(2) para.161(3)(b) (April 1, 2014)
- ³ Words substituted by Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014/892 Sch.1(2) para.161(3)(a) (April 1, 2014)
- ⁴ Existing text renumbered as s.370(2)(b), words are substituted and s.370(2)(a) is inserted by Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014/892 Sch.1(2) para.161(3)(c) (April 1, 2014)
- ⁵ Existing text renumbered as s.370(3)(a), words are substituted, existing s.370(3)(a) and (b) are substituted for words and a new s.370(3)(b) is inserted by Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014/892 Sch.1(2) para.161(4) (April 1, 2014)
- ⁶ Added by Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014/892 Sch.1(2) para.161(5) (April 1, 2014)
- ⁷ Words substituted by Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014/892 Sch.1(2) para.161(6)(a) (April 1, 2014)
- ⁸ Words substituted by Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014/892 Sch.1(2) para.161(6)(b) (April 1, 2014)
- ⁹ Word substituted by Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014/892 Sch.1(2) para.161(6)(c) (April 1, 2014)
- ¹⁰ Words substituted by Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014/892 Sch.1(2) para.161(7) (April 1, 2014)
- ¹¹ Words substituted by Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014/892 Sch.1(2) para.161(8)(a) (April 1, 2014)
- ¹² Words substituted by Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014/892 Sch.1(2) para.161(8)(b) (April 1, 2014)
- ¹³ Word substituted by Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014/892 Sch.1(2) para.161(8)(c) (April 1, 2014)
- ¹⁴ Added by Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014/892 Sch.1(2) para.161(9) (April 1, 2014)
- ¹⁵ Words substituted by Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014/892 Sch.1(2) para.161(10) (April 1, 2014)
- ¹⁶ Words substituted by Postal Services Act 2011 c. 5 Sch.12(2) para.63(2) (October 1, 2011)
- ¹⁷ Words substituted by Postal Services Act 2011 c. 5 Sch.12(2) para.63(3) (October 1, 2011)

Commencement

Pt 5 c. 1 s. 370(1)-(12): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))



Law In Force

371 OFCOM's functions under the Competition Act 1998

(1) The functions to which subsection (2) applies shall be concurrent functions of OFCOM and the [CMA]¹.

[(2) This subsection applies to the functions of the [CMA]¹ under the provisions of Part 1 of the Competition Act 1998 (other than [sections 31D(1) to (6), 38(1) to (6), 40B(1) to (4) and 51]³), so far as relating to—

- (a) agreements, decisions or concerted practices of the kind mentioned in section 2(1) of that Act,
- (b) conduct of the kind mentioned in section 18(1) of that Act, [or]⁴
- [(c) transferred EU anti-trust commitments or transferred EU anti-trust directions (as defined in section 40ZA of that Act),]⁵

which relate to activities connected with communications matters.

] ²

(3) So far as necessary for the purposes of, or in connection with, the provisions of subsections (1) and (2), references to the [CMA]¹ in Part 1 of the Competition Act 1998 are to be read as including references to OFCOM, except—

- (a) [in sections 31D(1) to (6), 38(1) to (6), [, 40B(1) to (4)]⁷ 51, 52(6) and (8) and 54]⁶, and
- (b) where the context otherwise requires.

(4) In subsection (2), the reference to activities connected with communications matters, so far as it is a reference to activities connected with any apparatus falling within paragraph (d) of section 369(1), includes a reference to—

- (a) the supply and export of any such apparatus; and
- (b) the production or acquisition of any such apparatus for supply or export.

(5) In section 54 of the Competition Act 1998—

- (a) in subsection (1) (definition of “regulator” for the purposes of Part 1 of that Act), for paragraph (a) there shall be substituted—

“(a) the Office of Communications;”

- (b) in subsection (4) (power to make regulations about concurrent functions of the [CMA]¹ and sectoral regulators), “or by Chapter V of Part I of the Transport Act 2000” there shall be inserted “to this Act, by Chapter 5 of Part 1 of the Transport Act 2000 or by section 371 of the Communications Act 2003”.

(6) In paragraph 5 of Schedule 2 to the Competition Act 1998 (publication of list of networking arrangements under the 1990 Act excluded from the Chapter 1 prohibition)—

- (a) in sub-paragraph (2), for “The Independent Television Commission (‘ITC’)” there shall be substituted “OFCOM”; and
- (b) in sub-paragraph (3), for “The ITC” there shall be substituted “OFCOM”.

(7) In section 59(1) of the Competition Act 1998 (interpretation of Part 1), after the definition of “Minister of the Crown” there shall be inserted—

“‘OFCOM’ means the Office of Communications;”.

(8) OFCOM may carry out, in respect of activities connected with communications matters and concurrently with the [CMA]¹, the functions of the [CMA]¹ under any of paragraphs 3, 7, 19(3) and 36 to 39 of Schedule 13 to the Competition Act 1998 (transitional provisions).

(9) If any question arises as to whether, by virtue of this section, any functions fall to be, or are capable of being, carried out by OFCOM in relation to a particular case, that question shall be referred to and determined by the Secretary of State.

(10) No objection shall be taken to anything done under by or in relation to OFCOM under the Competition Act 1998 (c. 41) on the ground that it should have been done by or in relation to the [CMA]¹.

(11) Subject to subsection (12), [section 3 of this Act (general duties) and section 29 of the Postal Services Act 2011 (duty to secure provision of universal postal service) do not]⁸ apply in relation to anything done by OFCOM in the carrying out of their functions by virtue of this section.

(12) In the carrying out of any functions by virtue of this section OFCOM may nevertheless have regard to any of the matters in respect of which a duty is imposed by [section 3(1) to (4) of this Act or section 29 of the Postal Services Act 2011]⁹ if it is a matter to which the [CMA]¹ is entitled to have regard in the carrying out of those functions.

Notes

- ¹ Words substituted by Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014/892 Sch.1(2) para.162(1) (April 1, 2014)
- ² Substituted by Competition Act 1998 and Other Enactments (Amendment) Regulations 2004/1261 Sch.2 para.11(2)(a) (May 1, 2004)
- ³ Words inserted by Enterprise and Regulatory Reform Act 2013 c. 24 Sch.15 para.46 (April 1, 2014 as SI 2014/416)
- ⁴ Word inserted by Competition (Amendment etc.) (EU Exit) Regulations 2019/93 Sch.1 para.11 (December 31, 2020: commenced by an amendment)
- ⁵ S.371(2)(c) substituted for s.371(2)(c) and (d) by Competition (Amendment etc.) (EU Exit) Regulations 2019/93 Sch.1 para.11 (December 31, 2020: commenced by an amendment)
- ⁶ Words substituted by Competition Act 1998 and Other Enactments (Amendment) Regulations 2004/1261 Sch.2 para.11(2)(b) (May 1, 2004)
- ⁷ Words inserted by Enterprise and Regulatory Reform Act 2013 c. 24 Sch.15 para.46 (April 1, 2014)
- ⁸ Words substituted by Postal Services Act 2011 c. 5 Sch.12(2) para.64(2) (October 1, 2011)
- ⁹ Words substituted by Postal Services Act 2011 c. 5 Sch.12(2) para.64(3) (October 1, 2011)

Commencement

Pt 5 c. 1 s. 371(1)-(12): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))



372 Application of the Competition Act 1998 to news provision

- (1) Section 194A of the 1990 Act (which modifies the Competition Act 1998 in relation to agreements relating to Channel 3 news provision) shall be amended as follows.
- (2) In subsection (1) (meaning of “relevant agreement”)—
- (a) for “section 31A(a)” there shall be substituted “section 280 of the Communications Act 2003”; and
 - (b) for “section 31(2)” (in both places) there shall be substituted “that section”.
- (3) In subsections (2), (6) and (7)(b)(i) (consultations with and notifications to the Office of Fair Trading), after the words “the OFT”, in each place where they occur, there shall be inserted “and OFCOM”.
- (4) In subsection (3)(b)—
- (a) for “section 31(2)” there shall be substituted “section 280 of the Communications Act 2003”; and
 - (b) for “section 31(1) and (2)” there shall be substituted “that section of that Act of 2003”.
- (5) In subsection (5)(c) (declaration without notification), after “the OFT” there shall be inserted “or OFCOM or both of them”.
- (6) In subsection (7) (restriction on exercise by Office of Fair Trading of Chapter III powers)—
- (a) for “The OFT may not” there shall be substituted “Neither the OFT nor OFCOM may”; and
 - (b) for paragraph (a) there shall be substituted—

“ (a) the Secretary of State has been notified by the OFT or (as the case may be) by OFCOM of its or their intention to do so; and”.
- (7) In subsection (8) (notice by Office of Fair Trading to the Secretary of State), for the words from the beginning to “assist” in paragraph (a) there shall be substituted—

“(8) Where the OFT or OFCOM is or are proposing to exercise any Chapter III powers in respect of a relevant agreement, it or they must give the Secretary of State particulars of the agreement and such other information—
 (a) it considers or (as the case may be) they consider will assist”.
- (8) In subsection (9), in the definition of “Chapter III powers”, for “given to the OFT by” there shall be substituted “of the OFT and of OFCOM under”.

Commencement

Pt 5 c. 1 s. 372(1)-(8): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

CHAPTER 2

MEDIA MERGERS

Introductory

✓ Law In Force

373 Repeal of existing newspaper merger regime

Sections 57 to 62 of the Fair Trading Act 1973 (c. 41) (newspaper merger references) shall cease to have effect.

Commencement

Pt 5 c. 2 s. 373: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

✓ Law In Force

374 Repeal of exclusion for newspaper mergers from general merger controls

Section 69 of the Enterprise Act 2002 (c. 40) (exclusion of newspaper mergers from references under Part 3 of that Act) shall cease to have effect.

Commencement

Pt 5 c. 2 s. 374: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Adaptation for media mergers of main merger regime

✓ Law In Force

375 Media public interest considerations

(1) After subsection (2) of section 58 of the Enterprise Act 2002 (considerations specified as public interest considerations for the purpose of the main merger regime) there shall be inserted—

“(2A) The need for—

- (a) accurate presentation of news; and
- (b) free expression of opinion;

in newspapers is specified in this section.

(2B) The need for, to the extent that it is reasonable and practicable, a sufficient plurality of views in newspapers in each market for newspapers in the United Kingdom or a part of the United Kingdom is specified in this section.

(2C) The following are specified in this section—

- (a) the need, in relation to every different audience in the United Kingdom or in a particular area or locality of the United Kingdom, for there to be a sufficient plurality of persons with control of the media enterprises serving that audience;
- (b) the need for the availability throughout the United Kingdom of a wide range of broadcasting which (taken as a whole) is both of high quality and calculated to appeal to a wide variety of tastes and interests; and
- (c) the need for persons carrying on media enterprises, and for those with control of such enterprises, to have a genuine commitment to the attainment in relation to broadcasting of the standards objectives set out in section 319 of the Communications Act 2003.”

(2) After that section there shall be inserted, in Chapter 2 of Part 3—

“58A Construction of consideration specified in section 58(2C)

- (1) For the purposes of section 58 and this section an enterprise is a media enterprise if it consists in or involves broadcasting.
- (2) In the case of a merger situation in which at least one of the enterprises ceasing to be distinct consists in or involves broadcasting, the references in section 58(2C)(a) or this section to media enterprises include references to newspaper enterprises.
- (3) In this Part “newspaper enterprise” means an enterprise consisting in or involving the supply of newspapers.
- (4) Wherever in a merger situation two media enterprises serving the same audience cease to be distinct, the number of such enterprises serving that audience shall be assumed to be more immediately before they cease to be distinct than it is afterwards.
- (5) For the purposes of section 58, where two or more media enterprises—
 - (a) would fall to be treated as under common ownership or common control for the purposes of section 26, or
 - (b) are otherwise in the same ownership or under the same control,they shall be treated (subject to subsection (4)) as all under the control of only one person.
- (6) A reference in section 58 or this section to an audience shall be construed in relation to a media enterprise in whichever of the following ways the decision-making authority considers appropriate—
 - (a) as a reference to any one of the audiences served by that enterprise, taking them separately;
 - (b) as a reference to all the audiences served by that enterprise, taking them together;
 - (c) as a reference to a number of those audiences taken together in such group as the decision-making authority considers appropriate; or
 - (d) as a reference to a part of anything that could be taken to be an audience under any of paragraphs (a) to (c) above.
- (7) The criteria for deciding who can be treated for the purposes of this section as comprised in an audience, or as comprised in an audience served by a particular service—
 - (a) shall be such as the decision-making authority considers appropriate in the circumstances of the case; and

(b) may allow for persons to be treated as members of an audience if they are only potentially members of it.

(8) In this section 'audience' includes readership.

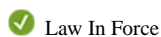
(9) The power under subsection (3) of section 58 to modify that section includes power to modify this section."

(3) In section 127(1) of that Act (associated persons to be treated as one person), for the word "and" at the end of paragraph (a) there shall be substituted—

“(aa) for the purposes of section 58(2C); and”.

Commencement

Pt 5 c. 2 s. 375(1)-(3): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

376 Adaptation of role of OFT in initial investigations and reports

(1) In section 44(3)(b) of the Enterprise Act 2002 (c. 40) (initial report by OFT in public interest cases must include summary of representations about public interest considerations) after the word “concerned” there shall be inserted “(other than a media public interest consideration)”.

(2) After section 44(5) of that Act there shall be inserted—

“(5A) The report may, in particular, contain a summary of any representations about the case which have been received by the OFT and which relate to any media public interest consideration mentioned in the intervention notice concerned and which is or may be relevant to the Secretary of State's decision as to whether to make a reference under section 45.”

(3) After section 44(7) of that Act there shall be inserted—

“(8) In this Part 'media public interest consideration' means any consideration which, at the time of the giving of the intervention notice concerned—

(a) is specified in section 58(2A) to (2C); or

(b) in the opinion of the Secretary of State, is concerned with broadcasting or newspapers and ought to be specified in section 58.

(9) In this Part 'broadcasting' means the provision of services the provision of which—

(a) is required to be licensed under Part 1 or 3 of the Broadcasting Act 1990 or Part 1 or 2 of the Broadcasting Act 1996; or

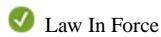
(b) would be required to be so licensed if provided by a person subject to licensing under the Part in question.

(10) In this Part 'newspaper' means a daily, Sunday or local (other than daily or Sunday) newspaper circulating wholly or mainly in the United Kingdom or in a part of the United Kingdom.

(11) The Secretary of State may by order amend subsections (9) and (10).”

Commencement

Pt 5 c. 2 s. 376(1)-(3): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

377 Additional investigation and report by OFCOM

After section 44 of the Enterprise Act 2002 (investigation and report by OFT in public interest cases) there shall be inserted—

“44A Additional investigation and report by OFCOM: media mergers

(1) Subsection (2) applies where—

- (a) the Secretary of State has given an intervention notice in relation to a relevant merger situation; and
- (b) the intervention notice mentions any media public interest consideration.

(2) OFCOM shall, within such period as the Secretary of State may require, give a report to the Secretary of State on the effect of the consideration or considerations concerned on the case.

(3) The report shall contain—

- (a) advice and recommendations on any media public interest consideration mentioned in the intervention notice concerned and which is or may be relevant to the Secretary of State's decision as to whether to make a reference under section 45; and
- (b) a summary of any representations about the case which have been received by OFCOM and which relate to any such consideration.

(4) OFCOM shall carry out such investigations as they consider appropriate for the purposes of producing a report under this section.”

Commencement

Pt 5 c. 2 s. 377: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Extension of special public interest regime



Law In Force

378 Extension of special public interest regime for certain media mergers

(1) In section 59 of the Enterprise Act 2002 (c. 40) (intervention by Secretary of State in special public interest cases), for subsections (3) and (4) (definition of “special merger situation”) there shall be substituted—

“(3) For the purposes of this Part a special merger situation has been created if—

- (a) the condition mentioned in subsection (3A) is satisfied; and
- (b) immediately before the enterprises concerned ceased to be distinct—
 - (i) the conditions mentioned in subsection (3B) were satisfied;
 - (ii) the condition mentioned in subsection (3C) was satisfied; or
 - (iii) the condition mentioned in subsection (3D) was satisfied.

(3A) The condition mentioned in this subsection is that—

- (a) no relevant merger situation has been created because of section 23(1)(b) and (2)(b); but
- (b) a relevant merger situation would have been created if those enactments were disregarded.

(3B) The conditions mentioned in this subsection are that—

- (a) at least one of the enterprises concerned was carried on in the United Kingdom or by or under the control of a body corporate incorporated in the United Kingdom; and
- (b) a person carrying on one or more of the enterprises concerned was a relevant government contractor.

(3C) The condition mentioned in this subsection is that, in relation to the supply of newspapers of any description, at least one-quarter of all the newspapers of that description which were supplied in the United Kingdom, or in a substantial part of the United Kingdom, were supplied by the person or persons by whom one of the enterprises concerned was carried on.

(3D) The condition mentioned in this subsection is that, in relation to the provision of broadcasting of any description, at least one-quarter of all broadcasting of that description provided in the United Kingdom, or in a substantial part of the United Kingdom, was provided by the person or persons by whom one of the enterprises concerned was carried on.”

(2) After subsection (6) of that section there shall be inserted—

“(6A) The Secretary of State may by order amend the conditions mentioned in subsection (3)(b)(ii) and (iii).”

(3) After that section there shall be inserted—

“59A Construction of conditions in section 59(3C) and (3D)

(1) For the purpose of deciding whether the proportion of one-quarter mentioned in section 59(3C) or (3D) is fulfilled with respect to—

- (a) newspapers of any description, or

(b) broadcasting of any description, the decision-making authority shall apply such criterion (whether value, cost, price, quantity, capacity, number of workers employed or some other criterion, of whatever nature), or such combination of criteria, as the decision-making authority considers appropriate.

(2) References in section 59(3C) to the supply of newspapers shall, in relation to newspapers of any description which are the subject of different forms of supply, be construed in whichever of the following ways the decision-making authority considers appropriate—

- (a) as references to any of those forms of supply taken separately;
- (b) as references to all those forms of supply taken together; or
- (c) as references to any of those forms of supply taken in groups.

(3) For the purposes of subsection (2) the decision-making authority may treat newspapers as being the subject of different forms of supply whenever—

- (a) the transactions concerned differ as to their nature, their parties, their terms or their surrounding circumstances; and
- (b) the difference is one which, in the opinion of the decision-making authority, ought for the purposes of that subsection to be treated as a material difference.

(4) References in section 59(3D) to the provision of broadcasting shall, in relation to broadcasting of any description which is the subject of different forms of provision, be construed in whichever of the following ways the decision-making authority considers appropriate—

- (a) as references to any of those forms of provision taken separately;
- (b) as references to all those forms of provision taken together; or
- (c) as references to any of those forms of provision taken in groups.

(5) For the purposes of subsection (4) the decision-making authority may treat broadcasting as being the subject of different forms of provision whenever—

- (a) the transactions concerned differ as to their nature, their parties, their terms or their surrounding circumstances; and
- (b) the difference is one which, in the opinion of the decision-making authority, ought for the purposes of that subsection to be treated as a material difference.

(6) The criteria for deciding when newspapers or broadcasting can be treated, for the purposes of section 59, as newspapers or broadcasting of a separate description shall be such as in any particular case the decision-making authority considers appropriate in the circumstances of that case.

(7) In section 59 and this section 'provision' and cognate expressions have the same meaning in relation to broadcasting as in Part 3 of the Communications Act 2003; but this subsection is subject to subsections (4) and (5) of this section."

Commencement

Pt 5 c. 2 s. 378(1)-(3): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

379 Adaptation of role of OFT in special public interest regime

(1) Section 61 of the Enterprise Act 2002 (c. 40) (initial investigation and report by OFT in special public interest cases) shall be amended as follows.

(2) In subsection (3)(b) (report must include summary of representations about considerations specified in section 58) after the word “concerned” there shall be inserted “(other than a consideration which, at the time of the giving of the notice, was specified in section 58(2A) to (2C))”.

(3) In subsection (4) for the words “59(4)(b)” there shall be substituted “59(3B)(b)”.

(4) After subsection (4) there shall be inserted—

“(4A) The report may, in particular, contain a summary of any representations about the case which have been received by the OFT and which relate to any consideration which—

(a) is mentioned in the special intervention notice concerned and, at the time of the giving of that notice, was specified in section 58(2A) to (2C); and

(b) is or may be relevant to the Secretary of State's decision as to whether to make a reference under section 62.”

Commencement

Pt 5 c. 2 s. 379(1)-(4): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

380 Additional investigation and report by OFCOM: special public interest cases

After section 61 of the Enterprise Act 2002 (initial investigation and report by OFT in special public interest cases) there shall be inserted—

“61A Additional investigation and report by OFCOM: certain media mergers

(1) Subsection (2) applies where—

(a) the Secretary of State has given a special intervention notice in relation to a special merger situation; and

(b) the special intervention notice mentions any consideration which, at the time of the giving of the notice, was specified in section 58(2A) to (2C).

(2) OFCOM shall, within such period as the Secretary of State may require, give a report to the Secretary of State on the effect of the consideration or considerations concerned on the case.

(3) The report shall contain—

(a) advice and recommendations on any consideration which—

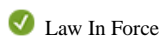
(i) is mentioned in the special intervention notice concerned and, at the time of the giving of that notice, was specified in section 58(2A) to (2C); and

- (ii) is or may be relevant to the Secretary of State's decision as to whether to make a reference under section 62; and
 - (b) a summary of any representations about the case which have been received by OFCOM and which relate to any such consideration.
- (4) OFCOM shall carry out such investigations as they consider appropriate for the purposes of producing a report under this section.”

Commencement

Pt 5 c. 2 s. 380: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

New general functions in relation to media mergers



Law In Force

381 Public consultation in relation to media mergers

After section 104 of the Enterprise Act 2002 (c. 40) there shall be inserted—

“104A Public consultation in relation to media mergers

- (1) Subsection (2) applies where the Commission—
- (a) is preparing—
 - (i) a report under section 50 on a reference which specifies a media public interest consideration; or
 - (ii) a report under section 65 on a reference which specifies a consideration specified in section 58(2A) to (2C); and
 - (b) is not under a duty to disregard the consideration concerned.
- (2) The Commission shall have regard (among other things) to the need to consult the public so far as they might be affected by the creation of the relevant merger situation or special merger situation concerned and so far as such consultation is practicable.
- (3) Any consultation of the kind mentioned in subsection (2) may be undertaken by the Commission by consulting such representative sample of the public or section of the public concerned as the Commission considers appropriate.”

Commencement

Pt 5 c. 2 s. 381: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

382 General information duties in relation to media mergers

(1) Section 105 of the Enterprise Act 2002 (general information duties of OFT and Competition Commission) shall be amended as follows.

(2) After subsection (1) there shall be inserted—

“(1A) Where OFCOM decide to investigate a matter so as to make a report under section 44A or 61A, they shall, so far as practicable, take such action as they consider appropriate to bring information about the investigation to the attention of those who they consider might be affected by the creation of the relevant merger situation concerned or (as the case may be) the special merger situation concerned.”

(3) In subsection (2) (exclusion for merger notices) for the words “Subsection (1) does” there shall be substituted “Subsections (1) and (1A) do”.

(4) In subsection (3) (duty of OFT to give requested assistance to Competition Commission)—

(a) after the word “Commission”, where it occurs for the first time, there shall be inserted “or OFCOM”; and

(b) after the word “Commission”, where it occurs for the second, third and fourth time, there shall be inserted “or (as the case may be) OFCOM”.

(5) After subsection (3) there shall be inserted—

“(3A) OFCOM shall give the Commission or the OFT—

(a) such information in their possession as the Commission or (as the case may be) the OFT may reasonably require to enable the Commission or (as the case may be) the OFT to carry out its functions under this Part; and

(b) any other assistance which the Commission or (as the case may be) the OFT may reasonably require for the purpose of assisting it in carrying out its functions under this Part and which it is within the power of OFCOM to give.”

(6) In subsection (4) (duty of OFT to give unrequested information to Competition Commission)—

(a) after the word “Commission”, where it occurs for the first time, there shall be inserted “or OFCOM”; and

(b) after the word “Commission”, where it occurs for the second and third time, there shall be inserted “or (as the case may be) OFCOM”.

(7) After subsection (4) there shall be inserted—

“(4A) OFCOM shall give the Commission or the OFT any information in their possession which has not been requested by the Commission or (as the case may be) the OFT but which, in the opinion of OFCOM, would be appropriate to give to the Commission or (as the case may be) the OFT for the purpose of assisting it in carrying out its functions under this Part.”

(8) In subsection (5) (duty of OFT and Competition Commission to give requested assistance to the Secretary of State) after the word “OFT”, in both places where it occurs, there shall be inserted “, OFCOM”.

(9) In subsection (6) (duty of OFT to give unrequested information to Secretary of State)—

- (a) after the word “OFT”, where it occurs for the first time, there shall be inserted “and OFCOM”;
- (b) for the word “its” there shall be substituted “their”; and
- (c) after the word “OFT”, where it occurs for the second time, there shall be inserted “or (as the case may be) OFCOM”.

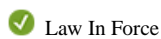
(10) In subsection (7) (duty to have regard to information given) for the words “or (4)” there shall be substituted “, (3A), (4) or (4A)”.

(11) After subsection (7) there shall be inserted—

“(7A) OFCOM shall have regard to any information given to them under subsection (3) or (4); and the OFT shall have regard to any information given to it under subsection (3A) or (4A).”

Commencement

Pt 5 c. 2 s. 382(1)-(11): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

383 Advice and information in relation to media mergers

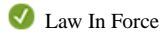
After section 106 of the Enterprise Act 2002 (c. 40) there shall be inserted—

“106A Advice and information in relation to media mergers

- (1) The Secretary of State may prepare and publish general advice and information about the considerations specified in section 58(2A) to (2C).
- (2) The Secretary of State may at any time publish revised, or new, advice or information.
- (3) Advice or information published under this section shall be prepared with a view to—
 - (a) explaining the considerations specified in section 58(2A) to (2C) to persons who are likely to be affected by them; and
 - (b) indicating how the Secretary of State expects this Part to operate in relation to such considerations.
- (4) Any advice or information published by the Secretary of State under this section shall be published in such manner as the Secretary of State considers appropriate.
- (5) In preparing any advice or information under this section, the Secretary of State shall consult the OFT, OFCOM, the Commission and such other persons as he considers appropriate.”

Commencement

Pt 5 c. 2 s. 383: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

384 General advisory functions of OFCOM in relation to media mergers

After section 106A of the Enterprise Act 2002 there shall be inserted—

“106B General advisory functions of OFCOM

(1) OFCOM may, in connection with any case on which they are required to give a report by virtue of section 44A or 61A, give such advice as they consider appropriate to the Secretary of State in relation to—

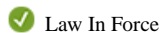
- (a) any report made in such a case by the Commission under section 50 or 65; and
- (b) the taking by the Secretary of State of enforcement action under Schedule 7.

(2) OFCOM may, if requested to do so by the Secretary of State, give such other advice as they consider appropriate to the Secretary of State in connection with any case on which they are required to give a report by virtue of section 44A or 61A.

(3) OFCOM shall publish any advice given by them under this section but advice given by them in relation to a report of the Commission under section 50 or 65 or related enforcement action shall not be published before the report itself is published.”

Commencement

Pt 5 c. 2 s. 384: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

385 Other general functions of OFCOM in relation to media mergers

After section 119 of the Enterprise Act 2002 (c. 40) there shall be inserted—

“Further provision about media mergers

119A Other general functions of OFCOM in relation to this Part

(1) OFCOM have the function of obtaining, compiling and keeping under review information about matters relating to the carrying out of their functions under this Part.

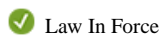
(2) That function is to be carried out with a view to (among other things) ensuring that OFCOM have sufficient information to take informed decisions and to carry out their other functions effectively.

(3) In carrying out that function OFCOM may carry out, commission or support (financially or otherwise) research.

(4) Section 3 of the Communications Act 2003 (general duties of OFCOM) shall not apply in relation to functions of OFCOM under this Part.”

Commencement

Pt 5 c. 2 s. 385: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

386 Monitoring role for OFT in relation to media mergers

After section 119A of the Enterprise Act 2002 there shall be inserted—

“119B Monitoring role for OFT in relation to media mergers

(1) The OFT has the function of obtaining, compiling and keeping under review information about matters which may be relevant to the Secretary of State in deciding whether to give a special intervention notice mentioning a consideration specified in section 58(2A) to (2C).

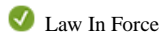
(2) That function is to be carried out with a view to (among other things) ensuring that the Secretary of State is aware of cases where, in the opinion of the OFT, he might wish to consider giving such a notice.

(3) That function does not extend to obtaining, compiling or keeping under review information with a view to carrying out a detailed analysis in each case of the operation in relation to that case of the consideration specified in section 58(2A) to (2C).”

Commencement

Pt 5 c. 2 s. 386: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Supplemental provisions of Chapter 2



Law In Force

387 Enforcement powers in relation to newspaper and other media mergers

In Schedule 8 to the Enterprise Act 2002 (provision that may be contained in certain enforcement orders) after paragraph 20 there shall be inserted—

“20A Newspaper mergers

- (1) This paragraph applies in relation to any order—
 - (a) which is to be made following the giving of—
 - (i) an intervention notice which mentions a newspaper public interest consideration;
 - (ii) an intervention notice which mentions any other media public interest consideration in relation to a relevant merger situation in which one of the enterprises ceasing to be distinct is a newspaper enterprise;
 - (iii) a special intervention notice which mentions a consideration specified in section 58(2A) or (2B); or
 - (iv) a special intervention notice which, in relation to a special merger situation in which one of the enterprises ceasing to be distinct is a newspaper enterprise, mentions a consideration specified in section 58(2C); and
 - (b) to which the consideration concerned is still relevant.
- (2) The order may make such provision as the person making the order considers to be appropriate in all circumstances of the case.
- (3) Such provision may, in particular, include provision requiring a person to do, or not to do, particular things.
- (4) Provision made by virtue of this paragraph may, in particular, include provision—
 - (a) altering the constitution of a body corporate (whether in connection with the appointment of directors, the establishment of an editorial board or otherwise);
 - (b) requiring the agreement of the relevant authority or another person before the taking of particular action (including the appointment or dismissal of an editor, journalists or directors or acting as a shadow director);
 - (c) attaching conditions to the operation of a newspaper;
 - (d) prohibiting consultation or co-operation between subsidiaries.
- (5) In this paragraph ‘newspaper public interest consideration’ means a media public interest consideration other than one which is such a consideration—
 - (a) by virtue of section 58(2C); or
 - (b) by virtue of having been, in the opinion of the Secretary of State, concerned with broadcasting and a consideration that ought to have been specified in section 58.
- (6) This paragraph is without prejudice to the operation of the other paragraphs of this Schedule in relation to the order concerned.”

Commencement


Pt 5 c. 2 s. 387: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

 Repealed

388 [...]¹

Notes

¹ Repealed by Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014/892 Sch.1(2) para.163 (April 1, 2014)

 Law In Force

389 Further provision in connection with media mergers

(1) Schedule 16 (which contains further amendments in connection with media mergers) shall have effect.

(2) Sections 276(2) and (3) and 277 of the Enterprise Act 2002 (c. 40) (power to make transitional and consequential amendments etc.) shall apply in relation to this Chapter of this Part of this Act and its related repeals as they apply in relation to that Act.

(3) For the avoidance of doubt, the power conferred by virtue of subsection (2) by applying section 277 of the Act of 2002 includes the power to modify that Act.

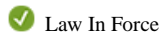
(4) Section 402 shall not apply in relation to any power to make an order which is exercisable by the Secretary of State by virtue of subsection (2).

Commencement

Pt 5 c. 2 s. 389(1)-(4): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

PART 6**MISCELLANEOUS AND SUPPLEMENTAL**

Annual report



Law In Force

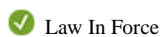
390 Annual report on the Secretary of State's functions

- (1) The Secretary of State must prepare and lay before Parliament regular reports on the carrying out by him of the functions to which this section applies.
- (2) This section applies to the Secretary of State's functions under the following enactments—
 - (a) this Act;
 - (b) the Office of Communications Act 2002 (c. 11);
 - (c) the enactments relating to the management of the radio spectrum so far as not comprised in this Act;
 - (d) the 1990 Act;
 - (e) the 1996 Act.
- (3) The first report under this section must relate to the period which—
 - (a) begins with 19th March 2002 (the date of the passing of the Office of Communications Act 2002); and
 - (b) ends with the period of twelve months beginning with the first date to be appointed for the purposes of section 2 of this Act.
- (4) Every subsequent report must relate to the period of twelve months beginning with the end of the period to which the previous report related.
- (5) The obligation under this section to prepare and lay a report before Parliament is an obligation to do that as soon as reasonably practicable after the end of the period to which the report relates.
- (6) Where a report for the purposes of this section relates to a period the whole or a part of which falls before the time when the whole of this Act is in force, the functions referred to in subsection (2) are to be taken as excluding all functions under the specified enactments that will have ceased to be functions of the Secretary of State when the whole of this Act is in force.

Commencement

Pt 6 s. 390(1)-(6): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Review of media ownership



Law In Force

391 Review of media ownership

- (1) It shall be the duty of OFCOM—
 - (a) to carry out regular reviews of the operation, taken together, of all the provisions to which this section applies; and
 - (b) to send a report on every such review to the Secretary of State.
- (2) This section applies to—

- (a) the provisions of Schedule 2 to the 1990 Act;
 - (b) the provision made by or under Schedule 14 to this Act;
 - (c) the provisions of sections 280 and 281 of this Act;
 - (d) whatever provision (if any) has been made under section 283 of this Act; and
 - (e) the provisions of Part 3 of the Enterprise Act 2002 (c. 40) so far as they relate to intervention by the Secretary of State in connection with newspapers or other media enterprises.
- (3) The first review must be carried out no more than three years after the commencement of this section, and subsequent reviews must be carried out at intervals of no more than three years.
- (4) The report to the Secretary of State on a review must set out OFCOM's recommendations, in consequence of their conclusions on the review, for the exercise by the Secretary of State of—
- (a) his power to make an order under section 348(5);
 - (b) his powers to make orders under Schedule 14;
 - (c) his powers under sections 282 and 283; and
 - (d) his powers under sections 44(11), 58(3) and 59(6A) of the Enterprise Act 2002 (media mergers).
- (5) OFCOM must publish every report sent by them to the Secretary of State under this section 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.

Commencement

Pt 6 s. 391(1)-(5): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Guidelines as to penalties



Law In Force

392 Penalties imposed by OFCOM

- (1) It shall be the duty of OFCOM to prepare and publish a statement containing the guidelines they propose to follow in determining the amount of penalties imposed by them under provisions contained in this Act or any other enactment apart from the Competition Act 1998 (c. 41).
- (2) OFCOM may from time to time revise that statement as they think fit.
- (3) Where OFCOM make or revise their statement under this section, they must publish the 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) Before publishing a statement or revised statement under this section OFCOM must consult both—
- (a) the Secretary of State, and
 - (b) such other persons as they consider appropriate,

about the guidelines they are proposing to include in the statement.

(5) Before determining how to publish a statement or revised statement under this section OFCOM must consult the Secretary of State.

(6) It shall be the duty of OFCOM, in determining the amount of any penalty to be imposed by them under this Act or any other enactment (apart from the Competition Act 1998 (c. 41)) to have regard to the guidelines contained in the statement for the time being in force under this section.

(7) References in this section to penalties imposed by OFCOM under provisions contained in this Act include references to penalties which the BBC is liable to pay to OFCOM by virtue of section 198(3).

Commencement

Pt 6 s. 392(1)-(7): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Disclosure of information



Law In Force With Amendments Pending

393 General restrictions on disclosure of information

(1) Subject to the following provisions of this section, information with respect to a particular business which has been obtained in exercise of a power conferred by—

- (a) this Act,
- (b) [...]¹
- (c) the 1990 Act, or
- (d) the 1996 Act,

is not, so long as that business continues to be carried on, to be disclosed without the consent of the person for the time being carrying on that business.

(2) Subsection (1) does not apply to any disclosure of information which is made—

- (a) for the purpose of facilitating the carrying out by OFCOM of any of their functions;
- (b) for the purpose of facilitating the carrying out by any relevant person of any relevant function;
- (c) for the purpose of facilitating the carrying out by the Comptroller and Auditor General of any of his functions;
- (d) for any of the purposes specified in section 17(2)(a) to (d) of the Anti-terrorism, Crime and Security Act 2001 (c. 24) (criminal proceedings and investigations);
- (e) for the purpose of any civil proceedings brought under or by virtue of this Act or any of the enactments or instruments mentioned in subsection (5); or
- (f) for the purpose of securing compliance with an international obligation of the United Kingdom.

(3) Each of the following is a relevant person for the purposes of this section—

- (a) a Minister of the Crown and the Treasury;
 - (b) the Scottish Executive;
 - (c) a Northern Ireland department;
 - (d) the [Competition and Markets Authority]² ;
 - (e) [...] ³
 - (f) the Consumer Panel;
 - (g) the Welsh Authority;
 - (h) a local weights and measures authority in Great Britain;
 - (i) any other person specified for the purposes of this subsection in an order made by the Secretary of State.
- (4) The following are relevant functions for the purposes of this section—
- (a) any function conferred by or under this Act;
 - (b) any function conferred by or under any enactment or instrument mentioned in subsection (5);
 - (c) any other function specified for the purposes of this subsection in an order made by the Secretary of State.
- (5) The enactments and instruments referred to in subsections (2) and (4) are—
- (a)-(b) [...] ¹
 - (c) [...] ⁴
 - (d) the Trade Descriptions Act 1968 (c. 29);
 - (e) the Fair Trading Act 1973 (c. 41);
 - (f) the Consumer Credit Act 1974 (c. 39);
 - (g) the Competition Act 1980 (c. 21);
 - (h) the Telecommunications Act 1984 (c. 12);
 - (i) the Consumer Protection Act 1987 (c. 43);
 - (j) the 1990 Act;
 - (k) the 1996 Act;
 - (l) [...] ¹
 - (m) the Competition Act 1998 (c. 41);
 - (n) the Enterprise Act 2002 (c. 40);
 - [(na) the Wireless Telegraphy Act 2006;] ⁵
 - (o) the Consumer Protection (Northern Ireland) Order 1987 (S.I. 1987/2049 (N.I. 20));
 - [(p) the Business Protection from Misleading Marketing Regulations 2008;
 - (q) the Consumer Protection from Unfair Trading Regulations 2008 [;] ⁷] ⁶
 - [(r) Parts 3 and 4 of the Enterprise and Regulatory Reform Act 2013.] ⁷
- (6) Nothing in this section—
- (a) limits the matters that may be published under section 15, 26 [, 134AB] ⁸ [, 137A] ⁹ or 390;
 - [(aza) prevents the disclosure of information under [section 24A, 24B or 25] ¹¹ ;] ¹⁰
 - [(aa) limits the information that may be made available under section 76A;] ¹²
 - (b) limits the matters that may be included in, or made public as part of, a report made by OFCOM by virtue of a provision of this Act or the Office of Communications Act 2002 (c. 11);
 - [(ba) limits the matters that may be published as part of a comparative overview carried out by OFCOM under section 134D;] ¹³

- (c) prevents the disclosure of anything for the purposes of a report of legal proceedings in which it has been publicly disclosed;
- (d) applies to information that has been published [, made public or made available]¹⁴ as mentioned in paragraphs (a) to (c).

(7) Nothing in this section applies to information obtained in exercise of the powers conferred by section 196 of the 1990 Act (powers of entry and search).

(8) Information obtained by OFCOM in exercise of functions which are exercisable by them concurrently with the [Competition and Markets Authority]¹⁵ under Part 1 of the Competition Act 1998 is subject to Part 9 of the Enterprise Act 2002, and not to the preceding provisions of this section.

(9) Section 18 of the Anti-terrorism, Crime and Security Act 2001 (c. 24) (restriction on disclosure of information for overseas purposes) shall have effect in relation to a disclosure by virtue of subsection (2)(d) as it applies in relation to a disclosure in exercise of a power to which section 17 of that Act applies.

(10) A person who discloses information in contravention of this section 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 imprisonment for a term not exceeding two years or to a fine, or to both.

(11) No order is to be made containing provision authorised by subsection (3) or (4) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

(12) In this section “legal proceedings” means civil or criminal proceedings in or before any court, or proceedings before any tribunal established by or under any enactment.

Notes

- ¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)
- ² Words substituted by Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014/892 Sch.1(2) para.164(1)(a)(i) (April 1, 2014)
- ³ Repealed by Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014/892 Sch.1(2) para.164(1)(a)(ii) (April 1, 2014)
- ⁴ Repealed by Enterprise and Regulatory Reform Act 2013 c. 24 Sch.21(1) para.2 (June 25, 2013)
- ⁵ Added by Wireless Telegraphy Act 2006 c. 36 Sch.7 para.31 (February 8, 2007)
- ⁶ S.393(5)(p) and (q) substituted for s.393(5)(p) by Consumer Protection from Unfair Trading Regulations 2008/1277 Sch.2(1) para.72 (May 26, 2008)
- ⁷ Added by Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014/892 Sch.1(2) para.164(1)(b) (April 1, 2014)
- ⁸ Word inserted by Digital Economy Act 2017 c. 30 Pt 6 s.82(5) (June 27, 2017)
- ⁹ Word inserted by Digital Economy Act 2017 c. 30 Pt 6 s.86(7) (June 27, 2017)
- ¹⁰ Added by Digital Economy Act 2017 c. 30 Pt 6 s.98(4) (July 31, 2017)
- ¹¹ Words substituted by Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019/246 Sch.1(1) para.41 (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))
- ¹² Added by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.97(a) (May 26, 2011)
- ¹³ Added by Digital Economy Act 2017 c. 30 Pt 6 s.83(4) (June 27, 2017)

- ¹⁴ Words substituted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.97(b) (May 26, 2011)
- ¹⁵ Words substituted by Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014/892 Sch.1(2) para.164(1)(c) (April 1, 2014)

Proposed Draft Amendments

Pt 6 s. 393(6)(aza): words substituted by Telecommunications (Security) Bill 2019-21 (HC Bill 246) s. 4(3) (Commons' Committee Stage, January 26, 2021) (date to be appointed)

Pt 6 s. 393(6)(bza): added by Telecommunications (Security) Bill 2019-21 (HC Bill 246) s. 11(5) (Commons' Committee Stage, January 26, 2021) (date to be appointed)

Pt 6 s. 393(6)(bzb): added by Telecommunications (Security) Bill 2019-21 (HC Bill 246) s. 18(5) (Commons' Committee Stage, January 26, 2021) (date to be appointed)

Commencement

Pt 6 s. 393(1), (5), (6): July 25, 2003

Pt 6 s. 393(1)(a)-(1)(b), (1)(b), (2)-(4)(c), (5)(a)-(5)(i), (5)(m)-(5)(p), (6)(b)-(6)(d), (8)-(12): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Pt 6 s. 393(1)(c), (1)(c)-(1)(d), (5)(j)-(5)(k), (7): December 29, 2003 (SI 2003/3142 art. 3(1))

Pt 6 s. 393(6)(a): July 25, 2003 except in relation to provisions specified in SI 2003/1900 Sch.1 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2); December 29, 2003 otherwise (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2), Sch. 1 para. 1)

Notifications etc. and electronic working



Law In Force

394 Service of notifications and other documents

(1) This section applies where provision made (in whatever terms) by or under an enactment specified in subsection (2) authorises or requires—

- (a) a notification to be given to any person; or
- (b) a document of any other description (including a copy of a document) to be sent to any person.

(2) Those enactments are—

- (a) this Act;
- (b) the Office of Communications Act 2002 (c. 11);
- (c) [...] ¹
- (d) [...] ²
- (e) the 1990 Act; [...] ³
- (f) the 1996 Act [;] ⁴
- [(g) Part 3 of the Postal Services Act 2011.] ⁴

- (3) The notification or document may be given or sent to the person in question—
- (a) by delivering it to him;
 - (b) by leaving it at his proper address; or
 - (c) by sending it by post to him at that address.
- (4) The notification or document may be given or sent to a body corporate by being given or sent to the secretary or clerk of that body.
- (5) The notification or document may be given or sent to a firm by being given or sent to—
- (a) a partner in the firm; or
 - (b) a person having the control or management of the partnership business.
- (6) The notification or document may be given or sent to an unincorporated body or association by being given or sent to a member of the governing body of the body or association.
- (7) For the purposes of this section and section 7 of the Interpretation Act 1978 (c. 30) (service of documents by post) in its application to this section, the proper address of a person is—
- (a) in the case of body corporate, the address of the registered or principal office of the body;
 - (b) in the case of a firm, unincorporated body or association, the address of the principal office of the partnership, body or association;
 - (c) in the case of a person to whom the notification or other document is given or sent in reliance on any of subsections (4) to (6), the proper address of the body corporate, firm or (as the case may be) other body or association in question; and
 - (d) in any other case, the last known address of the person in question.
- (8) In the case of—
- (a) a company registered outside the United Kingdom,
 - (b) a firm carrying on business outside the United Kingdom, or
 - (c) an unincorporated body or association with offices outside the United Kingdom,
- the references in subsection (7) to its principal office include references to its principal office within the United Kingdom (if any).
- (9) In this section—
- “document” includes anything in writing; and
 - “notification” includes notice;
- and references in this section to giving or sending a notification or other document to a person include references to transmitting it to him and to serving it on him.
- (10) This section has effect subject to section 395.

[(11) In its application to Schedule 3A this section is subject to paragraph 91 of that Schedule.]⁵

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

² Repealed by Digital Economy Act 2017 c. 30 Sch.3(2) para.46(2) (December 28, 2017)

³ Word repealed by Postal Services Act 2011 c. 5 Sch.12(2) para.65(a) (October 1, 2011)

⁴ Added by Postal Services Act 2011 c. 5 Sch.12(2) para.65(b) (October 1, 2011)

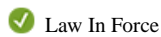
⁵ Added by Digital Economy Act 2017 c. 30 Sch.3(2) para.46(3) (December 28, 2017)

Commencement

Pt 6 s. 394(1)-(1)(b), (2)(a)-(2)(d), (2)(d), (3)-(10): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Pt 6 s. 394(2): July 25, 2003

Pt 6 s. 394(2)(e), (2)(e)-(2)(f): December 29, 2003 (SI 2003/3142 art. 3(1))



Law In Force

395 Notifications and documents in electronic form

(1) This section applies where—

- (a) section 394 authorises the giving or sending of a notification or other document by its delivery to a particular person (“the recipient”); and
- (b) the notification or other document is transmitted to the recipient—
 - (i) by means of an electronic communications network; or
 - (ii) by other means but in a form that nevertheless requires the use of apparatus by the recipient to render it intelligible.

(2) The transmission has effect for the purposes of the enactments specified in section 394(2) as a delivery of the notification or other document to the recipient, but only if the requirements imposed by or under this section are complied with.

(3) Where the recipient is OFCOM—

- (a) they must have indicated their willingness to receive the notification or other document in a manner mentioned in subsection (1)(b);
- (b) the transmission must be made in such manner and satisfy such other conditions as they may require; and
- (c) the notification or other document must take such form as they may require.

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

- (a) the manner in which the transmission is made; and
- (b) the form in which the notification or other document is transmitted.

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

- (a) the recipient, or
- (b) the person on whose behalf the recipient receives the notification or other document, must have indicated to the person making the transmission the recipient's willingness to receive notifications or documents transmitted in the form and manner used.

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

- (a) must be given to that person in such manner as he may require;
- (b) may be a general indication or one that is limited to notifications or documents of a particular description;
- (c) must state the address to be used and must be accompanied by such other information as that person requires for the making of the transmission; and
- (d) may be modified or withdrawn at any time by a notice given to that person in such manner as he may require.

[(6A) Subsections (5) and (6) do not apply in relation to a notification or other document given by OFCOM under Part 1 or Chapter 1 of Part 2 to the European Commission, BEREC or the regulatory authorities of member States (within the meaning of that Chapter).]¹

(7) An indication, requirement or determination given, imposed or made by OFCOM for the purposes of this section is to be given, imposed or made by being published 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.

(8) Subsection (9) of section 394 applies for the purposes of this section as it applies for the purposes of that section.

Notes

¹ Added by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.98 (May 26, 2011)

Commencement

Pt 6 s. 395(1)-(8): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))



Law In Force

396 Timing and location of things done electronically

(1) The Secretary of State may by order make provision specifying, for the purposes of the enactments specified in section 394(2), the manner of determining—

- (a) the times at which things done under those enactments by means of electronic communications networks are done; and
- (b) the places at which such things are so done, and at which things transmitted by means of such networks are received.

(2) The provision made by subsection (1) may include provision as to the country or territory in which an electronic address is to be treated as located.

(3) An order made by the Secretary of State may also make provision about the manner of proving in any legal proceedings—

- (a) that something done by means of an electronic communications network satisfies the requirements of the enactments specified in section 394(2) for the doing of that thing; and
- (b) the matters mentioned in subsection (1)(a) and (b).

(4) An order under this section may provide for such presumptions to apply (whether conclusive or not) as the Secretary of State considers appropriate.

Commencement

Pt 6 s. 396(1)-(4): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Other miscellaneous provisions

✓ Law In Force

397 Purchase of Duchy of Lancaster land

(1) The Chancellor and Council of the Duchy of Lancaster may, if they think fit, agree with a person who provides a public electronic communications network for the sale, and absolutely make sale, for such sum of money as appears to them sufficient consideration for the same, of any land which—

- (a) belongs to Her Majesty in right of the Duchy of Lancaster; and
- (b) is land which that person seeks to acquire for, or in connection with, the provision of his network.

(2) In this section “public electronic communications network” has the same meaning as in Chapter 1 of Part 2.

Commencement

Pt 6 s. 397(1)-(2): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

✓ Law In Force

398 Repeal of certain provisions of the Telecommunications Act 1984

(1) The Telecommunications Act 1984 (c. 12) shall be amended as follows.

(2) In Part 5 (transfer of undertakings of British Telecommunications), the following provisions (which include spent provisions) shall cease to have effect—

- (a) section 60;
- (b) section 61(1) to (6);
- (c) section 62;
- (d) section 63(1) to (4);
- (e) sections 64 to 67;
- (f) section 69 to 71;

- (g) sections 72(2), (4) and (5); and
- (h) section 73.

(3) In section 68(2) (liability of Secretary of State on winding up), after “any outstanding liability of the successor company” there shall be inserted “for the payment of pensions”.

- (4) In Part 7 (miscellaneous and supplemental) the following provisions shall cease to have effect—
- (a) section 93 (grants to promote interests of disabled persons); and
 - (b) section 97 (contributions by local authorities towards the provision of telecommunications facilities).

Commencement

Pt 6 s. 398(1)-(4)(b): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Supplemental

✓ Law In Force

399 Expenses

There shall be paid out of money provided by Parliament—

- (a) any expenditure incurred by the Secretary of State for or in connection with the carrying out of any of his functions under this Act; and
- (b) any increase attributable to this Act in the sums which are payable out of money so provided under any other Act.

Commencement

Pt 6 s. 399(a)-(b): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

✓ Law In Force

400 Destination of licence fees and penalties

(1) This section applies (subject to section 401) to the following amounts—

- (a) an amount paid to OFCOM in respect of a penalty imposed by them under Chapter 1 of Part 2 (including a penalty imposed by virtue of section 191(5));

- (b) so much of an amount paid to OFCOM under numbering conditions in respect of an allocation of telephone numbers as is an amount determined by reference to an indication given in response to an invitation such as is mentioned in section 58(5)(a);
 - (c) an amount paid to OFCOM in pursuance of an obligation imposed by or under [Chapter 1 or 2 of Part 2 of the Wireless Telegraphy Act 2006]¹;
 - (d) an amount paid to OFCOM in respect of a penalty imposed by them under [section 42 [or Part 2A]³ [...]]⁴ of that Act]²;
 - [(da) an amount paid to OFCOM in respect of a fee charged under section 53D of that Act;]⁵
 - (e) a cash bid amount paid to OFCOM under a Broadcasting Act licence for the first year falling within the period for which the licence is in force;
 - (f) an amount paid to OFCOM under such a licence for a subsequent year as the amount equal to a cash bid amount increased by the appropriate percentage;
 - (g) an amount paid to OFCOM under such a licence as an amount representing a percentage of relevant revenue for an accounting period;
 - (h) an amount paid to OFCOM in respect of a penalty imposed by them under Part 1 or 3 of the 1990 Act, Part 1 or 2 of the 1996 Act or Part 3 of this Act [;]⁶
 - [(i) an amount paid to OFCOM in respect of a penalty imposed by them under Part 3 of the Postal Services Act 2011.]⁶
- (2) Where OFCOM receive an amount to which this section applies, it must be paid into the appropriate Consolidated Fund; but this subsection does not apply to an amount which is required by OFCOM for making an adjustment in respect of an overpayment.
- (3) The reference in subsection (2) to the payment of an amount into the appropriate Consolidated Fund—
- (a) in the case of an amount received in respect of matters appearing to OFCOM to have no connection with Northern Ireland, is a reference to the payment of the amount into the Consolidated Fund of the United Kingdom;
 - (b) in the case of an amount received in respect of matters appearing to OFCOM to have a connection with Northern Ireland but no connection with the rest of the United Kingdom, is a reference to the payment of the amount into the Consolidated Fund of Northern Ireland; and
 - (c) in any other case, is a reference to the payment of the amount, in such proportions as OFCOM consider appropriate, into each of those Funds.
- (4) OFCOM must, in respect of each financial year, prepare an account showing—
- (a) the amounts to which this section applies that have been received by them during that year;
 - (b) the sums paid into the Consolidated Funds of the United Kingdom and Northern Ireland respectively under this section in respect of those amounts;
 - (c) the aggregate amount of the sums received by them during that year that is retained in accordance with a statement [under section 401 for meeting the costs set out in the statement in accordance with subsection (1)(b)]⁷ of that section during that year;
 - (d) the aggregate amount that they estimate will fall to be so retained out of amounts due to them and likely to be paid or recovered; and
 - (e) the cost to OFCOM of carrying out during that year the functions in respect of which amounts are or are to be retained in accordance with such a statement.

(5) OFCOM must send that account to the Comptroller and Auditor General not later than the end of the month of November following the financial year to which it relates.

(6) The Comptroller and Auditor General must examine, certify and report on the account and lay copies of it, together with his report, before each House of Parliament.

(7) References in this section to penalties imposed by OFCOM under Part 3 of this Act include references to penalties which the BBC is liable to pay to OFCOM by virtue of section 198(3).

(8) In this section—

“the appropriate percentage” has the same meaning as in section 19 of the 1990 Act;

“cash bid amount” means an amount specified in a cash bid for a Broadcasting Act licence or the amount determined by OFCOM for the purposes of any provision of the 1990 Act or this Part to be what would have been the amount of a cash bid for a licence;

“financial year” has the same meaning as in the Schedule to the Office of Communications Act 2002 (c. 11);

“numbering conditions” means conditions the setting of which is authorised by section 58 or 59; and

“relevant revenue” means any of the following—

(a) the amount which for the purposes of section 19, 52(1), 102(1) or 118(1) of the 1990 Act is the amount of qualifying revenue for an accounting period;

(b) the amount which for the purposes of section 13(1) or 55(1) of the 1996 Act is the amount of multiplex revenue for an accounting period; or

(c) an amount which for the purposes of paragraph 7 of Schedule 10 to this Act is the amount of qualifying revenue for an accounting period.

Notes

¹ Words substituted by Wireless Telegraphy Act 2006 c. 36 Sch.7 para.32(a) (February 8, 2007)

² Words substituted by Wireless Telegraphy Act 2006 c. 36 Sch.7 para.32(b) (February 8, 2007)

³ Words inserted by Digital Economy Act 2017 c. 30 Pt 2 s.8(4)(a) (July 31, 2017)

⁴ Words repealed by Digital Economy Act 2017 c. 30 Pt 2 s.9(10) (June 27, 2017: repeal has effect subject to savings as specified in 2017 c.30 s.9(13))

⁵ Added by Digital Economy Act 2017 c. 30 Pt 2 s.8(4)(b) (July 31, 2017)

⁶ Added by Postal Services Act 2011 c. 5 Sch.12(2) para.66 (October 1, 2011)

⁷ Words substituted by Digital Economy Act 2017 c. 30 Pt 6 s.100(2) (July 31, 2017)

Commencement

Pt 6 s. 400(1)-(8) definition of "relevant revenue" (c): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

401 [Retention by OFCOM of amounts paid under Wireless Telegraphy Act 2006]¹

[(1) OFCOM have power to make a statement setting out—

(a) the principles under which they may retain any or all of the amounts paid to them—

(i) in pursuance of obligations imposed by or under Chapter 1 or 2 of Part 2 of the Wireless Telegraphy Act 2006;

(ii) in respect of fees charged under section 53D of that Act, and

(b) the costs in respect of which the amounts may be retained (which may include costs other than those incurred in the exercise of their functions under those provisions).

]²

(2) Where such a statement [...] ³ authorises the retention of an amount, OFCOM are not required to pay it into the appropriate Consolidated Fund in accordance with section 400.

[(3) The provision contained in a statement made by OFCOM under this section must be such as appears to them likely to secure, on the basis of such estimates of the likely costs as it is practicable to make, that the amounts retained by OFCOM are objectively justifiable and proportionate to the costs in respect of which they are retained.] ⁴

(6) A statement under this section may include provision which, for the purposes of [...] ⁵ in the statement and of the preparation of accounts in accordance with section 400(4), requires an amount actually received in one year—

(a) to be treated as referable to costs incurred in that year and in one or more subsequent years; and

(b) to be brought into account, in each of those years, in accordance with an apportionment for which provision is made in the statement.

(7) A deficit or surplus shown (after applying this subsection for all previous years) by an account prepared under section 400(4) is to be carried forward and taken into account in determining what is required by OFCOM in relation to the following year for meeting the costs [set out in the statement in accordance with subsection (1)(b)] ⁶ .

(8) A statement [...] ⁷ under this section—

(a) if it is expressed to apply for a limited period, does not apply to any amounts paid to OFCOM after the end of that period; and

(b) in any event, does not apply to amounts paid to them after a withdrawal of the statement takes effect.

(9) OFCOM may revise a statement made under this section.

(10) The consent of the Treasury [and the Secretary of State] ⁸ is required for the making, revision or withdrawal of a statement under this section.

(11) Where OFCOM make or revise a statement of this section they must publish so much of the statement or revised statement as appears to them necessary for demonstrating that the statement or revision complies with subsection (3).

Notes

¹ Heading substituted by Digital Economy Act 2017 c. 30 Pt 6 s.100(10) (November 3, 2017: substitution came into force on July 31, 2017 but could not take effect until the commencement of 2003 c.21 s.401 on November 3, 2017)

² Substituted by Digital Economy Act 2017 c. 30 Pt 6 s.100(3) (November 3, 2017: substitution came into force on July 31, 2017 but could not take effect until the commencement of 2003 c.21 s.401(1) on November 3, 2017)

³ Words repealed by Digital Economy Act 2017 c. 30 Pt 6 s.100(4) (November 3, 2017: repeal came into force on July 31, 2017 but could not take effect until the commencement of 2003 c.21 s.401(2) on November 3, 2017)

⁴ S.401(3) substituted for s.401(3)-(5) by Digital Economy Act 2017 c. 30 Pt 6 s.100(5) (November 3, 2017: substitution came into force on July 31, 2017 but could not take effect until the commencement of 2003 c.21 s.401(3)-(5) on November 3, 2017)

⁵ Words repealed by Digital Economy Act 2017 c. 30 Pt 6 s.100(6) (November 3, 2017: repeal came into force on July 31, 2017 but could not take effect until the commencement of 2003 c.21 s.401(6) on November 3, 2017)

- ⁶ Words substituted by Digital Economy Act 2017 c. 30 Pt 6 s.100(7) (November 3, 2017: substitution came into force on July 31, 2017 but could not take effect until the commencement of 2003 c.21 s.401(7) on November 3, 2017)
- ⁷ Words repealed by Digital Economy Act 2017 c. 30 Pt 6 s.100(8) (November 3, 2017: repeal came into force on July 31, 2017 but could not take effect until the commencement of 2003 c.21 s.401(8) on November 3, 2017)
- ⁸ Words inserted by Digital Economy Act 2017 c. 30 Pt 6 s.100(9) (November 3, 2017: insertion came into force on July 31, 2017 but could not take effect until the commencement of 2003 c.21 s.401 on November 3, 2017)

Commencement

Pt 6 s. 401(1)-(11): November 3, 2017 (SI 2017/1063 art. 2)



Law In Force With Amendments Pending

402 Power of Secretary of State to make orders and regulations

(1) Every power conferred by this Act on the Secretary of State to make orders or regulations, other than the powers conferred by Schedule 4, is a power exercisable by statutory instrument.

(2) A statutory instrument containing an order or regulations made in exercise of any such power, other than—

(a) an order under section 31 or 411 [or regulations under section 368BC]¹, [...]²

[(aa) regulations under paragraph 95 of Schedule 3A which amend, repeal or modify the application of primary legislation, or]²

(b) [...]³

(c) any order that is required, by any provision of this Act, to be laid before Parliament and approved in draft,

shall be subject to annulment in pursuance of a resolution of either House of Parliament.

[(2A) A statutory instrument containing (whether alone or with other provisions) regulations under paragraph 95 of Schedule 3A which amend, repeal or modify the application of primary legislation, may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.]⁴

(3) Every power of the Secretary of State to make an order or regulations under this Act, other than an order under section 31 or 411 or an order made in exercise of a power conferred by Schedule 4, includes power—

(a) to make different provision for different cases (including different provision in respect of different areas);

(b) to make provision subject to such exemptions and exceptions as the Secretary of State thinks fit; and

(c) to make such incidental, supplemental, consequential and transitional provision as the Secretary of State thinks fit.

[(4) In this section “primary legislation” means—

(a) an Act of Parliament,

(b) a Measure or Act of the National Assembly for Wales,

(c) an Act of the Scottish Parliament, or

(d) Northern Ireland legislation.

] ⁵

Notes

- ¹ Words inserted by Digital Economy Act 2017 c. 30 Pt 6 s.93(8) (July 31, 2017)
- ² Added by Digital Economy Act 2017 c. 30 Sch.3(2) para.47(2) (July 31, 2017)
- ³ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)
- ⁴ Added by Digital Economy Act 2017 c. 30 Sch.3(2) para.47(3) (July 31, 2017)
- ⁵ Added by Digital Economy Act 2017 c. 30 Sch.3(2) para.47(4) (July 31, 2017)

Amendments Pending

Pt 6 s. 402(1): words inserted by Digital Economy Act 2010 c. 24 s. 20(3) (Not yet in force)

Pt 6 s. 402(2A)(a)-(b): added by Telecommunications Infrastructure (Leasehold Property) Act 2021 c. 7, Sch. 1 para. 3(b)(ii) (date to be appointed: 2021 c.7 Sch.1 para.3(b)(ii) came into force on March 15, 2021 as specified in 2021 c.7 s.3(3)(b) for the limited purpose of enabling the exercise, on or after that day, of any power to make regulations under 2003 c.21 Sch.3A Pt 4A; not yet in force otherwise)

Pt 6 s. 402(2A): words substituted by Telecommunications Infrastructure (Leasehold Property) Act 2021 c. 7, Sch. 1 para. 3(b)(i) (date to be appointed: 2021 c.7 Sch.1 para.3(b)(i) came into force on March 15, 2021 as specified in 2021 c.7 s.3(3)(b) for the limited purpose of enabling the exercise, on or after that day, of any power to make regulations under 2003 c.21 Sch.3A Pt 4A; not yet in force otherwise)

Pt 6 s. 402(2)(aa): substituted by Telecommunications Infrastructure (Leasehold Property) Act 2021 c. 7, Sch. 1 para. 3(a) (date to be appointed: 2021 c.7 Sch.1 para.3(a) came into force on March 15, 2021 as specified in 2021 c.7 s.3(3)(b) for the limited purpose of enabling the exercise, on or after that day, of any power to make regulations under 2003 c.21 Sch.3A Pt 4A; not yet in force otherwise)


Proposed Draft Amendments

Pt 6 s. 402(2)(aa): word repealed by Telecommunications (Security) Bill 2019-21 (HC Bill 246) s. 25(3)(a) (Commons' Committee Stage, January 26, 2021) (date to be appointed)

Pt 6 s. 402(2)(d): added by Telecommunications (Security) Bill 2019-21 (HC Bill 246) s. 25(3)(b) (Commons' Committee Stage, January 26, 2021) (date to be appointed)

Commencement

Pt 6 s. 402(1)-(3)(c): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

 Law In Force

403 Regulations and orders made by OFCOM

(1) This section applies to any power of OFCOM to make regulations or to make an order or scheme if that power is one to which this section is expressly applied.

(2) The powers to which this section applies shall be exercisable by statutory instrument, and the Statutory Instruments Act 1946 (c. 36) is to apply in relation to those powers as if OFCOM were a Minister of the Crown.

(3) Where an instrument made under a power to which this section applies falls to be laid before Parliament, OFCOM must, immediately after it is made, send it to the Secretary of State for laying by him.

(4) Before making any regulations or order under a power to which this section applies, OFCOM must—

- (a) give a notice of their proposal to do so to such persons representative of the persons appearing to OFCOM to be likely to be affected by the implementation of the proposal as OFCOM think fit;
- (b) publish notice of their proposal 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 and are not given notice by virtue of paragraph (a); and
- (c) consider any representations that are made to OFCOM, before the time specified in the notice.

(5) A notice for the purposes of subsection (4) must—

- (a) state that OFCOM propose to make the regulations or order in question;
- (b) set out the general effect of the regulations or order;
- (c) specify an address from which a copy of the proposed regulations or order may be obtained; and
- (d) specify a time before which any representations with respect to the proposal must be made to OFCOM.

(6) The time specified for the purposes of subsection (5)(d) must be no earlier than the end of the period of [30 days]¹ beginning with the day after the latest day on which the notice is given or published for the purposes of subsection (4).

(7) Every power of OFCOM to which this section applies includes power—

- (a) to make different provision for different cases (including different provision in respect of different areas);
- (b) to make provision subject to such exemptions and exceptions as OFCOM think fit; and
- (c) to make such incidental, supplemental, consequential and transitional provision as OFCOM think fit.

(8) The Documentary Evidence Act 1868 (c. 37) (proof of orders and regulations etc.) shall have effect as if—

- (a) OFCOM were included in the first column of the Schedule to that Act;
- (b) OFCOM and persons authorised to act on their behalf were mentioned in the second column of that Schedule.

Notes

¹ Words substituted by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.63 (December 21, 2020)

Commencement

Pt 6 s. 403(1)-(8)(b): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))



404 Criminal liability of company directors etc.

(1) Where an offence under any enactment to which this section applies is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—

- (a) a director, manager, secretary or other similar officer of the body corporate, or
- (b) a person who was purporting to act in any such capacity,

he (as well as the body corporate) is guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) Where an offence under any enactment to which this section applies—

- (a) is committed by a Scottish firm, and
- (b) is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of a partner of the firm,

he (as well as the firm) is guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(3) In this section “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

(4) The enactments to which this section applies are every enactment contained in—

- (a) this Act;
- (b)-(c) [...] ¹
- (d) [...] ²
- (e) the Telecommunications Act 1984 (c. 12) [; or] ³
- [(f) Part 3 of the Postal Services Act 2011.] ³

(5) [...] ¹

Notes

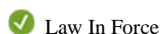
¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

² Repealed by Enterprise and Regulatory Reform Act 2013 c. 24 Sch.21(1) para.2 (June 25, 2013)

³ Added by Postal Services Act 2011 c. 5 Sch.12(2) para.67(b) (October 1, 2011)

Commencement

Pt 6 s. 404(1)-(5): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))



405 General interpretation

(1) In this Act, except in so far as the context otherwise requires—

- “the 1990 Act” means the Broadcasting Act 1990 (c. 42);
- “the 1996 Act” means the Broadcasting Act 1996 (c. 55);
- “access” is to be construed in accordance with subsection (4);

“apparatus” includes any equipment, machinery or device and any wire or cable and the casing or coating for any wire or cable;

“associated facility” has the meaning given by section 32;

[“the Audiovisual Media Services Directive” means Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services²;]¹

“the BBC” means the British Broadcasting Corporation;

[“BEREC” means the Body of European Regulators for Electronic Communications;]³

“body” (without more) means any body or association of persons, whether corporate or unincorporate, including a firm;

“broadcast” means broadcast by wireless telegraphy, and cognate expressions are to be construed accordingly;

“Broadcasting Act licence” means a licence under Part 1 or 3 of the 1990 Act or under Part 1 or 2 of the 1996 Act;

“business” includes any trade or profession;

“C4C” means the Channel Four Television Corporation;

“communications provider” means a person who (within the meaning of section 32(4)) provides an electronic communications network or an electronic communications service;

“the Consumer Panel” means the panel established under section 16;

“consumers” has the meaning given by subsection (5);

“Content Board” means the committee of OFCOM established and maintained under section 12;

“contravention” includes a failure to comply, and cognate expressions are to be construed accordingly;

“customers”, in relation to a communications provider or a person who makes an associated facility available, means the following (including any of them whose use or potential use of the network, service or facility is for the purposes of, or in connection with, a business)—

(a) the persons to whom the network, service or facility is provided or made available in the course of any business carried on as such by the provider or person who makes it available;

(b) the persons to whom the communications provider or person making the facility available is seeking to secure that the network, service or facility is so provided or made available;

(c) the persons who wish to be so provided with the network or service, or to have the facility so made available, or who are likely to seek to become persons to whom the network, service or facility is so provided or made available;

“distribute”, in relation to a service, does not include broadcast, and cognate expressions shall be construed accordingly;

[“the EECC Directive” means Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code;]⁴

“electronic communications network” and “electronic communications service” have the meanings given by section 32;

“enactment” includes any enactment comprised in an Act of the Scottish Parliament or in any Northern Ireland legislation;

“the enactments relating to the management of the radio spectrum” means—

[(a) the Wireless Telegraphy Act 2006; and]⁵

[(g) the provisions of this Act so far as relating to that Act;]⁶

“frequency” includes frequency band;

“holder”, in relation to a Broadcasting Act licence, is to be construed in accordance with subsection (7), and cognate expressions are to be construed accordingly;

“information” includes accounts, estimates and projections and any document;

“intelligible” is to be construed in accordance with subsection (9);

“international obligation of the United Kingdom” includes [...] ⁷ any obligation which will or may arise under any international agreement or arrangements to which the United Kingdom is a party ;

“modification” includes omissions, alterations and additions, and cognate expressions are to be construed accordingly;

“OFCOM” means the Office of Communications;

[“on-demand programme service” has the meaning given by section 368A(1);]⁸

[...] ⁹

[“postal services” has the meaning given by section 27 of the Postal Services Act 2011;]¹⁰

“pre-commencement regulator” means any of the following—

- (a) the Broadcasting Standards Commission;
- (b) the Director General of Telecommunications;
- (c) the Independent Television Commission;
- (d) the Radio Authority;

“programme” includes an advertisement and, in relation to a service, anything included in that service [which is an individual item (irrespective of length)] ¹¹ ;

“programme service” means—

- (a) a television programme service;
- (b) the public teletext service;
- (c) an additional television service;
- (d) a digital additional television service;
- (e) a radio programme service; or
- (f) a sound service provided by the BBC;

and expressions used in this definition and in Part 3 have the same meanings in this definition as in that Part;

“provide” and cognate expressions, in relation to an electronic communications network, electronic communications service or associated facilities, are to be construed in accordance with section 32(4);

“purposes of public service television broadcasting in the United Kingdom” shall be construed in accordance with subsection (4) of section 264 and subsections (5) and (6) of that section shall apply for the purposes of any provision of this Act referring to such purposes as they apply for the purposes of a report under that section;

“the radio transfer date” means the date on which the Radio Authority's functions under Part 3 of the 1990 Act and Part 2 of the 1996 Act are transferred under this Act to OFCOM;

“representation”, in relation to a proposal or the contents of any notice or notification, includes an objection to the proposal or (as the case may be) to the whole or any part of those contents;

“subordinate legislation” means—

- (a) any subordinate legislation, within the meaning of the Interpretation Act 1978 (c. 30); or

(b) any statutory rules (within the meaning of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)));

“television and radio services” means—

(a) programme services apart from those provided by the BBC; and

(b) services provided by the BBC in relation to which OFCOM have functions;

“television programme” means any programme (with or without sounds) which—

(a) is produced wholly or partly to be seen on television; and

(b) consists of moving or still images or of legible text or of a combination of those things;

“the television transfer date” means the date on which the Independent Television Commission's functions under Part 1 of the 1990 Act and Part 1 of the 1996 Act are transferred under this Act to OFCOM;

“TV licence” means a licence for the purposes of section 363;

[“very high capacity network” has the meaning given by section 4(12A);]¹²

“the Welsh Authority” means the authority whose name is, by virtue of section 56(1) of the 1990 Act, Sianel Pedwar Cymru;

[“wireless telegraphy” has the same meaning as in the Wireless Telegraphy Act 2006;]¹³

[“wireless telegraphy licence” means a licence granted under section 8 of the Wireless Telegraphy Act 2006.]¹⁴

(2) Any power under this Act to provide for the manner in which anything is to be done includes power to provide for the form in which it is to be done.

(3) References in this Act to OFCOM's functions under an enactment include references to their power to do anything which appears to them to be incidental or conducive to the carrying out of their functions under that enactment.

(4) References in this Act to access—

(a) in relation to an electronic communications network or electronic communications service, are references to the opportunity of making use of the network or service; and

(b) in relation to a programme service, are references to the opportunity of viewing in an intelligible form the programmes included in the service or (as the case may be) of listening to them in such a form.

(5) For the purposes of this Act persons are consumers in a market for a service, facility or apparatus, if they are—

(a) persons to whom the service, facility or apparatus is provided, made available or supplied (whether in their personal capacity or for the purposes of, or in connection with, their businesses);

(b) persons for whose benefit the service, facility or apparatus is provided, made available or supplied or for whose benefit persons falling within paragraph (a) arrange for it to be provided, made available or supplied;

(c) persons whom the person providing the service or making the facility available, or the supplier of the apparatus, is seeking to make into persons falling within paragraph (a) or (b); or

(d) persons who wish to become persons falling within paragraph (a) or (b) or who are likely to seek to become persons falling within one or both of those paragraphs.

[(5A) References in this Act to consumers in a market for a service include, where the service is a postal service, addressees.]¹⁵

(6) References in this Act to services in relation to which OFCOM have functions include references to any services in relation to which OFCOM are required to set standards under section 319.

(7) In this Act references, in relation to a time or a period, to the holder of a Broadcasting Act licence or of a particular description of such licence are references to the person who held that licence at that time or (as the case may be) to every person who held that licence for the whole or a part of that period.

(8) For the purposes of this Act the fact that a service is not in an intelligible form shall be disregarded, except where express provision is made to the contrary, in determining whether it has been provided—

- (a) for general reception;
- (b) for reception by particular persons; or
- (c) for reception at a particular place or in a particular area.

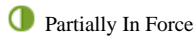
(9) For the purposes of this Act something is not to be regarded as in an intelligible form if it cannot readily be understood without being decrypted or having some comparable process applied to it.

Notes

- ¹ Definition substituted by Audiovisual Media Services Regulations 2020/1062 Pt 6 reg.50(a) (November 1, 2020: substitution has effect subject to transitional provision specified in SI 2020/1062 Pt 7)
- ² OJ No. L 95, 15.4.2010, p. 1; amended by Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 (OJ No. L 303, 28.11.2018, p. 69).
- ³ Definition inserted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.99 (May 26, 2011)
- ⁴ Definition inserted by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.64(a) (December 21, 2020)
- ⁵ Substituted by Wireless Telegraphy Act 2006 c. 36 Sch.7 para.34(2)(a) (February 8, 2007)
- ⁶ Substituted by Wireless Telegraphy Act 2006 c. 36 Sch.7 para.34(2)(b) (February 8, 2007)
- ⁷ Words repealed by Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019/246 Sch.1(1) para.42(a) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))
- ⁸ Definition inserted by Audiovisual Media Services Regulations 2009/2979 reg.11(b) (December 19, 2009)
- ⁹ Definition repealed by Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019/246 Sch.1(1) para.42(b) (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))
- ¹⁰ Definition inserted by Postal Services Act 2011 c. 5 Sch.12(2) para.68(2) (October 1, 2011)
- ¹¹ Words inserted by Audiovisual Media Services Regulations 2020/1062 Pt 6 reg.50(b) (November 1, 2020: insertion has effect subject to transitional provision specified in SI 2020/1062 Pt 7)
- ¹² Definition inserted by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.64(b) (December 21, 2020)
- ¹³ Definition substituted by Wireless Telegraphy Act 2006 c. 36 Sch.7 para.34(3) (February 8, 2007)
- ¹⁴ Definition substituted by Wireless Telegraphy Act 2006 c. 36 Sch.7 para.34(4) (February 8, 2007)
- ¹⁵ Added by Postal Services Act 2011 c. 5 Sch.12(2) para.68(3) (October 1, 2011)

Commencement

Pt 6 s. 405(1)-(9): July 17, 2003 (2003 c. 21 Pt 6 s. 411(3))



406 Minor and consequential amendments, transitionals and repeals

(1) Schedule 17 (which provides for minor and consequential amendments in connection with the other provision made by this Act) shall have effect.

(2) The Secretary of State may by order make such consequential modifications of any enactment as—

- (a) correspond to amendments of any other enactment that are made by Schedule 17; and
- (b) appear to him to be appropriate in consequence of that provision of this Act.

(3) The Secretary of State may by order make any provision that he thinks fit for substituting a reference in any enactment or subordinate legislation to something defined for the purposes of this Act, or of any provisions contained in this Act, for a reference to something equivalent or similar that was defined for the purposes of the Telecommunications Act 1984 (c. 12), or of provisions contained in that Act.

(4) The Secretary of State may by order make such further consequential modifications of—

- (a) an enactment extending only to Scotland,
- (b) an enactment extending only to Northern Ireland,
- (c) a local enactment, or
- (d) the provision of any subordinate legislation,

as appear to him to be appropriate in consequence of any provision of this Act.

(5) If it appears to the Secretary of State that a local enactment contains a provision which corresponds to a provision the effect of which is modified by an amendment in Schedule 17 of this Act of a listed provision, it shall be his duty to exercise his powers under this section to secure that a modification corresponding to that effected by that amendment is made to the local enactment.

(6) Schedule 18 (which contains transitional provisions in connection with the other provision made by this Act) shall have effect.

(7) Subject to the provisions of Schedule 18 and to the savings and commencement provisions set out in the notes to Schedule 19, the enactments and instruments specified in Schedule 19 (which include provisions that are spent or have ceased to be of any practical utility) are hereby repealed or revoked to the extent specified in the second column of that Schedule.

(8) In this section “local enactment” means—

- (a) a local or personal Act;
- (b) a public general Act relating only to London;
- (c) an order or scheme made under an Act which has been confirmed by Parliament or brought into operation in accordance with special Parliamentary procedure;
- (d) an enactment in a public general Act but amending a local enactment.

(9) In subsection (5) “listed provision” means the provisions of the following enactments—

- (a) sections 11 and 14 of the London Overground Wires, etc. Act 1933 (c. xliv);
- (b) section 7(6) of the London County Council (General Powers) Act 1949 (c. lv);
- (c) section 17(2) of the Lough Neagh and Lower Bann Drainage and Navigation Act (Northern Ireland) 1955 (c. 15 (N.I.));
- (d) section 17(4)(a) of the London County Council (General Powers) Act 1963 (c. xvii);
- (e) section 7(6) of the Greater London Council (General Powers) Act 1969 (c. lii);
- (f) section 20(1)(a) of the Thames Barrier and Flood Prevention Act 1972 (c. xlv);

- (g) section 32 of and paragraph 3(2)(b) of Schedule 2 and Part 10 of Schedule 7 to the Channel Tunnel Act 1987 (c. 53);
- (h) section 25(1) of the Norfolk and Suffolk Broads Act 1988 (c. 4);
- (i) section 5 of the London Local Authorities (No. 2) Act 1990 (c. xxx);
- (j) paragraphs 1(c) and 16 of Schedule 2, paragraph 3(2)(c) of Schedule 4 and paragraph 21 of Schedule 7 to the Cardiff Bay Barrage Act 1993 (c. 42);
- (k) section 3(1) of the British Waterways Act 1995 (c. i);
- (l) paragraphs 6(4) and 15(4) of Schedule 6 and Part 4 of Schedule 15 to the Channel Tunnel Rail Link Act 1996 (c. 61).

(10) This section has effect subject to section 408.

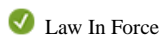
Commencement

Pt 6 s. 406(1): July 25, 2003 for provisions specified in SI 2003/1900 Sch.1 subject to transitional provisions specified in SI 2003/1900 art.3(1); September 18, 2003 for provisions specified in SI 2003/1900; December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2); December 29, 2003 for provisions specified in SI 2003/3142 art.3(1); April 1, 2004 for provisions specified in SI 2003/3142 art.4(2) and Sch.2; not yet in force otherwise (SI 2003/1900 art. 2(1), art. 2(2), art. 3(1), Sch. 1 para. 1, Sch. 2 para. 1; SI 2003/3142 art. 3(1), art. 3(2), art. 4(2), Sch. 1 para. 1, Sch. 2 para. 1)

Pt 6 s. 406(2)-(5), (8)-(10): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Pt 6 s. 406(6): July 25, 2003 for provisions specified in SI 2003/1900 Sch.1 subject to transitional provisions specified in SI 2003/1900 art.3(1); September 18, 2003 for provisions specified in SI 2003/1900 Sch.2; December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2); December 29, 2003 for provisions specified in SI 2003/3142 art.3(1); April 1, 2004 otherwise (SI 2003/1900 art. 2(1), art. 2(2), art. 3(1), Sch. 1 para. 1, Sch. 2 para. 1; SI 2003/3142 art. 3(1), art. 3(2), art. 4(2), Sch. 1 para. 1, Sch. 2 para. 1)

Pt 6 s. 406(7): July 25, 2003 for repeals set out in SI 2003/1900 Sch.1 subject to transitional provisions specified in SI 2003/1900 art.3(1); September 18, 2003 for repeals specified in SI 2003/1900 Sch.2; December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2); December 29, 2003 for repeals specified in SI 2003/3142 art.3(1); April 1, 2004 for repeals specified in SI 2003/3142 art.4(2) and Sch.2; not yet in force otherwise (SI 2003/1900 art. 2(1), art. 2(2), art. 3(1), Sch. 1 para. 1, Sch. 2 para. 1; SI 2003/3142 art. 3(1), art. 3(2), art. 4(2), Sch. 1 para. 1, Sch. 2 para. 1)



Law In Force

407 Pre-consolidation amendments

(1) The Secretary of State may by order make such modifications of—

- (a) [...]¹
- (b) the enactments relating to broadcasting, and
- (c) enactments referring to enactments falling within paragraph [...]² (b),

as in his opinion facilitate, or are otherwise desirable in connection with, the consolidation of those enactments or any of them.

(2) No order is to be made under this section unless a Bill for repealing and re-enacting—

- (a) the enactments modified by the order, or

(b) enactments relating to matters connected with the matters to which enactments modified by the order relate,
has been presented to either House of Parliament.

(3) An order under this section is not to come into force until immediately before the commencement of the Act resulting from that Bill.

(4) No order is to be made containing provision authorised by this section unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

(5) In this section “the enactments relating to broadcasting” means—

- (a) the 1990 Act;
- (b) the 1996 Act;
- (c) Part 3 of this Act; and
- (d) the other provisions of this Act so far as relating to the 1990 Act, the 1996 Act or that Part.

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

² Words repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

Commencement

Pt 6 s. 407(1)-(5)(d): September 18, 2003 (SI 2003/1900 art. 2(2), Sch. 2 para. 1)

✓ Law In Force

408 Transitional provision for anticipatory carrying out of functions

(1) This section applies where an order under section 411 bringing into force—

- (a) a provision of Part 1, 2 or 6, or
- (b) a provision of Chapter 1 of Part 5,

states that that provision is brought into force at a particular time for the purpose only of enabling specified networks and services functions, or specified spectrum functions, to be carried out during the transitional period by the Director General of Telecommunications or the Secretary of State.

(2) In relation to times falling in the transitional period, that provision is to have effect as if—

- (a) references in that provision to OFCOM, and
- (b) references to OFCOM inserted by that provision in any other enactment,

were references, in accordance with subsection (3), to the Director General of Telecommunications or to the Secretary of State.

(3) The references have effect—

- (a) as references to the Director General of Telecommunications to the extent that the provision is brought into force for the purpose of enabling specified networks and services functions to be carried out; and
- (b) as references to the Secretary of State, to the extent that the provision is brought into force for the purpose of enabling specified spectrum functions to be carried out.

(4) An order bringing a provision into force as mentioned in subsection (1) may include provision specifying the extent to which it is to be taken, for the purposes of subsection (3), to have been brought into force for the purpose of enabling particular functions to be carried out.

(5) In relation to times after the end of the transitional period for a provision which has been brought into force for enabling specified functions to be carried out by the Director General of Telecommunications or the Secretary of State, anything which—

(a) was done, during that period, by or in relation to that Director or the Secretary of State, and

(b) was so done for the purposes of, or in connection with, the carrying out of those functions,

is to have effect as if had been done by or in relation to OFCOM.

(6) In this section “the transitional period”, in relation to a provision brought into force as mentioned in subsection (1) by an order under section 411, means the period which—

(a) begins with the time when it is so brought into force; and

(b) ends with the time from which that order, or a subsequent order under that section, brings the provision into force for the purpose of conferring on OFCOM the functions in question.

(7) In this section “networks and services functions” means any of the following functions of OFCOM under this Act—

(a) their functions under sections 24 and 25;

(b) their functions under Chapter 1 of Part 2;

(c) their functions under Chapter 3 of Part 2, except to the extent that those functions relate to—

(i) disputes relating to rights or obligations conferred or imposed by or under the enactments relating to the management of the radio spectrum; or

(ii) decisions made under those enactments;

(d) their functions under Chapter 1 of Part 5, except to the extent that those functions relate to broadcasting or related matters;

(e) their functions under Schedule 18 to this Act in relation to the abolition of licensing (within the meaning of that Schedule).

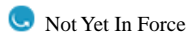
(8) In this section “spectrum functions” means—

(a) the functions under the enactments relating to the management of the radio spectrum which by virtue of this Act are conferred on OFCOM; and

(b) the functions conferred on OFCOM by so much of Chapter 3 of Part 2 as relates to the disputes and decisions mentioned in subsection (7)(c).

Commencement

Pt 6 s. 408(1)-(8)(b): July 25, 2003 subject to transitional provisions specified in 2003 c.21 Sch.18 para.2 and in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions specified in SI 2003/1900 art.3(1) cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2); 2003 c. 21 Sch. 18 para. 2)



409 Modifications consequential on regulations implementing Directives

(1) This section applies if it appears to the Secretary of State that regulations under section 2 of the European Communities Act 1972 (c. 68) for giving effect to Community obligations imposed by the Communications Directives have come into force before the passing of this Act.

(2) The Secretary of State may by order—

- (a) repeal any relevant provision of this Act which appears to him to be unnecessary, or to have become spent, in consequence of the regulations;
- (b) make such other modifications of the relevant provisions of this Act as he considers appropriate in consequence of the regulations;
- (c) revoke provision made by the regulations; and
- (d) make transitory or transitional provision in relation to anything done by or under the regulations.

(3) The Secretary of State's power under this section includes power to make consequential amendments of enactments not contained in this Act.

(4) In this section—

“the Communications Directives” means—

- (a) the Access Directive, that is to say, Directive 2002/19/EC of the European Parliament and of the Council on access to, and interconnection of, electronic communications networks and associated facilities;
- (b) the Authorisation Directive, that is to say, Directive 2002/20/EC of the European Parliament and of the Council on the authorisation of electronic communications networks and services;
- (c) the Framework Directive, that is to say, Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services;
- (d) the Universal Service Directive, that is to say, Directive 2002/22/EC of the European Parliament and of the Council on universal service and users' rights relating to electronic communications networks and services;

“relevant provision of this Act” means a provision contained in—

- (a) Part 1, 2 or 6; or
- (b) Chapter 1 of Part 5.

(5) No order is to be made containing provision authorised by this section unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

Commencement

Pt 6 s. 409(1)-(5): Date to be appointed (not yet in force) (2003 c. 21 Pt 6 s. 411(2))



Law In Force

410 Application of enactments to territorial sea and other waters

(1) This section applies to—

- (a) provision made by or under Part 2 of this Act;
- (b) any provision of the enactments relating to the management of the radio spectrum that are not contained in that Part [or the Wireless Telegraphy Act 2006]¹ ; and
- (c) any provision of Chapter 1 of Part 5 of this Act so far as it relates to a matter as respects which provision falling within paragraph (a) or (b) is made [or a matter as respects which the Wireless Telegraphy Act 2006 makes provision]² .

(2) Her Majesty may by Order in Council provide—

- (a) for an area of the territorial sea to be treated, for the purposes of any provision to which this section applies, as if it were situated in such part of the United Kingdom as may be specified in the Order; and
- (b) for jurisdiction with respect to questions arising in relation to the territorial sea under any such provision to be conferred on courts in a part of the United Kingdom so specified.

(3) An Order in Council under section 11 of the Petroleum Act 1998 (c. 17) [or section 87 of the Energy Act 2004]³ (application of civil law to offshore installations etc.) may make provision for treating—

- (a) an installation with respect to which provision is made under that section and which is outside the territorial sea but in waters to which that section applies, and
- (b) waters within 500 metres of the installation,

as if for the purposes of provisions to which this section applies, they were situated in such part of the United Kingdom as is specified in the Order.

(4) The jurisdiction conferred on a court by an Order in Council under this section is in addition to any jurisdiction exercisable apart from this section by that or any other court.

(5) Subsection (3) of section 402 applies to the power to make an Order in Council under this section as it applies to any power of the Secretary of State to make an order under this Act, but as if references in that subsection to the Secretary of State were references to Her Majesty in Council.

(6) A statutory instrument containing an Order in Council under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(7) In this section—

“installation” includes any floating structure or device maintained on a station by whatever means, and installations in transit;

“the territorial sea” means the territorial sea adjacent to the United Kingdom.

Notes

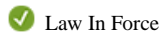
¹ Words inserted by Wireless Telegraphy Act 2006 c. 36 Sch.7 para.35(a) (February 8, 2007)

² Words inserted by Wireless Telegraphy Act 2006 c. 36 Sch.7 para.35(b) (February 8, 2007)

³ Words inserted by Energy Act 2004 c. 20 Pt 2 c.2 s.87(5) (October 5, 2004)

Commencement

Pt 6 s. 410(1)-(7) definition of "the territorial sea": July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))



Law In Force

411 Short title, commencement and extent

- (1) This Act may be cited as the Communications Act 2003.
- (2) This Act (except the provisions listed in subsection (3), which come into force on the passing of this Act) shall come into force on such day as the Secretary of State may by order appoint; and different days may be appointed under this subsection for different purposes.
- (3) Those provisions are sections 31(1) to (4) and (6) and 405 and this section.
- (4) An order under subsection (2) may include provision making such transitional or transitory provision, in addition to that made by Schedule 18, as the Secretary of State considers appropriate in connection with the bringing into force of any provisions of this Act; and the power to make transitional or transitory provision includes power to make—
- (a) different provision for different cases (including different provision in respect of different areas);
 - (b) provision subject to such exemptions and exceptions as the Secretary of State thinks fit; and
 - (c) such incidental, supplemental and consequential provision as he thinks fit.
- (5) This Act extends to Northern Ireland.
- (6) Subject to subsection (7), Her Majesty may by Order in Council extend the provisions of this Act, with such modifications as appear to Her Majesty in Council to be appropriate, to any of the Channel Islands or to the Isle of Man.
- (7) Subsection (6) does not authorise the extension to any place of a provision of this Act so far as it gives effect to an amendment of an enactment that is not itself capable of being extended there in exercise of a power conferred on Her Majesty in Council.
- (8) Subsection (3) of section 402 applies to the power to make an Order in Council under this section as it applies to any power of the Secretary of State to make an order under this Act, but as if references in that subsection to the Secretary of State were references to Her Majesty in Council.

Commencement

Pt 6 s. 411(1)-(8): July 17, 2003

SCHEDULE 1**FUNCTIONS TRANSFERRED TO OFCOM****Section 2**

Wireless telegraphy functions

 Repealed

1 [...]¹**Notes**


¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

 Repealed

2 [...]¹**Notes**

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

Functions in relation to the licensing etc. of television services

 Law In Force

3

The following functions of the Independent Television Commission are transferred to OFCOM—

- (a) the function of granting or awarding licences under Part 1 of the 1990 Act (independent television services) and Part 1 of the 1996 Act (digital television broadcasting);
- (b) the Commission's functions under those Parts in relation to, and to applications for, licences under either of those Parts;
- (c) the function of securing the provision of a nationwide system of television broadcasting services known as Channel 3;
- (d) the function of securing the provision of the television broadcasting service known as Channel 5.

Commencement

Sch. 1 para. 3(a)-(d): December 29, 2003 subject to transitional provisions contained in 2003 c.21 Sch.18 para.1 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Functions in relation to C4C

✓ Law In Force

4

The functions conferred on the Independent Television Commission by or under section 23 of the 1990 Act and under Schedule 3 to that Act (appointment of members of C4C and related administrative functions) are transferred to OFCOM.

Commencement

Sch. 1 para. 4: December 29, 2003 subject to transitional provisions contained in 2003 c.21 Sch.18 para.1 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Functions in relation to the licensing of radio services

✓ Law In Force

5

The following functions of the Radio Authority are transferred to OFCOM—

- (a) the function of granting or awarding licences under Part 3 of the 1990 Act (independent radio services) and Part 2 of the 1996 Act (digital sound broadcasting); and
- (b) the Authority's functions under those Parts in relation to licences granted or awarded under those Parts.

Commencement

Sch. 1 para. 5(a)-(b): December 29, 2003 subject to transitional provisions contained in 2003 c.21 Sch.18 para.1 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Functions in relation to the proscription of foreign satellite services

✓ Law In Force


6

The functions of the Independent Television Commission and of the Radio Authority under section 177 of the 1990 Act (proscription of foreign satellite services) are transferred to OFCOM.

Commencement

Sch. 1 para. 6: December 29, 2003 subject to transitional provisions contained in 2003 c.21 Sch.18 para.1 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Functions in relation to Gaelic broadcasting

 Law In Force


7

The functions of the Independent Television Commission under sections 183 and 184 of the 1990 Act and the functions of that Commission and of the Radio Authority under Schedule 19 to that Act (Gaelic broadcasting) are transferred to OFCOM.

Commencement

Sch. 1 para. 7: December 29, 2003 subject to transitional provisions contained in 2003 c.21 Sch.18 para.1 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Functions in relation to the national television archive

 Law In Force

8

The functions of the Independent Television Commission under section 185 of the 1990 Act (maintenance of the national television archive) are transferred to OFCOM.

Commencement

Sch. 1 para. 8: December 29, 2003 subject to transitional provisions contained in 2003 c.21 Sch.18 para.1 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Warrants to enter and search premises to enforce broadcasting licences provisions

✓ Law In Force

9

The functions of the Independent Television Commission and of the Radio Authority under section 196(1) of the 1990 Act (entry and search for the purposes of enforcing licensing provisions of the 1990 and 1996 Acts) are transferred to OFCOM.

Commencement

Sch. 1 para. 9: December 29, 2003 subject to transitional provisions contained in 2003 c.21 Sch.18 para.1 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Variation of existing Channel 3 and Channel 5 licences

✓ Law In Force

10

Any power to vary licences which is conferred on the Independent Television Commission by an order under section 28 of the 1996 Act is transferred to OFCOM.

Commencement

Sch. 1 para. 10: December 29, 2003 subject to transitional provisions contained in 2003 c.21 Sch.18 para.1 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Reports for the purposes of the review of digital broadcasting

✓ Law In Force


11

The functions of the Independent Television Commission and of the Radio Authority under sections 33 and 67 of the 1996 Act (reports to the Secretary of State for the purposes of his review of digital broadcasting) are transferred to OFCOM.

Commencement

Sch. 1 para. 11: December 29, 2003 subject to transitional provisions contained in 2003 c.21 Sch.18 para.1 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Functions in relation to reservation of digital capacity to the BBC

 Law In Force

12

The function of the Secretary of State under section 49(4) of the 1996 Act (reserving digital capacity on a local radio multiplex service for the BBC) is transferred to OFCOM.

Commencement

Sch. 1 para. 12: December 29, 2003 subject to transitional provisions contained in 2003 c.21 Sch.18 para.1 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Functions in relation to listed events

 Law In Force

13

The functions of the Independent Television Commission under Part 4 of the 1996 Act (functions in connection with listed events) are transferred to OFCOM.

Commencement

Sch. 1 para. 13: December 29, 2003 subject to transitional provisions contained in 2003 c.21 Sch.18 para.1 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Functions relating to fairness and privacy in broadcasting

✓ Law In Force

14

The following functions of the Broadcasting Standards Commission under Part 5 of the 1996 Act are transferred to OFCOM—

- (a) the Commission's function of drawing up and from time to time revising a code of practice under section 107 of that Act (codes of practice relation to fairness and privacy); and
- (b) their functions in relation to fairness complaints under that Part.

Commencement

Sch. 1 para. 14(a)-(b): December 29, 2003 subject to transitional provisions contained in 2003 c.21 Sch.18 para.1 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

SCHEDULE 2

TRANSFER SCHEMES

Section 30

✓ Law In Force

1 Contents of transfer scheme

(1) A transfer scheme—

- (a) shall set out the property, rights and liabilities to be transferred by the scheme; and
- (b) may make incidental, supplemental, consequential and transitional provision in connection with the transfer of that property and of those rights and liabilities.

(2) The provisions of the scheme setting out the property, rights and liabilities to be transferred may do so in either or both of the following ways—

- (a) by specifying them or describing them in particular; or
- (b) by identifying them generally by reference to, or to a specific part of, an undertaking from which they are to be transferred.

(3) The property, rights and liabilities that are to be capable of being transferred by a transfer scheme include—

- (a) property, rights and liabilities that would not otherwise be capable of being transferred or assigned by the person from whom they are transferred;
- (b) property acquired and rights and liabilities arising in the period after the making of the scheme and before it comes into force;
- (c) rights and liabilities arising subsequently in respect of matters occurring in that period;
- (d) property situated anywhere in the United Kingdom or elsewhere and rights and liabilities under the law of any part of the United Kingdom or of any place outside the United Kingdom; and

(e) rights and liabilities under an enactment.

(4) The provision that may be made under sub-paragraph (1)(b) includes provision for the creation in favour of a pre-commencement regulator, the Secretary of State or OFCOM of rights or liabilities over or in respect of property transferred to OFCOM or property retained by a pre-commencement regulator or the Secretary of State.

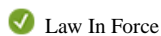
(5) The transfers to which effect may be given by a transfer scheme, and the rights that may be created by means of such a scheme, include transfers that are to take effect, and rights that are to arise, in accordance with the scheme as if there were—

- (a) no such requirement to obtain a person's consent or concurrence,
- (b) no such liability in respect of any contravention of any other requirement, and
- (c) no such interference with any interest or right,

as there would be, in the case of a transaction apart from this Act (whether under any enactment or agreement or otherwise), by reason of any provision having effect in relation to the terms on which a pre-commencement regulator or the Secretary of State is entitled or subject to any property, right or liability.

Commencement

Sch. 2 para. 1(1)-(5)(c): September 18, 2003 (SI 2003/1900 art. 2(2), Sch. 2 para. 1)



Law In Force

2 Effect of transfer scheme

(1) Property transferred by a transfer scheme shall, on the coming into force of the scheme, vest in OFCOM without further assurance.

(2) Where any transfer scheme comes into force, any agreement made, transaction effected or other thing done by or in relation to the person from whom any transfers for which the scheme provides are made shall have effect, so far as necessary for the purposes of those transfers, as if—

- (a) it had been made, effected or done by or in relation to OFCOM; and
- (b) OFCOM were the same person in law as the person from whom the transfer is made.

(3) Accordingly, references in any agreement, document, process or instrument of any description to the person from whom anything is transferred by means of a transfer scheme shall have effect, so far as necessary for the purpose of giving effect to the transfer from the coming into force of the scheme, as references to OFCOM.

(4) Where any agreement, document, process or instrument of any description has effect, in relation to anything transferred by means of a transfer scheme, as referring (whether expressly or by implication)—

- (a) to a member or to an officer of a pre-commencement regulator, or
- (b) to an officer of the Secretary of State,

that agreement, document, process or instrument shall have effect so far as necessary for the purposes of the transfers effected by the scheme and in consequence of them, as referring instead to the person mentioned in sub-paragraph (5).

(5) That person is—

- (a) the person nominated for the purposes of the transfer by OFCOM; or
- (b) in default of a nomination, the member or employee of OFCOM who most closely corresponds to the member or officer originally referred to.

(6) Nothing in sub-paragraph (3) or (4) is to apply in relation to any reference in an enactment or in subordinate legislation.

Commencement

Sch. 2 para. 2(1)-(6): September 18, 2003 (SI 2003/1900 art. 2(2), Sch. 2 para. 1)

✓ Law In Force

3 Retrospective modification of a transfer scheme

(1) If at any time after the coming into force of a transfer scheme it appears to the Secretary of State that it is appropriate to do so, he may by order provide for the scheme to be deemed to have come into force with such modifications (including modifications retrospective to the time of the coming into force of the scheme) as may be provided for in the order.

(2) The power under this paragraph to provide by order for the modification of a transfer scheme shall be exercisable for the purpose only of making provision that could have been made by the scheme.

(3) Before making an order under this paragraph the Secretary of State must consult OFCOM.

Commencement

Sch. 2 para. 3(1)-(3): September 18, 2003 (SI 2003/1900 art. 2(2), Sch. 2 para. 1)

✓ Law In Force

4 Compensation

(1) Where, in consequence of any provision included in a transfer scheme, the interests, rights or liabilities of a third party are modified as mentioned in sub-paragraph (2), the third party is to be entitled to such compensation as may be just in respect of—

- (a) any diminution in the value of any of his interests or rights, or
- (b) any increase in the burden of his liabilities,

which is attributable to that modification.

(2) The modifications mentioned in sub-paragraph (1) are modifications by virtue of which—

- (a) an interest of the third party in any property is transformed into, or replaced by—
 - (i) an interest in only part of that property; or

- (ii) separate interests in different parts of that property;
 - (b) a right of the third party against any of the pre-commencement regulators or against the Secretary of State is transformed into, or replaced by, two or more rights which do not include a right which, on its own, is equivalent (disregarding the person against whom it is enforceable) to the right against that regulator or (as the case may be) against the Secretary of State; or
 - (c) a liability of the third party to any of the pre-commencement regulators or to the Secretary of State is transformed into, or replaced by, two or more separate liabilities at least one of which is a liability enforceable by a person other than the person by whom it was enforceable before being so transformed.
- (3) Where—
 - (a) a third party would, apart from any provision of a transfer scheme, have become entitled to, or to exercise, any interest or right arising or exercisable in respect of the transfer or creation in accordance with such a scheme of any property, rights or liabilities, and
 - (b) the provisions of that scheme have the effect of preventing that person's entitlement to, or to exercise, that interest or right from arising on any occasion in respect of anything mentioned in paragraph (a), and
 - (c) provision is not made by a transfer scheme for securing that an entitlement to, or to exercise, that interest or right or an equivalent interest or right, is preserved or created so as to arise in respect of the first occasion when corresponding circumstances next occur after the coming into force of the transfers for which the scheme provides,the third party is to be entitled to such compensation as may be just in respect of the extinguishment of the interest or right.
- (4) A liability to pay compensation under this paragraph shall fall on the persons mentioned in sub-paragraph (5) who (as the case may be)—
 - (a) have interests in the whole or any part of the property affected by the modification in question,
 - (b) are subject to the rights of the person to be compensated which are affected by the modification in question,
 - (c) are entitled to enforce the liabilities of the person to be compensated which are affected by that modification, or
 - (d) benefit from the extinguishment of the entitlement mentioned in sub-paragraph (3),and that liability shall be apportioned between those persons in such manner as may be appropriate having regard to the extent of their respective interests, rights or liabilities or the extent of the benefit they respectively obtain from the extinguishment.
- (5) Those persons are the pre-commencement regulators and the Secretary of State.
- (6) Sub-paragraph (4) shall have effect subject to so much of any transfer scheme (including the one that gives rise to the liability) as makes provision for the transfer of any liability under that sub-paragraph to OFCOM.
- (7) Any dispute as to whether, or as to the person by whom, any compensation is to be paid under this paragraph, and any dispute as to the amount of compensation to be paid by a person, shall be referred to and determined—
 - (a) where the claimant requires the matter to be determined in England and Wales or in Northern Ireland, by an arbitrator appointed by the Lord Chancellor, or

(b) where the claimant requires the matter to be determined in Scotland, by an arbiter appointed by the Lord President of the Court of Session.

(8) In this paragraph “third party”, in relation to provisions capable of giving rise to compensation under this paragraph, means any person other than—

- (a) a pre-commencement regulator; and
- (b) the Secretary of State.

Commencement

Sch. 2 para. 4(1)-(8)(b): September 18, 2003 (SI 2003/1900 art. 2(2), Sch. 2 para. 1)

✓ Law In Force

5 Stamp duty

(1) Stamp duty is not to be chargeable—

- (a) on a transfer scheme; or
- (b) on an instrument or agreement certified by the Secretary of State to the Commissioners of Inland Revenue as made for the purposes of a transfer scheme, or as made for purposes connected with such a scheme.

(2) But a transfer scheme, or an instrument or agreement so certified, is to be treated as duly stamped only if—

- (a) in accordance with section 12 of the Stamp Act 1891 (c. 39) it has been stamped with a stamp denoting either that it is not chargeable to duty or that it has been duly stamped; or
- (b) it is stamped with the duty to which it would be chargeable apart from this paragraph.

Commencement

Sch. 2 para. 5(1)-(2)(b): September 18, 2003 (SI 2003/1900 art. 2(2), Sch. 2 para. 1)

✓ Law In Force

[5A.— Stamp duty land tax

(1) For the purposes of stamp duty land tax, a land transaction effected by, or for the purposes of, or for purposes connected with, a transfer scheme is exempt from charge.

(2) Relief under this paragraph must be claimed in a land transaction return or an amendment of such a return.


(3) In this paragraph—

- “land transaction” has the meaning given by section 43(1) of the Finance Act 2003;
- “land transaction return” has the meaning given by section 76(1) of that Act.

] ¹

Notes

- ¹ Added by Stamp Duty Land Tax (Consequential Amendment of Enactments) Regulations 2003/2867 Sch.1(1) para.33 (December 1, 2003)
-

 Law In Force

6 Interpretation of Schedule

In this Schedule “transfer scheme” means a scheme made by a pre-commencement regulator or by the Secretary of State under section 30.

Commencement

Sch. 2 para. 6: September 18, 2003 (SI 2003/1900 art. 2(2), Sch. 2 para. 1)

SCHEDULE 3

AMENDMENTS OF SCHEDULE 2 TO THE TELECOMMUNICATIONS ACT 1984

Section 106

 Repealed

1 [...]¹

Notes

- ¹ Repealed by Digital Economy Act 2017 c. 30 Sch.3(2) para.48 (December 28, 2017)
-

 Repealed

2 [...]¹

Notes

- ¹ Repealed by Digital Economy Act 2017 c. 30 Sch.3(2) para.48 (December 28, 2017)
-

 Repealed

3 [...]¹

Notes

¹ Repealed by Digital Economy Act 2017 c. 30 Sch.3(2) para.48 (December 28, 2017)

 Repealed

4 [...]¹

Notes

¹ Repealed by Digital Economy Act 2017 c. 30 Sch.3(2) para.48 (December 28, 2017)

 Repealed

5 [...]¹

Notes

¹ Repealed by Digital Economy Act 2017 c. 30 Sch.3(2) para.48 (December 28, 2017)

 Repealed

6 [...]¹

Notes

¹ Repealed by Digital Economy Act 2017 c. 30 Sch.3(2) para.48 (December 28, 2017)

 Repealed

7 [...]¹

Notes

¹ Repealed by Digital Economy Act 2017 c. 30 Sch.3(2) para.48 (December 28, 2017)

 Repealed

8 [...]¹

Notes

¹ Repealed by Digital Economy Act 2017 c. 30 Sch.3(2) para.48 (December 28, 2017)

 Repealed

9 [...]¹

Notes

¹ Repealed by Digital Economy Act 2017 c. 30 Sch.3(2) para.48 (December 28, 2017)

 Repealed

10 [...]¹

Notes

¹ Repealed by Digital Economy Act 2017 c. 30 Sch.3(2) para.48 (December 28, 2017)

 Repealed

11 [...]¹

Notes

¹ Repealed by Digital Economy Act 2017 c. 30 Sch.3(2) para.48 (December 28, 2017)

[SCHEDULE 3A

THE ELECTRONIC COMMUNICATIONS CODE

Section 106

]¹

Notes

¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (November 22, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)

[PART 1

KEY CONCEPTS

]¹

Notes

¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)

✓ Law In Force

[1 Introductory

- (1) This Part defines some key concepts used in this code.
- (2) For definitions of other terms used in this code, see—
- (a) paragraph 94 (meaning of “the court”).
 - (b) paragraph 105 (meaning of “occupier”),
 - (c) paragraph 108 (general interpretation),
 - (d) section 32 (meaning of electronic communications networks and services), and
 - (e) section 405 (general interpretation).

] ¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)
-

✓ Law In Force

[2 The operator

In this code “operator” means—

- (a) where this code is applied in any person's case by a direction under section 106, that person, and
- (b) where this code applies by virtue of section 106(3)(b), the Secretary of State or (as the case may be) the Northern Ireland department in question.

] ¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)
-

✓ Law In Force

[3 The code rights

For the purposes of this code a “code right”, in relation to an operator and any land, is a right for the statutory purposes—

- (a) to install electronic communications apparatus on, under or over the land,
- (b) to keep installed electronic communications apparatus which is on, under or over the land,
- (c) to inspect, maintain, adjust, alter, repair, upgrade or operate electronic communications apparatus which is on, under or over the land,
- (d) to carry out any works on the land for or in connection with the installation of electronic communications apparatus on, under or over the land or elsewhere,
- (e) to carry out any works on the land for or in connection with the maintenance, adjustment, alteration, repair, upgrading or operation of electronic communications apparatus which is on, under or over the land or elsewhere,

- (f) to enter the land to inspect, maintain, adjust, alter, repair, upgrade or operate any electronic communications apparatus which is on, under or over the land or elsewhere,
- (g) to connect to a power supply,
- (h) to interfere with or obstruct a means of access to or from the land (whether or not any electronic communications apparatus is on, under or over the land), or
- (i) to lop or cut back, or require another person to lop or cut back, any tree or other vegetation that interferes or will or may interfere with electronic communications apparatus.

] ¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)

✓ Law In Force

[4 The statutory purposes

In this code “the statutory purposes”, in relation to an operator, means—

- (a) the purposes of providing the operator's network, or
- (b) the purposes of providing an infrastructure system.

] ¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)

✓ Law In Force

[5 Electronic communications apparatus, lines and structures

(1) In this code “electronic communications apparatus” means—

- (a) apparatus designed or adapted for use in connection with the provision of an electronic communications network,
- (b) apparatus designed or adapted for a use which consists of or includes the sending or receiving of communications or other signals that are transmitted by means of an electronic communications network,
- (c) lines, and
- (d) other structures or things designed or adapted for use in connection with the provision of an electronic communications network.

(2) References to the installation of electronic communications apparatus are to be construed accordingly.

(3) In this code—

“line” means any wire, cable, tube, pipe or similar thing (including its casing or coating) which is designed or adapted for use in connection with the provision of any electronic communications network or electronic communications service;

“structure” includes a building only if the sole purpose of that building is to enclose other electronic communications apparatus.

] ¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)
-

✓ Law In Force

[6 The operator's network

In this code “network” in relation to an operator means—

- (a) if the operator falls within paragraph 2(a), so much of any electronic communications network or infrastructure system provided by the operator as is not excluded from the application of the code under section 106(5), and
- (b) if the operator falls within paragraph 2(b), the electronic communications network which the Secretary of State or the Northern Ireland department is providing or proposing to provide.

] ¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)
-

✓ Law In Force

[7 Infrastructure system

(1) In this code “infrastructure system” means a system of infrastructure provided so as to be available for use by providers of electronic communications networks for the purposes of the provision by them of their networks.

(2) References in this code to provision of an infrastructure system include references to establishing or maintaining such a system.


] ¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)
-

[PART 2**CONFERRAL OF CODE RIGHTS AND THEIR EXERCISE**] ¹**Notes**

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)


 Law In Force**[8 Introductory**

This Part of this code makes provision about—

- (a) the conferral of code rights,
- (b) the persons who are bound by code rights, and
- (c) the exercise of code rights.

] ¹**Notes**

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)

 Law In Force**[9 Who may confer code rights?**

A code right in respect of land may only be conferred on an operator by an agreement between the occupier of the land and the operator.

] ¹**Notes**

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)

 Law In Force With Amendments Pending**[10 Who else is bound by code rights?**

(1) This paragraph applies if, in accordance with this Part, a code right is conferred on an operator in respect of land by a person (“O”) who is the occupier of the land when the code right is conferred.

(2) If O has an interest in the land when the code right is conferred, the code right also binds—

- (a) the successors in title to that interest,
- (b) a person with an interest in the land that is created after the right is conferred and is derived (directly or indirectly) out of—

- (i) O's interest, or
 - (ii) the interest of a successor in title to O's interest, and
- (c) any other person at any time in occupation of the land whose right to occupation was granted by—
 - (i) O, at a time when O was bound by the code right, or
 - (ii) a person within paragraph (a) or (b).
- (3) A successor in title who is bound by a code right by virtue of sub-paragraph (2)(a) is to be treated as a party to the agreement by which O conferred the right.
- (4) The code right also binds any other person with an interest in the land who has agreed to be bound by it.
- (5) If such a person ("P") agrees to be bound by the code right, the code right also binds—
 - (a) the successors in title to P's interest,
 - (b) a person with an interest in the land that is created after P agrees to be bound and is derived (directly or indirectly) out of—
 - (i) P's interest, or
 - (ii) the interest of a successor in title to P's interest, and
 - (c) any other person at any time in occupation of the land whose right to occupation was granted by—
 - (i) P, at a time when P was bound by the code right, or
 - (ii) a person within paragraph (a) or (b).
- (6) A successor in title who is bound by a code right by virtue of sub-paragraph (5)(a) is to be treated as a party to the agreement by which P agreed to be bound by the right.

J¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)

Amendments Pending

Sch. 3A(2) para. 10(4): words inserted by Telecommunications Infrastructure (Leasehold Property) Act 2021 c. 7, Sch. 1 para. 4(2)(b) (date to be appointed: 2021 c.7 Sch.1 para.4(2)(b) came into force on March 15, 2021 as specified in 2021 c.7 s.3(3)(b) for the limited purpose of enabling the exercise, on or after that day, of any power to make regulations under 2003 c.21 Sch.3A Pt 4A; not yet in force otherwise)

Sch. 3A(2) para. 10(1): words substituted by Telecommunications Infrastructure (Leasehold Property) Act 2021 c. 7, Sch. 1 para. 4(2)(a) (date to be appointed: 2021 c.7 Sch.1 para.4(2)(a) came into force on March 15, 2021 as specified in 2021 c.7 s.3(3)(b) for the limited purpose of enabling the exercise, on or after that day, of any power to make regulations under 2003 c.21 Sch.3A Pt 4A; not yet in force otherwise)



[11 Requirements for agreements

- (1) An agreement under this Part—
 - (a) must be in writing,

- (b) must be signed by or on behalf of the parties to it,
- (c) must state for how long the code right is exercisable, and
- (d) must state the period of notice (if any) required to terminate the agreement.

(2) Sub-paragraph (1)(a) and (b) also applies to the variation of an agreement under this Part.

(3) The agreement as varied must still comply with sub-paragraph (1)(c) and (d).

] ¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)
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Law In Force With Amendments Pending

[12 Exercise of code rights

(1) A code right is exercisable only in accordance with the terms subject to which it is conferred.

(2) Anything done by an operator in the exercise of a code right conferred under this Part in relation to any land is to be treated as done in the exercise of a statutory power.

(3) Sub-paragraph (2) does not apply against a person who—

- (a) is the owner of the freehold estate in the land or the lessee of the land, and
- (b) is not for the time being bound by the code right.

(4) Sub-paragraph (2) does not apply against a person who has the benefit of a covenant or agreement entered into as respects the land, if—

- (a) the covenant or agreement was entered into under an enactment, and
- (b) by virtue of the enactment, it binds or will bind persons who derive title or otherwise claim—
 - (i) under the covenantor, or
 - (ii) under a party to the agreement.

(5) In the application of sub-paragraph (3) to Scotland the reference to a person who is the owner of the freehold estate in the land is to be read as a reference to a person who is the owner of the land.

] ¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)

Amendments Pending

Sch. 3A(2) para. 12(2): words inserted by Telecommunications Infrastructure (Leasehold Property) Act 2021 c. 7, Sch. 1 para. 4(3) (date to be appointed: 2021 c.7 Sch.1 para.4(3) came into force on March 15, 2021 as specified in 2021 c.7 s.3(3)(b) for the limited purpose of enabling the exercise, on or after that day, of any power to make regulations under 2003 c.21 Sch.3A Pt 4A; not yet in force otherwise)



Law In Force

[13 Access to land

(1) This paragraph applies to an operator by whom any of the following rights is exercisable in relation to land—

- (a) a code right within paragraph (a) to (g) or (i) of paragraph 3;
- (b) a right under Part 8 (street works rights);
- (c) a right under Part 9 (tidal water rights);
- (d) a right under paragraph 74 (power to fly lines).

(2) The operator may not exercise the right so as to interfere with or obstruct any means of access to or from any other land unless, in accordance with this code, the occupier of the other land has conferred or is otherwise bound by a code right within paragraph (h) of paragraph 3.

(3) A reference in this code to a means of access to or from land includes a means of access to or from land that is provided for use in emergencies.

(4) This paragraph does not require a person to whom sub-paragraph (5) applies to agree to the exercise of any code right on land other than the land mentioned in that sub-paragraph.

(5) This sub-paragraph applies to a person who is the occupier of, or owns an interest in, land which is—

- (a) a street in England and Wales or Northern Ireland,
- (b) a road in Scotland, or
- (c) tidal water or lands within the meaning of Part 9 of this code.

]¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)
-



Law In Force

[14 Code rights and land registration

Where an enactment requires interests, charges or other obligations affecting land to be registered, the provisions of this code about who is bound by a code right have effect whether or not that right is registered.


]¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)
-

[PART 3**ASSIGNMENT OF CODE RIGHTS, AND UPGRADING AND SHARING OF APPARATUS****] ¹****Notes**

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)

 Law In Force

[15 Introductory

This Part of this code makes provision for—

- (a) operators to assign agreements under Part 2,
- (b) operators to upgrade electronic communications apparatus to which such an agreement relates, and
- (c) operators to share the use of any such electronic communications apparatus.

] ¹**Notes**

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)

 Law In Force

[16 Assignment of code rights

(1) Any agreement under Part 2 of this code is void to the extent that—

- (a) it prevents or limits assignment of the agreement to another operator, or
- (b) it makes assignment of the agreement to another operator subject to conditions (including a condition requiring the payment of money).

(2) Sub-paragraph (1) does not apply to a term that requires the assignor to enter into a guarantee agreement (see sub-paragraph (7)).

(3) In this paragraph references to “the assignor” or “the assignee” are to the operator by whom or to whom an agreement under Part 2 of this code is assigned or proposed to be assigned.

(4) From the time when the assignment of an agreement under Part 2 of this code takes effect, the assignee is bound by the terms of the agreement.

(5) The assignor is not liable for any breach of a term of the agreement that occurs after the assignment if (and only if), before the breach took place, the assignor or the assignee gave a notice in writing to the other party to the agreement which—


- (a) identified the assignee, and
- (b) provided an address for service (for the purposes of paragraph 91(2)(a)) for the assignee.

- (6) Sub-paragraph (5) is subject to the terms of any guarantee agreement.
- (7) A “guarantee agreement” is an agreement, in connection with the assignment of an agreement under Part 2 of this code, under which the assignor guarantees to any extent the performance by the assignee of the obligations that become binding on the assignee under sub-paragraph (4) (the “relevant obligations”).
- (8) An agreement is not a guarantee agreement to the extent that it purports—
- (a) to impose on the assignor a requirement to guarantee in any way the performance of the relevant obligations by a person other than the assignee, or
 - (b) to impose on the assignor any liability, restriction or other requirement of any kind in relation to a time after the relevant obligations cease to be binding on the assignee.
- (9) Subject to sub-paragraph (8), a guarantee agreement may—
- (a) impose on the assignor any liability as sole or principal debtor in respect of the relevant obligations;
 - (b) impose on the assignor liabilities as guarantor in respect of the assignee's performance of the relevant obligations which are no more onerous than those to which the assignor would be subject in the event of the assignor being liable as sole or principal debtor in respect of any relevant obligation;
 - (c) make provision incidental or supplementary to any provision within paragraph (a) or (b).
- (10) In the application of this paragraph to Scotland references to assignment of an agreement are to be read as references to assignation of an agreement.
- (11) Nothing in the Landlord and Tenant Amendment (Ireland) Act 1860 applies in relation to an agreement under Part 2 of this code so as to—
- (a) prevent or limit assignment of the agreement to another operator, or
 - (b) relieve the assignor from liability for any breach of a term of the agreement that occurs after the assignment.

] ¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)
-

 Law In Force


[17 Power for operator to upgrade or share apparatus

- (1) An operator (“the main operator”) who has entered into an agreement under Part 2 of this code may, if the conditions in sub-paragraphs (2) and (3) are met—
- (a) upgrade the electronic communications apparatus to which the agreement relates, or
 - (b) share the use of such electronic communications apparatus with another operator.
- (2) The first condition is that any changes as a result of the upgrading or sharing to the electronic communications apparatus to which the agreement relates have no adverse impact, or no more than a minimal adverse impact, on its appearance.

- (3) The second condition is that the upgrading or sharing imposes no additional burden on the other party to the agreement.
- (4) For the purposes of sub-paragraph (3) an additional burden includes anything that—
- (a) has an additional adverse effect on the other party's enjoyment of the land, or
 - (b) causes additional loss, damage or expense to that party.
- (5) Any agreement under Part 2 of this code is void to the extent that—
- (a) it prevents or limits the upgrading or sharing, in a case where the conditions in sub-paragraphs (2) and (3) are met, of the electronic communications apparatus to which the agreement relates, or
 - (b) it makes upgrading or sharing of such apparatus subject to conditions to be met by the operator (including a condition requiring the payment of money).
- (6) References in this paragraph to sharing electronic communications apparatus include carrying out works to the apparatus to enable such sharing to take place.
-] ¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)
-

 Law In Force

[18 Effect of agreements enabling sharing between operators and others

- (1) This paragraph applies where—
- (a) this code has been applied by a direction under section 106 in a person's case,
 - (b) this code expressly or impliedly imposes a limitation on the use to which electronic communications apparatus installed by that person may be put or on the purposes for which it may be used, and
 - (c) that person is a party to a relevant agreement or becomes a party to an agreement which (after the person has become a party to it) is a relevant agreement.
- (2) The limitation does not preclude—
- (a) the doing of anything in relation to that apparatus, or
 - (b) its use for particular purposes,
- to the extent that the doing of that thing, or the use of the apparatus for those purposes, is in pursuance of the relevant agreement.
- (3) This paragraph is not to be construed, in relation to a person who is entitled or authorised by or under a relevant agreement to share the use of apparatus installed by another party to the agreement, as affecting any consent requirement imposed (whether by an agreement, an enactment or otherwise) on that person.
- (4) In this paragraph—
- “consent requirement”, in relation to a person, means a requirement for the person to obtain consent or permission to or in connection with—
- (a) the installation by the person of apparatus, or

(b) the doing by the person of any other thing in relation to apparatus the use of which the person is entitled or authorised to share;
 “relevant agreement” means an agreement in relation to electronic communications apparatus which—

(a) relates to the sharing by different parties to the agreement of the use of that apparatus, and

(b) is an agreement that satisfies the requirements of sub-paragraph (5).

(5) An agreement satisfies the requirements of this sub-paragraph if—

(a) every party to the agreement is a person in whose case this code applies by virtue of a direction under section 106, or

(b) one or more of the parties to the agreement is a person in whose case this code so applies and every other party to the agreement is a qualifying person.

(6) A person is a qualifying person for the purposes of sub-paragraph (5) if the person is either—

(a) a person who provides an electronic communications network without being a person in whose case this code applies, or

(b) a designated provider of an electronic communications service consisting in the distribution of a programme service by means of an electronic communications network.

(7) In sub-paragraph (6)—

“designated” means designated by regulations made by the Secretary of State;

“programme service” has the same meaning as in the Broadcasting Act 1990.

] ¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)

[PART 4

POWER OF COURT TO IMPOSE AGREEMENT

] ¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)



Law In Force With Amendments Pending

[19 Introductory

This Part of this code makes provision about—

(a) the circumstances in which the court can impose an agreement on a person by which the person confers or is otherwise bound by a code right,

(b) the test to be applied by the court in deciding whether to impose such an agreement,

- (c) the effect of such an agreement and its terms,
- (d) the imposition of an agreement on a person on an interim or temporary basis.

]¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)

Amendments Pending

Sch. 3A(4) para. 19(a): words inserted by Telecommunications Infrastructure (Leasehold Property) Act 2021 c. 7, Sch. 1 para. 4(4)(b) (date to be appointed: 2021 c.7 Sch.1 para.4(4)(b) came into force on March 15, 2021 as specified in 2021 c.7 s.3(3)(b) for the limited purpose of enabling the exercise, on or after that day, of any power to make regulations under 2003 c.21 Sch.3A Pt 4A; not yet in force otherwise)

Sch. 3A(4) para. 19(a): words substituted by Telecommunications Infrastructure (Leasehold Property) Act 2021 c. 7, Sch. 1 para. 4(4)(a) (date to be appointed: 2021 c.7 Sch.1 para.4(4)(a) came into force on March 15, 2021 as specified in 2021 c.7 s.3(3)(b) for the limited purpose of enabling the exercise, on or after that day, of any power to make regulations under 2003 c.21 Sch.3A Pt 4A; not yet in force otherwise)



Law In Force With Amendments Pending

[20 When can the court impose an agreement?

- (1) This paragraph applies where the operator requires a person (a “relevant person”) to agree—
 - (a) to confer a code right on the operator, or
 - (b) to be otherwise bound by a code right which is exercisable by the operator.
- (2) The operator may give the relevant person a notice in writing—
 - (a) setting out the code right, and all of the other terms of the agreement that the operator seeks, and
 - (b) stating that the operator seeks the person's agreement to those terms.
- (3) The operator may apply to the court for an order under this paragraph if—
 - (a) the relevant person does not, before the end of 28 days beginning with the day on which the notice is given, agree to confer or be otherwise bound by the code right, or
 - (b) at any time after the notice is given, the relevant person gives notice in writing to the operator that the person does not agree to confer or be otherwise bound by the code right.
- (4) An order under this paragraph is one which imposes on the operator and the relevant person an agreement between them which—
 - (a) confers the code right on the operator, or
 - (b) provides for the code right to bind the relevant person.

]¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)

Amendments Pending

Sch. 3A(4) para. 20(2)(a): words inserted by Telecommunications Infrastructure (Leasehold Property) Act 2021 c. 7, Sch. 1 para. 4(5) (date to be appointed: 2021 c.7 Sch.1 para.4(5) came into force on March 15, 2021 as specified in 2021 c.7 s.3(3)(b) for the limited purpose of enabling the exercise, on or after that day, of any power to make regulations under 2003 c.21 Sch.3A Pt 4A; not yet in force otherwise)

✓ Law In Force

[21 What is the test to be applied by the court?]

- (1) Subject to sub-paragraph (5), the court may make an order under paragraph 20 if (and only if) the court thinks that both of the following conditions are met.
- (2) The first condition is that the prejudice caused to the relevant person by the order is capable of being adequately compensated by money.
- (3) The second condition is that the public benefit likely to result from the making of the order outweighs the prejudice to the relevant person.
- (4) In deciding whether the second condition is met, the court must have regard to the public interest in access to a choice of high quality electronic communications services.
- (5) The court may not make an order under paragraph 20 if it thinks that the relevant person intends to redevelop all or part of the land to which the code right would relate, or any neighbouring land, and could not reasonably do so if the order were made.

] ¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)
-

✓ Law In Force

[22 What is the effect of an agreement imposed under paragraph 20?]

An agreement imposed by an order under paragraph 20 takes effect for all purposes of this code as an agreement under Part 2 of this code between the operator and the relevant person.

] ¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)
-

**[23 What are the terms of an agreement imposed under paragraph 20?**

- (1) An order under paragraph 20 may impose an agreement which gives effect to the code right sought by the operator with such modifications as the court thinks appropriate.
- (2) An order under paragraph 20 must require the agreement to contain such terms as the court thinks appropriate, subject to sub-paragraphs (3) to (8).
- (3) The terms of the agreement must include terms as to the payment of consideration by the operator to the relevant person for the relevant person's agreement to confer or be bound by the code right (as the case may be).
- (4) Paragraph 24 makes provision about the determination of consideration under sub-paragraph (3).
- (5) The terms of the agreement must include the terms the court thinks appropriate for ensuring that the least possible loss and damage is caused by the exercise of the code right to persons who—
 - (a) occupy the land in question,
 - (b) own interests in that land, or
 - (c) are from time to time on that land.
- (6) Sub-paragraph (5) applies in relation to a person regardless of whether the person is a party to the agreement.
- (7) The terms of the agreement must include terms specifying for how long the code right conferred by the agreement is exercisable.
- (8) The court must determine whether the terms of the agreement should include a term—
 - (a) permitting termination of the agreement (and, if so, in what circumstances);
 - (b) enabling the relevant person to require the operator to reposition or temporarily to remove the electronic communications equipment to which the agreement relates (and, if so, in what circumstances).

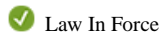
] ¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)

Amendments Pending

Sch. 3A(4) para. 23(2A): added by Telecommunications Infrastructure (Leasehold Property) Act 2021 c. 7, Sch. 1 para. 4(6) (date to be appointed: 2021 c.7 Sch.1 para.4(6) came into force on March 15, 2021 as specified in 2021 c.7 s.3(3)(b) for the limited purpose of enabling the exercise, on or after that day, of any power to make regulations under 2003 c.21 Sch.3A Pt 4A; not yet in force otherwise)



Law In Force

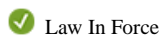
[24 How is consideration to be determined under paragraph 23?

- (1) The amount of consideration payable by an operator to a relevant person under an agreement imposed by an order under paragraph 20 must be an amount or amounts representing the market value of the relevant person's agreement to confer or be bound by the code right (as the case may be).
- (2) For this purpose the market value of a person's agreement to confer or be bound by a code right is, subject to sub-paragraph (3), the amount that, at the date the market value is assessed, a willing buyer would pay a willing seller for the agreement—
- (a) in a transaction at arm's length,
 - (b) on the basis that the buyer and seller were acting prudently and with full knowledge of the transaction, and
 - (c) on the basis that the transaction was subject to the other provisions of the agreement imposed by the order under paragraph 20.
- (3) The market value must be assessed on these assumptions—
- (a) that the right that the transaction relates to does not relate to the provision or use of an electronic communications network;
 - (b) that paragraphs 16 and 17 (assignment, and upgrading and sharing) do not apply to the right or any apparatus to which it could apply;
 - (c) that the right in all other respects corresponds to the code right;
 - (d) that there is more than one site which the buyer could use for the purpose for which the buyer seeks the right.
- (4) The terms of the agreement may provide for consideration to be payable—
- (a) as a lump sum or periodically,
 - (b) on the occurrence of a specified event or events, or
 - (c) in such other form or at such other time or times as the court may direct.

] ¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)
-



Law In Force

[25 What rights to the payment of compensation are there?

- (1) If the court makes an order under paragraph 20 the court may also order the operator to pay compensation to the relevant person for any loss or damage that has been sustained or will be sustained by that person as a result of the exercise of the code right to which the order relates.
- (2) An order under sub-paragraph (1) may be made—
- (a) at the time the court makes an order under paragraph 20, or
 - (b) at any time afterwards, on the application of the relevant person.
- (3) An order under sub-paragraph (1) may—
- (a) specify the amount of compensation to be paid by the operator, or

- (b) give directions for the determination of any such amount.
 - (4) Directions under sub-paragraph (3)(b) may provide—
 - (a) for the amount of compensation to be agreed between the operator and the relevant person;
 - (b) for any dispute about that amount to be determined by arbitration.
 - (5) An order under this paragraph may provide for the operator—
 - (a) to make a lump sum payment,
 - (b) to make periodical payments,
 - (c) to make a payment or payments on the occurrence of an event or events, or
 - (d) to make a payment or payments in such other form or at such other time or times as the court may direct.
 - (6) Paragraph 84 makes further provision about compensation in the case of an order under paragraph 20.
-]¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)
-



Law In Force With Amendments Pending

[26 Interim code rights

- (1) An operator may apply to the court for an order which imposes on the operator and a person, on an interim basis, an agreement between them which—
 - (a) confers a code right on the operator, or
 - (b) provides for a code right to bind that person.
- (2) An order under this paragraph imposes an agreement on the operator and a person on an interim basis if it provides for them to be bound by the agreement—
 - (a) for the period specified in the order, or
 - (b) until the occurrence of an event specified in the order.
- (3) The court may make an order under this paragraph if (and only if) the operator has given the person mentioned in sub-paragraph (1) a notice which complies with paragraph 20(2) stating that an agreement is sought on an interim basis and—
 - (a) the operator and that person have agreed to the making of the order and the terms of the agreement imposed by it, or
 - (b) the court thinks that there is a good arguable case that the test in paragraph 21 for the making of an order under paragraph 20 is met.
- (4) Subject to sub-paragraphs (5) and (6), the following provisions apply in relation to an order under this paragraph and an agreement imposed by it as they apply in relation to an order under paragraph 20 and an agreement imposed by it—
 - (a) paragraph 20(3) (time at which operator may apply for agreement to be imposed);
 - (b) paragraph 22 (effect of agreement imposed under paragraph 20);
 - (c) paragraph 23 (terms of agreement imposed under paragraph 20);

- (d) paragraph 24 (payment of consideration);
- (e) paragraph 25 (payment of compensation);
- (f) paragraph 84 (compensation where agreement imposed).

(5) The court may make an order under this paragraph even though the period mentioned in paragraph 20(3)(a) has not elapsed (and paragraph 20(3)(b) does not apply) if the court thinks that the order should be made as a matter of urgency.

(6) Paragraphs 23, 24 and 25 apply by virtue of sub-paragraph (4) as if—

- (a) references to the relevant person were to the person mentioned in sub-paragraph (1) of this paragraph, and
- (b) the duty in paragraph 23 to include terms as to the payment of consideration to that person in an agreement were a power to do so.

(7) Sub-paragraph (8) applies if—

- (a) an order has been made under this paragraph imposing an agreement relating to a code right on an operator and a person in respect of any land, and
- (b) the period specified under sub-paragraph (2)(a) has expired or, as the case may be, the event specified under sub-paragraph (2)(b) has occurred without (in either case) an agreement relating to the code right having been imposed on the person by order under paragraph 20.

(8) From the time when the period expires or the event occurs, that person has the right, subject to and in accordance with Part 6 of this code, to require the operator to remove any electronic communications apparatus placed on the land under the agreement imposed under this paragraph.
] ¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)

Amendments Pending

Sch. 3A(4) para. 26(6): words inserted by Telecommunications Infrastructure (Leasehold Property) Act 2021 c. 7, Sch. 1 para. 4(7)(b) (date to be appointed: 2021 c.7 Sch.1 para.4(7)(b) came into force on March 15, 2021 as specified in 2021 c.7 s.3(3)(b) for the limited purpose of enabling the exercise, on or after that day, of any power to make regulations under 2003 c.21 Sch.3A Pt 4A; not yet in force otherwise)

Sch. 3A(4) para. 26(1A)-(1B): added by Telecommunications Infrastructure (Leasehold Property) Act 2021 c. 7, Sch. 1 para. 4(7)(a) (date to be appointed: 2021 c.7 Sch.1 para.4(7)(a) came into force on March 15, 2021 as specified in 2021 c.7 s.3(3)(b) for the limited purpose of enabling the exercise, on or after that day, of any power to make regulations under 2003 c.21 Sch.3A Pt 4A; not yet in force otherwise)



Law In Force With Amendments Pending

[27 Temporary code rights

(1) This paragraph applies where—

- (a) an operator gives a notice under paragraph 20(2) to a person in respect of any land,

- (b) the notice also requires that person's agreement on a temporary basis in respect of a right which is to be exercisable (in whole or in part) in relation to electronic communications apparatus which is already installed on, under or over the land, and
 - (c) the person has the right to require the removal of the apparatus in accordance with paragraph 37 or as mentioned in paragraph 40(1) but the operator is not for the time being required to remove the apparatus.
- (2) The court may, on the application of the operator, impose on the operator and the person an agreement between them which confers on the operator, or provides for the person to be bound by, such temporary code rights as appear to the court reasonably necessary for securing the objective in sub-paragraph (3).
- (3) That objective is that, until the proceedings under paragraph 20 and any proceedings under paragraph 40 are determined, the service provided by the operator's network is maintained and the apparatus is properly adjusted and kept in repair.
- (4) Subject to sub-paragraphs (5) and (6), the following provisions apply in relation to an order under this paragraph and an agreement imposed by it as they apply in relation to an order under paragraph 20 and an agreement imposed by it—
- (a) paragraph 20(3) (time at which operator may apply for agreement to be imposed);
 - (b) paragraph 22 (effect of agreement imposed under paragraph 20);
 - (c) paragraph 23 (terms of agreement imposed under paragraph 20);
 - (d) paragraph 24 (payment of consideration);
 - (e) paragraph 25 (payment of compensation);
 - (f) paragraph 84 (compensation where agreement imposed).
- (5) The court may make an order under this paragraph even though the period mentioned in paragraph 20(3)(a) has not elapsed (and paragraph 20(3)(b) does not apply) if the court thinks that the order should be made as a matter of urgency.
- (6) Paragraphs 23, 24 and 25 apply by virtue of sub-paragraph (4) as if—
- (a) references to the relevant person were to the person mentioned in sub-paragraph (1) of this paragraph, and
 - (b) the duty in paragraph 23 to include terms as to the payment of consideration to that person in an agreement were a power to do so.
- (7) Sub-paragraph (8) applies where, in the course of the proceedings under paragraph 20, it is shown that a person with an interest in the land was entitled to require the removal of the apparatus immediately after it was installed.
- (8) The court must, in determining for the purposes of paragraph 20 whether the apparatus should continue to be kept on, under or over the land, disregard the fact that the apparatus has already been installed there.
-] ¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)

Amendments Pending

Sch. 3A(4) para. 27(6): words inserted by Telecommunications Infrastructure (Leasehold Property) Act 2021 c. 7, Sch. 1 para. 4(8) (date to be appointed: 2021 c.7 Sch.1 para.4(8) came into force on March 15, 2021 as specified in 2021

c.7 s.3(3)(b) for the limited purpose of enabling the exercise, on or after that day, of any power to make regulations under 2003 c.21 Sch.3A Pt 4A; not yet in force otherwise)

[PART 4A

CODE RIGHTS IN RESPECT OF LAND CONNECTED TO LEASED PREMISES: UNRESPONSIVE OCCUPIERS

] ¹

Notes

- ¹ Added by Telecommunications Infrastructure (Leasehold Property) Act 2021 c. 7 s.1 (date to be appointed: 2021 c.7 s.1 came into force on March 15, 2021 as specified in 2021 c.7 s.3(3)(b) for the limited purpose of enabling the exercise, on or after that day, of any power to make regulations under 2003 c.21 Sch.3A Pt 4A; not yet in force otherwise)
-

 Not Yet In Force

[27A Introductory

This Part of this code makes provision for the court to make an order imposing an agreement which provides that code rights are exercisable by an operator for the purpose of providing an electronic communications service to leased premises where—

- (a) the rights are required in respect of land which is connected to the leased premises, and
- (b) the occupier or another person with an interest in the land has not responded to repeated notices given by the operator seeking agreement to confer or otherwise be bound by the rights.

] ¹

Notes

- ¹ Added by Telecommunications Infrastructure (Leasehold Property) Act 2021 c. 7 s.1 (date to be appointed: 2021 c.7 s.1 came into force on March 15, 2021 as specified in 2021 c.7 s.3(3)(b) for the limited purpose of enabling the exercise, on or after that day, of any power to make regulations under 2003 c.21 Sch.3A Pt 4A; not yet in force otherwise)
-

 Not Yet In Force

[27B Circumstances in which an application for an order under this Part can be made

(1) Paragraphs 27C and 27D apply where—

- (a) premises within the scope of this Part are occupied under a lease (the "target premises"),
- (b) the lessee in occupation requests an operator to provide an electronic communications service to the target premises,

- (c) in order to fulfil that request, the operator requires a person (the "required grantor") to agree—
 - (i) to confer on the operator a code right in respect of connected land, or
 - (ii) otherwise to be bound by such a code right exercisable by the operator,
 - (d) the operator has, on or after the day on which section 1 of the Telecommunications Infrastructure (Leasehold Property) Act 2021 comes fully into force, given the required grantor a notice in accordance with paragraph 20(2) of this code seeking that agreement (the "request notice"), and
 - (e) the required grantor has not responded to the operator.
- (2) Premises are within the scope of this Part if they—
- (a) form part of a multiple dwelling building (see paragraph 27I(1)), or
 - (b) are other premises of a description specified in regulations made by the Secretary of State.
- (3) In this Part "connected land", in relation to the target premises, means land which—
- (a) is in common ownership with the target premises (see paragraph 27I(2)), and
 - (b) is held or used for access to, or otherwise in connection with, the target premises.
- (4) For the purposes of this paragraph, the required grantor responds to the operator if the required grantor—
- (a) agrees or refuses, in writing, to confer or otherwise be bound by the code right specified in the request notice on the terms that the operator seeks, or
 - (b) otherwise acknowledges the request notice in writing.

]¹

Notes

- ¹ Added by Telecommunications Infrastructure (Leasehold Property) Act 2021 c. 7 s.1 (date to be appointed: 2021 c.7 s.1 came into force on March 15, 2021 as specified in 2021 c.7 s.3(3)(b) for the limited purpose of enabling the exercise, on or after that day, of any power to make regulations under 2003 c.21 Sch.3A Pt 4A; not yet in force otherwise)



[27C Requirements to be met before applying for an order under this Part

- (1) Before applying to the court for an order under this Part (a "Part 4A order") (see paragraph 27E(2)) the operator must, in accordance with this paragraph, give the required grantor—
- (a) two warning notices, and
 - (b) a final notice.
- (2) A "warning notice" is a notice in writing which—
- (a) includes a copy of the request notice,
 - (b) states that it is the first or (as the case may be) second of three notices that, unless the required grantor responds to the operator, will allow the operator to apply for a Part 4A order, and
 - (c) explains the effect of a Part 4A order.
- (3) The first warning notice may only be given after the end of the period of seven days beginning with the day on which the request notice was given.

- (4) The second warning notice may only be given after the end of the period of seven days beginning with the day on which the first one was given.
- (5) A "final notice" is a notice in writing which—
- (a) includes a copy of the request notice,
 - (b) states that unless the required grantor responds to the operator before the end of the period of 14 days beginning with the day on which the final notice is given, the operator intends to apply for a Part 4A order, and
 - (c) explains the effect of a Part 4A order.
- (6) A final notice may only be given within the permitted period.
- (7) The "permitted period" means the period which—
- (a) begins immediately after the end of whichever of the following ends last—
 - (i) the period of seven days beginning with the day on which the second warning notice was given;
 - (ii) the period of 28 days beginning with the day on which the request notice was given, and
 - (b) ends at the end of the period of 28 days beginning with the day on which the second warning notice was given.
- (8) The Secretary of State may by regulations specify other conditions that the operator must satisfy before giving the required grantor a final notice.

] ¹

Notes

- ¹ Added by Telecommunications Infrastructure (Leasehold Property) Act 2021 c. 7 s.1 (date to be appointed: 2021 c.7 s.1 came into force on March 15, 2021 as specified in 2021 c.7 s.3(3)(b) for the limited purpose of enabling the exercise, on or after that day, of any power to make regulations under 2003 c.21 Sch.3A Pt 4A; not yet in force otherwise)
-

 Not Yet In Force

[27D

- (1) The operator may apply to the court for a Part 4A order in relation to the code right specified in the request notice if—
- (a) the operator has satisfied the notice requirements set out in paragraph 27C,
 - (b) the period of 14 days beginning with the day on which the final notice was given has ended,
 - (c) the required grantor has not responded to the operator, and
 - (d) the operator has satisfied any other specified conditions.
- (2) An application for a Part 4A order may not be made after the end of the specified period beginning with the day on which the final notice is given.
- (3) The operator must give the required grantor notice of an application for a Part 4A order.
- (4) For the purposes of this paragraph, the required grantor responds to the operator if the required grantor—

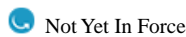
- (a) agrees or refuses, in writing, to confer or otherwise be bound by the code right specified in the request notice on the terms that the operator seeks, or
- (b) otherwise acknowledges, in writing, the request notice, a warning notice or the final notice.

(5) In this paragraph "specified" means specified in regulations made by the Secretary of State.

]

Notes

- ¹ Added by Telecommunications Infrastructure (Leasehold Property) Act 2021 c. 7 s.1 (date to be appointed: 2021 c.7 s.1 came into force on March 15, 2021 as specified in 2021 c.7 s.3(3)(b) for the limited purpose of enabling the exercise, on or after that day, of any power to make regulations under 2003 c.21 Sch.3A Pt 4A; not yet in force otherwise)



[27E When a Part 4A order can be made and its effect

- (1) The court may make a Part 4A order if (and only if)—
 - (a) it is satisfied that the requirements for applying for the order have been met, and
 - (b) the required grantor has not objected to the making of the order.
- (2) A Part 4A order is an order which imposes on the operator and the required grantor an agreement between them—
 - (a) by which the required grantor confers on the operator the code right identified in the request notice in respect of the connected land so identified, or
 - (b) which provides for the code right identified in that notice, which is exercisable by the operator in respect of the connected land so identified, otherwise to bind the required grantor.
- (3) In this code, a "Part 4A code right" means a code right which is conferred by or otherwise binds the required grantor pursuant to an agreement imposed by a Part 4A order.
- (4) The terms of an agreement imposed by a Part 4A order are to be those specified in regulations made by the Secretary of State.
- (5) Regulations under sub-paragraph (4) must, in particular, provide for an agreement to include terms—
 - (a) relating to the provision by the operator to the required grantor of details of the works to be carried out in the exercise of the Part 4A code right ("the works");
 - (b) relating to the obtaining by the operator of any consent, permit, licence, permission, authorisation or approval which is necessary for the works to be carried out;
 - (c) relating to the giving of notice by the operator to the required grantor or other specified persons before entering on the connected land in the exercise of the Part 4A code right or carrying out the works;
 - (d) restricting the operator's right to enter on the connected land to specified times, except in cases of emergency;
 - (e) as to the manner in which the works are to be carried out by the operator;
 - (f) relating to the restoration by the operator of the connected land at the end of the works, to the reasonable satisfaction of the required grantor;
 - (g) relating to the need for insurance cover or indemnification of the required grantor;

- (h) relating to the maintenance or upgrading by the operator of apparatus installed on, under or over the connected land in the exercise of the Part 4A code right ("the apparatus");
 - (i) imposing requirements or restrictions on the required grantor for the purposes of—
 - (i) preventing damage to the apparatus,
 - (ii) facilitating access to the apparatus for the operator, or
 - (iii) otherwise preventing or minimising disruption to the operation of the apparatus;
 - (j) relating to assignment of the agreement;
 - (k) aimed at ensuring that nothing done by the operator in the exercise of the Part 4A code right unnecessarily prevents or inhibits the provision of an electronic communications service by any other operator.
- (6) Before making regulations under sub-paragraph (4), the Secretary of State must consult—
- (a) operators,
 - (b) persons appearing to the Secretary of State to represent owners of interests in land who are likely to be affected by the regulations, and
 - (c) any other persons the Secretary of State thinks appropriate.
- (7) In sub-paragraph (5), "specified" mean specified, or of a description specified, in the regulations.
-]¹

Notes

- ¹ Added by Telecommunications Infrastructure (Leasehold Property) Act 2021 c. 7 s.1 (date to be appointed: 2021 c.7 s.1 came into force on March 15, 2021 as specified in 2021 c.7 s.3(3)(b) for the limited purpose of enabling the exercise, on or after that day, of any power to make regulations under 2003 c.21 Sch.3A Pt 4A; not yet in force otherwise)

Commencement

Sch. 3A(4A) para. 27E(5)(k): Date to be appointed



[27F Exercise of Part 4A code rights


- (1) A Part 4A code right may be exercised by the operator in respect of the connected land for the provision of an electronic communications service to—
- (a) the target premises, and
 - (b) other premises, but only if the provision of the service to the other premises in addition to the target premises imposes no additional burden on the required grantor.
- (2) For the purposes of sub-paragraph (1)(b), an additional burden includes anything that—
- (a) has an additional adverse effect on the required grantor's enjoyment of the connected land, or
 - (b) causes additional loss, damage or expense to the required grantor.

]¹

Notes

- ¹ Added by Telecommunications Infrastructure (Leasehold Property) Act 2021 c. 7 s.1 (date to be appointed: 2021 c.7 s.1 came into force on March 15, 2021 as specified in 2021 c.7 s.3(3)(b) for the limited purpose of enabling

the exercise, on or after that day, of any power to make regulations under 2003 c.21 Sch.3A Pt 4A; not yet in force otherwise)

 Not Yet In Force

[27G Expiry of Part 4A code rights

(1) A Part 4A code right ceases to be conferred on the operator by, or otherwise to bind, the required grantor—

- (a) if a replacement agreement comes into effect, in accordance with that agreement,
- (b) if the court decides to refuse an application by the operator for the imposition of a replacement agreement, in accordance with that decision, or
- (c) if the right has not ceased to have that effect as mentioned in paragraph (a) or (b) before the end of the specified period beginning with the day on which the agreement imposed by the Part 4A order comes into effect, at the end of that period.

(2) In sub-paragraph (1) a "replacement agreement", in relation to a Part 4A code right, means an agreement under Part 2 by which the required grantor confers a code right on the operator, or otherwise agrees to be bound by a code right which is exercisable by the operator, where that right is in respect of the same land as the Part 4A code right.

(3) In sub-paragraph (1)(c) "specified period" means the period, of no more than 18 months, specified in regulations made by the Secretary of State.

(4) The required grantor has the right, subject to and in accordance with Part 6 of this code, to require the operator to remove any electronic communications apparatus placed on the connected land in the exercise of a Part 4A code right which has ceased to have effect, or otherwise to bind, the required grantor.

] ¹

Notes

- ¹ Added by Telecommunications Infrastructure (Leasehold Property) Act 2021 c. 7 s.1 (date to be appointed: 2021 c.7 s.1 came into force on March 15, 2021 as specified in 2021 c.7 s.3(3)(b) for the limited purpose of enabling the exercise, on or after that day, of any power to make regulations under 2003 c.21 Sch.3A Pt 4A; not yet in force otherwise)
-

 Not Yet In Force

[27H Compensation

(1) This paragraph applies where the court has made a Part 4A order.

(2) The court may, on the application of the required grantor, order the operator to pay compensation to the required grantor for any loss or damage that has been sustained or will be sustained by the required grantor as a result of the exercise by the operator of the Part 4A code right.

(3) An application for an order under this paragraph may be made at any time after the Part 4A order is made (including at a time when the Part 4A code right has ceased to be conferred on the operator by, or otherwise to bind, the required grantor).

- (4) An order under this paragraph may—
- (a) specify the amount of compensation to be paid by the operator, or
 - (b) give directions for the determination of any such amount.
- (5) Directions under sub-paragraph (4)(b) may provide—
- (a) for the amount of compensation to be agreed between the operator and the required grantor;
 - (b) for any dispute about that amount to be determined by arbitration.
- (6) An order under this paragraph may provide for the operator—
- (a) to make a lump sum payment,
 - (b) to make periodical payments,
 - (c) to make a payment or payments on the occurrence of an event or events, or
 - (d) to make a payment or payments in such other form or at such other time or times as the court may direct.
- (7) Paragraph 84 makes further provision about compensation in the case of a Part 4A order.

]¹

Notes

- ¹ Added by Telecommunications Infrastructure (Leasehold Property) Act 2021 c. 7 s.1 (date to be appointed: 2021 c.7 s.1 came into force on March 15, 2021 as specified in 2021 c.7 s.3(3)(b) for the limited purpose of enabling the exercise, on or after that day, of any power to make regulations under 2003 c.21 Sch.3A Pt 4A; not yet in force otherwise)



[27I Interpretation of this Part

- (1) In this Part—
- "connected land" has the meaning given by paragraph 27B(3);
 - "multiple dwelling building" means a building which contains two or more sets of premises which are used as, or intended to be used as, a separate dwelling;
 - "Part 4A order" has the meaning given by paragraph 27C(1);
 - "premises" includes a part of premises;
 - "request notice" has the meaning given by paragraph 27B(1)(d);
 - "required grantor" has the meaning given by paragraph 27B(1)(c);
 - "target premises" has the meaning given by paragraph 27B(1)(a).
- (2) For the purposes of this Part, land is in "common ownership" with the target premises if a person with a relevant interest in the land also has a relevant interest (whether or not of the same sort) in the target premises.
- (3) For the purposes of sub-paragraph (2), a person has a "relevant interest" in land if—
- (a) the person owns the freehold estate in the land (or, in relation to Scotland, is the owner of the land), or
 - (b) the person is the lessee of the land.

]¹


Notes

- ¹ Added by Telecommunications Infrastructure (Leasehold Property) Act 2021 c. 7 s.1 (date to be appointed: 2021 c.7 s.1 came into force on March 15, 2021 as specified in 2021 c.7 s.3(3)(b) for the limited purpose of enabling the exercise, on or after that day, of any power to make regulations under 2003 c.21 Sch.3A Pt 4A; not yet in force otherwise)
-

[PART 5**TERMINATION AND MODIFICATION OF AGREEMENTS****] ¹**

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)
-

 Law In Force

[28 Introductory


This Part of this code makes provision about—

- (a) the continuation of code rights after the time at which they cease to be exercisable under an agreement,
- (b) the procedure for bringing an agreement to an end,
- (c) the procedure for changing an agreement relating to code rights, and
- (d) the arrangements for the making of payments under an agreement whilst disputes under this Part are resolved.

] ¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)
-

 Law In Force

[29 Application of this Part

- (1) This Part of this code applies to an agreement under Part 2 of this code, subject to sub-paragraphs (2) to (4).
- (2) This Part of this code does not apply to a lease of land in England and Wales if—
- (a) its primary purpose is not to grant code rights, and
 - (b) it is a lease to which Part 2 of the Landlord and Tenant Act 1954 (security of tenure for business, professional and other tenants) applies.

(3) In determining whether a lease is one to which Part 2 of the Landlord and Tenant Act 1954 applies, any agreement under section 38A (agreements to exclude provisions of Part 2) of that Act is to be disregarded.

(4) This Part of this code does not apply to a lease of land in Northern Ireland if—


- (a) its primary purpose is not to grant code rights, and
- (b) it is a lease to which the Business Tenancies (Northern Ireland) Order 1996 (SI 1996/725 (NI 5)) applies.

(5) An agreement to which this Part of this code applies is referred to in this code as a “code agreement”.

] ¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)
-

 Law In Force

[30 Continuation of code rights

(1) Sub-paragraph (2) applies if—

- (a) a code right is conferred by, or is otherwise binding on, a person (the “site provider”) as the result of a code agreement, and
- (b) under the terms of the agreement—
 - (i) the right ceases to be exercisable or the site provider ceases to be bound by it, or
 - (ii) the site provider may bring the code agreement to an end so far as it relates to that right.

(2) Where this sub-paragraph applies the code agreement continues so that—

- (a) the operator may continue to exercise that right, and
- (b) the site provider continues to be bound by the right.

(3) Sub-paragraph (2) does not apply to a code right which is conferred by, or is otherwise binding on, a person by virtue of an order under paragraph 26 (interim code rights) or 27 (temporary code rights).

(4) Sub-paragraph (2) is subject to the following provisions of this Part of this code.

] ¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)
-



Law In Force

[31 How may a person bring a code agreement to an end?]

- (1) A site provider who is a party to a code agreement may bring the agreement to an end by giving a notice in accordance with this paragraph to the operator who is a party to the agreement.
- (2) The notice must—
- (a) comply with paragraph 89 (notices given by persons other than operators),
 - (b) specify the date on which the site provider proposes the code agreement should come to an end, and
 - (c) state the ground on which the site provider proposes to bring the code agreement to an end.
- (3) The date specified under sub-paragraph (2)(b) must fall—
- (a) after the end of the period of 18 months beginning with the day on which the notice is given, and
 - (b) after the time at which, apart from paragraph 30, the code right to which the agreement relates would have ceased to be exercisable or to bind the site provider or at a time when, apart from that paragraph, the code agreement could have been brought to an end by the site provider.
- (4) The ground stated under sub-paragraph (2)(c) must be one of the following—
- (a) that the code agreement ought to come to an end as a result of substantial breaches by the operator of its obligations under the agreement;
 - (b) that the code agreement ought to come to an end because of persistent delays by the operator in making payments to the site provider under the agreement;
 - (c) that the site provider intends to redevelop all or part of the land to which the code agreement relates, or any neighbouring land, and could not reasonably do so unless the code agreement comes to an end;
 - (d) that the operator is not entitled to the code agreement because the test under paragraph 21 for the imposition of the agreement on the site provider is not met.

]¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)
-



Law In Force

[32 What is the effect of a notice under paragraph 31?]

- (1) Where a site provider gives a notice under paragraph 31, the code agreement to which it relates comes to an end in accordance with the notice unless—
- (a) within the period of three months beginning with the day on which the notice is given, the operator gives the site provider a counter-notice in accordance with sub-paragraph (3), and
 - (b) within the period of three months beginning with the day on which the counter-notice is given, the operator applies to the court for an order under paragraph 34.

(2) Sub-paragraph (1) does not apply if the operator and the site provider agree to the continuation of the code agreement.

(3) The counter-notice must state—

- (a) that the operator does not want the existing code agreement to come to an end,
- (b) that the operator wants the site provider to agree to confer or be otherwise bound by the existing code right on new terms, or
- (c) that the operator wants the site provider to agree to confer or be otherwise bound by a new code right in place of the existing code right.

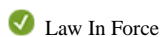
(4) If, on an application under sub-paragraph (1)(b), the court decides that the site provider has established any of the grounds stated in the site provider's notice under paragraph 31, the court must order that the code agreement comes to an end in accordance with the order.

(5) Otherwise the court must make one of the orders specified in paragraph 34.

] ¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)
-



Law In Force

[33 How may a party to a code agreement require a change to the terms of an agreement which has expired?

(1) An operator or site provider who is a party to a code agreement by which a code right is conferred by or otherwise binds the site provider may, by notice in accordance with this paragraph, require the other party to the agreement to agree that—

- (a) the code agreement should have effect with modified terms,
- (b) where under the code agreement more than one code right is conferred by or otherwise binds the site provider, that the agreement should no longer provide for an existing code right to be conferred by or otherwise bind the site provider,
- (c) the code agreement should—
 - (i) confer an additional code right on the operator, or
 - (ii) provide that the site provider is otherwise bound by an additional code right, or
- (d) the existing code agreement should be terminated and a new agreement should have effect between the parties which—
 - (i) confers a code right on the operator, or
 - (ii) provides for a code right to bind the site provider.

(2) The notice must—

- (a) comply with paragraph 88 or 89, according to whether the notice is given by an operator or a site provider,
- (b) specify—
 - (i) the day from which it is proposed that the modified terms should have effect,
 - (ii) the day from which the agreement should no longer provide for the code right to be conferred by or otherwise bind the site provider,

- (iii) the day from which it is proposed that the additional code right should be conferred by or otherwise bind the site provider, or
 - (iv) the day on which it is proposed the existing code agreement should be terminated and from which a new agreement should have effect,
 - (as the case may be), and
 - (c) set out details of—
 - (i) the proposed modified terms,
 - (ii) the code right it is proposed should no longer be conferred by or otherwise bind the site provider,
 - (iii) the proposed additional code right, or
 - (iv) the proposed terms of the new agreement,
 - (as the case may be).
 - (3) The day specified under sub-paragraph (2)(b) must fall—
 - (a) after the end of the period of 6 months beginning with the day on which the notice is given, and
 - (b) after the time at which, apart from paragraph 30, the code right to which the existing code agreement relates would have ceased to be exercisable or to bind the site provider or at a time when, apart from that paragraph, the code agreement could have been brought to an end by the site provider.
 - (4) Sub-paragraph (5) applies if, after the end of the period of 6 months beginning with the day on which the notice is given, the operator and the site provider have not reached agreement on the proposals in the notice.
 - (5) Where this paragraph applies, the operator or the site provider may apply to the court for the court to make an order under paragraph 34.
-]¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)
-



Law In Force


[34 What orders may a court make on an application under paragraph 32 or 33?

- (1) This paragraph sets out the orders that the court may make on an application under paragraph 32(1)(b) or 33(5).
- (2) The court may order that the operator may continue to exercise the existing code right in accordance with the existing code agreement for such period as may be specified in the order (so that the code agreement has effect accordingly).
- (3) The court may order the modification of the terms of the code agreement relating to the existing code right.
- (4) Where under the code agreement more than one code right is conferred by or otherwise binds the site provider, the court may order the modification of the terms of the code agreement so that it no longer provides for an existing code right to be conferred by or otherwise bind the site provider.

- (5) The court may order the terms of the code agreement relating to the existing code right to be modified so that—
- (a) it confers an additional code right on the operator, or
 - (b) it provides that the site provider is otherwise bound by an additional code right.
- (6) The court may order the termination of the code agreement relating to the existing code right and order the operator and the site provider to enter into a new agreement which—
- (a) confers a code right on the operator, or
 - (b) provides for a code right to bind the site provider.
- (7) The existing code agreement continues until the new agreement takes effect.
- (8) This code applies to the new agreement as if it were an agreement under Part 2 of this code.
- (9) The terms conferring or providing for an additional code right under sub-paragraph (5), and the terms of a new agreement under sub-paragraph (6), are to be such as are agreed between the operator and the site provider.
- (10) If the operator and the site provider are unable to agree on the terms, the court must on an application by either party make an order specifying those terms.
- (11) Paragraphs 23(2) to (8), 24, 25 and 84 apply—
- (a) to an order under sub-paragraph (3), (4) or (5), so far as it modifies or specifies the terms of the agreement, and
 - (b) to an order under sub-paragraph (10)
- as they apply to an order under paragraph 20.
- (12) In the case of an order under sub-paragraph (10) the court must also have regard to the terms of the existing code agreement.
- (13) In determining which order to make under this paragraph, the court must have regard to all the circumstances of the case, and in particular to—
- (a) the operator's business and technical needs,
 - (b) the use that the site provider is making of the land to which the existing code agreement relates,
 - (c) any duties imposed on the site provider by an enactment, and
 - (d) the amount of consideration payable by the operator to the site provider under the existing code agreement.
- (14) Where the court makes an order under this paragraph, it may also order the operator to pay the site provider the amount (if any) by which A exceeds B, where—
- (a) A is the amount of consideration that would have been payable by the operator to the site provider for the relevant period if that amount had been assessed on the same basis as the consideration payable as the result of the order, and
 - (b) B is the amount of consideration payable by the operator to the site provider for the relevant period.
- (15) In sub-paragraph (14) the relevant period is the period (if any) that—
- (a) begins on the date on which, apart from the operation of paragraph 30, the code right to which the existing code agreement relates would have ceased to be exercisable or to bind the site provider or from which, apart from that paragraph, the code agreement could have been brought to an end by the site provider, and
 - (b) ends on the date on which the order is made.

] ¹**Notes**

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)

 Law In Force

[35 What arrangements for payment can be made pending determination of the application?

(1) This paragraph applies where—

- (a) a code right continues to be exercisable under paragraph 30 after the time at which, apart from the operation of that paragraph, the code right would have ceased to be exercisable or to bind the site provider or from which, apart from that paragraph, the code agreement relating to the right could have been brought to an end by the site provider, and
- (b) the operator or the site provider has applied to the court for an order under paragraph 32(1)(b) or 33(5).

(2) The site provider may—

- (a) agree with the operator that, until the application has been finally determined, the site provider will continue to receive the payments of consideration from the operator to which the site provider is entitled under the agreement relating to the existing code right,
- (b) agree with the operator that, until that time, the site provider will receive different payments of consideration under that agreement, or
- (c) apply to the court for the court to determine the payments of consideration to be made by the operator to the site provider under that agreement until that time.

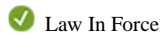
(3) The court must determine the payments under sub-paragraph (2)(c) on the basis set out in paragraph 24 (calculation of consideration).

] ¹**Notes**

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)

[PART 6**RIGHTS TO REQUIRE REMOVAL OF ELECTRONIC COMMUNICATIONS APPARATUS**] ¹**Notes**

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)



Law In Force

[36 Introductory

This Part of this code makes provision about—

- (a) the cases in which a person has the right to require the removal of electronic communications apparatus or the restoration of land,
- (b) the means by which a person can discover whether apparatus is on land pursuant to a code right, and
- (c) the means by which a right to require removal of apparatus or restoration of land can be enforced.

]¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)
-



Law In Force With Amendments Pending

[37 When does a landowner have the right to require removal of electronic communications apparatus?

(1) A person with an interest in land (a “landowner”) has the right to require the removal of electronic communications apparatus on, under or over the land if (and only if) one or more of the following conditions are met.

(2) The first condition is that the landowner has never since the coming into force of this code been bound by a code right entitling an operator to keep the apparatus on, under or over the land. This is subject to sub-paragraph (4).

(3) The second condition is that a code right entitling an operator to keep the apparatus on, under or over the land has come to an end or has ceased to bind the landowner—

- (a) as mentioned in paragraph 26(7) and (8),
- (b) as the result of paragraph 32(1), or
- (c) as the result of an order under paragraph 32(4) or 34(4) or (6), or
- (d) where the right was granted by a lease to which Part 5 of this code does not apply.

This is subject to sub-paragraph (4).

(4) The landowner does not meet the first or second condition if—

- (a) the land is occupied by a person who—
 - (i) conferred a code right (which is in force) entitling an operator to keep the apparatus on, under or over the land, or
 - (ii) is otherwise bound by such a right, and
- (b) that code right was not conferred in breach of a covenant enforceable by the landowner.

(5) In the application of sub-paragraph (4)(b) to Scotland the reference to a covenant enforceable by the landowner is to be read as a reference to a contractual term which is so enforceable.

(6) The third condition is that—

- (a) an operator has the benefit of a code right entitling the operator to keep the apparatus on, under or over the land, but

- (b) the apparatus is not, or is no longer, used for the purposes of the operator's network, and
 - (c) there is no reasonable likelihood that the apparatus will be used for that purpose.
- (7) The fourth condition is that—
- (a) this code has ceased to apply to a person so that the person is no longer entitled under this code to keep the apparatus on, under or over the land,
 - (b) the retention of the apparatus on, under or over the land is not authorised by a scheme contained in an order under section 117, and
 - (c) there is no other person with a right conferred by or under this code to keep the apparatus on, under or over the land.
- (8) The fifth condition is that—
- (a) the apparatus was kept on, under or over the land pursuant to—
 - (i) a transport land right (see Part 7), or
 - (ii) a street work right (see Part 8),
 - (b) that right has ceased to be exercisable in relation to the land by virtue of paragraph 54(9), and
 - (c) there is no other person with a right conferred by or under this code to keep the apparatus on, under or over the land.
- (9) This paragraph does not affect rights to require the removal of apparatus under another enactment (see paragraph 41).

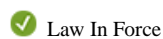
]¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)

Amendments Pending

Sch. 3A(6) para. 37(3)(aa): added by Telecommunications Infrastructure (Leasehold Property) Act 2021 c. 7, Sch. 1 para. 4(9) (date to be appointed: 2021 c.7 Sch.1 para.4(9) came into force on March 15, 2021 as specified in 2021 c.7 s.3(3)(b) for the limited purpose of enabling the exercise, on or after that day, of any power to make regulations under 2003 c.21 Sch.3A Pt 4A; not yet in force otherwise)



Law In Force

[38 When does a landowner or occupier of neighbouring land have the right to require removal of electronic communications apparatus?

- (1) A landowner or occupier of any land (“neighbouring land”) has the right to require the removal of electronic communications apparatus kept on, under or over other land in exercise of a right mentioned in paragraph 13(1), if both of the following conditions are met.
- (2) The first condition is that the apparatus interferes with or obstructs a means of access to or from the neighbouring land.
- (3) The second condition is that the landowner or occupier of the neighbouring land is not bound by a code right within paragraph 3(h) entitling an operator to cause the interference or obstruction.

(4) A landowner of neighbouring land who is not the occupier of the land does not meet the second condition if—

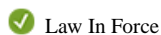
- (a) the land is occupied by a person who—
 - (i) conferred a code right (which is in force) entitling an operator to cause the interference or obstruction, or
 - (ii) is otherwise bound by such a right, and
- (b) that code right was not conferred in breach of a covenant enforceable by the landowner.

(5) In the application of sub-paragraph (4)(b) to Scotland the reference to a covenant enforceable by the landowner is to be read as a reference to a contractual term which is so enforceable.

]¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)



Law In Force

[39 How does a landowner or occupier find out whether apparatus is on land pursuant to a code right?

- (1) A landowner may by notice require an operator to disclose whether—
 - (a) the operator owns electronic communications apparatus on, under or over land in which the landowner has an interest or uses such apparatus for the purposes of the operator's network, or
 - (b) the operator has the benefit of a code right entitling the operator to keep electronic communications apparatus on, under or over land in which the landowner has an interest.
- (2) A landowner or occupier of neighbouring land may by notice require an operator to disclose whether—
 - (a) the operator owns electronic communications apparatus on, under or over land that forms (or, but for the apparatus, would form) a means of access to the neighbouring land, or uses such apparatus for the purposes of the operator's network, or
 - (b) the operator has the benefit of a code right entitling the operator to keep electronic communications apparatus on, under or over land that forms (or, but for the apparatus, would form) a means of access to the neighbouring land.
- (3) The notice must comply with paragraph 89 (notices given by persons other than operators).
- (4) Sub-paragraph (5) applies if—
 - (a) the operator does not, before the end of the period of three months beginning with the date on which the notice under sub-paragraph (1) or (2) was given, give a notice to the landowner or occupier that—
 - (i) complies with paragraph 88 (notices given by operators), and
 - (ii) discloses the information sought by the landowner or occupier,
 - (b) the landowner or occupier takes action under paragraph 40 to enforce the removal of the apparatus, and
 - (c) it is subsequently established that—

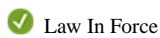
- (i) the operator owns the apparatus or uses it for the purposes of the operator's network, and
- (ii) the operator has the benefit of a code right entitling the operator to keep the apparatus on, under or over the land.

(5) The operator must nevertheless bear the costs of any action taken by the landowner or occupier under paragraph 40 to enforce the removal of the apparatus.

] ¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)
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Law In Force

[40 How does a landowner or occupier enforce removal of apparatus?

(1) The right of a landowner or occupier to require the removal of electronic communications apparatus on, under or over land, under paragraph 37 or 38, is exercisable only in accordance with this paragraph.

(2) The landowner or occupier may give a notice to the operator whose apparatus it is requiring the operator—

- (a) to remove the apparatus, and
- (b) to restore the land to its condition before the apparatus was placed on, under or over the land.

(3) The notice must—

- (a) comply with paragraph 89 (notices given by persons other than operators), and
- (b) specify the period within which the operator must complete the works.

(4) The period specified under sub-paragraph (3) must be a reasonable one.

(5) Sub-paragraph (6) applies if, within the period of 28 days beginning with the day on which the notice was given, the landowner or occupier and the operator do not reach agreement on any of the following matters—

- (a) that the operator will remove the apparatus;
- (b) that the operator will restore the land to its condition before the apparatus was placed on, under or over the land;
- (c) the time at which or period within which the apparatus will be removed;
- (d) the time at which or period within which the land will be restored.

(6) The landowner or occupier may make an application to the court for—

- (a) an order under paragraph 44(1) (order requiring operator to remove apparatus etc), or
- (b) an order under paragraph 44(3) (order enabling landowner to sell apparatus etc).

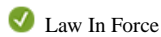
(7) If the court makes an order under paragraph 44(1), but the operator does not comply with the agreement imposed on the operator and the landowner or occupier by virtue of paragraph 44(7), the landowner or occupier may make an application to the court for an order under paragraph 44(3).

(8) On an application under sub-paragraph (6) or (7) the court may not make an order in relation to apparatus if an application under paragraph 20(3) has been made in relation to the apparatus and has not been determined.

] ¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)
-



Law In Force

[41 How are other rights to require removal of apparatus enforced?

- (1) The right of a person (a “third party”) under an enactment other than this code, or otherwise than under an enactment, to require the removal of electronic communications apparatus on, under or over land is exercisable only in accordance with this paragraph.
- (2) The third party may give a notice to the operator whose apparatus it is, requiring the operator—
- (a) to remove the apparatus, and
 - (b) to restore the land to its condition before the apparatus was placed on, under or over the land.
- (3) The notice must—
- (a) comply with paragraph 89 (notices given by persons other than operators), and
 - (b) specify the period within which the operator must complete the works.
- (4) The period specified under sub-paragraph (3) must be a reasonable one.
- (5) Within the period of 28 days beginning with the day on which notice under sub-paragraph (2) is given, the operator may give the third party notice (“counter-notice”)—
- (a) stating that the third party is not entitled to require the removal of the apparatus, or
 - (b) specifying the steps which the operator proposes to take for the purpose of securing a right as against the third party to keep the apparatus on the land.
- (6) If the operator does not give counter-notice within that period, the third party is entitled to enforce the removal of the apparatus.
- (7) If the operator gives the third party counter-notice within that period, the third party may enforce the removal of the apparatus only in pursuance of an order of the court that the third party is entitled to enforce the removal of the apparatus.
- (8) If the counter-notice specifies steps under paragraph (5)(b), the court may make an order under sub-paragraph (7) only if it is satisfied—
- (a) that the operator is not intending to take those steps or is being unreasonably dilatory in taking them; or
 - (b) that taking those steps has not secured, or will not secure, for the operator as against the third party any right to keep the apparatus installed on, under or over the land or to reinstall it if it is removed.

(9) Where the third party is entitled to enforce the removal of the apparatus, under sub-paragraph (6) or under an order under sub-paragraph (7), the third party may make an application to the court for—

- (a) an order under paragraph 44(1) (order requiring operator to remove apparatus etc), or
- (b) an order under paragraph 44(3) (order enabling third party to sell apparatus etc).

(10) If the court makes an order under paragraph 44(1), but the operator does not comply with the agreement imposed on the operator and the third party by virtue of paragraph 44(7), the third party may make an application to the court for an order under paragraph 44(3).

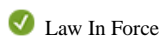
(11) An order made on an application under this paragraph need not include provision within paragraph 44(1)(b) or (3)(d) unless the court thinks it appropriate.

(12) Sub-paragraph (9) is without prejudice to any other method available to the third party for enforcing the removal of the apparatus.

] ¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)
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Law In Force

[42 How does paragraph 40 apply if a person is entitled to require apparatus to be altered in consequence of street works?

(1) This paragraph applies where the third party's right in relation to which paragraph 41 applies is a right to require the alteration of the apparatus in consequence of the stopping up, closure, change or diversion of a street or road or the extinguishment or alteration of a public right of way.

(2) The removal of the apparatus in pursuance of paragraph 41 constitutes compliance with a requirement to make any other alteration.

(3) A counter-notice under paragraph 41(5) may state (in addition to, or instead of, any of the matters mentioned in paragraph 41(5)(b)) that the operator requires the third party to reimburse the operator in respect of any expenses incurred by the operator in or in connection with the making of any alteration in compliance with the requirements of the third party.

(4) An order made under paragraph 41 on an application by the third party in respect of a counter-notice containing a statement under sub-paragraph (3) must, unless the court otherwise thinks fit, require the third party to reimburse the operator in respect of the expenses referred to in the statement.

(5) Paragraph 44(3)(b) to (e) do not apply.

(6) In this paragraph—

“road” means a road in Scotland;

“street” means a street in England and Wales or Northern Ireland.

] ¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)
-

✓ Law In Force

[43 When can a separate application for restoration of land be made?

- (1) This paragraph applies if—
- (a) the condition of the land has been affected by the exercise of a code right, and
 - (b) restoration of the land to its condition before the code right was exercised does not involve the removal of electronic communications apparatus from any land.
- (2) The occupier of the land, the owner of the freehold estate in the land or the lessee of the land (“the relevant person”) has the right to require the operator to restore the land if the relevant person is not for the time being bound by the code right.
- This is subject to sub-paragraph (3).
- (3) The relevant person does not have that right if—
- (a) the land is occupied by a person who—
 - (i) conferred a code right (which is in force) entitling the operator to affect the condition of the land in the same way as the right mentioned in sub-paragraph (1), or
 - (ii) is otherwise bound by such a right, and
 - (b) that code right was not conferred in breach of a covenant enforceable by the relevant person.
- (4) In the application of sub-paragraph (3)(b) to Scotland the reference to a covenant enforceable by the relevant person is to be read as a reference to a contractual term which is so enforceable.
- (5) A person who has the right conferred by this paragraph may give a notice to the operator requiring the operator to restore the land to its condition before the code right was exercised.
- (6) The notice must—
- (a) comply with paragraph 89 (notices given by persons other than operators), and
 - (b) specify the period within which the operator must complete the works.
- (7) The period specified under sub-paragraph (6) must be a reasonable one.
- (8) Sub-paragraph (9) applies if, within the period of 28 days beginning with the day on which the notice was given, the landowner and the operator do not reach agreement on any of the following matters—
- (a) that the operator will restore the land to its condition before the code right was exercised;
 - (b) the time at which or period within which the land will be restored.
- (9) The landowner may make an application to the court for—
- (a) an order under paragraph 44(2) (order requiring operator to restore land), or
 - (b) an order under paragraph 44(4) (order enabling landowner to recover cost of restoring land).

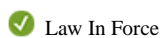
(10) If the court makes an order under paragraph 44(2), but the operator does not comply with the agreement imposed on the operator and the landowner by virtue of paragraph 44(7), the landowner may make an application to the court for an order under paragraph 44(4).

(11) In the application of sub-paragraph (2) to Scotland the reference to a person who is the owner of the freehold estate in the land is to be read as a reference to a person who is the owner of the land.

] ¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)
-



Law In Force

[44 What orders may the court make on an application under paragraphs 40 to 43?

(1) An order under this sub-paragraph is an order that the operator must, within the period specified in the order—

- (a) remove the electronic communications apparatus, and
- (b) restore the land to its condition before the apparatus was placed on, under or over the land.

(2) An order under this sub-paragraph is an order that the operator must, within the period specified in the order, restore the land to its condition before the code right was exercised.

(3) An order under this sub-paragraph is an order that the landowner, occupier or third party may do any of the following—

- (a) remove or arrange the removal of the electronic communications apparatus;
- (b) sell any apparatus so removed;
- (c) recover the costs of any action under paragraph (a) or (b) from the operator;
- (d) recover from the operator the costs of restoring the land to its condition before the apparatus was placed on, under or over the land;
- (e) retain the proceeds of sale of the apparatus to the extent that these do not exceed the costs incurred by the landowner, occupier or third party as mentioned in paragraph (c) or (d).

(4) An order under this sub-paragraph is an order that the landowner may recover from the operator the costs of restoring the land to its condition before the code right was exercised.

(5) An order under this paragraph on an application under paragraph 40 may require the operator to pay compensation to the landowner for any loss or damage suffered by the landowner as a result of the presence of the apparatus on the land during the period when the landowner had the right to require the removal of the apparatus from the land but was not able to exercise that right.

(6) Paragraph 84 makes further provision about compensation under sub-paragraph (5).

(7) An order under sub-paragraph (1) or (2) takes effect as an agreement between the operator and the landowner, occupier or third party that—

- (a) requires the operator to take the steps specified in the order, and

(b) otherwise contains such terms as the court may so specify.

] ¹

Notes

¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)

[PART 7

CONFERRAL OF TRANSPORT LAND RIGHTS AND THEIR EXERCISE

] ¹

Notes

¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)

✓ Law In Force

[45 Introductory

This Part of this code makes provision about—

- (a) the conferral of transport land rights, and
- (b) the exercise of transport land rights.

] ¹

Notes

¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)

✓ Law In Force

[46 Transport land and transport undertakers

In this Part of this code—

“transport land” means land which is used wholly or mainly—


- (a) as a railway, canal or tramway, or
- (b) in connection with a railway, canal or tramway on the land;

“transport undertaker”, in relation to transport land, means the person carrying on the railway, canal or tramway undertaking.

] ¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)
-

 Law In Force

[47 Conferral of transport land rights

(1) An operator may exercise a transport land right for the statutory purposes.

(2) But that is subject to the following provisions of this Part of this code.

] ¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)
-

 Law In Force

[48 The transport land rights

(1) For the purposes of this code a “transport land right”, in relation to an operator, is—

- (a) a right to cross any transport land with a line;
- (b) a right, for the purposes of crossing any transport land with a line—
 - (i) to install and keep the line and any other electronic communications apparatus on, under or over the transport land;
 - (ii) to inspect, maintain, adjust, alter, repair, upgrade or operate electronic communications apparatus on, under or over the transport land;
 - (iii) a right to carry out any works on the transport land for or in connection with the exercise of a right under sub-paragraph (i) or (ii);
 - (iv) a right to enter the transport land to inspect, maintain, adjust, alter, repair, upgrade or operate the line or other electronic communications apparatus.

(2) A line installed in the exercise of a transport land right need not cross the transport land in question by a direct route or the shortest route from the point at which the line enters the transport land.


(3) But the line must not cross the transport land by any route which, in the horizontal plane, exceeds that shortest route by more than 400 metres.

(4) The transport land rights do not authorise an operator to install a line or other electronic communications apparatus in any position on transport land in which the line or other apparatus would interfere with traffic on the railway, canal or tramway.

] ¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)
-


 Law In Force

[49 Non-emergency works: when can an operator exercise the transport land rights?

- (1) Before exercising a transport land right in order to carry out non-emergency works, the operator must give the transport undertaker notice of the intention to carry out the works (“notice of proposed works”).
- (2) Notice of proposed works must contain a plan and section of the works; but, if the transport undertaker agrees, the notice may instead contain a description of the works (whether or not in the form of a diagram).
- (3) The operator must not begin the proposed works until the notice period has ended.
- (4) But the operator's power to carry out the proposed works is subject to paragraph 50.
- (5) In this paragraph—
 “non-emergency works” means any works which are not emergency works under paragraph 51;
 “notice period” means the period of 28 days beginning with the day on which notice of proposed works is given.
-] ¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)
-

 Law In Force

[50 What is the effect of the transport undertaker giving notice of objection to the operator?

- (1) This paragraph applies if an operator gives a transport undertaker notice of proposed works under paragraph 49.
- (2) The transport undertaker may, within the notice period, give the operator notice objecting to the proposed works (“notice of objection”).
- (3) If notice of objection is given, the operator or the transport undertaker may, within the arbitration notice period, give the other notice that the objection is to be referred to arbitration under paragraph 52 (“arbitration notice”).
- (4) In a case where notice of objection is given, the operator may exercise a transport land right in order to carry out the proposed works only if they are permitted under sub-paragraph (5) or (6).
- (5) Works are permitted in a case where—

- (a) the arbitration notice period has ended, and
- (b) no arbitration notice has been given.

(6) In a case where arbitration notice has been given, works are permitted in accordance with an award made on the arbitration.

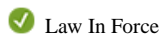
(7) In this paragraph—

- (a) “arbitration notice period” means the period of 28 days beginning with the day on which objection notice is given;
- (b) expressions defined in paragraph 49 have the same meanings as in that paragraph.

] ¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)
-



Law In Force

[51 Emergency works: when can an operator exercise the transport land rights?

(1) An operator may exercise a transport land right in order to carry out emergency works.

(2) If the operator exercises a transport land right to carry out emergency works, the operator must give the transport undertaker an emergency works notice as soon as reasonably practicable after starting the works.

(3) An “emergency works notice” is a notice which—

- (a) identifies the emergency works;
- (b) contains a statement of the reason why the works are emergency works; and
- (c) contains either—
 - (i) the matters which would be included in a notice of proposed works (if one were given in relation to the works), or
 - (ii) a reference to a notice of proposed works which relates to the works that are emergency works (if one has been given).

(4) A transport undertaker may, within the compensation notice period, give the operator notice which requires the operator to pay compensation for loss or damage sustained in consequence of the carrying out of emergency works (“compensation notice”).

(5) The operator must pay the transport undertaker any compensation which is required by a compensation notice (if given within the compensation notice period).

(6) The amount of compensation payable under sub-paragraph (5) is to be agreed between the operator and the transport undertaker.

(7) But if—

- (a) the compensation agreement period has ended, and
- (b) the operator and the transport undertaker have not agreed the amount of compensation payable under sub-paragraph (6),

the operator or the transport undertaker may give the other notice that the disagreement is to be referred to arbitration under paragraph 52.

(8) A reference in this paragraph to emergency works includes a reference to any works which are included in a notice of proposed works but become emergency works before the operator is authorised by paragraph 50 or 51 to carry them out.

(9) In this paragraph—

“compensation agreement period” means the period of 28 days beginning with the day on which a compensation notice is given;

“compensation notice period” means the period of 28 days beginning with the day on which an emergency works notice is given;

“emergency works” means works carried out in order to stop anything already occurring, or to prevent anything imminent from occurring, which is likely to cause—

(a) danger to persons or property,

(b) the interruption of any service provided by the operator's network, or

(c) substantial loss to the operator,

and any other works which it is reasonable (in all the circumstances) to carry out with those works;

“notice of proposed works” means such notice given under paragraph 49.

] ¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)

✓ Law In Force

[52 What happens if a dispute about the transport land rights is referred to arbitration?

(1) This paragraph applies if notice is given under paragraph 50(3) or 51(7) that the following matter (the “matter in dispute”) is to be referred to arbitration—

(a) an objection to proposed works;

(b) a disagreement about an amount of compensation.

(2) The matter in dispute is to be referred to the arbitration of a single arbitrator appointed—

(a) by agreement between the parties, or

(b) in the absence of such agreement, by the President of the Institution of Civil Engineers.

(3) If the matter in dispute is an objection to proposed works, the arbitrator has the following powers—

(a) power to require the operator to give the arbitrator a plan and section in such form as the arbitrator thinks appropriate;

(b) power to require the transport undertaker to give the arbitrator any observations on such a plan or section in such form as the arbitrator thinks appropriate;

(c) power to impose on either party any other requirements which the arbitrator thinks appropriate (including a requirement to provide information in such form as the arbitrator thinks appropriate);

(d) power to make an award—

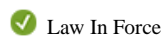
(i) requiring modifications to the proposed works, and

- (ii) specifying the terms on which, and the conditions subject to which, the proposed works may be carried out;
 - (e) power to award one or both of the following, payable to the transport undertaker—
 - (i) compensation for loss or damage sustained by that person in consequence of the carrying out of the works;
 - (ii) consideration for the right to carry out the works.
- (4) If the matter in dispute is a disagreement about an amount of compensation, the arbitrator has the following powers—
- (a) power to impose on either party any requirements which the arbitrator thinks appropriate (including a requirement to provide information in such form as the arbitrator thinks appropriate);
 - (b) power to award compensation, payable to the transport undertaker, for loss or damage sustained by that person in consequence of the carrying out of the emergency works.
- (5) The arbitrator may make an award conditional upon a party complying with a requirement imposed under sub-paragraph (3)(a), (b) or (c) or (4)(a).
- (6) In determining what award to make, the matters to which the arbitrator must have regard include the public interest in there being access to a choice of high quality electronic communications services.
- (7) The arbitrator's power under sub-paragraph (3) or (4) to award compensation for loss includes power to award compensation for any increase in the expenses incurred by the transport undertaker in carrying on its railway, canal or tramway undertaking.
- (8) An award of consideration under sub-paragraph (3)(e)(ii) must be determined on the basis of what would have been fair and reasonable if the transport undertaker had willingly given authority for the works to be carried out on the same terms, and subject to the same conditions (if any), as are contained in the award.
- (9) In this paragraph “party” means—
- (a) the operator, or
 - (b) the transport undertaker.

] ¹

Notes

¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)



Law In Force

[53 When can a transport undertaker require an operator to alter communications apparatus?

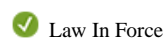
- (1) A transport undertaker may give an operator notice which requires the operator to alter a line or other electronic communications apparatus specified in the notice (“notice requiring alterations”) on the ground that keeping the apparatus on, under or over transport land interferes with, or is likely to interfere with—
- (a) the carrying on of the transport undertaker's railway, canal or tramway undertaking, or

- (b) anything done or to be done for the purposes of its railway, canal or tramway undertaking.
- (2) The operator may, within the notice period, give the transport undertaker notice (“counter-notice”) specifying the respects in which the operator is not prepared to comply with the notice requiring alterations.
- (3) The operator must comply with the notice requiring alterations, within a reasonable time and to the reasonable satisfaction of the transport undertaker, if—
 - (a) the notice period has ended, and
 - (b) no counter-notice has been given.
- (4) If counter-notice has been given (within the notice period), the transport undertaker may apply to the court for an order requiring the operator to alter any of the specified apparatus.
- (5) The court must not make an order unless it is satisfied that the order is necessary on one of the grounds mentioned in sub-paragraph (1).
- (6) In determining whether to make an order, the matters to which the court must also have regard include the public interest in there being access to a choice of high quality electronic communications services.
- (7) An order under this paragraph may take such form and be on such terms as the court thinks fit.
- (8) In particular, the order—
 - (a) may impose such conditions, and
 - (b) may contain such directions to the operator or the transport undertaker,
 as the court thinks necessary for resolving any difference between the operator and the transport undertaker and for protecting their respective interests.
- (9) In this paragraph—
 - “notice period” means the period of 28 days beginning with the day on which notice requiring alterations is given;
 - “specified apparatus” means the line or other electronic communications apparatus specified in notice requiring alterations.

]¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)
-



[54 What happens to the transport land rights if land ceases to be transport land?

- (1) This paragraph applies if an operator is exercising a transport land right in relation to land immediately before a time when it ceases to be transport land.
- (2) After that time, this Part of this code — except for paragraph 53 — continues to apply to the land as if it were still transport land (and, accordingly, the operator may continue to exercise any transport land right in relation to the land as if it were still transport land).

(3) But sub-paragraph (2) is subject to sub-paragraphs (4) to (9).

(4) In the application of this Part of this code to land in accordance with sub-paragraph (2), references to the transport undertaker have effect as references to the occupier of the land.

(5) The application of this Part of this code to land in accordance with sub-paragraph (2) does not authorise the operator—

- (a) to cross the land with any line that is not in place at the time when the land ceases to be transport land, or
- (b) to install and keep any line or other electronic communications apparatus that is not in place at the time when the land ceases to be transport land.

(6) But sub-paragraph (5) does not affect the power of the operator to replace an existing line or other apparatus (whether in place at the time when the land ceased to be transport land or a replacement itself authorised by this sub-paragraph) with a new line or apparatus which—

- (a) is not substantially different from the existing line or apparatus, and
- (b) is not in a significantly different position.

(7) The occupier of the land may, at any time after the land ceases to be transport land, give the operator notice specifying a date on which this Part of this code is to cease to apply to the land in accordance with this paragraph (“notice of termination”).


(8) That date specified in the notice of termination must fall after the end of the period of 12 months beginning with the day on which the notice of termination is given.

(9) On the date specified in notice of termination in accordance with sub-paragraph (8), the transport land rights cease to be exercisable in relation to the land in accordance with this paragraph.

] ¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)
-

 Law In Force

[55 Offence: operators who do not comply with this Part of this code

(1) An operator is guilty of an offence if the operator starts any works in contravention of any provision of paragraph 49, paragraph 50 or paragraph 51.

(2) An operator guilty of an offence under this paragraph is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) In a case where this Part of this code applies in accordance with paragraph 54, the reference in this paragraph to paragraph 49, paragraph 50 or paragraph 51 is a reference to that paragraph as it applies in accordance with paragraph 54.

] ¹


Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)
-

[PART 8**CONFERRAL OF STREET WORK RIGHTS AND THEIR EXERCISE****] ¹**

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)
-

 Law In Force

[56 Introductory


This Part of this code makes provision about—

- (a) the conferral of street work rights, and
- (b) the exercise of street work rights.

] ¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)
-

 Law In Force

[57 Streets and roads

In this Part of this code—

“road” means—


- (a) a road in Scotland which is a public road;
- (b) a road in Northern Ireland;

“street” means a street in England and Wales which is a maintainable highway (within the meaning of Part 3 of New Roads and Street Works Act 1991), other than one which is a footpath, bridleway or restricted byway that crosses, and forms part of, any agricultural land or any land which is being brought into use for agriculture.

] ¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)
-

 Law In Force

[58 Conferral of street work rights


(1) An operator may exercise a street work right for the statutory purposes.

(2) But that is subject to the following provisions of this Part of this code.

] ¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)
-

 Law In Force

[59 The street work rights

(1) For the purposes of this code a “street work right”, in relation to an operator, is—

- (a) a right to install and keep electronic communications apparatus in, on, under, over, along or across a street or a road;
- (b) a right to inspect, maintain, adjust, alter, repair, upgrade or operate electronic communications apparatus which is installed or kept by the exercise of the right under paragraph (a);
- (c) a right to carry out any works in, on, under, over, along or across a street or road for or in connection with the exercise of a right under paragraph (a) or (b);
- (d) a right to enter any street or road to inspect, maintain, adjust, alter, repair, upgrade or operate electronic communications apparatus which is installed or kept by the exercise of the right under paragraph (a).

(2) The works that may be carried out under sub-paragraph (1)(c) include—

- (a) breaking up or opening a street or a road;
- (b) tunnelling or boring under a street or a road;
- (c) breaking up or opening a sewer, drain or tunnel.


] ¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)
-

[PART 9**CONFERRAL OF TIDAL WATER RIGHTS AND THEIR EXERCISE**] ¹**Notes**

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)

 Law In Force


[60 Introductory

This Part of this code makes provision about—

- (a) the conferral of tidal water rights, and
- (b) the exercise of tidal water rights.

] ¹**Notes**

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)

 Law In Force


[61 Tidal water or lands

In this Part of this code “tidal water or lands” includes—

- (a) any estuary or branch of the sea,
- (b) the shore below mean high water springs, and
- (c) the bed of any tidal water.

] ¹**Notes**

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)

 Law In Force


[62 Conferral of tidal water rights

- (1) An operator may exercise a tidal water right for the statutory purposes.
- (2) But that is subject to the following provisions of this Part of this code.

] ¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)
-

 Law In Force

[63 The tidal water rights

- (1) For the purposes of this code a “tidal water right”, in relation to an operator, is—
- (a) a right to install and keep electronic communications apparatus on, under or over tidal water or lands;
 - (b) a right to inspect, maintain, adjust, alter, repair, upgrade or operate electronic communications apparatus on, under or over the tidal water or lands;
 - (c) a right to carry out any works on, under or over any tidal water or lands for or in connection with the exercise of a right under paragraph (a) or (b);
 - (d) a right to enter any tidal water or lands to inspect, maintain, adjust, alter, repair, upgrade or operate electronic communications apparatus which is installed or kept by the exercise of the right under paragraph (a).
- (2) The works that may be carried out under sub-paragraph (1)(c) include placing a buoy or seamark.
-] ¹**

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)
-

 Law In Force

[64 Exercise of tidal water right: Crown land

- (1) An operator may not exercise a tidal water right in relation to land in which a Crown interest subsists unless agreement to the exercise of the right in relation to the land has been given in respect of that interest by the appropriate authority in accordance with paragraph 104.
- (2) Where, in connection with an agreement between the operator and the appropriate authority for the exercise of such a right, the operator and the appropriate authority cannot agree the consideration to be paid by the operator, the operator or the appropriate authority may apply to the appointed valuer for a determination of the market value of the right.
- (3) An application under sub-paragraph (2) must be made in writing and must include—
- (a) the proposed terms of the agreement, and
 - (b) the reasoned evidence of the operator and of the appropriate authority as to the market value of the right.
- (4) As soon as reasonably practicable after receiving such an application, the appointed valuer must—
- (a) determine the market value of the tidal water right; and

(b) notify the operator and the appropriate authority in writing of its determination and the reasons for it.

(5) If the agreement mentioned in sub-paragraph (2) or an agreement in substantially the same terms is concluded following a determination under sub-paragraph (4), the consideration payable by the operator must not be more than the market value notified under sub-paragraph (4)(b).

(6) For this purpose the market value of a tidal water right is, subject to sub-paragraph (7), the amount that, at the date the market value is assessed, a willing buyer would pay a willing seller for the right—

- (a) in a transaction at arm's length,
- (b) on the basis that the buyer and seller were acting prudently and with full knowledge of the transaction, and
- (c) on the basis that the transaction was subject to the proposed terms set out in the application.

(7) The market value must be assessed on these assumptions—

- (a) that the right that the transaction relates to does not relate to the provision or use of an electronic communications network;
- (b) that the right in all other respects corresponds to the tidal water right;
- (c) that there is more than one site which the buyer could use for the purpose for which the buyer seeks the right.

(8) The appointed valuer may charge a fee in respect of the consideration of an application under sub-paragraph (4) and may apportion the fee between the operator and the appropriate authority as the appointed valuer considers appropriate.

(9) In this paragraph “the appointed valuer” means—

- (a) such person as the operator and the appropriate authority may agree;
- (b) if no person is agreed, such person as may be nominated, on the application of the operator or the appropriate authority, by the President of the Royal Institution of Chartered Surveyors.

]¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)
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[PART 10

UNDERTAKER'S WORKS AFFECTING ELECTRONIC COMMUNICATIONS APPARATUS

]¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)
-

✓ Law In Force

[65 Introductory

This Part of this code makes provision about the carrying out of undertaker's works by undertakers or operators.

] ¹

Notes

¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)

✓ Law In Force

[66 Key definitions

(1) In this Part of this code—

“undertaker” means a person (including a local authority) of a description set out in any of the entries in the first column of the following table;

“undertaker's works”, in relation to an undertaker of a description set out in a particular entry in the first column of the table, means works of the description set out in the corresponding entry in the second column of the table.

<i>“undertaker”</i>	<i>“undertaker's works”</i>
A person authorised by any enactment (whether public general or local) or by any order or scheme made under or confirmed by any enactment to carry on any railway, tramway, road transport, water transport, canal, inland navigation, dock, harbour, pier or lighthouse undertaking	Works that the undertaker is authorised to carry out for the purposes of, or in connection with, the undertaking which it carries on
A person (apart from the operator) to whom this code is applied by a direction under section 106 of the Communications Act 2003	Works that the undertaker is authorised to carry out by or in accordance with any provision of this code
Any person to whom this Part of this code is applied by any enactment (whenever passed or made)	Works for the purposes of which this paragraph is applied to the undertaker

(2) In this Part of this code—

(a) a reference to undertaker's works which interfere with a network is a reference to any undertaker's works which involve, or are likely to involve, an alteration of any electronic communications apparatus kept on, under or over any land for the purposes of an operator's network;

(b) a reference to an alteration of any electronic communications apparatus is a reference to a temporary or permanent alteration of the apparatus.

] ¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)
-

✓ Law In Force

[67 When can an undertaker carry out non-emergency undertaker's works?

- (1) Before carrying out non-emergency undertaker's works which interfere with a network, an undertaker must give the operator notice of the intention to carry out the works ("notice of proposed works").
- (2) Notice of proposed works must specify—
- (a) the nature of the proposed undertaker's works,
 - (b) the alteration of the electronic communications apparatus which the works involve or are likely to involve, and
 - (c) the time and place at which the works will begin.
- (3) The undertaker must not begin the proposed undertaker's works (including the proposed alteration of electronic communications apparatus) until the notice period has ended.
- (4) But the undertaker's power to alter electronic communications apparatus (in carrying out the proposed undertaker's works) is subject to paragraph 68.
- (5) In this paragraph—
- "non-emergency undertaker's works" means any undertaker's works which are not emergency works under paragraph 71;
 - "notice period" means the period of 10 days beginning with the day on which notice of proposed works is given.

] ¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)
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✓ Law In Force

[68 What is the effect of the operator giving counter-notice to the undertaker?

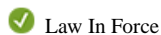
- (1) This paragraph applies if an undertaker gives an operator notice of proposed works under paragraph 67.
- (2) The operator may, within the notice period, give the undertaker notice ("counter-notice") stating either—
- (a) that the operator requires the undertaker to make any alteration of the electronic communications apparatus that is necessary or expedient because of the proposed undertaker's works—
 - (i) under the supervision of the operator, and

- (ii) to the satisfaction of the operator; or
 - (b) that the operator intends to make any alteration of the electronic communications apparatus that is necessary or expedient because of the proposed undertaker's works.
- (3) In a case where counter-notice contains a statement under sub-paragraph (2)(a), the undertaker must act in accordance with the counter-notice when altering electronic communications apparatus (in carrying out the proposed undertaker's works).
- (4) But, if the operator unreasonably fails to provide the required supervision, the undertaker must act in accordance with the counter-notice only insofar as it requires alterations to be made to the satisfaction of the operator.
- (5) In a case where counter-notice contains a statement under sub-paragraph (2)(b) (operator intends to make alteration), the undertaker must not alter electronic communications apparatus (in carrying out the proposed undertaker's works).
- (6) But that does not prevent the undertaker from making any alteration of electronic communications apparatus which the operator fails to make within a reasonable time.
- (7) Expressions defined in paragraph 67 have the same meanings in this paragraph.

] ¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)
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Law In Force

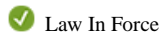
[69 What expenses must the undertaker pay?

- (1) This paragraph applies if an undertaker carries out any non-emergency undertaker's works in accordance with paragraph 67 (including in a case where counter-notice is given under paragraph 68).
- (2) The undertaker must pay the operator the amount of any loss or damage sustained by the operator in consequence of any alteration being made to electronic communications apparatus (in carrying out the works).
- (3) The undertaker must pay the operator any expenses incurred by the operator in, or in connection with, supervising the undertaker when altering electronic communications apparatus (in carrying out the works).
- (4) Any amount which is not paid in accordance with this paragraph is to be recoverable by the operator from the undertaker in any court of competent jurisdiction.

] ¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)
-



Law In Force

[70 When can the operator alter apparatus in connection with non-emergency undertaker's works?

- (1) An operator may make an alteration of electronic communications apparatus if—
 - (a) notice of proposed works has been given,
 - (b) the notice period has ended, and
 - (c) counter-notice has been given which states (in accordance with paragraph 68(2)(b)) that the operator intends to make the alteration.
 - (2) If the operator makes any alteration in accordance with this paragraph, the undertaker must pay the operator—
 - (a) any expenses incurred by the operator in, or in connection with, making the alteration; and
 - (b) the amount of any loss or damage sustained by the operator in consequence of the alteration being made.
 - (3) Any amount which is not paid in accordance with sub-paragraph (2) is to be recoverable by the operator from the undertaker in any court of competent jurisdiction.
 - (4) Expressions defined in paragraph 67 have the same meanings in this paragraph.
-] ¹**

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)
-



Law In Force

[71 When can an undertaker carry out emergency undertaker's works?

- (1) An undertaker may, in carrying out emergency undertaker's works, make an alteration of any electronic communications apparatus kept on, under or over any land for the purposes of an operator's network.
- (2) The undertaker must give the operator notice of the emergency undertaker's works as soon as practicable after beginning them.
- (3) This paragraph does not authorise the undertaker to make an alteration of apparatus after any failure by the undertaker to give notice in accordance with sub-paragraph (2).
- (4) The undertaker must make the alteration to the satisfaction of the operator.
- (5) If the undertaker makes any alteration in accordance with this paragraph, the undertaker must pay the operator—
 - (a) any expenses incurred by the operator in, or in connection with, supervising the undertaker when making the alteration; and
 - (b) the amount of any loss or damage sustained by the operator in consequence of the alteration being made.
- (6) Any amount which is not paid in accordance with sub-paragraph (5) is to be recoverable by the operator from the undertaker in any court of competent jurisdiction.

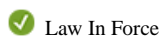
(7) In this paragraph “emergency undertaker's works” means undertaker's works carried out in order to stop anything already occurring, or to prevent anything imminent from occurring, which is likely to cause—

- (a) danger to persons or property,
- (b) interference with the exercise of any functions conferred or imposed on the undertaker by or under any enactment, or
- (c) substantial loss to the undertaker,

and any other works which it is reasonable (in all the circumstances) to carry out with those works.
]¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)
-



Law In Force

[72 Offence: undertakers who do not comply with this Part of this code

- (1) An undertaker, or an agent of an undertaker, is guilty of an offence if that person—
- (a) makes an alteration of electronic communications apparatus in carrying out non-emergency undertaker's works, and
 - (b) does so—
 - (i) without notice of proposed works having been given in accordance with paragraph 67, or
 - (ii) (in a case where such notice is given) before the end of the notice period under paragraph 67.
- (2) An undertaker, or an agent of an undertaker, is guilty of an offence if that person—
- (a) makes an alteration of electronic communications apparatus in carrying out non-emergency undertaker's works, and
 - (b) unreasonably fails to comply with any reasonable requirement of the operator under this Part of this code when doing so.
- (3) An undertaker, or an agent of an undertaker, is guilty of an offence if that person—
- (a) makes an alteration of electronic communications apparatus in carrying out emergency undertaker's works, and
 - (b) does so without notice of emergency undertaker's works having been given in accordance with paragraph 71.
- (4) A person guilty of an offence under this paragraph is liable on summary conviction to—
- (a) a fine not exceeding level 4 on the standard scale, if the service provided by the operator's network is interrupted by the works or failure, or
 - (b) a fine not exceeding level 3 on the standard scale, if that service is not interrupted.
- (5) This paragraph does not apply to a Northern Ireland department.
]¹


Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)
-

[PART 11**OVERHEAD APPARATUS****] ¹**

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)
-

 Law In Force

[73 Introductory


This Part of this code—

- (a) confers a power on operators to install and keep certain overhead apparatus, and
- (b) imposes a duty on operators to affix notices to certain overhead apparatus.

] ¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)
-

 Law In Force

[74 Power to fly lines

- (1) This paragraph applies where any electronic communications apparatus is kept on or over any land for the purposes of an operator's network.
- (2) The operator has the right, for the statutory purposes, to install and keep lines which—
 - (a) pass over other land adjacent to, or in the vicinity of, the land on or over which the apparatus is kept,
 - (b) are connected to that apparatus, and
 - (c) are not, at any point where they pass over the other land, less than three metres above the ground or within two metres of any building over which they pass.
- (3) Sub-paragraph (2) does not authorise the installation or keeping on or over any land of—
 - (a) any electronic communications apparatus used to support, carry or suspend a line installed under sub-paragraph (2), or


(b) any line which, as a result of its position, interferes with the carrying on of any business carried on on that land.

(4) In this paragraph “business” includes a trade, profession or employment and includes any activity carried on by a body of persons (whether corporate or unincorporate).

] ¹

Notes

¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)

 Law In Force

[75 Duty to attach notices to overhead apparatus

(1) This paragraph applies where—

- (a) an operator has, for the purposes of the operator's network, installed any electronic communications apparatus, and
- (b) the whole or part of the apparatus is at a height of three metres or more above the ground.

(2) The operator must, before the end of the period of three days beginning with the day after that on which the installation is completed, in a secure and durable manner attach a notice—

- (a) to every major item of apparatus installed, or
- (b) if no major item of apparatus is installed, to the nearest major item of electronic communications apparatus to which the apparatus that is installed is directly or indirectly connected.

(3) A notice attached under sub-paragraph (2) above—

- (a) must be attached in a position where it is reasonably legible, and
- (b) must give the name of the operator and an address in the United Kingdom at which any notice of objection may be given under paragraph 77(5) in respect of the apparatus in question.

(4) Any person giving such a notice at that address in respect of that apparatus is to be treated as having given that address for the purposes of paragraph 91(2).

(5) An operator who breaches the requirements of this paragraph is guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(6) In any proceedings for an offence under this paragraph it is a defence for the person charged to prove that the person took all reasonable steps and exercised all due diligence to avoid committing the offence.


] ¹

Notes

¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)

[PART 12**RIGHTS TO OBJECT TO CERTAIN APPARATUS****] ¹****Notes**

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)

 Law In Force


[76 Introductory

This Part of this code makes provision conferring rights to object to certain kinds of apparatus, and makes provision about—

- (a) the cases in which and persons by whom a right can be exercised, and
- (b) the power and procedures of the court if an objection is made.

] ¹**Notes**

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)

 Law In Force

[77 When and by whom can a right to object be exercised?

(1) A right to object under this Part of this code is available where, pursuant to the right in paragraph 62, an operator keeps electronic communications apparatus installed on, under or over tidal water or lands within the meaning of Part 9 of this code.

(2) In that case a person has a right to object under this Part of this code if the person—

- (a) is an occupier of, or has an interest in, the tidal water or lands,
- (b) is not bound by a code right enabling the operator to keep the apparatus installed on, under or over the tidal water or lands, and
- (c) is not a person with the benefit of a Crown interest in the tidal water or lands.

(3) A right to object under this Part of this code is available where an operator keeps a line installed over land pursuant to the right in paragraph 74.

(4) In that case a person has a right to object under this Part of this code if the person—

- (a) is an occupier of, or has an interest in, the land, and
- (b) is not bound by a code right enabling the operator to keep the apparatus installed over the land.

(5) A right to object under this Part of this code is available where—

- (a) electronic communications apparatus is kept on or over land for the purposes of an operator's network, and

(b) the whole or any part of that apparatus is at a height of three metres or more above the ground.

(6) In that case a person has a right to object under this Part of this code if—

- (a) the person is an occupier of, or has an interest in, any neighbouring land, and
- (b) because of the nearness of the neighbouring land to the land on or over which the apparatus is kept—
 - (i) the enjoyment of the neighbouring land is capable of being prejudiced by the apparatus, or
 - (ii) any interest in that land is capable of being prejudiced by the apparatus.

(7) There is no right to object under this Part of this code in respect of electronic communications apparatus if the apparatus—

- (a) replaces any electronic communications apparatus which is not substantially different from the new apparatus, and
- (b) is not in a significantly different position.

] ¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)
-

✓ Law In Force

[78 How may a right to object be exercised?

(1) A person with a right to object under this Part (“the objector”) may exercise the right by giving a notice to the operator.

(2) The right to object that the person has, and the procedure that applies to that right, depends on whether—

- (a) the notice is given before the end of the period of 12 months beginning with the date on which installation of the apparatus was completed (see paragraph 79), or
- (b) the notice is given after the end of that period (see paragraph 80).

] ¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)
-

✓ Law In Force

[79 What is the procedure if the objection is made within 12 months of installation?

(1) This paragraph applies if the notice is given before the end of the period of 12 months beginning with the date on which installation of the apparatus was completed.

(2) At any time after the end of the period of two months beginning with the date on which the notice is given, but before the end of the period of four months beginning with that date, the objector may apply to the court to have the objection upheld.

(3) The court must uphold the objection if the following conditions are met.

(4) The first condition is that the apparatus appears materially to prejudice the objector's enjoyment of, or interest in, the land by reference to which the objection is made.

(5) The second condition is that the court is not satisfied that the only possible alterations of the apparatus will—

- (a) substantially increase the cost or diminish the quality of the service provided by the operator's network to persons who have, or may in future have, access to it,
- (b) involve the operator in substantial additional expenditure (disregarding any expenditure caused solely by the fact that any proposed alteration was not adopted originally or, as the case may be, that the apparatus has been unnecessarily installed), or
- (c) give to any person a case at least as good as the objector has to have an objection under this paragraph upheld.

(6) If the court upholds an objection under this paragraph it may by order do any of the following—

- (a) direct the alteration of the apparatus to which the objection relates;
- (b) authorise the installation (instead of the apparatus to which the objection relates), in a manner and position specified in the order, of any apparatus specified in the order;
- (c) direct that no objection may be made under this paragraph in respect of any apparatus the installation of which is authorised by the court.

(7) Where an objector has both given a notice under paragraph 78 and applied for compensation under any of the other provisions of this code—

- (a) the court may give such directions as it thinks fit for ensuring that no compensation is paid until any proceedings under this paragraph have been disposed of, and
- (b) if the court makes an order under this paragraph, it may provide in that order for some or all of the compensation otherwise payable under this code to the objector not to be so payable, or, if the case so requires, for some or all of any compensation paid under this code to the objector to be repaid to the operator.

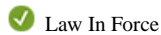
(8) For the purposes of sub-paragraph (5)(c), the court has the power on an application under this paragraph to give the objector directions for bringing the application to the notice of such other interested persons as it thinks fit.

(9) This paragraph is subject to paragraph 81.

] ¹

Notes

¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)



Law In Force

[80 What is the procedure if the objection is made later than 12 months after installation?

- (1) This paragraph applies if the notice is given after the end of the period of 12 months beginning with the date on which installation of the apparatus was completed.
- (2) At any time after the end of the period of two months beginning with the date on which the notice is given, but before the end of the period of four months beginning with that date, the objector may apply to the court to have the objection upheld.
- (3) The court may uphold the objection only if it is satisfied that—
 - (a) the alteration is necessary to enable the objector to carry out a proposed improvement of the land by reference to which the objection is made, and
 - (b) the alteration will not substantially interfere with any service which is or is likely to be provided using the operator's network.
- (4) If the court upholds an objection under this paragraph it may by order direct the alteration of the apparatus to which the objection relates.
- (5) An order under this paragraph may provide for the alteration to be carried out with such modifications, on such terms and subject to such conditions as the court thinks fit.
- (6) But the court must not include any such modifications, terms or conditions in its order without the consent of the objector, and if such consent is not given may refuse to make an order under this paragraph.
- (7) An order made under this paragraph must, unless the court otherwise thinks fit, require the objector to reimburse the operator in respect of any expenses which the operator incurs in or in connection with the execution of any works in compliance with the order.
- (8) This paragraph is subject to paragraph 81.
- (9) In this paragraph “improvement” includes development and change of use.

J¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)
-



Law In Force

[81 What limitations are there on the court's powers under paragraph 79 or 80?

- (1) This paragraph applies where the court is considering making—
 - (a) an order under paragraph 79 directing the alteration of any apparatus or authorising the installation of any apparatus, or
 - (b) an order under paragraph 80 directing the alteration of any apparatus.
- (2) The court must not make the order unless it is satisfied—
 - (a) that the operator has all such rights as it appears to the court appropriate that the operator should have for the purpose of making the alteration or, as the case may be, installing the apparatus, or

(b) that—

- (i) the operator would have all those rights if the court, on an application under paragraph 20, imposed an agreement on the operator and another person, and
- (ii) it would be appropriate for the court, on such an application, to impose such an agreement.

(3) For the purposes of avoiding the need for the agreement of any person to the alteration or installation of any apparatus, the court has the same powers as it would have if an application had been duly made under paragraph 20 above for an order imposing such an agreement.

(4) For the purposes of this paragraph, the court has the power on an application under paragraph 79 or 80 to give the objector directions for bringing the application to the notice of such other interested persons as it thinks fit.

] ¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)
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[PART 13

RIGHTS TO LOP TREES

] ¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)
-

 Law In Force

[82 Rights to lop trees

(1) This paragraph applies where—

- (a) a tree or other vegetation overhangs a street in England and Wales or Northern Ireland or a road in Scotland, and
- (b) the tree or vegetation—
 - (i) obstructs, or will or may obstruct, relevant electronic communications apparatus, or
 - (ii) interferes with, or will or may interfere with, such apparatus.

(2) In sub-paragraph (1) “relevant electronic communications apparatus” means electronic communications apparatus which—

- (a) is installed, or about to be installed, on land, and
- (b) is used, or to be used, for the purposes of an operator's network.

(3) The operator may, by notice to the occupier of the land on which the tree or vegetation is growing, require the tree to be lopped or the vegetation to be cut back to prevent the obstruction or interference.

(4) If, within the period of 28 days beginning with the day on which the notice is given, the occupier gives the operator a counter-notice objecting to the lopping of the tree or cutting back of the vegetation, the notice has effect only if confirmed by an order of the court.

(5) Sub-paragraph (6) applies if at any time a notice under sub-paragraph (3) has not been complied with and—

(a) the period of 28 days beginning with the day on which the notice was given has expired without a counter-notice having been given, or

(b) an order of the court confirming the notice has come into force.

(6) The operator may cause the tree to be lopped or the vegetation to be cut back.

(7) Where the operator lops a tree or cuts back vegetation in exercise of the power in sub-paragraph (6) the operator must do so in a husband-like manner and in such a way as to cause the minimum damage to the tree or vegetation.

(8) Sub-paragraph (9) applies where—

(a) a notice under sub-paragraph (3) is complied with (either without a counter-notice having been given or after the notice has been confirmed), or

(b) the operator exercises the power in sub-paragraph (6).

(9) The court must, on an application made by a person who has sustained loss or damage in consequence of the lopping of the tree or cutting back of the vegetation or who has incurred expenses in complying with the notice, order the operator to pay that person such compensation in respect of the loss or damage as it thinks fit.

] ¹

Notes

¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)

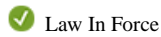
[PART 14

COMPENSATION UNDER THE CODE

] ¹

Notes

¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)



Law In Force

[83 Introductory

This Part of this code makes provision about compensation under this code.

] ¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)
-



Law In Force With Amendments Pending

[84 Compensation where agreement imposed or apparatus removed

(1) This paragraph applies to the following powers of the court to order an operator to pay compensation to a person—

- (a) the power in paragraph 25(1) (compensation where order made imposing agreement on person);
- (b) the power in paragraph 44(5) (compensation in relation to removal of the apparatus from the land).

(2) Depending on the circumstances, the power of the court to order the payment of compensation for loss or damage includes power to order payment for—

- (a) expenses (including reasonable legal and valuation expenses, subject to the provisions of any enactment about the powers of the court by whom the order for compensation is made to award costs or, in Scotland, expenses),
- (b) diminution in the value of the land, and
- (c) costs of reinstatement.

(3) For the purposes of assessing such compensation for diminution in the value of land, the following provisions apply with any necessary modifications as they apply for the purposes of assessing compensation for the compulsory purchase of any interest in land—

- (a) in relation to England and Wales, rules (2) to (4) set out in section 5 of the Land Compensation Act 1961;
- (b) in relation to Scotland, rules (2) to (4) set out in section 12 of the Land Compensation (Scotland) Act 1963;
- (c) in relation to Northern Ireland, rules (2) to (4) set out in Article 6(1) of the Land Compensation (Northern Ireland) Order 1982 (SI 1982/712 (NI 9)).

(4) In the application of this paragraph to England and Wales, section 10(1) to (3) of the Land Compensation Act 1973 (compensation in respect of mortgages, trusts of land and settled land) applies in relation to such compensation for diminution in the value of land as it applies in relation to compensation under Part 1 of that Act.

(5) In the application of this paragraph to Scotland, section 10(1) and (2) of the Land Compensation (Scotland) Act 1973 (compensation in respect of restricted interests in land) applies in relation to such compensation for diminution in the value of land as it applies in relation to compensation under Part 1 of that Act.

(6) In the application of this paragraph to Northern Ireland, Article 13(1) to (3) of the Land Acquisition and Compensation (Northern Ireland) Order 1973 (SI 1973/1896 (NI 21)) (compensation in respect of mortgages, trusts for sale and settlements) applies in relation to such compensation for diminution in the value of land as it applies in relation to compensation under Part II of that Order.

(7) Where a person has a claim for compensation to which this paragraph applies and a claim for compensation under any other provision of this code in respect of the same loss, the compensation payable to that person must not exceed the amount of that person's loss.


]¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)

Amendments Pending

Sch. 3A(14) para. 84(1)(aa): added by Telecommunications Infrastructure (Leasehold Property) Act 2021 c. 7, Sch. 1 para. 4(10) (date to be appointed: 2021 c.7 Sch.1 para.4(10) came into force on March 15, 2021 as specified in 2021 c.7 s.3(3)(b) for the limited purpose of enabling the exercise, on or after that day, of any power to make regulations under 2003 c.21 Sch.3A Pt 4A; not yet in force otherwise)

 Law In Force

[85 Compensation for injurious affection to neighbouring land etc

(1) This paragraph applies where a right conferred by or in accordance with any provision of Parts 2 to 9 of this code is exercised by an operator.

(2) In the application of this paragraph to England and Wales, compensation is payable by the operator under section 10 of the Compulsory Purchase Act 1965 (compensation for injurious affection to neighbouring land) as if that section applied in relation to injury caused by the exercise of such a right as it applies in relation to injury caused by the execution of works on land that has been compulsorily acquired.

(3) In the application of this paragraph to Scotland, compensation is payable by the operator under section 6 of the Railway Clauses Consolidation (Scotland) Act 1845 as if that section applied in relation to injury caused by the exercise of such a right as it applies in relation to injury caused by the execution of works on land that has been taken or used for the purpose of a railway.

(4) Any question as to a person's entitlement to compensation by virtue of sub-paragraph (3), or as to the amount of that compensation, is, in default of agreement, to be determined by the Lands Tribunal for Scotland.

(5) In the application of this paragraph to Northern Ireland, compensation is payable by the operator under Article 18 of the Land Compensation (Northern Ireland) Order 1982 (SI 1982/712 (NI 9)) as if that section applied in relation to injury caused by the exercise of such a right as it applies in relation to injury caused by the execution of works on land that has been compulsorily acquired.

(6) Any question as to a person's entitlement to compensation by virtue of sub-paragraph (5), or as to the amount of that compensation, is, in default of agreement, to be determined by the Lands Tribunal for Northern Ireland.

(7) Compensation is payable on a claim for compensation under this paragraph only if the amount of the compensation exceeds £50.

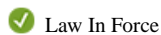
(8) Compensation is payable to a person under this paragraph irrespective of whether the person claiming the compensation has any interest in the land in relation to which the right referred to in sub-paragraph (1) is exercised.

(9) Compensation under this paragraph may include reasonable legal and valuation expenses, subject to the provisions of any enactment about the powers of the court or tribunal by whom an order for compensation is made to award costs or, in Scotland, expenses.

] ¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)
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Law In Force

[86 No other compensation available

Except as provided by any provision of Parts 2 to 13 of this code or this Part, an operator is not liable to compensate any person for, and is not subject to any other liability in respect of, any loss or damage caused by the lawful exercise of any right conferred by or in accordance with any provision of those Parts.

] ¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)
-

[PART 15

NOTICES UNDER THE CODE

] ¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)
-

✓ Law In Force

[87 Introductory

This Part makes provision—

- (a) about requirements for the form of notices given under this code by operators,
- (b) about requirements for the form of notices given under this code by persons other than operators, and
- (c) about procedures for giving notices.

] ¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)
-

✓ Law In Force

[88 Notices given by operators

(1) A notice given under this code by an operator must—

- (a) explain the effect of the notice,
- (b) explain which provisions of this code are relevant to the notice, and
- (c) explain the steps that may be taken by the recipient in respect of the notice.

(2) If OFCOM have prescribed the form of a notice which may or must be given by an operator under a provision of this code, a notice given by an operator under that provision must be in that form.

(3) A notice which does not comply with this paragraph is not a valid notice for the purposes of this code.

(4) Sub-paragraph (3) does not prevent the person to whom the notice is given from relying on the notice if the person chooses to do so.

(5) In any proceedings under this code a certificate issued by OFCOM stating that a particular form of notice has been prescribed by them as mentioned in this paragraph is conclusive evidence of that fact.

] ¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)
-

✓ Law In Force


[89 Notices given by others

(1) Sub-paragraph (2) applies to a notice given under paragraph 31(1), 33(1), 39(1) or 40(2) by a person other than an operator.

- (2) If OFCOM have prescribed the form of a notice given under the provision in question by a person other than an operator, the notice must be in that form.
- (3) A notice which does not comply with sub-paragraph (2) is not a valid notice for the purposes of this code.
- (4) Sub-paragraph (3) does not prevent the operator to whom the notice is given from relying on the notice if the operator chooses to do so.
- (5) Sub-paragraph (6) applies to a notice given under any other provision of this code by a person other than an operator if—
- (a) OFCOM have prescribed the form of a notice given under that provision by a person other than an operator,
 - (b) the notice is given in response to a notice given by an operator, and
 - (c) the operator has, in giving the notice, drawn the person's attention to the form prescribed by OFCOM.
- (6) The notice is a valid notice for the purposes of this code, but the person giving the notice must bear any costs incurred by the operator as a result of the notice not being in that form.
- (7) In any proceedings under this code a certificate issued by OFCOM stating that a particular form of notice has been prescribed by them as mentioned in this paragraph is conclusive evidence of that fact.
-] ¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)
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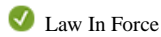
 Law In Force

[90 Prescription of notices by OFCOM

- (1) OFCOM must prescribe the form of a notice to be given under each provision of this code that requires a notice to be given.
- (2) OFCOM may from time to time amend or replace a form prescribed under sub-paragraph (1).
- (3) Before prescribing a form for the purposes of this code, OFCOM must consult operators and such other persons as OFCOM think appropriate.
- (4) Sub-paragraph (3) does not apply to the amendment or replacement of a form prescribed under sub-paragraph (1).
-] ¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)
-

**[91 Procedures for giving notice**

- (1) A notice given under this code must not be sent by post unless it is sent by a registered post service or by recorded delivery.
- (2) For the purposes, in the case of a notice under this code, of section 394 of this Act (service of notifications and other documents) and section 7 of the Interpretation Act 1978 (references to service by post), the proper address of a person (“P”) is—
- (a) if P has given the person giving the notice an address for service under this code, that address, and
 - (b) otherwise, the address given by section 394.
- (3) Sub-paragraph (4) applies if it is not practicable, for the purposes of giving a notice under this code, to find out after reasonable enquiries the name and address of a person who is the occupier of land for the purposes of this code.
- (4) A notice may be given under this code to the occupier —
- (a) by addressing it to a person by the description of “occupier” of the land (and describing the land), and
 - (b) by delivering it to a person who is on the land or, if there is no person on the land to whom it can be delivered, by affixing it, or a copy of it, to a conspicuous object on the land.
- (5) Sub-paragraph (6) applies if it is not practicable, for the purposes of giving a notice under this code, to find out after reasonable enquiries the name and address of the owner of an interest in land.
- (6) A notice may be given under this code to the owner—
- (a) by addressing it to a person by the description of “owner” of the interest (and describing the interest and the land), and
 - (b) by delivering it to a person who is on the land or, if there is no person on the land to whom it can be delivered, by affixing it, or a copy of it, to a conspicuous object on the land.

] ¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)
-

[PART 16**ENFORCEMENT AND DISPUTE RESOLUTION**

] ¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)
-

✓ Law In Force

[92 Introductory

This Part of this code makes provision about—

- (a) the court or tribunal by which agreements and rights under this code may be enforced,
- (b) the meaning of references to “the court” in this code, and
- (c) the power of the Secretary of State by regulations to confer jurisdiction under this code on other tribunals.

] ¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)
-

✓ Law In Force

[93 Enforcement of agreements and rights

An agreement under this code, and any right conferred by this code, may be enforced—

- (a) in the case of an agreement imposed by a court or tribunal, by the court or tribunal which imposed the agreement,
- (b) in the case of any agreement or right, by any court or tribunal which for the time being has the power to impose an agreement under this code, or
- (c) in the case of any agreement or right, by any court of competent jurisdiction.

] ¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)
-

✓ Law In Force

[94 Meaning of “the court”

(1) In this code “the court” means—

- (a) in relation to England and Wales, the county court,
- (b) in relation to Scotland, the sheriff court, and
- (c) in relation to Northern Ireland, a county court.

(2) Sub-paragraph (1) is subject to provision made by regulations under paragraph 95.

] ¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)
-



[95 Power to confer jurisdiction on other tribunals

- (1) The Secretary of State may by regulations provide for a function conferred by this code on the court to be exercisable by any of the following—
- (a) in relation to England, the First-tier Tribunal;
 - (b) in relation to England and Wales, the Upper Tribunal;
 - (c) in relation to Scotland, the Lands Tribunal for Scotland;
 - (d) in relation to Northern Ireland, the Lands Tribunal for Northern Ireland.
- (2) Regulations under sub-paragraph (1) may make provision for the function to be exercisable by a tribunal to which the regulations apply—
- (a) instead of by the court, or
 - (b) as well as by the court.
- (3) The Secretary of State may by regulations make provision—
- (a) requiring proceedings to which regulations under sub-paragraph (1) apply to be commenced in the court or in a tribunal to which the regulations apply;
 - (b) enabling the court or such a tribunal to transfer such proceedings to a tribunal which has jurisdiction in relation to them by virtue of such regulations or to the court.
- (4) The power in section 402(3)(c) for regulations under sub-paragraph (1) or (3) to make consequential provision includes power to make provision which amends, repeals or revokes or otherwise modifies the application of any enactment.
- (5) Before making regulations under sub-paragraph (1) or (3) the Secretary of State must—
- (a) so far as the regulations relate to Scotland, consult the Scottish Ministers;
 - (b) so far as the regulations relate to Northern Ireland, consult the Department of Justice in Northern Ireland.

] ¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017: insertion came into force on July 31, 2017 for the limited purpose of making regulations; December 28., 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4 otherwise)

Amendments Pending

Sch. 3A(16) para. 95(1)(aa): added by Telecommunications Infrastructure (Leasehold Property) Act 2021 c. 7, Sch. 1 para. 4(11) (date to be appointed: 2021 c.7 Sch.1 para.4(11) came into force on March 15, 2021 as specified in 2021 c.7 s.3(3)(b) for the limited purpose of enabling the exercise, on or after that day, of any power to make regulations under 2003 c.21 Sch.3A Pt 4A; not yet in force otherwise)



[96 Award of costs by tribunal


- (1) Where in any proceedings a tribunal exercises functions by virtue of regulations under paragraph 95(1), it may make such order as it thinks fit as to costs, or, in Scotland, expenses.

(2) The matters a tribunal must have regard to in making such an order include in particular the extent to which any party is successful in the proceedings.

] ¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)
-

 Law In Force


[97 Applications to the court

Regulation 3 of the Electronic Communications and Wireless Telegraphy Regulations 2011 (SI 2011/1210) makes provision about the time within which certain applications to the court under this code must be determined.

] ¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)
-

 Law In Force

[98 Appeals in Northern Ireland

Article 60 of the County Courts (Northern Ireland) Order 1980 (ordinary appeals from the county court in civil cases) is to apply in relation to any determination of the court in Northern Ireland under this code in the same manner as it applies in relation to any decree of the court made in the exercise of the jurisdiction conferred by Part 3 of that Order.

] ¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)
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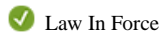
[PART 17

SUPPLEMENTARY PROVISIONS

] ¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (November 22, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)
-



Law In Force

[99 Relationship between this code and existing law

(1) This code does not authorise the contravention of any provision of an enactment passed or made before the coming into force of this code.

(2) Sub-paragraph (1) does not apply if and to the extent that an enactment makes provision to the contrary.

] ¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)
-



Law In Force

[100 Relationship between this code and agreements with operators

(1) This code does not affect any rights or liabilities arising under an agreement to which an operator is a party.

(2) Sub-paragraph (1) does not apply in relation to paragraph 99 or Parts 3 to 6 of this code.

] ¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)
-



Law In Force

[101 Ownership of property

The ownership of property does not change merely because the property is installed on or under, or affixed to, any land by any person in exercise of a right conferred by or in accordance with this code.

] ¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)
-



Law In Force

[102 Conduits

- (1) This code does not authorise an operator to do anything inside a relevant conduit without the agreement of the authority with control of the conduit.
- (2) The agreement of the authority with control of a public sewer is sufficient in all cases to authorise an operator to exercise any of the rights under this code in order to do anything wholly inside that sewer.
- (3) In this paragraph the following expressions have the same meanings as in section 98 of the Telecommunications Act 1984—
- (a) “public sewer” and “relevant conduit”;
 - (b) references to the authority with control of a relevant conduit.

] ¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)
-



Law In Force

[103 Duties for OFCOM to prepare codes of practice

- (1) OFCOM must prepare and publish a code of practice dealing with—
- (a) the provision of information for the purposes of this code by operators to persons who occupy or have an interest in land;
 - (b) the conduct of negotiations for the purposes of this code between operators and such persons;
 - (c) the conduct of operators in relation to persons who occupy or have an interest in land adjoining land on, under or over which electronic communications apparatus is installed;
 - (d) such other matters relating to the operation of this code as OFCOM think appropriate.
- (2) OFCOM must prepare and publish standard terms which may (but need not) be used in agreements under this code.
- (3) OFCOM may from time to time—
- (a) amend or replace a code of practice or standard terms published under this paragraph;
 - (b) publish the code or terms as amended or (as the case may be) the replacement code or terms.
- (4) Before publishing a code of practice or standard terms under this paragraph, OFCOM must consult operators and such other persons as OFCOM think appropriate.
- (5) Sub-paragraph (4) does not apply to—
- (a) the publication of amendments to a code of practice or standard terms, or
 - (b) the publication of a replacement code or replacement terms.

] ¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)
-

✓ Law In Force

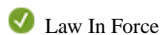
[104 Application of this code to the Crown

- (1) This code applies in relation to land in which there subsists, or at any material time subsisted, a Crown interest as it applies in relation to land in which no such interest subsists.
- (2) In this code “Crown interest” means—
- (a) an interest which belongs to Her Majesty in right of the Crown,
 - (b) an interest which belongs to Her Majesty in right of the Duchy of Lancaster,
 - (c) an interest which belongs to the Duchy of Cornwall,
 - (d) an interest which belongs to a government department or which is held in trust for Her Majesty for the purposes of a government department, or
 - (e) an interest which belongs to an office-holder in the Scottish Administration or which is held in trust for Her Majesty for the purposes of the Scottish Administration by such an office-holder.
- (3) This includes, in particular—
- (a) an interest which belongs to Her Majesty in right of Her Majesty's Government in Northern Ireland, and
 - (b) an interest which belongs to a Northern Ireland department or which is held in trust for Her Majesty for the purposes of a Northern Ireland department.
- (4) Where an agreement is required by this code to be given in respect of any Crown interest subsisting in any land, the agreement must be given by the appropriate authority.
- (5) Where a notice under this code is required to be given in relation to land in which a Crown interest subsists, the notice must be given by or to the appropriate authority (as the case may require).
- (6) In this paragraph “the appropriate authority” means—
- (a) in the case of land belonging to Her Majesty in right of the Crown, the Crown Estate Commissioners or the relevant person or, as the case may be, the government department or office-holder in the Scottish Administration having the management of the land in question;
 - (b) in the case of land belonging to Her Majesty in right of the Duchy of Lancaster, the Chancellor of the Duchy of Lancaster;
 - (c) in the case of land belonging to the Duchy of Cornwall, such person as the Duke of Cornwall, or the possessor for the time being of the Duchy of Cornwall, appoints;
 - (d) in the case of land belonging to an office-holder in the Scottish Administration or held in trust for Her Majesty by such an office-holder for the purposes of the Scottish Administration, the office-holder;
 - (e) in the case of land belonging to Her Majesty in right of Her Majesty's Government in Northern Ireland, the Northern Ireland department having the management of the land in question;

- (f) in the case of land belonging to a government department or a Northern Ireland department or held in trust for Her Majesty for the purposes of a government department or a Northern Ireland department, that department.
- (7) In sub-paragraph (6)(a) “relevant person”, in relation to land to which section 90B(5) of the Scotland Act 1998 applies, means the person having the management of that land.
- (8) Any question as to the authority that is the appropriate authority in relation to any land is to be referred to the Treasury, whose decision is final.
- (9) Paragraphs 55 (offence in relation to transport land rights) and 75(5) (offence in relation to notices on overhead apparatus) do not apply where this code applies in the case of the Secretary of State or a Northern Ireland department by virtue of section 106(3)(b).
- (10) References in this paragraph to an office-holder in the Scottish Administration are to be construed in accordance with section 126(7) of the Scotland Act 1998.
-] ¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)
-



Law In Force

[105 Meaning of “occupier”

- (1) References in this code to an occupier of land are to the occupier of the land for the time being.
- (2) References in this code to an occupier of land, in relation to a footpath or bridleway that crosses and forms part of agricultural land, are to the occupier of that agricultural land.
- (3) Sub-paragraph (4) applies in relation to land which is—
- (a) a street in England and Wales or Northern Ireland, other than a footpath or bridleway within sub-paragraph (2), or
 - (b) a road in Scotland, other than such a footpath or bridleway.
- (4) References in this code to an occupier of land—
- (a) in relation to such a street in England and Wales, are to the street managers within the meaning of Part 3 of the New Roads and Street Works Act 1991,
 - (b) in relation to such a street in Northern Ireland, are to the street managers within the meaning of the Street Works (Northern Ireland) Order 1995 (SI 1995/3210 (NI 19)), and
 - (c) in relation to such a road in Scotland, are to the road managers within the meaning of Part 4 of the New Roads and Street Works Act 1991.
- (5) Sub-paragraph (6) applies in relation to land which—
- (a) is unoccupied, and
 - (b) is not a street in England and Wales or Northern Ireland or a road in Scotland.
- (6) References in this code to an occupier of land, in relation to land within sub-paragraph (5), are to—
- (a) the person (if any) who for the time being exercises powers of management or control over the land, or

(b) if there is no person within paragraph (a), to every person whose interest in the land would be prejudicially affected by the exercise of a code right in relation to the land.


(7) In this paragraph—

- (a) “agricultural land” includes land which is being brought into use for agriculture, and
- (b) references in relation to England and Wales to a footpath or bridleway include a restricted byway.

] ¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)
-

 Law In Force


[106 Lands Tribunal for Scotland procedure rules

The power to make rules under section 3(6) of the Lands Tribunal Act 1949 (Lands Tribunal for Scotland procedure rules) for the purposes of this code or regulations made under it is exercisable by the Scottish Ministers instead of by the Secretary of State (and any reference there to the approval of the Treasury does not apply).

] ¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (November 22, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)
-

 Law In Force

[107 Arbitrations in Scotland

Until the Arbitration (Scotland) Act 2010 is in force in relation to any arbitrations carried out under or by virtue of this code, that Act applies as if it were in force in relation to those arbitrations.

] ¹

Notes

- ¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)
-

 Law In Force With Amendments Pending

[108 General interpretation

(1) In this code—

“agriculture” and “agricultural” —

- (a) in relation to England and Wales, have the same meanings as in the Highways Act 1980,
- (b) in relation to Scotland, have the same meanings as in the Town and Country Planning (Scotland) Act 1997, and
- (c) in relation to Northern Ireland, have the same meanings as in the Agriculture Act (Northern Ireland) 1949;

“bridleway” and “footpath” —

- (a) in relation to England and Wales, have the same meanings as in the Highways Act 1980,
- (b) in relation to Scotland, have the same meanings as Part 3 of the Countryside (Scotland) Act 1967, and
- (c) in relation to Northern Ireland, mean a way over which the public have, by virtue of the Access to the Countryside (Northern Ireland) Order 1983 (SI 1983/1895 (NI 18)), a right of way (respectively) on horseback and on foot;

“code agreement” has the meaning given by paragraph 29(5);

“Crown interest” has the meaning given by paragraph 104(2) and (3);

“enactment” includes—

- (a) an enactment comprised in subordinate legislation within the meaning of the Interpretation Act 1978,
- (b) an enactment comprised in, or in an instrument made under, a Measure or Act of the National Assembly for Wales,
- (c) an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament, and
- (d) an enactment comprised in, or in an instrument made under, Northern Ireland legislation;

“land” does not include electronic communications apparatus;

“landowner” has the meaning given by paragraph 37(1);

“lease” includes—

- (a) in relation to England and Wales and Northern Ireland, any leasehold tenancy (whether in the nature of a head lease, sub-lease or underlease) and any agreement to grant such a tenancy but not a mortgage by demise or sub-demise, and
- (b) in relation to Scotland, any sub-lease and any agreement to grant a sub-lease,

and “lessee” is to be construed accordingly;

“relevant person” has the meaning given by paragraph 20(1);

“restricted byway” has the same meaning as in Part 2 of the Countryside and Rights of Way Act 2000;

“road” —

- (a) in relation to Scotland, has the same meaning as in Part 4 of the New Roads and Street Works Act 1991;
- (b) in relation to Northern Ireland, has the same meaning as in the Roads (Northern Ireland) Order 1993 (SI 1993/3160 (NI 15));

“site provider” has the meaning given by paragraph 30(1);

“street” —

- (a) in relation to England and Wales, has the same meaning as in Part 3 of the New Roads and Street Works Act 1991, and
- (b) in relation to Northern Ireland, has the same meaning as in the Street Works (Northern Ireland) Order 1995 (SI 1995/3210 (NI 19)).

(2) In this code, references to the alteration of any apparatus include references to the moving, removal or replacement of the apparatus.

]¹

Notes

¹ Added by Digital Economy Act 2017 c. 30 Sch.1 para.1 (December 28, 2017 subject to transitional provisions specified in 2017 c.30 s.4(10) and Sch.2 and SI 2017/1008 regs 3 and 4)

Amendments Pending

Sch. 3A(17) para. 108(1) definition of "lease": definition substituted by Telecommunications Infrastructure (Leasehold Property) Act 2021 c. 7 Sch. 1 para. 4(12)(a) (Not yet in force: 2021 c.7 Sch.1 para.4(12)(a) came into force on March 15, 2021 as specified in 2021 c.7 s.3(3)(b) for the limited purpose of enabling the exercise, on or after that day, of any power to make regulations under 2003 c.21 Sch.3A Pt 4A; not yet in force otherwise)

Sch. 3A(17) para. 108(1) definition of "Part 4A code right": definition inserted by Telecommunications Infrastructure (Leasehold Property) Act 2021 c. 7 Sch. 1 para. 4(12)(b) (Not yet in force: 2021 c.7 Sch.1 para.4(12)(b) came into force on March 15, 2021 as specified in 2021 c.7 s.3(3)(b) for the limited purpose of enabling the exercise, on or after that day, of any power to make regulations under 2003 c.21 Sch.3A Pt 4A; not yet in force otherwise)


Proposed Draft Amendments

Sch. 3A(17) para. 108(1) definition of "Part 4A code right": definition inserted by Telecommunications Infrastructure (Leasehold Property) Bill 2019-21 (HL Bill 118) Sch. 1 para. 3(12) (Royal Assent, March 15, 2021) (Not yet in force)

SCHEDULE 4

COMPULSORY PURCHASE AND ENTRY FOR EXPLORATORY PURPOSES

Section 118

 Law In Force

1 Interpretation

In this Schedule—

“code operator” means a provider of an electronic communications network in whose case the electronic communications code is applied by a direction under section 106; and

“the operator's network”, in relation to a code operator, means so much of the electronic communications network provided by the operator as is not excluded from the application of the electronic communications code under section 106(5).

Commencement

Sch. 4 para. 1 definition of "code operator"- definition of "the operators network": July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions

cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

✓ Law In Force

2 General duties with respect to powers under Schedule

In exercising his powers under this Schedule it shall be the duty of the Secretary of State to have regard, in particular, to each of the following—

- (a) the duties imposed on OFCOM by sections 3 and 4;
- (b) the need to protect the environment and, in particular, to conserve the natural beauty and amenity of the countryside;
- (c) the need to ensure that highways are not damaged or obstructed, and traffic not interfered with, to any greater extent than is reasonably necessary;
- (d) the need to encourage the sharing of the use of electronic communications apparatus.

Commencement

Sch. 4 para. 2(a)-(d): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

✓ Law In Force

3 Compulsory purchase of land: England and Wales

(1) Subject to sub-paragraph (2), the Secretary of State may authorise a code operator to purchase compulsorily any land in England and Wales which is required by the operator—

- (a) for, or in connection with, the establishment or running of the operator's network; or
- (b) as to which it can reasonably be foreseen that it will be so required.

(2) No order is to be made authorising a compulsory purchase under this paragraph by a code operator except with OFCOM's consent.

(3) This power to purchase land compulsorily includes power to acquire an easement or other right over land by the creation of a new right.

(4) The Acquisition of Land Act 1981 (c. 67) is to apply to any compulsory purchase under this paragraph as if the code operator were a local authority within the meaning of that Act.

(5) The provisions of the Town and Country Planning Act 1990 (c. 8) specified in sub-paragraph (6) have effect in relation to land acquired compulsorily by a code operator under this paragraph as they have effect in relation to land acquired compulsorily by statutory undertakers.

(6) Those provisions are—

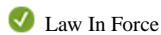
- (a) sections 238 to 240 (use and development of consecrated land and burial ground);

- (b) section 241 (use and development of land for open spaces); and
- (c) sections 271 to 274 (extinguishment of rights of way, and rights as to apparatus, of statutory undertakers).

(7) Where a code operator has acquired land under this paragraph, he must not dispose of that land, or of an interest or right in or over it, except with OFCOM's consent.

Commencement

Sch. 4 para. 3(1)-(7): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))



Law In Force

4 Compulsory purchase of land: Scotland

(1) Subject to sub-paragraph (2), the Secretary of State may authorise a code operator to purchase compulsorily any land in Scotland which is required by the operator—

- (a) for, or in connection with, the establishment or running of the operator's network; or
- (b) as to which it can reasonably be foreseen that it will be so required.

(2) No order is to be made authorising a compulsory purchase under this paragraph except with OFCOM's consent.

(3) This power to purchase land compulsorily includes power to acquire a servitude or other right over land by the creation of a new right.

(4) The Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (c. 42) applies to any compulsory purchase under this paragraph as if—

- (a) the code operator were a local authority within the meaning of that Act; and
- (b) this paragraph had been in force immediately before the commencement of that Act.

(5) The provisions of the Town and Country Planning (Scotland) Act 1997 (c. 8) specified in sub-paragraph (6) have effect in relation to land acquired compulsorily by a code operator under this paragraph as they have effect in relation to land acquired compulsorily by statutory undertakers.

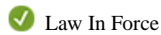
(6) Those provisions are—

- (a) section 197 (provisions as to churches and burial grounds);
- (b) section 198 (use and development of land for open spaces); and
- (c) sections 224 to 227 (extinguishment of rights of way, and rights as to apparatus, of statutory undertakers).

(7) Where a code operator has acquired land under this paragraph, he must not dispose of that land, or of any interest or right in or over it, except with OFCOM's consent.

Commencement

Sch. 4 para. 4(1)-(7): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))



Law In Force

5 Compulsory purchase of land: Northern Ireland

(1) Where a code operator proposes to acquire, otherwise than by agreement, any land in Northern Ireland required by him—

- (a) for, or in connection with, the establishment or running of the operator's network, or
- (b) as to which it can reasonably be foreseen that it will be so required,

he may, with OFCOM's consent, apply to the Secretary of State for an order vesting that land in him.

(2) On such an application the Secretary of State is to have power to make such an order.

(3) This power to acquire land compulsorily includes power to acquire an easement or other right over land by the creation of a new right.

(4) Where a code operator has acquired land under this paragraph, he must not dispose of that land, or of any interest or right in or over it, except with OFCOM's consent.

(5) The following provisions—

- (a) Schedule 6 to the Local Government Act (Northern Ireland) 1972 (c. 9 (N.I.)) (acquisition of land by vesting order), and
- (b) Schedule 8 to the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I. 14)) (provisions as to inquiries),

have effect for the purposes of the acquisition of land by means of a vesting order under this paragraph as they have effect for the purposes of that Act and that Order but subject to the modifications set out in sub-paragraph (6).

(6) Those modifications are—

- (a) for any reference to the Department substitute a reference to the Secretary of State;
- (b) for any reference to the Act or Order in question substitute a reference to this Act;
- (c) for any reference in Schedule 6 to the Local Government Act (Northern Ireland) 1972 to a council substitute a reference to the code operator;
- (d) in paragraph 6(2) of that Schedule, for the words from “the fund” onwards substitute “funds of the code operator (in this Schedule referred to as “the compensation fund”) and shall be discharged by payments made by the code operator”; and
- (e) in paragraph 12(2) of that Schedule for “the clerk of the council” substitute “such person as may be designated for the purposes of this Schedule by the code operator”.

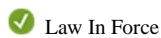
(7) The enactments for the time being in force relating to the assessment of compensation in respect of land vested in a district council by an order made under Schedule 6 to the Local Government

Act (Northern Ireland) 1972 are to apply, subject to any necessary modifications, in relation to land vested in a code operator by an order made under this paragraph.

(8) In this paragraph, “land” has the meaning assigned to it by section 45(1)(a) of the Interpretation Act (Northern Ireland) 1954 (c. 33 (N.I.)).

Commencement

Sch. 4 para. 5(1)-(8): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))



Law In Force

6 Entry on land for exploratory purposes: England and Wales

(1) A person—

- (a) nominated by a code operator, and
- (b) duly authorised in writing by the Secretary of State,

may, at any reasonable time, enter upon and survey land in England and Wales for the purpose of ascertaining whether the land would be suitable for use by the code operator for, or in connection with, the establishment or running of the operator's network.

(2) This paragraph does not apply in relation to land covered by buildings or used as a garden or pleasure ground.

(3) Sections 324(8) and 325(1) to (5), (8) and (9) of the Town and Country Planning Act 1990 (c. 8) (supplementary provisions relating to powers of entry) have effect in relation to the power conferred by this paragraph—

- (a) as they have effect in relation to the powers conferred by section 324 of that Act; but
- (b) subject to the modifications set out in sub-paragraph (4).

(4) Those modifications are—

- (a) in section 324(8) (power to search and bore for the purpose of ascertaining the nature of the subsoil or the presence of minerals) omit “or the presence of minerals therein”; and
- (b) in section 325(1) (24 hours' notice to be given of an intended entry upon occupied land) for “24 hours” substitute “28 days”.

(5) Where, in an exercise of the power conferred by this paragraph, any damage is caused to land or to chattels, the code operator must—

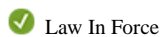
- (a) make good the damage; or
- (b) pay compensation in respect of the damage to every person interested in the land or chattels.

(6) Where, in consequence of an exercise of the power conferred by this paragraph, a person is disturbed in his enjoyment of land or chattels, the code operator must pay that person compensation in respect of the disturbance.

(7) Section 118 of the Town and Country Planning Act 1990 (c. 8) (determination of disputes as to compensation) applies to any question of disputed compensation under this paragraph as it applies to such questions under Part 4 of that Act.

Commencement

Sch. 4 para. 6(1)-(7): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))



Law In Force

7 Entry on land for exploratory purposes: Scotland

(1) A person—

- (a) nominated by a code operator, and
- (b) duly authorised in writing by the Secretary of State,

may, at any reasonable time, enter upon and survey any land in Scotland for the purpose of ascertaining whether the land would be suitable for use by the code operator for, or in connection with, the establishment or running of the operator's network.

(2) This paragraph does not apply in relation to land covered by buildings or used as a garden or pleasure ground.

(3) Sections 269(6) and 270(1) to (5), (8) and (9) of the Town and Country Planning (Scotland) Act 1997 (c. 8) (supplementary provisions relating to powers of entry) have effect in relation to the power conferred by this paragraph—

- (a) as they have effect in relation to the powers conferred by section 269 of that Act; but
- (b) subject to the modifications set out in sub-paragraph (4).

(4) Those modifications are—

- (a) in section 269(6) (power to search and bore for the purpose of ascertaining the nature of the subsoil or the presence of minerals), omit “or the presence of minerals therein”; and
- (b) in section 270(1) (24 hours' notice to be given of an intended entry upon occupied land) for “24 hours” substitute “28 days”.

(5) Where, in an exercise of the power conferred by this paragraph, damage is caused to land or to corporeal moveables, the code operator must—

- (a) make good the damage; or
- (b) pay compensation in respect of the damage to every person interested in the land or corporeal moveables.

(6) Where, in consequence of an exercise of the power conferred by this paragraph, a person is disturbed in his enjoyment of any land or corporeal moveables, the code operator must pay that person compensation in respect of the disturbance.

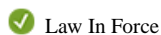
(7) A dispute arising under this paragraph—

- (a) as to the effect of damage, or
- (b) as to the amount of compensation,

must be determined by arbitration by a single arbiter appointed by agreement between the parties or, in default of an agreement, by the Secretary of State.

Commencement

Sch. 4 para. 7(1)-(7)(b): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))



Law In Force

8 Entry on land for exploratory purposes: Northern Ireland

(1) A person—

- (a) nominated by a code operator, and
- (b) duly authorised in writing by the Secretary of State,

may, at any reasonable time, enter upon and survey any land in Northern Ireland for the purpose of ascertaining whether the land would be suitable for use by the code operator for, or in connection with, the establishment or running of the operator's network.

(2) This paragraph does not apply in relation to land covered by buildings or used as a garden or pleasure ground.

(3) Subsections (2) to (5) and (8) of section 40 of the Land Development Values (Compensation) Act (Northern Ireland) 1965 (c. 23 (N.I.)) (supplementary provisions relating to powers of entry) have effect in relation to the power of entry conferred by this paragraph—

- (a) as they have effect in relation to the power conferred by that section; but
- (b) subject to the modifications set out in sub-paragraph (4).

(4) Those modifications are—

- (a) in section 40(2) (power to search and bore for the purpose of ascertaining the nature of the subsoil or the presence of minerals) omit “or the presence of minerals therein”; and
- (b) in section 40(3)(b) (three days' notice to be given of an intended entry upon occupied land) for the word “three” substitute “twenty eight”.

(5) Where, in an exercise of the power conferred by this paragraph, damage is caused to land or to chattels, the code operator must—

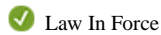
- (a) make good the damage; or
- (b) pay compensation in respect of the damage to every person interested in the land or chattels.

(6) Where, in consequence of an exercise of the power conferred by this paragraph, a person is disturbed in his enjoyment of any land or chattels, the code operator must pay that person compensation in respect of the disturbance.

(7) Section 31 of the Land Development Values (Compensation) Act (Northern Ireland) 1965 (determination of disputes as to compensation) applies to any question of disputed compensation under this paragraph as it applies to such questions under Part 3 of that Act.

Commencement

Sch. 4 para. 8(1)-(7): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))



Law In Force

9 Acquisition of land by agreement

(1) For the purpose of the acquisition by agreement by a code operator of land in England and Wales, the provisions of Part 1 of the Compulsory Purchase Act 1965 (c. 56) (so far as applicable), other than sections 4 to 8 (time limits, notices to treat etc.) and section 31 (ecclesiastical property), apply as they apply for the purposes of that Act.

(2) For the purpose of the acquisition by agreement by a code operator of land in Scotland, section 109(2) of the Town and Country Planning (Scotland) Act 1972 (c. 52) (incorporation of Lands Clauses Acts) applies, with any necessary modifications, for the purposes of this Act as it applies for the purposes of that Act.

(3) For the purpose of the acquisition by agreement by a code operator of land in Northern Ireland, the Lands Clauses Acts, except for sections 127 to 132 (sale of superfluous land) and sections 150 and 151 (access to the special Act) of the Lands Clauses Consolidation Act 1845 (c. 18), apply as they apply for the purposes of those Acts.

Commencement

Sch. 4 para. 9(1)-(3): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

SCHEDULE 5**PROCEDURE FOR GRANTS OF RECOGNISED SPECTRUM ACCESS****Section 159**

Repealed

1 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

 Repealed

2 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

 Repealed

3 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

 Repealed

4 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

 Repealed

5 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

 Repealed

6 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

 Repealed

7 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

 Repealed

8 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

SCHEDULE 6

FIXED PENALTIES FOR WIRELESS TELEGRAPHY OFFENCES

Section 180

 Repealed

1 [...]¹

Notes

¹ Repealed, never in force by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

 Repealed

2 [...]¹

Notes

¹ Repealed, never in force by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

 Repealed

3 [...]¹

Notes

¹ Repealed, never in force by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

 Repealed

4 [...]¹

Notes

¹ Repealed, never in force by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

 Repealed

5 [...]¹

Notes

¹ Repealed, never in force by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

 Repealed

6 [...]¹

Notes

¹ Repealed, never in force by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

 Repealed

7 [...]¹

Notes

¹ Repealed, never in force by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

 Repealed

8 [...]¹

Notes

¹ Repealed, never in force by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

 Repealed

9 [...]¹

Notes

¹ Repealed, never in force by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

 Repealed

10 [...]¹

Notes

¹ Repealed, never in force by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

 Repealed

11 [...]¹

Notes

¹ Repealed, never in force by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

 Repealed

12 [...]¹

Notes

¹ Repealed, never in force by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

 Repealed

13 [...]¹

Notes

¹ Repealed, never in force by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

SCHEDULE 7

SEIZURE AND FORFEITURE OF APPARATUS

Section 182

Application of Schedule

 Repealed

1 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

Notice of seizure

 Repealed

2 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

Notice of claim

 Repealed

3 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

 Repealed

4 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

Condemnation

 Repealed

5 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

 Repealed

6 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

 Repealed

7 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

Proceedings for condemnation by court

 Repealed

8 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

 Repealed

9 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

 Repealed

10 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

 Repealed

11 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

 Repealed

12 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

Disposal of unclaimed property

 Repealed

13 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

Provisions as to proof

 Repealed

14 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

 Repealed

15 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)


Special provisions as to certain claimants

 Repealed

16 [...]¹

Notes


¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

Saving for owner's rights Repealed**17 [...]**¹**Notes**¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)**SCHEDULE 8****DECISIONS NOT SUBJECT TO APPEAL****Section 192***Prosecutions and civil proceedings* Law In Force**1**

A decision to institute, bring or carry on any criminal or civil proceedings.

Commencement

Sch. 8 para. 1: July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))


 Law In Force**2**

A decision (other than one under section 119) to take preliminary steps for the purpose of enabling any such proceedings to be instituted.

Commencement

Sch. 8 para. 2: July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

This Act


 Law In Force

3

A decision relating to the making or revision of a statement under section 38.

Commencement

Sch. 8 para. 3: July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

 Law In Force

4

A decision required to be published in a notification under section 44(4).

Commencement

Sch. 8 para. 4: July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))


 Law In Force

5

A decision given effect to by an order under section 55.

Commencement

Sch. 8 para. 5: July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

 Law In Force

6

A decision given effect to by regulations under section 66.

Commencement

Sch. 8 para. 6: July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

 Law In Force

7


A decision given effect to by regulations under section 71 [or under section 71(4) to (7) as applied by section 72H(4)]¹.

Notes

¹ Words inserted by Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020/1419 Sch.1(1) para.65 (December 21, 2020)

Commencement

Sch. 8 para. 7: July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))


 Law In Force

8

A decision required to be published in a notification under section 108(4).

Commencement

Sch. 8 para. 8: July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

 Law In Force

9

A decision given effect to by an order under section 122.

Commencement

Sch. 8 para. 9: July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

 Law In Force


[9A

A decision relating to any of sections 124A to 124N or to anything done under them.

]¹

Notes

¹ Added by Digital Economy Act 2010 c. 24 s.16(3) (June 8, 2010)

 Law In Force

10

A decision relating to the making or revision of a statement under section 131.

Commencement

Sch. 8 para. 10: July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

✓ Law In Force

11

A decision given effect to by an order under section 134(6).

Commencement

Sch. 8 para. 11: July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

✓ Law In Force

12

A decision relating to the making or revision of a statement under section 145.

Commencement

Sch. 8 para. 12: July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

✗ Repealed

13 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.7 para.36 (February 8, 2007)

✗ Repealed

14 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.7 para.36 (February 8, 2007)

✗ Repealed

15 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.7 para.36 (February 8, 2007)

 Repealed

16 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.7 para.36 (February 8, 2007)

 Repealed

17 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.7 para.36 (February 8, 2007)

 Repealed

18 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.7 para.36 (February 8, 2007)

 Repealed

19 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.7 para.36 (February 8, 2007)

 Repealed

20 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.7 para.36 (February 8, 2007)

 Repealed

21 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.7 para.36 (February 8, 2007)

 Repealed

22 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.7 para.36 (February 8, 2007)

 Repealed

23 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.7 para.36 (February 8, 2007)

 Repealed

24 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.7 para.36 (February 8, 2007)

 Repealed

25 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.7 para.36 (February 8, 2007)

 Repealed

26 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.7 para.36 (February 8, 2007)

Wireless Telegraphy Act 1949

 Repealed

27 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.7 para.36 (February 8, 2007)

 Repealed

28 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.7 para.36 (February 8, 2007)

 Repealed

29 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.7 para.36 (February 8, 2007)

 Repealed

30 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.7 para.36 (February 8, 2007)

 Repealed

31 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.7 para.36 (February 8, 2007)

 Repealed

32 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.7 para.36 (February 8, 2007)

Wireless Telegraphy Act 1998

 Repealed

33 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.7 para.36 (February 8, 2007)

 Repealed

34 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.7 para.36 (February 8, 2007)

 Repealed

35 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.7 para.36 (February 8, 2007)

 Repealed

36 [...]¹


Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.7 para.36 (February 8, 2007)

[Wireless Telegraphy Act 2006]¹

Notes

¹ Added by Wireless Telegraphy Act 2006 c. 36 Sch.7 para.36 (February 8, 2007)

 Law In Force

[37

A decision relating to the publication of the United Kingdom Plan for Frequency Authorisation.
]¹

Notes

¹ Added by Wireless Telegraphy Act 2006 c. 36 Sch.7 para.36 (February 8, 2007)

✓ Law In Force

[38

A decision in exercise of the functions conferred on OFCOM by section 1 as to—

- (a) the services, records and advice to be provided, maintained or given by them;
- (b) the research to be carried out or the arrangements made for carrying it out; or
- (c) the making or terms of any grant.

] ¹

Notes

¹ Added by Wireless Telegraphy Act 2006 c. 36 Sch.7 para.36 (February 8, 2007)

✓ Law In Force

[39

A decision under section 4 or 7.

] ¹

Notes

¹ Added by Wireless Telegraphy Act 2006 c. 36 Sch.7 para.36 (February 8, 2007)

✓ Law In Force

[40

A decision given effect to—

- (a) by regulations under [section 8(3), 12, 14, 18, 21, 23, 27, 30, 45, 53A(7), 53D or 54 or paragraph 1 of Schedule 1 or paragraph 1 of Schedule 2] ²;
- (b) by an order under section 29 or 62.

] ¹

Notes

¹ Added by Wireless Telegraphy Act 2006 c. 36 Sch.7 para.36 (February 8, 2007)

² Words inserted by Digital Economy Act 2017 c. 30 Pt 2 s.8(5)(a) (July 31, 2017)

✓ Law In Force

[41


A decision relating to the recovery of a sum payable to OFCOM under [section 15, 24 or 53D(6)] ².

] ¹

Notes

¹ Added by Wireless Telegraphy Act 2006 c. 36 Sch.7 para.36 (February 8, 2007)

² Words substituted by Digital Economy Act 2017 c. 30 Pt 2 s.8(5)(b) (July 31, 2017)

 Law In Force


[42

A decision given effect to by regulations under section 31 and any decision under any such regulations.

¹

Notes

¹ Added by Wireless Telegraphy Act 2006 c. 36 Sch.7 para.36 (February 8, 2007)

 Law In Force

[43

A decision relating to the making or revision of a statement under–

(a) section 34 , [...] ²

(b) section 44 [, or] ²

[(c) section 53H.] ²

¹

Notes

¹ Added by Wireless Telegraphy Act 2006 c. 36 Sch.7 para.36 (February 8, 2007)

² Added by Digital Economy Act 2017 c. 30 Pt 2 s.8(5)(c) (July 31, 2017)

 Law In Force

[44

A decision to impose a penalty under section 42(1) [for a relevant multiplex contravention] ².

¹

Notes

¹ Added by Wireless Telegraphy Act 2006 c. 36 Sch.7 para.36 (February 8, 2007)

² Words inserted by Digital Economy Act 2017 c. 30 Pt 2 s.9(11) (June 27, 2017: insertion has effect subject to savings as specified in 2017 c.30 s.9(13))

✓ Law In Force

[45

A decision for the purposes of section 59.

] ¹

Notes

¹ Added by Wireless Telegraphy Act 2006 c. 36 Sch.7 para.36 (February 8, 2007)

✓ Law In Force

[46

A decision relating to an authority under section 62(5).

] ¹

Notes

¹ Added by Wireless Telegraphy Act 2006 c. 36 Sch.7 para.36 (February 8, 2007)

SCHEDULE 9

ARRANGEMENTS ABOUT CARRYING ON OF C4C'S ACTIVITIES

Section 199

✓ Law In Force

1 Notification of requirement to submit proposals

- (1) It shall be the duty of OFCOM to give a notification under this paragraph to C4C—
- (a) as soon as practicable after the commencement of this Schedule, [...] ¹
 - [(aa) as soon as practicable after the day on which section 198A comes into force, and] ¹
 - (b) as soon as practicable in the last twelve months preceding each date on which the replacement licence granted in accordance with section 231 would expire if not renewed.
- (2) A notification under this paragraph is one requiring C4C to submit proposals to OFCOM in accordance with this Schedule for the relevant licence period.
- (3) A notification under this paragraph must specify the period within which C4C must submit their proposals.
- (4) The period specified under sub-paragraph (3) must be a period ending not less than three months after the day of the giving of the notification.

Notes

¹ Added by Digital Economy Act 2010 c. 24 s.22(3)(a) (June 8, 2010)

Commencement

Sch. 9 para. 1(1)-(4): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

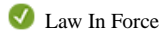
✓ Law In Force

2 Submission of proposed arrangements

- (1) This paragraph applies where C4C have received a notification under paragraph 1.
- (2) C4C must, within the period set out in the notification, submit proposals to OFCOM for the arrangements under which they are proposing to secure, so far as reasonably practicable, that all significant risks that their other activities will have an adverse effect on the carrying out, during the relevant licence period, of their primary functions are—
 - (a) identified;
 - (b) evaluated; and
 - (c) properly managed.
- (3) The proposals must include proposals for the arrangements that C4C consider appropriate for securing the transparency objectives during the relevant licence period.
- (4) For the purposes of this Schedule the transparency objectives are—
 - (a) an appropriate financial and organisational separation between the activities of C4C that relate to the carrying out of their primary functions and their other activities; and
 - (b) an appropriate degree of transparency in financial and other reporting where resources are shared between separated activities or where there is some other financial or practical connection between otherwise separated activities.
- (5) The matters to which the proposals submitted under this paragraph may relate include, in particular, the procedures and other practices to be followed by C4C in the case of—
 - (a) the initiation and management of new ventures;
 - (b) the exercise of particular powers;
 - (c) the assessment of risks;
 - (d) the imposition of charges; and
 - (e) the keeping of records.
- (6) The determination of what is appropriate for the purposes of sub-paragraphs (3) and (4) is not to be confined to a determination of what is appropriate for securing the matters mentioned in sub-paragraph (2).
- (7) The arrangements proposed by C4C must contain provision for compliance with the arrangements to be checked regularly by a person appointed in accordance with that provision.
- (8) That person must be a person other than the person for the time being holding an appointment for the purposes of paragraph 12(2) of Schedule 3 to the 1990 Act (C4C's auditor).

Commencement

Sch. 9 para. 2(1)-(8): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

3 Consideration and approval of proposals

(1) OFCOM must consider every proposal or revised proposal submitted to them by C4C under paragraph 2 or this paragraph and may do one of the following—

- (a) approve the proposed arrangements;
- (b) approve them with such modifications as they may notify to C4C;
- (c) require C4C to submit revised proposals in accordance with directions given by OFCOM.

(2) Before—

- (a) making modifications of proposed arrangements for the purpose of approving them, or
- (b) requiring the submission of revised proposals,

OFCOM must consult C4C.

Commencement

Sch. 9 para. 3(1)-(2)(b): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

4 Duration of approval and modification of arrangements

(1) Arrangements approved under this Schedule are to remain in force (subject to the following provisions of this paragraph) throughout the licence period to which they relate.

(2) The arrangements for the time being approved under this Schedule for any licence period may be modified, by agreement between OFCOM and C4C, at any time during the licence period for which they apply.

(3) OFCOM may carry out a review of the arrangements for the time being approved under this Schedule.

(4) The reviews that may be carried out under this paragraph in any one licence period are confined to either—

- (a) one review relating to all the arrangements; or
- (b) two reviews carried out at separate times as follows—
 - (i) one (whether the first or second) relating to the arrangements for securing the transparency objectives; and
 - (ii) the other relating to other matters.

(5) On a review under this paragraph, OFCOM may require C4C to submit proposals for modifying the arrangements for the time being approved under this Schedule so far as they relate to the matters under review.

(6) Paragraph 3 applies where proposals are submitted to OFCOM under sub-paragraph (5) as it applies where they are submitted under paragraph 2.

Commencement

Sch. 9 para. 4(1)-(6): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

✓ Law In Force

5 Publication of approved arrangements

(1) OFCOM must publish all arrangements approved by them under this Schedule.

(2) The publication of anything under this paragraph must be in such manner as OFCOM consider appropriate for bringing it to the attention of members of the public.

Commencement

Sch. 9 para. 5(1)-(2): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

✓ Law In Force

6 Duty of C4C to act in accordance with the approved arrangements

It shall be the duty of C4C to act in accordance with the arrangements for the time being in force under this Schedule.

Commencement

Sch. 9 para. 6: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

✓ Law In Force

7 Enforcement of duties

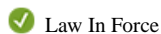
(1) This paragraph applies to—

- (a) every duty of C4C under this Schedule to submit proposals to OFCOM; and
- (b) the duty imposed on C4C by paragraph 6.

- (2) Each of those duties shall be 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 (c. 36); or
 - (c) for any other appropriate remedy or relief.

Commencement

Sch. 9 para. 7(1)-(2)(c): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

8 Penalty for contravention of the arrangements

- (1) OFCOM may impose a penalty on C4C if C4C have contravened—
- (a) a requirement of this Schedule to submit proposals to OFCOM;
 - (b) a requirement of arrangements for the time being approved under this Schedule.
- (2) The amount of the penalty must not exceed 3 per cent. of C4C's qualifying revenue for their last complete accounting period before the contravention.
- (3) Before imposing a penalty on C4C under this paragraph OFCOM must give C4C a reasonable opportunity of making representations to OFCOM about their proposal to impose the penalty.
- (4) Where OFCOM impose a penalty on C4C under this paragraph, they shall—
- (a) notify C4C; and
 - (b) in that notification, fix a reasonable period after it is given as the period within which the penalty is to be paid.
- (5) In the case of a continuing contravention—
- (a) separate penalties may be imposed in respect of different periods during which the contravention continues;
 - (b) the notification of the penalty must specify the period in respect of which the penalty is imposed; and
 - (c) the reference in sub-paragraph (2) to the last complete accounting period before the contravention is a reference to the last complete accounting period before the end of the period in respect of which the penalty is imposed.
- (6) A penalty imposed under this paragraph must be paid to OFCOM within the period fixed by them.
- (7) Section 19(2) to (6) of the 1990 Act and Part 1 of Schedule 7 to that Act (calculation of qualifying revenue), with any necessary modifications, have effect in relation to C4C for the purposes of this paragraph as they have effect in relation to the holder of a Channel 3 licence for the purposes of Part 1 of that Act.

Commencement

Sch. 9 para. 8(1)-(7): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

✓ Law In Force

9 OFCOM's duty to take account of need to support C4C's primary functions

In exercising their powers under this Schedule OFCOM must have regard, in particular, to the need to secure, so far as practicable, that all significant risks that C4C's other activities will have an adverse effect on the carrying out of their primary functions are—

- (a) identified;
- (b) evaluated; and
- (c) properly managed.

Commencement

Sch. 9 para. 9(a)-(c): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

✓ Law In Force

10 Interpretation of Schedule

In this Schedule—

“arrangements” means arrangements about the procedures and other practices to be followed by C4C and about other matters connected with the carrying on by them of any of their activities;

“licence period” means—

- (a) the period for which the replacement licence is granted to C4C in accordance with section 231; or
- (b) any subsequent period for which it is renewed;

“primary functions” is to be construed in accordance with section 199(2);

“relevant licence period” —

- (a) in relation to the first notification to be given under paragraph 1, the licence period mentioned in paragraph (a) of the definition of that period; [...]¹
[(aa) in relation to the notification under paragraph 1(1)(aa), the period beginning on the day on which section 198A comes into force and ending on the last day of the first licence period to expire after that day; and]¹
- (b) in relation to [any other notification under paragraph 1]², the first licence period to begin after the giving of the notification;

“transparency objectives” is to be construed in accordance with paragraph 2(4).

Notes

- ¹ Added by Digital Economy Act 2010 c. 24 s.22(3)(b) (June 8, 2010)
² Words substituted by Digital Economy Act 2010 c. 24 s.22(3)(c) (June 8, 2010)

Commencement

Sch. 9 para. 10 definition of "arrangements"- definition of "transparency objectives": December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

SCHEDULE 10**LICENSING THE PUBLIC TELETEXT SERVICE****Section 219****PART 1****APPLICATIONS FOR AND AWARD OF LICENCE**

✓ Law In Force

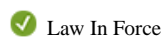
1 Notice of proposal to grant licence

- (1) Where OFCOM propose to grant a licence to provide the public teletext service they must publish a notice stating that they are proposing to do so.
- (2) The notice must—
- (a) specify the digital capacity which is available for the public teletext service on television multiplex services;
 - (b) specify whether the licence will require the public teletext service to comprise a service to be provided for broadcasting in analogue form;
 - (c) invite applications for the licence;
 - (d) specify the closing date for applications;
 - (e) specify the fee payable on the making of an application for the licence; and
 - (f) specify the percentage of qualifying revenue for each accounting period of the licence holder which OFCOM have determined to be the percentage of that revenue that will have to be paid to them.
- (3) Where the licence is to comprise an analogue teletext service the notice must specify—
- (a) the television broadcasting service or services on whose frequency or frequencies the services are to be provided; and
 - (b) the extent and nature of the spare capacity which is to be allocated by the licence.
- (4) For the purposes of sub-paragraph (2)(f)—

- (a) different percentages may be determined and specified for different accounting periods; and
 - (b) the percentages that may be determined and specified for an accounting period include a nil percentage.
- (5) A notice under this paragraph is to be published in such manner as OFCOM consider appropriate.

Commencement

Sch. 10(1) para. 1(1)-(5): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



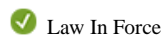
Law In Force

2 Guidance as to applications

- (1) When publishing a notice under paragraph 1, OFCOM must publish with it some general guidance to applicants about what is likely to make proposals relating to the matters mentioned in paragraph 3(1)(c) to (e) acceptable to them.
- (2) Guidance published under this paragraph must include examples.

Commencement

Sch. 10(1) para. 2(1)-(2): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

3 Applications for the licence

- (1) An application made in response to a notice under paragraph 1 must be accompanied by—
- (a) the fee specified in the notice as payable on the making of the application;
 - (b) a technical plan complying with sub-paragraph (2);
 - (c) the applicant's proposals for providing, or securing the provision of, a service that fulfils the public service remit for the public teletext service;
 - (d) the applicant's proposals for including news items in the service and for securing that the news items included in the service are up to date and regularly revised;
 - (e) the applicant's proposals for the inclusion in the service of material that is of particular interest to persons living in different parts of the United Kingdom;
 - (f) the applicant's cash bid in respect of the licence; and
 - (g) such information as OFCOM may reasonably require about the matters mentioned in sub-paragraph (3).
- (2) The technical plan must indicate—
- (a) the nature of the public teletext service which the applicant is proposing to provide; and

- (b) the nature of any services the provision of which, in accordance with proposals made by another person, would be secured by the applicant in accordance with provision made under section 220.
- (3) The matters about which OFCOM may require information under sub-paragraph (1)(g) are—
 - (a) the applicant's present financial position; and
 - (b) his projected financial position during the period for which the licence would be in force.
- (4) At any time after receiving an application under this Schedule and before disposing of it, OFCOM may require the applicant to furnish additional information about any one or more of the following—
 - (a) the matters that must be indicated in the technical plan;
 - (b) the applicant's proposals with respect to the matters mentioned in sub-paragraph (1)(c) to (e); and
 - (c) the matters mentioned in sub-paragraph (3).
- (5) Any information to be furnished to OFCOM under this paragraph must be in such form, and must be verified, in such manner as they may require.

Commencement

Sch. 10(1) para. 3(1)-(5): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

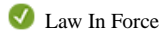
Law In Force

4 Notice inviting public representations

- (1) As soon as reasonably practicable after the date specified in a notice under paragraph 1 as the closing date for applications, OFCOM must publish—
 - (a) the name of every person who has made an application to them in response to their notice;
 - (b) particulars of the technical plan submitted by each applicant;
 - (c) the proposals submitted by each applicant with respect to the matters mentioned in paragraph 3(1)(c) to (e);
 - (d) such other information connected with each application as OFCOM consider appropriate; and
 - (e) a notice under sub-paragraph (2).
- (2) The notice required by this paragraph is one that—
 - (a) invites representations to be made to OFCOM with respect to the other matters published under this paragraph; and
 - (b) specifies the manner in which, and the time by which, such representations have to be made.
- (3) Publication of any information or notice under this paragraph is to be in such manner as OFCOM consider appropriate.

Commencement

Sch. 10(1) para. 4(1)-(3): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

5 Determination of applications

(1) This paragraph applies where, in response to a notice under paragraph 1, a person has made an application for a licence to provide the public teletext service.

(2) OFCOM must not proceed to consider whether to award the applicant the licence in accordance with the following provisions of this paragraph unless it appears to them—

- (a) that the applicant's technical plan, in so far as it involves the use of an electronic communications network, contains proposals that are acceptable to them;
- (b) that the applicant's proposals with respect to the matters mentioned in paragraph 3(1)(c) to (e) are acceptable to them; and
- (c) that the services proposed to be provided under the licence would be capable of being maintained throughout the period for which the licence would be in force.

(3) In determining whether it appears to them as mentioned in sub-paragraph (2), OFCOM must take account of any representations made to them in response to the invitation published under paragraph 4.

(4) Sections 17 and 17A of the 1990 Act (award of licence to highest cash bidder and financial conditions) apply in relation to a licence to provide the public teletext service as they apply in relation to a Channel 3 licence, but with the modifications set out in sub-paragraphs (5) and (6).

(5) In the application of section 17 of the 1990 Act in accordance with sub-paragraph (4)—

- (a) any reference to an applicant is to be construed as a reference to an applicant in whose case it appears to OFCOM as mentioned in sub-paragraph (2);
- (b) the provisions of subsection (4) down to the end of paragraph (b) are to be omitted;
- (c) in subsection (7)(a), the reference to section 19(1) of the 1990 Act is to be construed as a reference to paragraph 7 of this Schedule;
- (d) subsection (12) shall have effect with the substitution of the following paragraph for paragraph (b)—

“(b) the name of every other applicant in whose case it appeared to OFCOM as mentioned in paragraph 5(2) of Schedule 10 to the Communications Act 2003;”

- (e) in subsection (14), the references to a notice under section 15(1) of the 1990 Act and a notice under Part 1 of that Act shall each have effect as a reference to a notice under paragraph 1 of this Schedule.

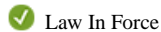
(6) In the application of section 17A of the 1990 Act in accordance with sub-paragraph (4)—

- (a) the reference in subsection (1)(b) to section 15(3)(g) of the 1990 Act shall have effect as a reference to paragraph 3(1)(g) of this Schedule; and

- (b) the reference in subsection (3) to a notice under section 15(1) of the 1990 Act shall have effect as a reference to a notice under paragraph 1 of this Schedule.

Commencement

Sch. 10(1) para. 5(1)-(6)(b): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

6 Revocation of award

(1) This paragraph applies if, at any time after a licence to provide the public teletext service has been awarded to a person, but before it has come into force—

- (a) that person indicates to OFCOM that he does not intend to provide, or secure the provision of, the licensed service; or
- (b) OFCOM have, for any other reason, reasonable grounds for believing that the licensed service will not be provided once the licence has come into force.

(2) OFCOM must revoke the licence by serving a notice of revocation on the person to whom it was awarded.

(3) OFCOM may then award the licence again in accordance with section 17 of the 1990 Act (as applied by paragraph 5 of this Schedule) as if the person whose licence is revoked had not made an application.

(4) Sub-paragraph (3) has effect subject to subsection (14) of section 17 of the 1990 Act (as so applied) (re-publication of invitation to make applications) as if the reference in that subsection to the following provisions of Part 1 of that Act included a reference to that sub-paragraph.

(5) Before acting under sub-paragraphs (2) and (3) in a case falling within sub-paragraph (1)(b), OFCOM must serve a notice on the person awarded the licence stating their grounds for believing that the licensed service will not be provided once the licence has come into force.

(6) Where such a notice is required to be given, OFCOM must not revoke the licence unless they have given the person to whom it was awarded a reasonable opportunity of making representations to them about the matters by reference to which they are proposing to revoke it.

(7) In the case of a licence to provide a service that must comprise both—

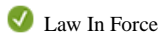
- (a) an analogue teletext service, and
- (b) a teletext service provided in digital form, the references in sub-paragraphs (1) and (5) to the licensed service are references to one or both of those services.

Commencement

Sch. 10(1) para. 6(1)-(7)(b): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

PART 2

CONDITIONS AND ENFORCEMENT OF LICENCE



Law In Force

7 Payments to be made in respect of the public teletext service

(1) A licence to provide the public teletext service must include conditions requiring the licence holder to pay the following amounts to OFCOM (in addition to any fees required to be so paid by virtue of section 4(1)(b) of the 1990 Act)—

- (a) a specified amount in respect of the first complete calendar year falling within the licence period;
- (b) in respect of each subsequent year falling wholly or partly within the licence period, that amount increased by the appropriate percentage;
- (c) in respect of each accounting period of his falling within the licence period, an amount representing a specified percentage of qualifying revenue for that accounting period.

(2) The amount specified for the purposes of sub-paragraph (1)(a) must be—

- (a) in the case of the replacement licence under section 221, the amount proposed in accordance with subsection (5)(a) of that section;
- (b) in the case of a licence renewed under section 222, the amount determined under section 223(1)(a); and
- (c) in any other case, the amount specified in the licence holder's cash bid.

(3) The percentage specified for the purposes of sub-paragraph (1)(c) in respect of an accounting period must be—

- (a) in the case of the replacement licence under section 221, nil;
- (b) in the case of a licence renewed under section 222, the percentage determined under section 223(1)(b); and
- (c) in any other case, the percentage determined and specified for the purposes of paragraph 1(2)(f) of this Schedule.

(4) A licence to provide the public teletext service may also include conditions—

- (a) enabling OFCOM to estimate before the beginning of an accounting period the amount due for that period by virtue of any condition imposed under this paragraph; and
- (b) requiring the licence holder to pay the estimated amount by monthly instalments throughout that period.

(5) Such a licence may, in particular, include conditions—

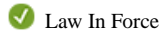
- (a) authorising OFCOM to revise an estimate on one or more occasions;
- (b) requiring them to alter the amounts of the instalments payable by the licence holder to take account of the revised estimate;
- (c) providing for the adjustment of an overpayment or underpayment.

(6) This paragraph has effect subject to sections 225 and 226 and to the requirement in section 221(5)(b).

(7) In this paragraph “the appropriate percentage” has the same meaning as in section 19 of the 1990 Act.

Commencement

Sch. 10(2) para. 7(1)-(7): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

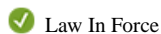
8 Corrections and statements of findings by the public teletext provider

(1) Section 40 of the 1990 Act (power to direct correction or a statement of findings) shall have effect in relation to the public teletext service as it has effect in relation to a Channel 3 service but as if the references in subsection (4) to a programme were references to an item.

(2) OFCOM's powers by virtue of this paragraph in relation to any matter are not affected by any prior exercise by them in relation to that matter of their powers under either or both of paragraphs 9 and 10.

Commencement

Sch. 10(2) para. 8(1)-(2): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

9 Enforcement of the licence for the public teletext service

(1) If OFCOM are satisfied that the holder of the licence to provide the public teletext service has—
(a) contravened a condition of the licence, or
(b) failed to comply with a direction given to him by OFCOM under or by virtue of a provision of the 1990 Act, the 1996 Act or Part 3 of this Act,
they may serve on him a notice requiring him to pay a specified financial penalty to them.

(2) The maximum amount which a person may be required to pay by way of a penalty under this paragraph is 5 per cent. of the qualifying revenue for his last complete accounting period.

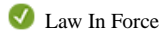
(3) Where an accounting period by reference to which the maximum amount of a penalty falls to be calculated has not ended when the penalty is imposed, the amount taken into account in respect of that period is to be the amount estimated by OFCOM.

(4) OFCOM are not to serve a notice under this paragraph on any person unless they have given him a reasonable opportunity of making representations to them about the matters complained of.

(5) A notice requiring a person to pay a penalty under this paragraph must specify the period within which it is to be paid.

Commencement

Sch. 10(2) para. 9(1)-(5): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



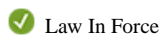
Law In Force

10 Power to shorten licence period

- (1) If OFCOM are satisfied that the holder of the licence to provide the public teletext service has—
- (a) contravened a condition of the licence, or
 - (b) failed to comply with a direction given to him by OFCOM under or by virtue of any provision of the 1990 Act, the 1996 Act or Part 3 of this Act,
- they may serve on him a notice reducing the period for which the licence is to be in force by a specified period not exceeding two years.
- (2) OFCOM are not to serve a notice under this paragraph on any person unless they have given him a reasonable opportunity of making representations to them about the matters in respect of which it is served.
- (3) Where a licence is due to expire on a particular date by virtue of a notice served on a person under this paragraph, OFCOM may, on the application of that person, revoke that notice by a further notice served on him at any time before that date.
- (4) OFCOM may exercise their power under sub-paragraph (3) only if they are satisfied that, since the date of the earlier notice, the conduct of the licence holder in relation to the operation of the licensed service has been such as to justify the revocation of that notice.

Commencement

Sch. 10(2) para. 10(1)-(4): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

11 Revocation for contravention of condition or direction

Section 42 of the 1990 Act (revocation for contravention) shall apply in relation to the licence to provide the public teletext service as it applies in relation to a licence to provide a Channel 3 service.

Commencement

Sch. 10(2) para. 11: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

12 Penalty on revocation

(1) Where OFCOM revoke the licence to provide the public teletext service (whether under paragraph 6 or a provision of the 1990 Act or 1996 Act), they must serve on the licence holder a notice requiring him to pay a specified financial penalty to them.

(2) The maximum amount which a person may be required to pay by way of a penalty under this paragraph is the maximum given by sub-paragraphs (3) and (4).

(3) In a case where the licence is revoked under paragraph 6 or the penalty is imposed before the end of the first complete accounting period of the licence holder to begin in the licence period, the maximum penalty is whichever is the greater of—

(a) £500,000; and

(b) 7 per cent. of the amount which OFCOM estimate would have been the qualifying revenue for the first complete accounting period of the licence holder falling within the period for which the licence would have been in force.

(4) In any other case, the maximum penalty is whichever is the greater of—

(a) £500,000; and

(b) 7 per cent. of the qualifying revenue for the last complete accounting period of the licence holder falling within the licence period.

(5) A notice requiring a person to pay a penalty under this paragraph must specify the period within which it is to be paid.

(6) A financial penalty that must be paid by virtue of this paragraph by a body of any description shall also be recoverable—

(a) as a debt due to OFCOM from the person who controls the body; or

(b) if two or more persons control it, as a debt due jointly and severally from them all.

(7) Sub-paragraph (6) is in addition to the provision for the recovery of penalties contained in section 346, but the amount recovered in respect of any one penalty must not exceed the full amount of that penalty.

(8) References in this paragraph to a person controlling a body are references to his controlling it within the meaning of Schedule 2 to the 1990 Act.

Commencement

Sch. 10(2) para. 12(1)-(8): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

13 Power to modify penalties in paragraph 12

(1) The Secretary of State may by order substitute a different sum for the sum for the time being specified in paragraph 12(3)(a) or (4)(a).


(2) No order is to be made containing provision authorised by this paragraph unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

Commencement

Sch. 10(2) para. 13(1)-(2): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

PART 3

INTERPRETATION OF SCHEDULE


 Law In Force

14

In this Schedule “licence period”, in relation to a licence, means the period for which the licence is in force.

Commencement

Sch. 10(3) para. 14: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

 Law In Force

15

(1) For the purposes of this Schedule the qualifying revenue for an accounting period of the holder of a licence to provide the public teletext service consists of the aggregate of all the following amounts—

- (a) the amounts received or to be received by a person mentioned in sub-paragraph (2) in consideration of the inclusion in the licensed service in that period of advertisements or other items; and
- (b) the amounts received or to be received by such a person in respect of the provision of the service from—
 - (i) a person authorised by the licence holder to provide the whole or a part of the licensed service; or
 - (ii) a person who is a connected person in relation to a person so authorised.

(2) Those persons are—

- (a) the licence holder; or
- (b) a person who is a connected person in relation to the licence holder without being a person authorised by the licence holder to provide the whole or a part of the licensed service.

(3) Part 1 of Schedule 7 to the 1990 Act applies for determining qualifying revenue for the purposes of this Schedule as it applies for the purposes of Part 1 of that Act.

(4) Where, in the case of the licence to provide the public teletext service—

- (a) the first complete accounting period of the licence holder to fall within the licence period does not begin at the same time as the licence period, or
- (b) the last complete accounting period of his to fall within the licence period does not end at the same time as the licence period,

references in this Schedule to an accounting period of the licence holder include references to such part of the accounting period preceding the first complete accounting period, or (as the case may be) following the last complete accounting period, as falls within the licence period.

(5) In this paragraph “connected person” has the same meaning as in Schedule 2 to the 1990 Act.

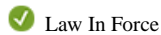
Commencement

Sch. 10(3) para. 15(1)-(5): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

SCHEDULE 11

APPROVAL, IMPOSITION AND MODIFICATION OF NETWORKING ARRANGEMENTS

Sections 291 and 294



Law In Force

1 Application of Schedule

(1) This Schedule applies where OFCOM's approval of networking arrangements entered into by the holders of regional Channel 3 licences is required—

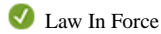
- (a) for the purposes of conditions included in regional Channel 3 licences in accordance with section 291; or
- (b) in order for networking arrangements made by OFCOM to cease to have effect in accordance with section 292.

(2) This Schedule also has effect as respects—

- (a) the imposition by OFCOM under section 292 of networking arrangements;
- (b) the modification of such arrangements following a review under section 293; and
- (c) the making of proposals for modifications of networking arrangements following such a review.

Commencement

Sch. 11 para. 1(1)-(2)(c): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

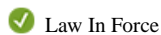
2 Approval required for modifications

(1) Where networking arrangements are approved by OFCOM for purposes mentioned in paragraph 1(1), those arrangements are not to be modified unless OFCOM have approved the modifications in accordance with this Schedule.

(2) This paragraph does not apply to modifications proposed by OFCOM under section 293.

Commencement

Sch. 11 para. 2(1)-(2): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

3 Procedure for giving approval

(1) This paragraph applies where arrangements or modifications are submitted to OFCOM for their approval.

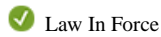
(2) OFCOM must publish a description of the arrangements or modifications that have been submitted.

(3) The publication must be in such manner as OFCOM consider appropriate for bringing the matters published to the attention of the persons who, in OFCOM's opinion, are likely to be affected by the arrangements or modifications.

(4) After allowing a reasonable time after the publication for the making of representations, OFCOM must consider the arrangements or modifications and decide whether or not to approve them.

Commencement

Sch. 11 para. 3(1)-(4): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

4 Decision of OFCOM whether or not to approve arrangements or modifications

- (1) The decision made by OFCOM under paragraph 3(4) has to be one of the following—
 - (a) a decision to approve the arrangements or modifications unconditionally;
 - (b) a decision to give a conditional approval to the arrangements or modifications;
 - (c) a decision to refuse approval.
- (2) A conditional approval is one that has effect only if effect is given, in relation to the proposed arrangements or modifications, to changes proposed by OFCOM.
- (3) Before deciding to give a conditional approval, OFCOM must consult every holder of a regional Channel 3 licence about the changes they are proposing.
- (4) When OFCOM have made their decision, they must prepare a report setting out—
 - (a) their decision; and
 - (b) their reasons for that decision.
- (5) OFCOM must publish the report and send a copy of it to—
 - (a) the [Competition and Markets Authority]¹ ; and
 - (b) every person to whom the relevant arrangements will apply, or do apply.
- (6) The relevant arrangements are—
 - (a) the arrangements for which approval has been sought; or
 - (b) the arrangements which are the subject of the modifications for which approval has been sought.

Notes

- ¹ Words substituted by Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014/892 Sch.1(2) para.165 (April 1, 2014)

Commencement

Sch. 11 para. 4(1)-(6)(b): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

5 Notification of decisions on imposition of arrangements

- (1) Where OFCOM impose arrangements they must prepare and publish a report setting out details of the imposed arrangements.
- (2) Where OFCOM carry out a review under section 293, they must prepare and publish a report setting out—
 - (a) their conclusions on the review;
 - (b) their reasons for those conclusions; and
 - (c) the modifications (if any) that they are proposing, or intend to make, following the review.
- (3) OFCOM must send a copy of a report prepared under this paragraph to—
 - (a) the [Competition and Markets Authority]¹ ; and
 - (b) every person to whom the relevant arrangements will apply or do apply.

(4) The relevant arrangements are—

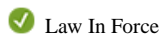
- (a) the arrangements which are imposed; or
- (b) the arrangements which are the subject of the modifications proposed by OFCOM or to be made by them.

Notes

- ¹ Words substituted by Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014/892 Sch.1(2) para.165 (April 1, 2014)

Commencement

Sch. 11 para. 5(1)-(4)(b): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

6 Competition tests applying to OFCOM's decisions

(1) OFCOM must not—

- (a) approve arrangements or modifications,
- (b) impose arrangements or modify imposed arrangements, or
- (c) propose modifications following a review under section 293,

unless they are satisfied that the arrangements, or the arrangements as proposed to be modified, satisfy the first or second competition test.

(2) Before making a decision about whether a competition test is satisfied OFCOM must consult the [Competition and Markets Authority]¹.

(3) Arrangements satisfy the first competition test if they do not have as their object or effect the prevention, restriction or distortion of competition within the United Kingdom.

(4) Arrangements satisfy the second competition test if—

- (a) they do have such an object or effect; but
- (b) they would satisfy the criteria set out in section 9 of the Competition Act 1998 (c. 41) (agreements contributing to improving the production or distribution of goods or to promoting technical or economic progress).

(5) For the purposes of the second competition test, arrangements imposed by OFCOM and modifications of such arrangements are to be treated as if they were given effect to by an agreement between undertakings.

(6) [Subject to paragraph 6A, in]² determining whether arrangements or modified arrangements would satisfy either of the competition tests, OFCOM must act with a view to securing that there is no inconsistency between—

- (a) the principles they apply and the decision they reach; and
- (b) any principles or decisions referred to in sub-paragraph (7).

(7) Those principles and decisions are—

- (a) the principles laid down by [the Treaty on the Functioning of the European Union and the European Court [before [IP completion day]⁵]⁴ , and any decisions [made by that court before [IP completion day]⁵]⁶ , that are relevant to the construction of Article 101 of that Treaty]³ ; and

(b) any decisions under Part 1 of the Competition Act 1998, and any decisions of a court in the United Kingdom, that are relevant to the construction of a provision of that Act that is equivalent to the provisions of this Schedule imposing the competition tests.

[(7A) In sub-paragraph (7)(a), the reference to principles laid down before [IP completion day]⁵ is a reference to such principles as they have effect in EU law immediately before [IP completion day]⁵, disregarding the effect of principles laid down, and decisions made, by the European Court on or after [IP completion day]⁵.]⁷

(8) In the case of a conditional approval, the requirements of this paragraph have to be satisfied in relation to the arrangements or modified arrangements as they will be after giving effect to the changes proposed by OFCOM.

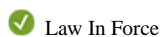
(9) In this paragraph, the “European Court” includes a court attached to the European Court.

Notes

- ¹ Words substituted by Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014/892 Sch.1(2) para.165 (April 1, 2014)
- ² Words inserted by Competition (Amendment etc.) (EU Exit) Regulations 2019/93 Sch.1 para.11(4) (December 31, 2020: insertion has effect subject to saving and transitional provisions specified in SI 2019/93 Sch.4 paras 7 and 15)
- ³ Words substituted by Treaty of Lisbon (Changes in Terminology or Numbering) Order 2012/1809 Sch.1(1) para.1 (August 1, 2012: substitution has effect subject to savings specified in SI 2012/1809 art.2(2))
- ⁴ Words inserted by Competition (Amendment etc.) (EU Exit) Regulations 2019/93 Sch.1 para.11(5)(a) (December 31, 2020: insertion has effect subject to saving and transitional provisions specified in SI 2019/93 Sch.4 paras 7 and 15)
- ⁵ Words substituted by Competition (Amendment etc.) (EU Exit) Regulations 2019/93 Sch.1 para.11 (December 31, 2020: commenced by an amendment)
- ⁶ Words substituted by Competition (Amendment etc.) (EU Exit) Regulations 2019/93 Sch.1 para.11(5)(b) (December 31, 2020: substitution has effect subject to saving and transitional provisions specified in SI 2019/93 Sch.4 paras 7 and 15)
- ⁷ Added by Competition (Amendment etc.) (EU Exit) Regulations 2019/93 Sch.1 para.11(6) (December 31, 2020: insertion has effect subject to saving and transitional provisions specified in SI 2019/93 Sch.4 paras 7 and 15)

Commencement

Sch. 11 para. 6(1)-(9): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

[6A.— Competition tests applying to OFCOM's decisions: EU principles etc

(1) Paragraph 6(6) does not require OFCOM to secure that there is no inconsistency with a principle or decision referred to in paragraph 6(7)(a)—

- (a) so far as the principle or decision is excluded from the law of England and Wales, Scotland and Northern Ireland on or after [IP completion day]², or
- (b) so far as doing so would be incompatible with OFCOM's duty to secure that there is no inconsistency with a decision referred to in paragraph 6(7)(b).

(2) For the purposes of sub-paragraph (1)(a), a principle or decision is to be treated as not excluded from the law of England and Wales, Scotland and Northern Ireland if it is excluded only by virtue of an exclusion or revocation in the Competition (Amendment etc) (EU Exit) Regulations 2019.

(3) Paragraph 6(6) does not require OFCOM to secure that there is no inconsistency with a principle or decision referred to in paragraph 6(7)(a) if OFCOM think that it is appropriate to act otherwise in the light of one or more of the following—

- (a) differences between the competition tests and Article 101 of the Treaty on the Functioning of the European Union as it had effect immediately before [IP completion day]² ;
- (b) differences between markets in the United Kingdom and markets in the European Union;
- (c) developments in forms of economic activity since the time when the principle or decision referred to in paragraph 6(7)(a) was laid down or made;
- (d) generally accepted principles of competition analysis or the generally accepted application of such principles;
- (e) a principle laid down, or decision made, by the European Court on or after [IP completion day]² ;
- (f) the particular circumstances under consideration.

] ¹

Notes

¹ Added by Competition (Amendment etc.) (EU Exit) Regulations 2019/93 Sch.1 para.11(7) (December 31, 2020: insertion has effect subject to saving and transitional provisions specified in SI 2019/93 Sch.4 paras 7 and 15)

² Words substituted by Competition (Amendment etc.) (EU Exit) Regulations 2019/93 Sch.1 para.11 (December 31, 2020: commenced by an amendment)

✓ Law In Force

7 Other matters to be taken into account

(1) OFCOM must not—

- (a) approve arrangements or modifications,
- (b) impose arrangements or modify imposed arrangements, or
- (c) propose modifications following a review under section 293,

unless they consider that the arrangements, or the arrangements as proposed to be modified, are satisfactory.

(2) OFCOM's consideration under sub-paragraph (1) must include consideration of the following two factors.

(3) The first factor is whether the arrangements, or the arrangements as proposed to be modified, represent a satisfactory means of achieving the purpose set out in section 290(4)(c).

(4) The second factor is the likely effect of the arrangements, or the arrangements as modified, on the ability of the persons who will be or are the holders of regional Channel 3 licences, or of any of them, to maintain the quality and range of—

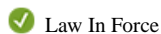
- (a) regional programmes included in regional Channel 3 services; and
- (b) the other programmes included in such services which contribute to the regional character of the services.

(5) In this paragraph “regional programme”, in relation to a regional Channel 3 service, means a programme (including a news programme) which is of particular interest—

- (a) to persons living within the area for which the service is provided;
- (b) to persons living within a part of that area; or
- (c) to particular communities living within that area.

Commencement

Sch. 11 para. 7(1)-(5)(c): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

8 Duty to refuse approval in certain cases

(1) This paragraph applies to a decision by OFCOM—

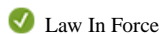
- (a) to approve arrangements or modifications;
- (b) to impose arrangements or to modify imposed arrangements; or
- (c) to propose modifications following a review under section 293.

(2) OFCOM must not make that decision if it appears to them that the arrangements, or the arrangements as proposed to be modified, would be likely to be prejudicial to the ability of holders of regional Channel 3 licences, or of any of them, to comply with—

- (a) their public service remits;
- (b) conditions imposed on them under section 286;
- (c) conditions imposed on them under section 287; or
- (d) conditions imposed on them under section 352.

Commencement

Sch. 11 para. 8(1)-(2)(d): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

9 Appeals against decisions relating to competition test

(1) A person holding a regional Channel 3 licence may appeal to the Tribunal against the following decisions by OFCOM—

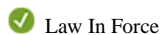
- (a) a decision on how to dispose of an application for the approval of arrangements or modifications;
- (b) a decision to impose arrangements or to modify imposed arrangements; or
- (c) a decision to propose modifications following a review under section 293.

(2) An appeal can be made only by sending the Tribunal a notice of appeal within the period specified, in relation to the decision appealed against, in Tribunal rules.

- (3) The notice of appeal must set out the grounds of appeal.
- (4) The only grounds on which an appeal may be brought are—
- (a) that OFCOM have wrongly decided that a competition test is or is not satisfied in relation to arrangements or modifications submitted to them for approval;
 - (b) that a competition test is not satisfied in the case of arrangements proposed by OFCOM;
 - (c) that provisions contained in arrangements proposed by OFCOM for satisfying a competition test are not required for that purpose;
 - (d) that the requirement to satisfy a competition test should be discharged in a different manner from that in which it would be satisfied in accordance with arrangements proposed by OFCOM.
- (5) In sub-paragraph (4) “arrangements proposed by OFCOM” means—
- (a) arrangements or modified arrangements as they will have effect after giving effect to changes proposed by OFCOM in giving a conditional approval;
 - (b) arrangements imposed by them;
 - (c) imposed arrangements as modified by them;
 - (d) arrangements as modified by proposals made by OFCOM following a review under section 293.
- (6) The holder of a regional Channel 3 licence is not required by the conditions of his licence to take steps for giving effect to a decision of OFCOM at any time when an appeal under this Schedule against that decision is pending.

Commencement

Sch. 11 para. 9(1)-(6): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

10 Decisions on an appeal


- (1) Appeals to the Tribunal under paragraph 9 are to be disposed of in accordance with this paragraph.
- (2) The Tribunal shall decide the appeal on the merits and by reference to the grounds of appeal set out in the notice of appeal.
- (3) The Tribunal shall decide what (if any) is the appropriate decision for OFCOM to have made in relation to the matters to which those grounds relate.
- (4) The Tribunal shall then either—
- (a) confirm OFCOM's decision; or
 - (b) remit the matter to OFCOM with such directions (if any) as the Tribunal considers appropriate for giving effect to its decision.
- (5) The Tribunal must not direct OFCOM to take any action which they would not otherwise have had power to take in relation to the matter under appeal.

(6) It shall be the duty of OFCOM to comply with every direction given to them under sub-paragraph (4).

(7) In its application to a decision of the Tribunal under this paragraph, paragraph 1(2)(b) of Schedule 4 to the Enterprise Act 2002 (c. 40) (exclusion of commercial information from documents recording Tribunal decisions) is to have effect as if for the reference to the undertaking to which commercial information relates there were substituted a reference to the person to whom such information relates.

Commencement

Sch. 11 para. 10(1)-(7): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

 Law In Force

11 Appeals against decisions of the Tribunal

(1) A decision of the Tribunal on an appeal under paragraph 9 may itself be appealed.

(2) An appeal under this paragraph—

- (a) lies to the Court of Appeal or to the Court of Session; and
- (b) must relate only to a point of law arising from the decision of the Tribunal.

(3) An appeal under this paragraph may be brought by a party to the proceedings before the Tribunal.

(4) An appeal under this paragraph requires the permission of the Tribunal or of the court to which it is to be made.

(5) In this paragraph references to a decision of the Tribunal include references to a direction given by it under paragraph 10(4).

Commencement

Sch. 11 para. 11(1)-(5): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

 Law In Force

12 Information for OFCOM

(1) OFCOM may by notice require a person—

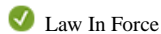
- (a) to produce to them such documents specified or described in the notice, or
- (b) to furnish them with such other information so specified or described,

as they consider necessary in order to determine for the purposes of section 293 or this Schedule whether the competition tests are satisfied.

- (2) A requirement imposed by a notice under this paragraph has to be complied with by producing the document, or by furnishing the required information, at the time and place specified in the notice.
- (3) If the requirement is one for the furnishing of information otherwise than by the production of a document, the information must be furnished in the manner specified in the notice.
- (4) The only documents that a person is required to produce by a notice under this paragraph are those that are in his custody or under his control—
- (a) at the time of the notice; or
 - (b) at a time between that time and the time when the notice must be complied with.

Commencement

Sch. 11 para. 12(1)-(4)(b): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force


13 Enforcement of information provisions

- (1) The court may, on an application by OFCOM, enquire into whether any person (“the defaulter”) has refused or otherwise failed, without reasonable excuse, to comply with a requirement contained in a notice under paragraph 12.
- (2) An application under sub-paragraph (1) shall include details of the possible failure which OFCOM consider has occurred.
- (3) In enquiring into a case under sub-paragraph (1), the court shall hear—
- (a) any witness who may be produced against or on behalf of the defaulter; and
 - (b) any statement which may be offered in defence.
- (4) Sub-paragraphs (5) and (6) apply where the court is satisfied, after hearing any witnesses and statements as mentioned in sub-paragraph (3), that the defaulter has refused or failed, without reasonable excuse, to comply with the requirement contained in the notice under paragraph 12.
- (5) The court may punish the defaulter as it would have been able to punish him had he been guilty of contempt of court.
- (6) Where the defaulter is a body corporate, the power of the court to punish the defaulter includes power to punish a director or officer of the body corporate.
- (7) Where the defaulter is a partnership constituted under the law of Scotland, the power of the court to punish the defaulter includes power to punish a member of the partnership.
- (8) A person is guilty of an offence if he intentionally alters, suppresses or destroys a document which he has been required to produce by a notice under paragraph 12.
- (9) A person is guilty of an offence if—
- (a) he supplies information to OFCOM in purported compliance with a notice given to him under paragraph 12;
 - (b) the information is false or misleading in a material respect; and

- (c) he knows that it is false or misleading in a material respect or is reckless as to whether it is false or misleading in a material respect.
- (10) A person is guilty of an offence if—
- (a) he supplies information to another person knowing that the information is to be used for complying with a notice under paragraph 12;
 - (b) the information is false or misleading in a material respect; and
 - (c) he knows that it is false or misleading in a material respect or is reckless as to whether it is false or misleading in a material respect.
- (11) A person guilty of an offence under this paragraph 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.
- (12) In this paragraph “the court” means—
- (a) in relation to England and Wales, the High Court;
 - (b) in relation to Scotland, the Court of Session; and
 - (c) in relation to Northern Ireland, the High Court or a judge of the High Court.

Commencement

Sch. 11 para. 13(1)-(12)(c): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

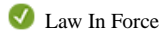
 Law In Force

14 Confidentiality and defamation

- (1) When publishing a report prepared under paragraph 4 or 5, OFCOM must have regard to the need to exclude from the publication, so far as practicable, the matters which are confidential in accordance with sub-paragraphs (2) and (3).
- (2) A matter is confidential under this sub-paragraph if—
- (a) it relates specifically to the affairs of a particular body; and
 - (b) publication of that matter would or might, in OFCOM's opinion, seriously and prejudicially affect the interests of that body.
- (3) A matter is confidential under this sub-paragraph if—
- (a) it relates to the private affairs of an individual; and
 - (b) publication of that matter would or might, in OFCOM's opinion, seriously and prejudicially affect the interests of that individual.
- (4) For the purposes of the law of defamation absolute privilege attaches to every report prepared under paragraph 4 or 5.

Commencement

Sch. 11 para. 14(1)-(4): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

15 Interpretation of Schedule

In this Schedule—

“competition test” is to be construed in accordance with paragraph 6;

“the Tribunal” means the Competition Appeal Tribunal; and

“Tribunal rules” means rules made under section 15 of the Enterprise Act 2002 (c. 40).

Commencement

Sch. 11 para. 15 definition of "competition test"- definition of "Tribunal rules": December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

[SCHEDULE 11A**Restrictions on product placement**

] ¹

Notes

¹ Added by Audiovisual Media Services (Product Placement) Regulations 2010/831 reg.9 (April 16, 2010)

[Introductory] ¹

Notes

¹ Added by Audiovisual Media Services (Product Placement) Regulations 2010/831 reg.9 (April 16, 2010)

✓ Law In Force

[1.—

(1) In this Part “product placement”, in relation to a programme included in a television programme service, means the inclusion in the programme of, or of a reference to, a product, service or trade mark, where the inclusion—

- (a) is for a commercial purpose;
- (b) is in return for the making of any payment, or the giving of other valuable consideration, to any relevant provider or any person connected with a relevant provider; and
- (c) is not prop placement.

(2) “Prop placement”, in relation to such a programme, means the inclusion in the programme of, or of a reference to, a product, service or trade mark where—

- (a) the provision of the product, service or trade mark has no significant value; and
- (b) no relevant provider, or person connected with a relevant provider, has received any payment or other valuable consideration in relation to its inclusion in, or the reference to it in, the programme, disregarding the costs saved by including the product, service or trademark, or a reference to it, in the programme.

] ¹

Notes

¹ Added by Audiovisual Media Services (Product Placement) Regulations 2010/831 reg.9 (April 16, 2010)

✓ Law In Force

[2.

The product placement requirements are—

- (a) that the product placement does not fall within any of paragraphs 3 to 6;
- (b) that all of the conditions in paragraph 7 are met; and
- (c) that, where paragraph 8 applies, the condition in that paragraph is also met.

] ¹

Notes

¹ Added by Audiovisual Media Services (Product Placement) Regulations 2010/831 reg.9 (April 16, 2010)

[Prohibitions of product placement] ¹

Notes

¹ Added by Audiovisual Media Services (Product Placement) Regulations 2010/831 reg.9 (April 16, 2010)

✓ Law In Force

[3.—

[(1) Product placement falls within this paragraph if it is in a—

- (a) children's programme;
- (b) news or current affairs programme;
- (c) consumer affairs programme; or
- (d) religious programme.

] ²

(2) In sub-paragraph (1) “children's programme” means a programme made—

- (a) for a television programme service or for an on-demand programme service, and
- (b) for viewing primarily by persons under the age of sixteen.

] ¹

Notes

¹ Added by Audiovisual Media Services (Product Placement) Regulations 2010/831 reg.9 (April 16, 2010)

² Substituted by Audiovisual Media Services Regulations 2020/1062 Pt 2(2) reg.18(a) (November 1, 2020: substitution has effect subject to transitional provision specified in SI 2020/1062 Pt 7)

✓ Law In Force

[4.

Product placement falls within this paragraph if it is—

- (a) of cigarettes or other tobacco products;
- (b) by or on behalf of an undertaking whose principal activity is the manufacture or sale of cigarettes or other tobacco products; [...] ²
- [(ba) of electronic cigarettes or electronic cigarette refill containers; [...] ⁴] ³
- [(bb) by or on behalf of an undertaking whose principal activity is the manufacture or sale of electronic cigarettes or electronic cigarette refill containers; or] ⁵
- (c) of prescription-only medicines.

] ¹

Notes

¹ Added by Audiovisual Media Services (Product Placement) Regulations 2010/831 reg.9 (April 16, 2010)

² Word repealed by Tobacco and Related Products Regulations 2016/507 Pt 7 reg.45(2)(a) (May 20, 2016: repeal has effect subject to saving specified in SI 2016/507 reg.57)

³ Added by Tobacco and Related Products Regulations 2016/507 Pt 7 reg.45(2)(b) (May 20, 2016: insertion has effect subject to saving specified in SI 2016/507 reg.57)

⁴ Word repealed by Audiovisual Media Services Regulations 2020/1062 Pt 2(2) reg.18(b) (November 1, 2020: repeal has effect subject to transitional provision specified in SI 2020/1062 Pt 7)

⁵ Added by Audiovisual Media Services Regulations 2020/1062 Pt 2(2) reg.18(c) (November 1, 2020: insertion has effect subject to transitional provision specified in SI 2020/1062 Pt 7)

✓ Law In Force

[5.

Product placement of alcoholic drinks falls within this paragraph if—

- (a) it is aimed specifically at persons under the age of eighteen; or
- (b) it encourages immoderate consumption of such drinks.

] ¹

Notes

¹ Added by Audiovisual Media Services (Product Placement) Regulations 2010/831 reg.9 (April 16, 2010)

✓ Law In Force

[6.—

(1) Product placement falls within this paragraph if it is in a programme to which this paragraph applies and—

- (a) [...]²
- (b) the product placement is of anything within sub-paragraph (2); or
- (c) the product placement is otherwise unsuitable.

(2) The following are within this sub-paragraph—

- (a) [...]³ cigarette lighters, cigarette papers or pipes intended for smoking;
- (b) medicinal products;
- (c) alcoholic drinks;
- (d) infant formulae or follow-on formulae;
- (e) a food or drink high in fat, salt or sugar;
- (f) gambling services.

(3) This paragraph applies to—

- (a) a programme that has been produced or commissioned by the provider of the television programme service in which it is included, or by a person connected with that provider, and that is not a film made for cinema; and
- (b) a programme that has been produced or commissioned by any other person with a view to its first showing taking place in a television programme service [that falls within section 211(2)] ⁴.

] ¹

Notes

¹ Added by Audiovisual Media Services (Product Placement) Regulations 2010/831 reg.9 (April 16, 2010)

² Repealed by Audiovisual Media Services Regulations 2020/1062 Pt 2(2) reg.18(d) (November 1, 2020: repeal has effect subject to transitional provision specified in SI 2020/1062 Pt 7)

³ Words repealed by Tobacco and Related Products Regulations 2016/507 Pt 7 reg.45(2)(c) (May 20, 2016: repeal has effect subject to saving specified in SI 2016/507 reg.57)

⁴ Words substituted by Broadcasting (Amendment) (EU Exit) Regulations 2019/224 Sch.1(3) para.31 (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))

[Conditions applying to product placement]¹

Notes

¹ Added by Audiovisual Media Services (Product Placement) Regulations 2010/831 reg.9 (April 16, 2010)

✓ Law In Force

[7.—

(1) These are the conditions referred to in paragraph 2(b).

(2) [...]²

(3) Condition B is that the product placement has not influenced the content or scheduling of the programme in a way that affects the editorial independence of the provider of the television programme service in which the programme is included.

(4) Condition C is that the product placement does not directly encourage the purchase or rental of goods or services, whether by making promotional reference to those goods or services or otherwise.

(5) Condition D is that the programme does not give undue prominence to the products, services or trade marks concerned.

(6) Condition E is that the product placement does not use techniques which exploit the possibility of conveying a message subliminally or surreptitiously.

(7) Condition F is that the way in which the product, service or trade mark, or the reference to it, is included in the programme by way of product placement does not—

- (a) prejudice respect for human dignity;
- (b) promote discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation;
- (c) encourage behaviour prejudicial to health or safety;
- (d) encourage behaviour grossly prejudicial to the protection of the environment;
- (e) cause physical [, mental]³ or moral detriment to persons under the age of eighteen;
- [(ea) directly exhort such persons to purchase or rent goods or services in a manner which exploits their inexperience or credulity;]⁴
- (f) directly encourage such persons to persuade their parents or others to purchase or rent goods or services;
- (g) exploit the trust of such persons in parents, teachers or others; or
- (h) unreasonably show such persons in dangerous situations.

] ¹

Notes

¹ Added by Audiovisual Media Services (Product Placement) Regulations 2010/831 reg.9 (April 16, 2010)

² Repealed by Audiovisual Media Services Regulations 2020/1062 Pt 2(2) reg.18(e) (November 1, 2020: repeal has effect subject to transitional provision specified in SI 2020/1062 Pt 7)

³ Word inserted by Audiovisual Media Services Regulations 2020/1062 Pt 2(2) reg.18(f)(i) (November 1, 2020: insertion has effect subject to transitional provision specified in SI 2020/1062 Pt 7)

- ⁴ Added by Audiovisual Media Services Regulations 2020/1062 Pt 2(2) reg.18(f)(ii) (November 1, 2020: insertion has effect subject to transitional provision specified in SI 2020/1062 Pt 7)

✓ Law In Force

[8.—

(1) This paragraph applies where the programme featuring the product placement has been produced or commissioned by the provider of the television programme service in which it is included or by a person connected with that provider.

(2) The condition referred to in paragraph 2(c) is that the television programme service in which the programme is included signals appropriately the fact that product placement is contained in a programme no less frequently than—

- (a) at the start and end of such a programme; and
- (b) in the case of a television programme service which includes advertising breaks within it, at the recommencement of the programme after each such advertising break.

] ¹

Notes

- ¹ Added by Audiovisual Media Services (Product Placement) Regulations 2010/831 reg.9 (April 16, 2010)

[Minor definitions] ¹

Notes

- ¹ Added by Audiovisual Media Services (Product Placement) Regulations 2010/831 reg.9 (April 16, 2010)

✓ Law In Force

[9.

In this Schedule—

“connected” has the same meaning as it has in the Broadcasting Act 1990 by virtue of section 202 of that Act;

[“electronic cigarette” has the meaning given in section 368R;

“electronic cigarette refill container” has the meaning given in section 368R;] ²

“film made for cinema” means a film made with a view to its being shown to the general public first in a cinema;

“follow-on formulae” has the meaning given in Article 2 of Commission Directive 2006/141/EC on infant formulae and follow-on formulae and amending Directive 1999/21/EC;

“infant formulae” has the meaning given in Article 2 of Commission Directive 2006/141/EC on infant formulae and follow-on formulae and amending Directive 1999/21/EC;

“medicinal product” has the meaning given in section 130 of the Medicines Act 1968;

“prescription-only medicine” means a medicinal product of a description or falling within a class specified in an order made under section 58 of the Medicines Act 1968;

“producer”, in relation to a programme, means the person by whom the arrangements necessary for the making of the programme are undertaken;

“programme” does not include an advertisement;

“relevant provider”, in relation to a programme, means—

(a) the provider of the television programme service in which the programme is included; and

(b) the producer of the programme;

“residual value” means any monetary or other economic value in the hands of the relevant provider other than the cost saving of including the product, service or trademark, or a reference to it, in a programme;

“significant value” means a residual value that is more than trivial;

“tobacco product” has the meaning given in section 1 of the Tobacco Advertising and Promotion Act 2002;

“trade mark”, in relation to a business, includes any image (such as a logo) or sound commonly associated with that business or its products or services.

]¹

Notes

¹ Added by Audiovisual Media Services (Product Placement) Regulations 2010/831 reg.9 (April 16, 2010)

² Definitions inserted by Tobacco and Related Products Regulations 2016/507 Pt 7 reg.45(2)(d) (May 20, 2016: insertion has effect subject to saving specified in SI 2016/507 reg.57)

SCHEDULE 12

CORRESPONDING OBLIGATIONS OF THE BBC AND WELSH AUTHORITY

Section 338

PART 1

THE BBC

 Law In Force

1 Quotas for independent productions

(1) It shall be the duty of the BBC to secure that, in each year, not less than 25 per cent. of the total amount of time allocated to the broadcasting of qualifying programmes included in the television broadcasting services provided by the BBC is allocated to the broadcasting of a range and diversity of independent productions.

(2) In this paragraph—

- (a) a reference to qualifying programmes is a reference to programmes of such description as the Secretary of State may by order specify as describing the programmes that are to be qualifying programmes for the purposes of this paragraph;
- (b) a reference to independent productions is a reference to programmes of such description as the Secretary of State may by order specify as describing the programmes that are to be independent productions for the purposes of this paragraph; and
- (c) a reference to a range of independent productions is a reference to a range of such productions in terms of cost of acquisition as well as in terms of the types of programme involved.

(3) The Secretary of State may by order amend sub-paragraph (1) by substituting a different percentage for the percentage for the time being specified in that sub-paragraph.

(4) The Secretary of State may also by order provide for the BBC to have the duty set out in sub-paragraph (5), either instead of or as well as the one set out in sub-paragraph (1).

(5) That duty is a duty to secure that, in each year, not less than the percentage specified in the order of the programming budget for that year for the television broadcasting services provided by the BBC is applied in the acquisition of independent productions.

(6) The power to make an order under sub-paragraph (4) includes power to provide that the BBC are again to be subject to a duty to which they have previously ceased to be subject by virtue of such an order, in addition to or instead of the duty to which they are subject (apart from the exercise of that power) by virtue of this paragraph.

(7) The Secretary of State is not to make an order for the BBC to be or to cease to be subject to the duty mentioned in sub-paragraph (1) or (5) unless—

- (a) OFCOM have made a recommendation to him that the BBC should be subject to that duty, or should cease to be subject to it; and
- (b) the order gives effect to that recommendation.

(8) Where television broadcasting services are designated by or under the BBC Charter and Agreement—

- (a) as services that must be treated separately for the purposes of the duty imposed by sub-paragraph (1) or a duty imposed under sub-paragraph (4), or
- (b) as services that must be included in a group of services that must be taken together for the purposes of such a duty,

that duty is to have effect in accordance with sub-paragraph (9).

(9) A duty having effect in accordance with this sub-paragraph is to have effect as if (instead of applying to all the television broadcasting services provided by the BBC, taken together) it applied separately—

- (a) in relation to each service that is required to be treated separately; and
- (b) in relation to each group of services that are required to be taken together.

(10) The BBC must comply with directions given to them by OFCOM for the purpose of—

- (a) carrying forward to one or more subsequent years determined in accordance with the direction any shortfall for any year in their compliance with the duties imposed by virtue of sub-paragraph (1) or (4); and
- (b) thereby increasing the percentage applicable for the purposes of those duties to the subsequent year or years.

(11) For the purposes of this paragraph—

- (a) the amount of the programming budget for a year, and
 - (b) the means of determining the amount of that budget that is applied for any purpose,
- are to be computed in accordance with such provision as may be set out in an order made by the Secretary of State, or as may be determined by OFCOM in accordance with such an order.

(12) Before making an order under this paragraph the Secretary of State must consult OFCOM and the BBC.

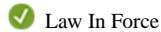
(13) No order is to be made containing provision authorised by this paragraph unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

(14) In this paragraph—

- “acquisition”, in relation to a programme, includes commissioning and acquiring a right to include it in a service or to have it broadcast; and
- “programming budget” means the budget for the production and acquisition of qualifying programmes.

Commencement

Sch. 12(1) para. 1(1)-(14) definition of “programming budget”: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

2 Duty to publicise complaints procedures etc.

(1) It shall be the duty of the BBC to make arrangements for securing that the matters mentioned in sub-paragraph (2) are brought to the attention of the public (whether by means of broadcasts or otherwise).

(2) Those matters are—

- (a) OFCOM's functions under Part 5 of the 1996 Act in relation to services provided by the BBC; and
- (b) any procedures established by OFCOM or the BBC for the handling and resolution of complaints about the observance by the BBC of standards set under section 319 [or about compliance by the BBC with the requirements imposed by section 368D]¹ [and section 368E(4)]².

Notes

¹ Words inserted by Audiovisual Media Services Regulations 2009/2979 reg.3(2) (December 19, 2009)

² Words inserted by Audiovisual Media Services Regulations 2020/1062 Pt 3 reg.45(a) (November 1, 2020: insertion has effect subject to transitional provision specified in SI 2020/1062 Pt 7)


Commencement

Sch. 12(1) para. 2(1)-(2)(b): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

PART 2

THE WELSH AUTHORITY

Public service remits of the Welsh Authority services

 Law In Force

3

- (1) It shall be the duty of the Welsh Authority to secure that the public service remits for each of their public television services is fulfilled.
- (2) The public service remit for S4C is the provision of a broad range of high quality and diverse programming in a service in which—
- (a) a substantial proportion of the programmes consists of programmes in Welsh;
 - (b) the programmes broadcast for viewing between 6:30 PM and 10:00 PM on every day of the week consist mainly of programmes in Welsh; and
 - (c) the programmes that are not in Welsh are normally programmes which are being, have been or are to be broadcast on Channel 4.
- (3) The public service remit for S4C Digital is the provision of a broad range of high quality and diverse programming in a service in which a substantial proportion of the programmes consists of programmes in Welsh.
- (4) The public service remit for a television programme service provided by the Welsh Authority with the approval of the Secretary of State under section 205 is the remit set out in the order approving the provision of the service.
- (5) The Secretary of State may by order modify sub-paragraphs (2) and (3).
- (6) Before making an order specifying or modifying the public service remit for any of the Welsh Authority's public television services, the Secretary of State must consult—
- (a) the Authority; and
 - (b) where the order relates to the inclusion in any service of programmes that are not in Welsh, C4C.
- (7) An order modifying the public service remit for S4C or S4C Digital must not contain provision inconsistent with a requirement that each service must—
- (a) represent a public service for the dissemination of information, education and entertainment; and
 - (b) include programmes a substantial proportion of which consists of programmes in Welsh.
- (8) No order is to be made containing provision authorised by sub-paragraph (5) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

Commencement

Sch. 12(2) para. 3(1)-(8): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Statements of programme policy

✓ Law In Force

4

- (1) It shall be the duty of the Welsh Authority—
- (a) as soon as practicable after the coming into force of this paragraph, and subsequently at annual intervals, to prepare a statement of programme policy; and
 - (b) to monitor their own performance in the carrying out of the proposals contained in statements made under this paragraph.
- (2) Every statement of programme policy prepared under this paragraph must set out the Welsh Authority's proposals for securing that, during the following year—
- (a) the public service remit for each of their public television services to be provided during that year will be fulfilled; and
 - (b) the Welsh Authority's duties under the provisions of this Schedule will be performed.
- (3) Every such statement must contain a report on the performance of the Welsh Authority in the carrying out during the period since the previous statement of the proposals contained in that previous statement.
- (4) When preparing such a statement, the Welsh Authority must consider—
- (a) any guidance by OFCOM that is in force for the purposes of section 266; and
 - (b) any reports previously published by OFCOM under section 264 or 358.
- (5) Every such statement must be published by the Welsh Authority as soon as practicable after its preparation is complete.
- (6) OFCOM may direct that any statement of policy which—
- (a) was made by the Welsh Authority before the coming into force of this paragraph, and
 - (b) is specified in the direction,
- is to be treated for the purposes of this Act as if it were a statement made in relation to such period as may be so specified in pursuance of this paragraph.
- (7) A direction under sub-paragraph (6) cannot contain provision the effect of which is to postpone the time at which the Welsh Authority would otherwise be required to make its first statement of programme policy.

Commencement

Sch. 12(2) para. 4(1)-(7): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Must-offer obligations in relation to networks and satellite services

 Not Yet In Force

5

(1) It shall be the duty of the Welsh Authority to ensure that each of their public digital services is at all times offered as available (subject to the need to agree terms)—

- (a) to be broadcast or distributed by means of every appropriate network; and
- (b) to be broadcast by means of every satellite television service that is available for reception by members of the public in Wales.

(2) It shall be the duty of the Welsh Authority to do their best to secure that arrangements are entered into, and kept in force, that ensure—

- (a) that each of their public digital services is broadcast or distributed on appropriate networks; and
- (b) that the broadcasting and distribution of each of their public digital services, in accordance with those arrangements, result in the service being available for reception, by means of appropriate networks, by as many members of its intended audience as practicable.

(3) It shall be the duty of the Welsh Authority to do their best to secure that arrangements are entered into, and kept in force, that ensure—

- (a) that each of their public digital services is broadcast by means of satellite television services that are broadcast so as to be available for reception by members of the public in Wales; and
- (b) that the broadcasting, in accordance with those arrangements, of each of the Authority's public digital services by means of satellite television services results in its being available for reception in an intelligible form and by means of those services by as many members of its intended audience as practicable.

(4) The Welsh Authority must secure that the arrangements entered into and kept in force for the purposes of sub-paragraphs (2) and (3) prohibit the imposition, for or in connection with the provision of an appropriate network or a satellite television service, of any charge that is attributable (whether directly or indirectly) to the conferring of an entitlement to receive each of the Authority's public digital services in an intelligible form by means of that network or service.

(5) OFCOM may, by a direction to the Welsh Authority, require arrangements made or kept in force for the purposes of sub-paragraphs (2) or (3) to apply in the case of every service which is an ancillary service by reference to one of their public digital services as they apply to the service itself.

(6) For the purposes of this paragraph a public digital service of the Welsh Authority is to be treated, in relation to particular appropriate networks and satellite television services, as constituting such services comprised in or provided with that public digital service—

- (a) as may be determined by agreement between the Welsh Authority and OFCOM; or
- (b) in default of agreement, as may be directed by OFCOM.

(7) This paragraph—

- (a) so far as it relates to the broadcasting or distribution of any of the Welsh Authority's public digital services by means of appropriate networks, applies only in relation to times when that service is included in the list of must-carry services in section 64; and
- (b) so far as it relates to the broadcasting of such a public digital service by means of a satellite television service, applies only in relation to times when that service is included in the list of must-provide services in section 275.

(8) In this paragraph—

“appropriate network” means an electronic communications network by means of which public electronic communications services are provided that are used by a significant number of end-users in Wales as their principal means of receiving television programmes;

“intended audience”, in relation to a public digital service of the Welsh Authority, means—

- (a) if the service is one provided only for a particular area or locality of Wales, members of the public in that area or locality;
- (b) if the service is one provided for members of a particular community, members of that community; and
- (c) in any other case, members of the public in Wales;

“public digital service”, in relation to the Welsh Authority, means any of their public television services so far as it is provided in digital form; and

“satellite television service” means a service which—

- (a) consists in or involves the broadcasting of television programme services from a satellite; and
- (b) is used by a significant number of the persons by whom the broadcasts are received in an intelligible form as their principal means of receiving television programmes.


(9) For the purposes of this paragraph an electronic communications network is not an appropriate network in relation to so much of a channel or other service as is provided only for a particular area or locality of Wales unless it is a network by means of which electronic communications services are provided to persons in that area or locality

(10) In sub-paragraph (8) “public electronic communications service” and “end-user” each has the same meaning as in Chapter 1 of Part 2.

(11) An order under section 411 must not appoint a day for provisions of this paragraph to come into force that falls less than six months after the day on which the order is made.

Commencement

Sch. 12(2) para. 5(1)-(11): Date to be appointed (not yet in force)


Supply of services by satellite in certain areas Not Yet In Force**6**

It shall be the duty of the Welsh Authority—

- (a) to join with the providers of other must-provide services in entering into and maintaining arrangements satisfying the requirements of section 274; and
- (b) to comply with the requirements of any arrangements imposed by OFCOM for the purposes of conditions under subsection (2) of that section.

Commencement

Sch. 12(2) para. 6(a)-(b): Date to be appointed (not yet in force)

Programming quotas for independent productions Law In Force**7**

(1) It shall be the duty of the Welsh Authority to secure that, in each year, not less than 25 per cent. of the total amount of time allocated to the broadcasting of qualifying programmes included in their designated public services (taken together) is allocated to the broadcasting of a range and diversity of independent productions.

(2) In this paragraph—

- (a) a reference to qualifying programmes is a reference to programmes of such description as the Secretary of State may by order specify as describing the programmes that are to be qualifying programmes for the purposes of this paragraph;
- (b) a reference to independent productions is a reference to programmes of such description as the Secretary of State may by order specify as describing the programmes that are to be independent productions for the purposes of this paragraph; and
- (c) a reference to a range of independent productions is a reference to a range of such productions in terms of cost of acquisition as well as in terms of the types of programme involved.

(3) The Secretary of State may by order amend sub-paragraph (1) by substituting a different percentage for the percentage for the time being specified in that sub-paragraph.


(4) The Secretary of State may also by order provide for the Welsh Authority to have the duty set out in sub-paragraph (5), either instead of or as well as the one set out in sub-paragraph (1).

- (5) That duty is a duty to secure that, in each year, not less than the percentage specified in the order of the programming budget for that year for the designated public services (taken together) is applied in the acquisition of independent productions.
- (6) The power to make an order under sub-paragraph (4) includes power to provide that the Welsh Authority are again to be subject to a duty to which they have previously ceased to be subject by virtue of such an order, in addition to or instead of the duty to which they are subject (apart from the exercise of that power) by virtue of this paragraph.
- (7) The Secretary of State is not to make an order for the Welsh Authority to be or to cease to be subject to the duty mentioned in sub-paragraph (1) or (5) unless—
- (a) OFCOM have made a recommendation to him that the Authority should be subject to that duty, or should cease to be subject to it; and
 - (b) the order gives effect to that recommendation.
- (8) The Welsh Authority must comply with directions given to them by OFCOM for the purpose of—
- (a) carrying forward to one or more subsequent years determined in accordance with the direction any shortfall for any year in their compliance with the duties imposed by virtue of sub-paragraph (1) or (4); and
 - (b) thereby increasing the percentage applicable for the purposes of those duties to the subsequent year or years.
- (9) For the purposes of this paragraph—
- (a) the amount of the programming budget for a year, and
 - (b) the means of determining the amount of that budget that is applied for any purpose,
- are to be computed in accordance with such provision as may be set out in an order made by the Secretary of State, or as may be determined by OFCOM in accordance with such an order.
- (10) Before making an order under this paragraph the Secretary of State must consult OFCOM, the BBC and the Welsh Authority.
- (11) No order is to be made containing provision authorised by this paragraph unless a draft of the order has been laid before Parliament and approved by a resolution of each House.
- (12) The services that are designated public services for the purposes of this paragraph are—
- (a) S4C;
 - (b) S4C Digital; and
 - (c) any of the Welsh Authority's other public television services which is designated for the purposes of this paragraph by the order under section 205 approving its provision.
- (13) In this paragraph—
- “acquisition”, in relation to a programme, includes commissioning and acquiring a right to include it in a service or to have it broadcast;
 - “programme” does not include an advertisement; and
 - “programming budget” means the budget for the production and acquisition of qualifying programmes.

Commencement

Sch. 12(2) para. 7(1)-(13) definition of "programming budget": December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Programme quotas for original productions

 Law In Force

8

(1) It shall be the duty of the Welsh Authority, in relation to their designated public services (taken together) to secure—

- (a) that the time allocated, in each year, to the broadcasting of original productions included in those services is no less than the proportion fixed under sub-paragraph (2) of the total amount of time allocated to the broadcasting of all the programmes included in those services; and
- (b) that the time allocated to the broadcasting of original productions is split in the manner so fixed between peak viewing times and other times.

(2) The fixing for the purposes of sub-paragraph (1) of a proportion or manner of splitting allocated time is to be—

- (a) by agreement between the Welsh Authority and OFCOM; or
- (b) in default of agreement, by a direction given by OFCOM to the Authority fixing the proportion or manner according to whatever OFCOM consider appropriate for ensuring that the service is consistently of a high quality.

(3) The agreement or direction may, for the purposes of sub-paragraph (1)(b), fix a proportion for the purposes of sub-paragraph (1)(a) in terms of the cumulative effect of two different minimum proportions, one applying to peak viewing times and the other to other times.

(4) The agreement or direction may provide that specified descriptions of programmes are to be excluded in determining the programmes a proportion of which is to constitute original productions.

(5) It may also provide that, in determining whether a programme is of a description of programmes excluded by an agreement or direction by virtue of sub-paragraph (4), regard is to be had to any guidance prepared and published, and from time to time revised, by OFCOM.

(6) References in this paragraph, in relation to the designated public services of the Welsh Authority, to original productions are references to programmes of such description as the Secretary of State may by order specify as describing the programmes that are to be original productions for the purposes of this paragraph.

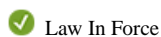
(7) The power to specify descriptions of programmes by order under sub-paragraph (6) includes power to confer such discretions on OFCOM as the Secretary of State thinks fit.

- (8) Before making an order under this paragraph the Secretary of State must consult OFCOM, the BBC and the Welsh Authority.
- (9) No order is to be made containing provision authorised by this paragraph unless a draft of the order has been laid before Parliament and approved by a resolution of each House.
- (10) The services that are designated public services for the purposes of this paragraph are—
- (a) S4C;
 - (b) S4C Digital; and
 - (c) any of the Welsh Authority's other public television services which is designated for the purposes of this paragraph by the order under section 205 approving its provision.
- (11) In this paragraph—
- “peak viewing time”, in relation to the designated public services of the Welsh Authority, means a time that is determined in accordance with sub-paragraph (12) to be a peak viewing time for one or more of those services; and
 - “programme” does not include an advertisement.
- (12) The determination for the purposes of this paragraph of peak viewing times is to be—
- (a) by agreement between the Welsh Authority and OFCOM; or
 - (b) in default of agreement, by a direction given by OFCOM to the Authority determining those times.

Commencement

Sch. 12(2) para. 8(1)-(12)(b): July 1, 2004 by SI 2003/3142 art.4(4)(c) as amended by SI 2004/545 art.2(2) (SI 2003/3142 art. 4(2), art. 4(4)(c), Sch. 2 para. 1; SI 2004/545 art. 2(2))

News and current affairs programmes



Law In Force

9

- (1) It shall be the duty of the Welsh Authority, in relation to their designated public services, to secure—
- (a) that the programmes included in each service include news programmes and current affairs programmes;
 - (b) that the news programmes and current affairs programmes included in each service deal with both national and international matters; and
 - (c) that the news programmes so included are broadcast for viewing at intervals throughout the period for which the service is provided.
- (2) It shall be the duty of the Welsh Authority, in relation to each of their designated public services, to ensure that the news programmes and current affairs programmes included in each service are of high quality.

(3) It shall also be the duty of the Welsh Authority, in relation to each of their designated public services, to secure that in each year—

- (a) the time allocated to the broadcasting of news programmes included in the service, and
 - (b) the time allocated to the broadcasting of current affairs programmes so included,
- each constitutes no less than the proportion fixed under sub-paragraph (5) of the time allocated to the broadcasting of all the programmes included in the service.

(4) It is the further duty of the Welsh Authority, in relation to each of their designated public services, to secure that the time allocated—

- (a) to the broadcasting of news programmes included in the service, and
 - (b) to the broadcasting of current affairs programmes so included,
- is, in each case, split, in the manner fixed under sub-paragraph (5), between peak viewing times and other times.

(5) The fixing for the purposes of sub-paragraph (3) or (4) of a proportion or manner of splitting allocated time is to be—

- (a) by agreement between the Welsh Authority and OFCOM; or
- (b) in default of agreement, by a direction given by OFCOM to the Authority fixing the proportion or manner according to whatever OFCOM consider appropriate.

(6) The agreement or direction may, for the purposes of sub-paragraph (4), fix a proportion for the purposes of sub-paragraph (3) in terms of the cumulative effect of two different minimum proportions, one applying to peak viewing times and the other to other times.

(7) The services that are designated public services for the purposes of this paragraph are—

- (a) S4C;
- (b) S4C Digital; and
- (c) any of the Welsh Authority's other public television services which is designated for the purposes of this paragraph by the order under section 205 approving its provision.

(8) In this paragraph “peak viewing time”, in relation to a service, means a time that is determined in accordance with sub-paragraph (9) to be a peak viewing time for that service.

(9) The determination for the purposes of this paragraph of a peak viewing time is to be—

- (a) by agreement between the Welsh Authority and OFCOM; or
- (b) in default of agreement, by a direction given by OFCOM to the Authority determining that time.

Commencement

Sch. 12(2) para. 9(1)-(9)(b): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Code relating to programme commissioning



Law In Force

10

- (1) It shall be the duty of the Welsh Authority to draw up and from time to time revise a code of practice setting out the principles that are to be applied when they or an S4C company are for a relevant purpose agreeing terms for the commissioning of independent productions.
- (2) A relevant purpose is a purpose connected with the provision by the Welsh Authority or an S4C company of a programme service.
- (3) It shall also be the duty of the Welsh Authority—
- (a) at all times to comply with the code of practice which is for the time being in force under this paragraph;
 - (b) to take all reasonable steps for securing that the code is complied with by S4C companies;
 - (c) to exercise their power to revise that code to take account of revisions from time to time of the guidance issued by OFCOM for the purposes of this paragraph; and
 - (d) to comply with such directions as may be given to the Authority by OFCOM for securing that they properly perform their duties under paragraphs (a) and (b).
- (4) The code for the time being in force under this paragraph must be such as to secure, in the manner described in guidance issued by OFCOM—
- (a) that a reasonable timetable is applied to negotiations for the commissioning of an independent production and for the conclusion of a binding agreement;
 - (b) that there is sufficient clarity when an independent production is commissioned about the different categories of rights to broadcast or otherwise to make use of or exploit the commissioned production that are being disposed of;
 - (c) that there is sufficient transparency about the amounts to be paid in respect of each category of rights;
 - (d) that satisfactory arrangements are made about the duration and exclusivity of those rights;
 - (e) that procedures exist for reviewing the arrangements adopted in accordance with the code and for demonstrating compliance with it;
 - (f) that those procedures include requirements for the monitoring of the application of the code and for the making of reports to OFCOM;
 - (g) that provision is made for resolving disputes arising in respect of the provisions of the code (by independent arbitration or otherwise) in a manner that appears to OFCOM to be appropriate.
- (5) The Welsh Authority must also ensure that the drawing up or revision of a code by virtue of this paragraph is in accordance with guidance issued by OFCOM as to—
- (a) the times when the code is to be drawn up or reviewed with a view to revision;
 - (b) the consultation to be undertaken before a code is drawn up or revised;
 - (c) the publication of every code or revised code.
- (6) The Welsh Authority must submit to OFCOM for approval a draft of—
- (a) every code that is required to be drawn up under this paragraph; and
 - (b) every revision made by that Authority of such a code.
- (7) A code drawn up by the Welsh Authority or a revision of such a code—
- (a) is to have effect for the purposes of this paragraph only if approved by OFCOM; and

(b) if approved by OFCOM subject to modifications, is to have effect with those modifications.

(8) OFCOM—

- (a) must issue and may from time to time revise guidance for the purposes of this paragraph;
- (b) must ensure that there is always guidance for those purposes in force;
- (c) must, before issuing their guidance or revised guidance, consult the providers of licensed public service channels, persons who make independent productions (or persons appearing to OFCOM to represent them), the BBC and the Welsh Authority; and
- (d) must publish their guidance or revised guidance in such manner as they think appropriate.

(9) Guidance issued by OFCOM for the purposes of this paragraph must be general guidance and is not to specify particular terms to be included in agreements to which the guidance relates.

(10) OFCOM may by a direction to the Welsh Authority specify that a code which—

- (a) was drawn up by the Authority before the commencement of this paragraph, and
- (b) is identified in the direction,

is to be treated as drawn up in pursuance of this paragraph and approved by OFCOM.

(11) In this paragraph “independent production” has the same meaning as in paragraph 7.

Commencement

Sch. 12(2) para. 10(1)-(11): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Co-operation with the public teletext provider

 Law In Force

11

(1) The Welsh Authority must grant access to the public teletext provider to the facilities that are reasonably required by him for the purposes of, or in connection with, the provision of the public teletext service.

(2) The Welsh Authority may require the public teletext provider to pay a reasonable charge in respect of facilities access to which is granted under this paragraph.

(3) In the event of a dispute, the amount of the charge is to be determined by OFCOM.

Commencement

Sch. 12(2) para. 11(1)-(3): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Programme standards

✓ Law In Force

12

It shall be the duty of the Welsh Authority in relation to their public television services to observe the standards set under section 319.

Commencement

Sch. 12(2) para. 12: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

✓ Law In Force

13

It shall be the duty of the Welsh Authority to comply with a direction given to them by OFCOM with respect to the establishment of procedures for the handling and resolution of complaints about the observance by the Authority of standards set under section 319.

Commencement

Sch. 12(2) para. 13: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

✓ Law In Force

14

(1) It shall be the duty of the Welsh Authority to comply with directions given to them by OFCOM with respect to any of the matters mentioned in sub-paragraph (2).

(2) Those matters are—

- (a) the exclusion from any of the Authority's public television services of a particular advertisement, or its exclusion in particular circumstances;
- (b) the descriptions of advertisements and methods of advertising to be excluded from the services so provided (whether generally or in particular circumstances); [...]¹
- (c) the methods of sponsorship to be excluded from those services (whether generally or in particular circumstances) [; and]²
- [(d) the forms and methods of product placement to be excluded from those services (including descriptions of products, services or trade marks product placement of which is to be excluded) (whether generally or in particular circumstances).]²

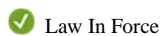
Notes

¹ Word repealed by Audiovisual Media Services (Product Placement) Regulations 2010/831 reg.10(3)(a) (April 16, 2010)

² Added by Audiovisual Media Services (Product Placement) Regulations 2010/831 reg.10(3)(b) (April 16, 2010)

Commencement

Sch. 12(2) para. 14(1)-(2)(c): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)


15

(1) This paragraph applies if OFCOM are satisfied—

[(a) that the Welsh Authority have failed in any respect to perform any of their duties under—

- (i) paragraphs 12 to 14,
- (ii) paragraph 23A,
- (iii) section 368D(1) except so far as it relates to advertising,
- (iv) section 368D(2),
- (v) section 368D(3)(zza), (zb), (a) or (b), or
- (vi) section 368E(4) except so far as it relates to advertising; and

] ¹

(b) that the failure can be appropriately remedied by the inclusion in any or all of the Authority's public television services [or on-demand programme services] ² of a correction or a statement of findings.

(2) OFCOM may direct the Welsh Authority to include a correction or a statement of findings (or both) in any one or more of their public television services [or on-demand programme services] ³

(3) A direction may require the correction or statement of findings to be in such form, and to be included in programmes at such time or times, as OFCOM may determine.

(4) OFCOM are not to give a direction under this paragraph unless they have given the Welsh Authority a reasonable opportunity of making representations to them about the matters appearing to OFCOM to provide grounds for the giving of the direction.

(5) Where the Welsh Authority include a correction or a statement of findings in any of their public television services [or on-demand programme services] ³ in pursuance of a direction under this paragraph, the Authority may announce that they are doing so in pursuance of such a direction.

(6) For the purposes of this paragraph a statement of findings, in relation to a case in which OFCOM are satisfied that the Welsh Authority have failed to perform a duty [mentioned in sub-paragraph (1)(a)] ⁴, is a statement of OFCOM's findings in relation to that failure.

Notes


¹ Substituted by Audiovisual Media Services Regulations 2020/1062 Pt 3 reg.45(b) (November 1, 2020: substitution has effect subject to transitional provision specified in SI 2020/1062 Pt 7)

- ² Words inserted by Audiovisual Media Services Regulations 2009/2979 reg.4(2)(b) (December 19, 2009)
³ Added by Audiovisual Media Services Regulations 2009/2979 reg.4(2)(b) (December 19, 2009)
⁴ Words substituted by Audiovisual Media Services Regulations 2010/419 reg.14(3) (March 18, 2010)

Commencement

Sch. 12(2) para. 15(1)-(6): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Directions with respect to advertising

 Law In Force

16

(1) The Welsh Authority must comply with directions given to them by OFCOM with respect to any of the matters mentioned in sub-paragraph (2).

(2) Those matters are—

- (a) the maximum amount of time to be given to advertisements in any hour or other period;
- (b) the minimum interval which must elapse between any two periods given over to advertisements;
- (c) the number of such periods to be allowed in any programme or in any hour or day; and
- (d) the exclusion of advertisements from a specified part of S4C or S4C Digital.

(3) Directions under this paragraph—

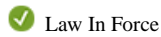
- (a) may be either general or specific;
- (b) may be qualified or unqualified; and
- (c) may make different provision for different parts of the day, different days of the week, different types of programmes or for other differing circumstances.

(4) In giving a direction under this paragraph, OFCOM shall take account of such of the international obligations of the United Kingdom as the Secretary of State may notify to them for the purposes of this paragraph.

Commencement

Sch. 12(2) para. 16(1)-(4): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Fairness standards

**17**

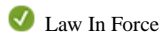
It shall be the duty of the Welsh Authority to secure the observance—

- (a) in connection with the provision of their public television services, and
 - (b) in relation to the programmes included in those services,
- of the code for the time being in force under section 107 of the 1996 Act (the fairness code).

Commencement

Sch. 12(2) para. 17(a)-(b): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Party political broadcasts

**18**

(1) It shall be the duty of the Welsh Authority to include—

- (a) party political broadcasts, and
 - (b) referendum campaign broadcasts,
- in every designated public service of theirs.

(2) The Welsh Authority must prepare, publish and from time to time review and revise their policy with respect to—

- (a) party political broadcasts and referendum campaign broadcasts; and
- (b) the manner in which they propose to perform their duty under sub-paragraph (1).

(3) The Welsh Authority's policy may, in particular, include provision for determining—

- (a) the political parties on whose behalf party political broadcasts may be made;
- (b) in relation to each political party on whose behalf such broadcasts may be made, the length and frequency of the broadcasts; and
- (c) in relation to each designated organisation on whose behalf referendum campaign broadcasts are required to be broadcast, the length and frequency of such broadcasts.

(4) That policy is to have effect subject to sections 37 and 127 of the Political Parties, Elections and Referendums Act 2000 (c. 41) (only registered parties and designated organisations to be entitled to party political broadcasts or referendum campaign broadcasts).

(5) In preparing or revising their policy with respect to the inclusion of party political broadcasts or referendum campaign broadcasts in their designated public services, the Welsh Authority must have regard to—

- (a) any views expressed for the purposes of this paragraph by the Electoral Commission; and
- (b) any rules made by OFCOM under section 333.

(6) The services that are designated public services for the purposes of this paragraph are—

- (a) S4C;
- (b) S4C Digital; and
- (c) any of the Welsh Authority's other public television services which is designated for the purposes of this paragraph by the order under section 205 approving its provision.


(7) In this paragraph—

“designated organisation”, in relation to a referendum, means a person or body designated by the Electoral Commission under section 108 of the Political Parties, Elections and Referendums Act 2000 in respect of that referendum; and
 “referendum campaign broadcast” has the meaning given by section 127 of that Act.

Commencement

Sch. 12(2) para. 18(1)-(7) definition of “referendum campaign broadcast”: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Duty to publicise complaints procedures etc.

 Law In Force

19

(1) It shall be the duty of the Welsh Authority to make arrangements for securing that the matters mentioned in sub-paragraph (2) are brought to the attention of the public (whether by means of broadcasts or otherwise).

(2) Those matters are—

- (a) OFCOM's functions under Part 5 of the 1996 Act in relation to services provided by the Welsh Authority; and
- (b) any procedures established by OFCOM or the Authority for the handling and resolution of complaints about the observance by the Authority of standards set under section 319 [or about compliance by the Authority with the requirements imposed by [section 368D and section 368E(4)]², except the [requirements mentioned in sub-paragraph (3)]³]¹.

[(3) The requirements mentioned in this sub-paragraph are—

- (a) the requirements imposed by sections 368D(1) and 368E(4) so far as they relate to advertising, and
- (b) the requirement imposed by section 368D(3)(za).

] ⁴

Notes

¹ Words inserted by Audiovisual Media Services Regulations 2009/2979 reg.4(3) (December 19, 2009)

² Words substituted by Audiovisual Media Services Regulations 2020/1062 Pt 3 reg.45(c)(i) (November 1, 2020: substitution has effect subject to transitional provision specified in SI 2020/1062 Pt 7)


³ Words substituted by Audiovisual Media Services Regulations 2010/419 reg.14(4) (March 18, 2010)

- ⁴ Substituted by Audiovisual Media Services Regulations 2020/1062 Pt 3 reg.45(c)(ii) (November 1, 2020: substitution has effect subject to transitional provision specified in SI 2020/1062 Pt 7)

Commencement

Sch. 12(2) para. 19(1)-(2)(b): December 29, 2003

Monitoring of programmes

 Law In Force

20

(1) It shall be the duty of the Welsh Authority—


- (a) in respect of every programme included in any of their public television services, to retain a recording of the programme in the form, and for the period, specified by OFCOM;
- (b) to comply with any request to produce such recordings to OFCOM for examination or reproduction; and
- (c) to comply, to the extent that they are able to do so, with any request to produce to OFCOM a script or transcript of a programme included in any of their public television services.

(2) The period specified for the purposes of sub-paragraph (1)(a) must be a period not exceeding ninety days.

Commencement

Sch. 12(2) para. 20(1)-(2): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Compliance with international obligations

 Law In Force

21

(1) OFCOM may give the Welsh Authority such directions as OFCOM consider appropriate for securing that all relevant international obligations are complied with.

(2) It shall be the duty of the Authority to comply with a direction under this paragraph.

(3) Before giving a direction under this paragraph, OFCOM must consult the Authority.

(4) In this paragraph “relevant international obligations” means the international obligations of the United Kingdom which have been notified to OFCOM by the Secretary of State for the purposes of this paragraph.


Commencement

Sch. 12(2) para. 21(1)-(4): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Services for [people with disabilities]¹

Notes

- ¹ Words substituted by Audiovisual Media Services Regulations 2020/1062 Pt 2(2) reg.19 (November 1, 2020: substitution has effect subject to transitional provision specified in SI 2020/1062 Pt 7)
-

 Law In Force

22


It shall be the duty of the Welsh Authority to observe the code for the time being in force under section 303 in the provision of—

- (a) S4C Digital; and
- (b) so much of any of the Welsh Authority's other public television services as is provided in digital form.

Commencement

Sch. 12(2) para. 22(a)-(b): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Equality of opportunity

 Law In Force

23

(1) It shall be the duty of the Welsh Authority to make such arrangements as they consider appropriate for promoting, in relation to employment with the Authority, equality of opportunity—

- (a) between men and women; and
- (b) between persons of different racial groups.

- (2) It shall be the duty of the Welsh Authority to make arrangements for promoting, in relation to employment with the Authority, the equalisation of opportunities for disabled persons.
- (3) The Welsh Authority shall also make such arrangements as they consider appropriate for the training and retraining of persons whom they employ in or in connection with—
- (a) the provision of one or more of their public services; or
 - (b) the making of programmes to be included in one or more of those services.
- (4) The Welsh Authority—
- (a) shall take all such steps as they consider appropriate for making persons affected by any arrangements made in pursuance of sub-paragraphs (1) to (3) aware of the arrangements (including the publication of the arrangements in such manner as they think fit);
 - (b) shall review the arrangements from time to time; and
 - (c) shall, from time to time (and at least annually), publish, in such manner as they consider appropriate, their observations on the current operation and effectiveness of the arrangements.
- (5) Before making any arrangements in pursuance of any of sub-paragraphs (1) to (3) or determining the manner in which they will comply with sub-paragraph (4), the Welsh Authority must consult OFCOM.
- (6) In this paragraph—
- “disabled” has the same meaning as in [the Equality Act 2010 or, in Northern Ireland,]¹ the Disability Discrimination Act 1995 (c. 50);
 - “racial group” has the same meaning as in the [Equality Act 2010]² or, in Northern Ireland, the Race Relations (Northern Ireland) Order 1997 (S.I. 1997/869 (N.I. 6)).
- (7) The Secretary of State may by order amend sub-paragraph (1) by adding any other form of equality of opportunity that he considers appropriate to that sub-paragraph.
- (8) No order is to be made containing provision authorised by sub-paragraph (7) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

Notes

¹ Possible drafting error, words purportedly inserted into the definition of 'disability' but that doesn't exist so words inserted into the definition of 'disabled' in Sch.12 para.23(6) by Equality Act 2010 c. 15 Sch.26(1) para.56(a) (October 1, 2010: commenced by an amendment; insertion has effect subject to savings and transitional provisions specified in SI 2010/2317 arts 5-22 and Schs 1-7)

² Words substituted by Equality Act 2010 c. 15 Sch.26(1) para.56(b) (October 1, 2010: commenced by an amendment; substitution has effect subject to savings and transitional provisions specified in SI 2010/2317 arts 5-22 and Schs 1-7)

Commencement

Sch. 12(2) para. 23(1)-(8): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

[On-demand programme services]¹

Notes

¹ Added by Audiovisual Media Services Regulations 2009/2979 reg.4(4) (December 19, 2009)

✓ Law In Force

[23A.—

(1) It is the duty of the Welsh Authority to comply with a direction given to them by OFCOM in relation to the establishment of procedures for the handling and resolution of complaints about compliance by the Authority with the requirements imposed by [section 368D or section 368E(4)]².

[(2) But OFCOM must not give any such direction in relation to the handling and resolution of complaints about compliance with—

- (a) the requirements imposed by section 368D(1) or 368E(4) so far as they relate to advertising, or
- (b) the requirement imposed by section 368D(3)(za).

] ³

] ¹

Notes

¹ Added by Audiovisual Media Services Regulations 2009/2979 reg.4(4) (December 19, 2009)

² Words substituted by Audiovisual Media Services Regulations 2020/1062 Pt 3 reg.45(d)(i) (November 1, 2020: substitution has effect subject to transitional provision specified in SI 2020/1062 Pt 7)

³ Substituted by Audiovisual Media Services Regulations 2020/1062 Pt 3 reg.45(d)(ii) (November 1, 2020: substitution has effect subject to transitional provision specified in SI 2020/1062 Pt 7)

Meaning of Welsh Authority's public services

✓ Law In Force

24

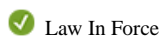
(1) In this Part of this Schedule, references to the Welsh Authority's public services are references to the following—

- (a) S4C;
- (b) S4C Digital; and
- (c) the services the provision of which by the Authority is authorised by or under section 205.

(2) References in this Schedule to a public television service of the Welsh Authority are references to any public service of the Authority which is a television programme service.

Commencement

Sch. 12(2) para. 24(1)-(2): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

SCHEDULE 13**FINANCIAL PENALTIES UNDER THE BROADCASTING ACTS****Section 345****PART 1****BROADCASTING ACT 1990**

Law In Force

1 Preliminary

The 1990 Act shall be amended as follows.

Commencement

Sch. 13(1) para. 1: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

2 Revocation of television services licence

(1) In subsection (3) of section 18 (penalty on revocation of television services licence), for “a financial penalty of the prescribed amount” there shall be substituted “a specified financial penalty”.

(2) For subsection (4) of that section (amount of penalty) there shall be substituted—

“(3A) The maximum amount which a person may be required to pay by way of a penalty under subsection (3) is the maximum penalty given by subsections (3B) and (3C).

(3B) In a case where the licence is revoked under this section or the penalty is imposed before the end of the first complete accounting period of the licence holder to fall within the period for which the licence is in force, the maximum penalty is whichever is the greater of—

- (a) £500,000; and
- (b) 7 per cent. of the amount which OFCOM estimate would have been the qualifying revenue for the first complete accounting period of the licence holder falling within the period for which the licence would have been in force.

(3C) In any other case, the maximum penalty is whichever is the greater of—

- (a) £500,000; and
- (b) 7 per cent. of the qualifying revenue for the last complete accounting period of the licence holder falling within the period for which the licence is in force.

(3D) Section 19(2) to (6) applies for estimating or determining qualifying revenue for the purposes of subsection (3B) or (3C) above.”

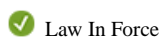
(3) This paragraph applies only in a case of a revocation in relation to which—

- (a) the notice required by section 18(2) of the 1990 Act, or
- (b) the notice revoking the licence,

is served after the commencement of this paragraph.

Commencement

Sch. 13(1) para. 2(1)-(3)(b): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

3 Licences for Channel 3 services and for Channels 4 and 5

(1) For subsection (2) of section 41 (penalties for failure by holder of licence for Channel 3 services, Channel 4 or Channel 5 to comply with licence conditions or directions) there shall be substituted—

“(1A) The amount of a financial penalty imposed on a person in pursuance of subsection (1)(a) shall not exceed 5 per cent. of the qualifying revenue for the licence holder's last complete accounting period falling within the period for which his licence has been in force ('the relevant period').

(1B) In relation to a person whose first complete accounting period falling within the relevant period has not ended when the penalty is imposed, subsection (1A) is to be construed as referring to 5 per cent. of the amount which OFCOM estimate to be the qualifying revenue for that accounting period.

(1C) Section 19(2) to (6) applies for determining or estimating qualifying revenue for the purposes of subsection (1A) or (1B) above.”

(2) This paragraph applies in relation to a failure to comply with a condition or direction only if it is one occurring after the commencement of this paragraph.

Commencement

Sch. 13(1) para. 3(1)-(2): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

4 Restricted services licences

(1) In subsection (2) of section 42B (application of sections 40 to 42 to licensing of restricted services), for “subsections (3) and (4)” there shall be substituted “subsections (3) to (3C)”.

(2) In subsection (3) of that section—

- (a) for “subsection (2)” there shall be substituted “subsections (1A) to (1C)”; and
- (b) for the words from “shall not exceed whichever is the greater” onwards there shall be substituted “is the maximum penalty given by subsection (3A).”

(3) For subsection (4) of that section (penalties for failure to comply with conditions or directions) there shall be substituted—

“(3A) The maximum penalty is whichever is the greater of—

- (a) £250,000; and
- (b) 5 per cent. of the qualifying revenue for the licence holder's last complete accounting period falling within the period for which his licence has been in force (‘the relevant period’).

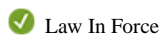
(3B) In relation to a person whose first complete accounting period falling within the relevant period has not ended when the penalty is imposed, subsection (3A)(b) is to be construed as referring to 5 per cent. of the amount which OFCOM estimate to be the qualifying revenue for that accounting period.

(3C) Section 19(2) to (6) applies for determining or estimating qualifying revenue for the purposes of subsection (3A) or (3B) above.”

(4) This paragraph applies in relation to a failure to comply with a condition or direction only if it is one occurring after the commencement of this paragraph.

Commencement

Sch. 13(1) para. 4(1)-(4): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

5 Additional television services licences

(1) For subsection (2) of section 55 (penalties for failure by holder of licence for additional television service to comply with licence conditions or directions) there shall be substituted—

“(1A) The amount of a financial penalty imposed on a person in pursuance of subsection (1) shall not exceed 5 per cent. of the qualifying revenue for the licence holder's last complete accounting period falling within the period for which his licence has been in force (‘the relevant period’).

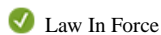
(1B) In relation to a person whose first complete accounting period falling within the relevant period has not ended when the penalty is imposed, subsection (1A) is to be construed as referring to 5 per cent. of the amount which OFCOM estimate to be the qualifying revenue for that accounting period.

(1C) Section 52(2) applies for determining or estimating qualifying revenue for the purposes of subsection (1A) or (1B) above.”

(2) This paragraph applies in relation to a failure to comply with a condition or direction only if it is one occurring after the commencement of this paragraph.

Commencement

Sch. 13(1) para. 5(1)-(2): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

6 Revocation of national sound broadcasting licence

(1) In subsection (3) of section 101 (penalty on revocation of national sound broadcasting licence), for “a financial penalty of the prescribed amount” there shall be substituted “a specified financial penalty”.

(2) For subsection (4) of that section (amount of penalty) there shall be substituted—

“(3A) The maximum amount which a person may be required to pay by way of a penalty under subsection (3) is the maximum penalty given by subsections (3B) and (3C).

(3B) In a case where the licence is revoked under this section or the penalty is imposed before the end of the first complete accounting period of the licence holder to fall within the period for which the licence is in force, the maximum penalty is whichever is the greater of—

(a) £250,000; and

(b) 7 per cent. of the amount which OFCOM estimate would have been the qualifying revenue for the first complete accounting period of the licence holder falling within the period for which the licence would have been in force.

(3C) In any other case, the maximum penalty is whichever is the greater of—

(a) £250,000; and

(b) 7 per cent. of the qualifying revenue for the last complete accounting period of the licence holder falling within the period for which the licence is in force.

(3D) Section 102(2) to (6) applies for estimating or determining qualifying revenue for the purposes of subsection (3B) or (3C) above.”

(3) This paragraph applies only in a case of a revocation in relation to which—

(a) the notice required by section 101(2) of the 1990 Act, or

(b) the notice revoking the licence,

is served after the commencement of this paragraph.

Commencement

Sch. 13(1) para. 6(1)-(3)(b): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

7 Licences for analogue sound services

(1) For subsection (2) of section 110 (penalties for failure by holder of national sound broadcasting licence to comply with licence conditions or directions) there shall be substituted—

“(1A) The maximum amount which the holder of a national licence may be required to pay by way of a financial penalty imposed in pursuance of subsection (1)(a) is the maximum penalty given by subsection (1B).

(1B) The maximum penalty is whichever is the greater of—

(a) £250,000; and

(b) 5 per cent. of the qualifying revenue for his last complete accounting period falling within the period for which his licence has been in force (‘the relevant period’).

(1C) In relation to a person whose first complete accounting period falling within the relevant period has not ended when the penalty is imposed, subsection (1B)(b) is to be construed as referring to 5 per cent. of the amount which OFCOM estimate to be the qualifying revenue for that accounting period.

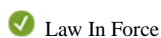
(1D) Section 102(2) to (6) applies for determining or estimating qualifying revenue for the purposes of subsection (1B) or (1C) above.”

(2) In subsection (3) of that section (maximum penalty for failure by holder of a sound broadcasting licence that is not a national licence to comply with licence conditions or directions), for “£50,000” there shall be substituted “£250,000”.

(3) This paragraph applies in relation to a failure to comply with a condition or direction only if it is one occurring after the commencement of this paragraph.

Commencement

Sch. 13(1) para. 7(1)-(3): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

8 Additional radio services licences

(1) For subsection (2) of section 120 (penalties for failure by holder of additional radio services licence to comply with licence conditions or directions) there shall be substituted—

“(1A) The amount of a financial penalty imposed on a person in pursuance of subsection (1) shall not exceed 5 per cent. of the qualifying revenue for the licence holder's last complete accounting period falling within the period for which his licence has been in force (‘the relevant period’).

(1B) In relation to a person whose first complete accounting period falling within the relevant period has not ended when the penalty is imposed, subsection (1A) is to be construed as

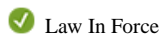
referring to 5 per cent. of the amount which OFCOM estimate to be the qualifying revenue for that accounting period.

(1C) Section 118(2) applies for determining or estimating qualifying revenue for the purposes of subsection (1A) or (1B) above.”

(2) This paragraph applies in relation to a failure to comply with a condition or direction only if it is one occurring after the commencement of this paragraph.

Commencement

Sch. 13(1) para. 8(1)-(2): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

9 Power to amend penalties under the 1990 Act

(1) The Secretary of State may by order amend any of the provisions of the 1990 Act specified in sub-paragraph (2) by substituting a different sum for the sum for the time being specified in that provision.

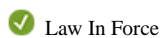
(2) Those provisions are—

- (a) section 18(3B)(a) and (3C)(a);
- (b) section 42B(3A)(a);
- (c) section 101(3B)(a) and (3C)(a);
- (d) section 110(1B)(a) and (3).

(3) No order is to be made under this paragraph unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

Commencement

Sch. 13(1) para. 9(1)-(3): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

PART 2**BROADCASTING ACT 1996**

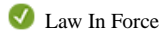
Law In Force

10 Preliminary

The 1996 Act shall be amended as follows.

Commencement

Sch. 13(2) para. 10: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

11 Revocation of television multiplex licences

(1) In subsection (5) of section 11 (penalty on revocation of television multiplex licence), the words from “not exceeding” onwards shall be omitted.

(2) For subsection (6) of that section (amount of penalty) there shall be substituted—

“(5A) The maximum amount which a person may be required to pay by way of a penalty under subsection (5) is the maximum penalty given by subsections (5B) and (5C).

(5B) In a case where the licence is revoked under this section or the penalty is imposed before the end of the first complete accounting period of the licence holder to fall within the period for which the licence is in force, the maximum penalty is whichever is the greater of—

- (a) £500,000; and
- (b) 7 per cent. of the amount which OFCOM estimate would have been the multiplex revenue for the first complete accounting period of the licence holder falling within the period for which the licence would have been in force.

(5C) In any other case, the maximum penalty is whichever is the greater of—

- (a) £500,000; and
- (b) 7 per cent. of the multiplex revenue for the last complete accounting period of the licence holder falling within the period for which the licence is in force.

(5D) Section 14 applies for estimating or determining multiplex revenue for the purposes of subsection (5B) or (5C) above.”

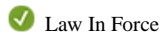
(3) This paragraph applies only in a case of a revocation in relation to which—

- (a) the notice required by section 11(2) of the 1996 Act, or
- (b) the notice revoking the licence,

is served after the commencement of this paragraph.

Commencement

Sch. 13(2) para. 11(1)-(3)(b): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

12 Attribution of television multiplex revenue

(1) In subsection (1) of section 15 (attribution of multiplex revenue for the purposes of section 17(3)), for “17(3)” there shall be substituted “17(2A) and (2B)”.

(2) In subsection (2) of that section (attribution for the purposes of sections 23(3) and 27(3)), for “section 23(3) or section 27(3)” there shall be substituted “sections 23(2A) to (5) and 27(2A) to (5)”.

(3) This paragraph has effect in relation only to cases in which section 17, 23 or 27 applies as amended by this Schedule.

Commencement

Sch. 13(2) para. 12(1)-(3): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

13 Multiplex licences

(1) In subsection (2) of section 17 (penalty for failure by holder of television multiplex licence to comply with licence conditions or directions), for the words from “whichever is the greater” onwards there shall be substituted “the maximum penalty given by subsection (2A).”

(2) For subsection (3) of that section (maximum penalties) there shall be substituted—

“(2A) The maximum penalty is whichever is the greater of—

(a) £250,000; and

(b) 5 per cent. of the share of multiplex revenue attributable to the licence holder for his last complete accounting period falling within the period for which his licence has been in force ('the relevant period').

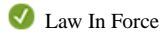
(2B) In relation to a person whose first complete accounting period falling within the relevant period has not ended when the penalty is imposed, subsection (2A)(b) is to be construed as referring to 5 per cent. of the amount which OFCOM estimate to be the share of multiplex revenue attributable to him for that accounting period.

(2C) Section 15(1) and (3) applies for determining or estimating the share of multiplex revenue attributable to a person for the purposes of subsection (2A) or (2B) above.”

(3) This paragraph applies in relation to a failure to comply with a condition or direction only if it is one occurring after the commencement of this paragraph.

Commencement

Sch. 13(2) para. 13(1)-(3): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

14 Digital television programme licences

(1) In subsection (2) of section 23 (penalty for failure by holder of digital television programme licence to comply with licence conditions or directions), for the words from “whichever is the greater” onwards there shall be substituted “the maximum penalty given by subsection (2A).”

(2) For subsection (3) of that section (maximum penalties) there shall be substituted—

“(2A) The maximum penalty is whichever is the greater of—

(a) £250,000; and

(b) 5 per cent. of the aggregate amount of the shares of multiplex revenue attributable to him in relation to television multiplex services and general multiplex services in respect of relevant accounting periods.”

(3) In subsection (4) of that section (meaning of “relevant accounting period”), for “subsection (3)(a)” there shall be substituted “subsection (2A)”.

(4) In subsection (5) of that section, for “not yet ended, then for the purposes of subsection (3)” there shall be substituted “not ended when the penalty is imposed, then for the purposes of this section”.

(5) Before subsection (6) of that section there shall be inserted—

“(5B) Section 15(2) and (3) applies for determining or estimating the share of multiplex revenue attributable to a person for the purposes of subsection (2A) or (5) above.”

(6) This paragraph applies in relation to a failure to comply with a condition or direction only if it is one occurring after the commencement of this paragraph.

Commencement

Sch. 13(2) para. 14(1)-(6): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

15 Digital additional television services licences

(1) In subsection (2) of section 27 (penalty for failure by holder of digital additional services licence to comply with licence conditions or directions), for the words from “whichever is the greater” onwards there shall be substituted “the maximum penalty given by subsection (2A).”

(2) For subsection (3) of that section (maximum penalties) there shall be substituted—

“(2A) The maximum penalty is whichever is the greater of—

(a) £250,000; and

(b) 5 per cent. of the aggregate amount of the shares of multiplex revenue attributable to him in relation to television multiplex services and general multiplex services in respect of relevant accounting periods.”

(3) In subsection (4) of that section (meaning of “relevant accounting period”), for “subsection (3)(a)” there shall be substituted “subsection (2A)”.

(4) In subsection (5) of that section, for “not yet ended, then for the purposes of subsection (3)” there shall be substituted “not ended when the penalty is imposed, then for the purposes of this section”.

(5) Before subsection (6) of that section there shall be inserted—

“(5B) Section 15(2) and (3) applies for determining or estimating the share of multiplex revenue attributable to a person for the purposes of subsection (2A) or (5) above.”

(6) This paragraph applies in relation to a failure to comply with a condition or direction only if it is one occurring after the commencement of this paragraph.

Commencement

Sch. 13(2) para. 15(1)-(6): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

16 Power to amend digital television penalties

For section 36(2) and (3) (provisions that may be amended and negative resolution procedure) there shall be substituted—

“(2) The provisions referred to in subsection (1) are—

(a) section 11(5B)(a) and (5C)(a);

(b) section 17(2A)(a);

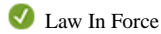
(c) section 23(2A)(a); and

(d) section 27(2A)(a).

(3) No order is to be made under subsection (1) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.”

Commencement

Sch. 13(2) para. 16: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

17 Revocation of radio multiplex licences

(1) In section 53(5) (maximum penalty on revocation of radio multiplex licence), for “£50,000”, in both places, there shall be substituted “£250,000”.

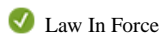
(2) This paragraph applies only in a case of a revocation in relation to which—

- (a) the notice required by section 53(2) of the 1996 Act, or
- (b) the notice revoking the licence,

is served after the commencement of this paragraph.

Commencement

Sch. 13(2) para. 17(1)-(2)(b): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

18 Attribution of radio multiplex revenue

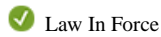
(1) In subsection (1) of section 57 (attribution of multiplex revenue for the purposes of sections 59(3)), for “59(3)” there shall be substituted “59(2A) and (2B)”.

(2) In subsection (2) of that section, (attribution for the purposes of sections 62(3) and 66(3)), for “section 62(3) or section 66(3)” there shall be substituted “sections 62(2A) to (5) and 66(2A) to (5)”.

(3) This paragraph has effect in relation only to cases in which section 59, 62 or 66 applies as amended by this Schedule.

Commencement

Sch. 13(2) para. 18(1)-(3): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

19 Contraventions of conditions of radio multiplex licences

(1) In subsection (2) of section 59 (penalty for failure by holder of radio multiplex licence to comply with licence conditions or directions), for the words from “whichever is the greater” onwards there shall be substituted “the maximum penalty given by subsection (2A).”

(2) For subsection (3) of that section (maximum penalties) there shall be substituted—

“(2A) The maximum penalty is whichever is the greater of—

(a) £250,000; and

(b) 5 per cent. of the aggregate amount of the share of multiplex revenue attributable to him for his last complete accounting period falling within a period for which his licence has been in force (‘the relevant period’).

(2B) In relation to a person whose first complete accounting period falling within the relevant period has not ended when the penalty is imposed, subsection (2A)(b) is to be construed as referring to 5 per cent. of the amount which OFCOM estimate to be the share of multiplex revenue attributable to him for that accounting period.

(2C) Section 57(1) and (3) applies for determining or estimating the share of multiplex revenue attributable to a person for the purposes of subsection (2A) or (2B) above.”

(3) In subsection (4) of that section (maximum penalty to be imposed on holder of local radio multiplex licences for failure to comply with conditions or directions), for “£50,000” there shall be substituted “£250,000”.

(4) This paragraph applies in relation to a failure to comply with a condition or direction only if it is one occurring after the commencement of this paragraph.

Commencement

Sch. 13(2) para. 19(1)-(4): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

20 Digital sound programme licences

(1) In subsection (2) of section 62 (penalty for failure by holder of digital sound programme licence to comply with licence conditions or directions), for the words from “whichever is the greater” onwards there shall be substituted “the maximum penalty given by subsection (2A).”

(2) For subsection (3) of that section (maximum penalties) there shall be substituted—

“(2A) The maximum penalty is whichever is the greater of—

(a) £250,000; and

(b) 5 per cent. of the aggregate amount of the shares of multiplex revenue attributable to him in relation to relevant multiplex services in respect of relevant accounting periods.”

(3) In subsection (4) of that section (meaning of “relevant accounting period”), for “subsection (3)” there shall be substituted “subsection (2A)”.

(4) In subsection (5) of that section, for “not yet ended, then for the purposes of subsection (3)” there shall be substituted “not ended when the penalty is imposed, then for the purposes of this section”.

(5) After that subsection there shall be inserted—

“(5A) A determination or estimate for the purposes of subsection (2A) or (5) above of the share of multiplex revenue attributable to a person in relation to national radio multiplex services is to be in accordance with section 57(2) and (3).

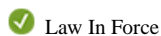
(5B) A determination or estimate for the purposes of subsection (2A) or (5) above of the share of multiplex revenue attributable to a person in relation to television multiplex services or general multiplex services is to be in accordance with section 15(2) and (3).”

(6) In subsection (6) of that section (maximum penalty where licence is a local digital sound programme licence), for “£50,000” there shall be substituted “£250,000”.

(7) This paragraph applies in relation to a failure to comply with a condition or direction only if it is one occurring after the commencement of this paragraph.

Commencement

Sch. 13(2) para. 20(1)-(7): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

21 Licences for digital additional sound services

(1) In subsection (2) of section 66 (penalty for failure by holder of digital additional sound services licence to comply with licence conditions or directions), for the words from “whichever is the greater” onwards there shall be substituted “the maximum penalty given by subsection (2A).”

(2) For subsection (3) of that section (maximum penalties) there shall be substituted—

“(2A) The maximum penalty is whichever is the greater of—

(a) £250,000; and

(b) 5 per cent. of the aggregate amount of the shares of multiplex revenue attributable to him in relation to relevant multiplex services in respect of relevant accounting periods.”

(3) In subsection (4) of that section (maximum penalty where licence is a local digital sound programme licence), for “£50,000” there shall be substituted “£250,000”.

(4) In subsection (5) of that section (meaning of “relevant accounting period”) for “subsection (3)” there shall be substituted “subsection (2A)”.

(5) In subsection (6) of that section, for “not yet ended, then for the purposes of subsection (3)” there shall be substituted “not ended when the penalty is imposed, then for the purposes of this section”.

(6) After that subsection there shall be inserted—


“(6A) A determination or estimate for the purposes of subsection (2A) or (6) above of the share of multiplex revenue attributable to a person in relation to national radio multiplex services is to be in accordance with section 57(2) and (3).

(6B) A determination or estimate for the purposes of subsection (2A) or (6) above of the share of multiplex revenue attributable to a person in relation to general multiplex services is to be in accordance with section 15(2) and (3).”

(7) This paragraph applies in relation to a failure to comply with a condition or direction only if it is one occurring after the commencement of this paragraph.

Commencement

Sch. 13(2) para. 21(1)-(7): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

 Law In Force

22 Power to amend digital television penalties

For section 69(2) and (3) (provisions that may be amended and negative resolution procedure) there shall be substituted—

“(2) The provisions referred to in subsection (1) are—

- (a) section 53(5)(a) and (b)(i);
- (b) section 59(2A)(a) and (4);
- (c) section 62(2A)(a) and (6); and
- (d) section 66(2A)(a) and (4).

(3) No order is to be made under subsection (1) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.”

Commencement

Sch. 13(2) para. 22: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)


SCHEDULE 14

MEDIA OWNERSHIP RULES

Section 350

PART 1

CHANNEL 3 SERVICES

 Law In Force

1 Ban on newspaper proprietors holding Channel 3 licences

- (1) A person is not to hold a licence to provide a Channel 3 service if—
- (a) he runs a national newspaper which for the time being has a national market share of 20 per cent. or more; or
 - (b) he runs national newspapers which for the time being together have a national market share of 20 per cent. or more.
- (2) [...]¹
- (3) For the purposes of this paragraph, where there is a licence to provide a Channel 3 service, each of the following shall be treated as holding that licence—
- (a) the actual licence holder; and
 - (b) every person connected with the actual licence holder.

Notes

- ¹ Repealed by Media Ownership (Radio and Cross-media) Order 2011/1503 art.3 (June 15, 2011; the enabling authority contained in 2003 c.21 Sch.14 Pt 2 para.10 is repealed by SI 2011/1503 together with the repeal of Sch.14 Pt 1 para.1(2) and the remaining provisions of Sch.14 Pt 2, thereby removing various restrictions as specified in the Explanatory Note of SI 2011/1503)

Commencement

Sch. 14(1) para. 1(1)-(3)(b): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

 Law In Force

2 Restrictions on participation

- (1) A person who is—
- (a) the proprietor of a national newspaper which for the time being has a national market share of 20 per cent. or more, or
 - (b) the proprietor of national newspapers which for the time being together have a national market share of 20 per cent. or more,

is not to be a participant with more than a 20 per cent. interest in a body corporate which is the holder of a licence to provide a Channel 3 service.

(2) A person who is the holder of a licence to provide a Channel 3 service is not to be a participant with more than a 20 per cent. interest in a body corporate which is a relevant national newspaper proprietor.

(3) A body corporate is not to be a participant with more than a 20 per cent. interest in a body corporate which holds a licence to provide a Channel 3 service if the first body corporate is one in which a relevant national newspaper proprietor is a participant with more than a 20 per cent. interest.

(4) A restriction imposed by this paragraph on participation in a body corporate which is the holder of a Channel 3 licence applies equally to participation in a body corporate which controls the holder of such a licence.

(5) Any restriction on participation imposed by this paragraph—

- (a) on the proprietor of a newspaper, or
- (b) on the holder of a licence,

is to apply as if he and every person connected with him were one person.

(6) In this paragraph “a relevant national newspaper proprietor” means a person who runs—

- (a) a national newspaper which for the time being has a national market share of 20 per cent. or more; or
- (b) national newspapers which for the time being together have a national market share of 20 per cent. or more.

Commencement

Sch. 14(1) para. 2(1)-(6)(b): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

3 National and local newspapers and their respective national and local market shares

(1) In this Part of this Schedule references to a national or local newspaper are references to a national or local newspaper circulating wholly or mainly in the United Kingdom or in a part of the United Kingdom.

(2) Where a newspaper is published in different regional editions on the same day, OFCOM have the power to determine whether those regional editions should be treated for the purposes of this Part of this Schedule as constituting—

- (a) one national newspaper;
- (b) two or more local newspapers; or
- (c) one national newspaper and one or more local newspapers.

(3) In the case of a newspaper which would otherwise be neither a national nor a local newspaper for the purposes of this Part of this Schedule, OFCOM have the power to determine, if they consider it appropriate to do so in the light of—

- (a) its circulation and influence in the United Kingdom, or

(b) its circulation or influence in a part of the United Kingdom, that the newspaper is to be treated as a national or as a local newspaper for such of those purposes as they may determine.

(4) For the purposes of this Part of this Schedule, the national market share of a national newspaper at any time is the percentage of the total number of copies of all national newspapers sold in the United Kingdom in the relevant six months which is represented by the total number of copies of that newspaper sold in the United Kingdom in that six months.

(5) [...] ¹

(6) In [sub-paragraph (4)] ² “the relevant six months” means the six months ending with the last whole calendar month to end before the time in question.

(7) For the purposes of [sub-paragraph (4)] ³, the number of copies of a newspaper sold in the United Kingdom [...] ⁴ during any period may be taken to be such number as is estimated by OFCOM—

(a) in such manner, or

(b) by reference to such statistics prepared by any other person, as they think fit.

(8) In relation to a newspaper which is distributed free of charge (rather than sold), references in this paragraph to the number of copies sold include references to the number of copies distributed.

Notes

¹ Repealed by Media Ownership (Radio and Cross-media) Order 2011/1503 art.6(2) (June 15, 2011; the enabling authority contained in 2003 c.21 Sch.14 Pt 2 para.10 is repealed by SI 2011/1503 together with the repeal of Sch.14 Pt 1 para.1(2) and the remaining provisions of Sch.14 Pt 2, thereby removing various restrictions as specified in the Explanatory Note of SI 2011/1503)

² Words substituted by Media Ownership (Radio and Cross-media) Order 2011/1503 art.6(3) (June 15, 2011; the enabling authority contained in 2003 c.21 Sch.14 Pt 2 para.10 is repealed by SI 2011/1503 together with the repeal of Sch.14 Pt 1 para.1(2) and the remaining provisions of Sch.14 Pt 2, thereby removing various restrictions as specified in the Explanatory Note of SI 2011/1503)

³ Words substituted by Media Ownership (Radio and Cross-media) Order 2011/1503 art.6(4)(a) (June 15, 2011; the enabling authority contained in 2003 c.21 Sch.14 Pt 2 para.10 is repealed by SI 2011/1503 together with the repeal of Sch.14 Pt 1 para.1(2) and the remaining provisions of Sch.14 Pt 2, thereby removing various restrictions as specified in the Explanatory Note of SI 2011/1503)

⁴ Words repealed by Media Ownership (Radio and Cross-media) Order 2011/1503 art.6(4)(b) (June 15, 2011; the enabling authority contained in 2003 c.21 Sch.14 Pt 2 para.10 is repealed by SI 2011/1503 together with the repeal of Sch.14 Pt 1 para.1(2) and the remaining provisions of Sch.14 Pt 2, thereby removing various restrictions as specified in the Explanatory Note of SI 2011/1503)

Commencement

Sch. 14(1) para. 3(1)-(8): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



4 Construction of references to running a newspaper

For the purposes of this Part of this Schedule a person runs a [...] ¹ newspaper if—

(a) he is the proprietor of the newspaper; or

(b) he controls a body which is the proprietor of the newspaper.

Notes

- ¹ Words repealed by Media Ownership (Radio and Cross-media) Order 2011/1503 art.7 (June 15, 2011; the enabling authority contained in 2003 c.21 Sch.14 Pt 2 para.10 is repealed by SI 2011/1503 together with the repeal of Sch.14 Pt 1 para.1(2) and the remaining provisions of Sch.14 Pt 2, thereby removing various restrictions as specified in the Explanatory Note of SI 2011/1503)

Commencement


Sch. 14(1) para. 4(a)-(b): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

 Repealed

5 [...]¹

Notes

- ¹ Repealed by Media Ownership (Radio and Cross-media) Order 2011/1503 art.8 (June 15, 2011; the enabling authority contained in 2003 c.21 Sch.14 Pt 2 para.10 is repealed by SI 2011/1503 together with the repeal of Sch.14 Pt 1 para.1(2) and the remaining provisions of Sch.14 Pt 2, thereby removing various restrictions as specified in the Explanatory Note of SI 2011/1503)
-

 Law In Force

6 Power to amend Part 1 of Schedule

The Secretary of State may by order repeal or otherwise modify any of the restrictions imposed by this Part of this Schedule.

Commencement

Sch. 14(1) para. 6: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

PART 2

RADIO MULTIPLEX SERVICES

 Repealed

7 [...]¹

Notes

- ¹ Repealed by Media Ownership (Radio and Cross-media) Order 2011/1503 art.3 (June 15, 2011; the enabling authority contained in 2003 c.21 Sch.14 Pt 2 para.10 is repealed by SI 2011/1503 together with the repeal of Sch.14

Pt 1 para.1(2) and the remaining provisions of Sch.14 Pt 2, thereby removing various restrictions as specified in the Explanatory Note of SI 2011/1503)

 Repealed

8 [...]¹

Notes

- ¹ Repealed by Media Ownership (Radio and Cross-media) Order 2011/1503 art.3 (June 15, 2011; the enabling authority contained in 2003 c.21 Sch.14 Pt 2 para.10 is repealed by SI 2011/1503 together with the repeal of Sch.14 Pt 1 para.1(2) and the remaining provisions of Sch.14 Pt 2, thereby removing various restrictions as specified in the Explanatory Note of SI 2011/1503)
-

 Repealed

9 [...]¹

Notes

- ¹ Repealed by Media Ownership (Radio and Cross-media) Order 2011/1503 art.3 (June 15, 2011; the enabling authority contained in 2003 c.21 Sch.14 Pt 2 para.10 is repealed by SI 2011/1503 together with the repeal of Sch.14 Pt 1 para.1(2) and the remaining provisions of Sch.14 Pt 2, thereby removing various restrictions as specified in the Explanatory Note of SI 2011/1503)
-

 Repealed

10 [...]¹

Notes

- ¹ Repealed by Media Ownership (Radio and Cross-media) Order 2011/1503 art.3 (June 15, 2011; the enabling authority contained in 2003 c.21 Sch.14 Pt 2 para.10 is repealed by SI 2011/1503 together with the repeal of Sch.14 Pt 1 para.1(2) and the remaining provisions of Sch.14 Pt 2, thereby removing various restrictions as specified in the Explanatory Note of SI 2011/1503)
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PART 3

LOCAL SOUND PROGRAMME SERVICES

 Law In Force

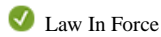
11 Restriction on holding of local sound broadcasting licences

(1) The Secretary of State may by order impose—

- (a) requirements prohibiting the holding at the same time by the same person, in the circumstances described in the order, of more than the number of local sound broadcasting licences that is determined in the manner set out in the order;
 - (b) requirements prohibiting a person from holding even one local sound broadcasting licence in the circumstances described in the order.
- (2) The circumstances by reference to which a person may be prohibited under sub-paragraph (1) from holding a local sound broadcasting licence, and the factors that may be used for determining the number of such licences that he may hold, include, in particular—
- (a) whether and to what extent the coverage areas of different services provided by that person under different local sound broadcasting licences would overlap;
 - (b) the sizes of the potential audiences for those services and the times when those services would be made available;
 - (c) whether and to what extent members of the potential audiences for those services would also be members of the potential audiences for services provided under local sound broadcasting licences held by other persons;
 - (d) in a case in which members of potential audiences for services so provided by that person would also be members of the potential audiences for services so provided by other persons—
 - (i) the number of those other persons;
 - (ii) the coverage areas of their services;
 - (iii) the sizes of the potential audiences for their services; and
 - (iv) the times when their services are or will be made available;
 - (e) whether that person runs one or more national newspapers, and their national market share;
 - (f) whether and to what extent the whole or a part of the coverage area for a service for which that person would hold a local sound broadcasting licence is or includes an area in which one or more local newspapers run by him is circulating, and the newspapers' local market share;
 - (g) whether and to what extent the whole or a part the coverage area for which that person would hold a local sound broadcasting licence is or is included in the coverage area of a regional Channel 3 service for which he also holds a licence.
- (3) For the purposes of this paragraph the coverage area for a service provided under a local sound broadcasting licence or a Channel 3 licence is the area in the United Kingdom within which that service is capable of being received at a level satisfying such technical standards as may have been laid down by OFCOM for the purposes of the provisions of an order under this paragraph.

Commencement

Sch. 14(3) para. 11(1)-(3): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

12 Restriction applying to local digital sound programme services

(1) The Secretary of State may by order impose requirements, on persons holding local digital sound programme licences, prohibiting the provision by the same person, in the circumstances described in the order, of more than the number of local digital sound programme services that is determined in the manner set out in the order.

(2) The circumstances by reference to which a person may be prohibited under sub-paragraph (1) from providing a local digital sound programme service, and the factors that may be used for determining the number of such services that he may provide, include, in particular—

- (a) whether and to what extent the coverage areas of different local digital sound programme services provided by that person would overlap;
- (b) the capacity used by those services on the relevant multiplexes;
- (c) the sizes of the potential audiences for those services and the times when those services would be made available;
- (d) whether and to what extent members of the potential audiences for those services would also be members of the potential audiences for local digital sound programme services provided by other persons;
- (e) in a case in which members of the potential audiences for the services provided by that person would also be members of the potential audiences for local digital sound programme services provided by other persons—
 - (i) the number of those other persons;
 - (ii) the coverage areas of their services;
 - (iii) the capacity used by their services on the relevant multiplexes;
 - (iv) the sizes of the potential audiences for their services; and
 - (v) the times when their services are or will be made available.

(3) For the purposes of this paragraph the coverage area for a service provided under a local digital sound programme licence is the area in the United Kingdom within which the relevant multiplex is capable of being received at a level satisfying such technical standards as may have been laid down by OFCOM for the purposes of the provisions of an order under this paragraph.

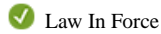
(4) In this paragraph “the relevant multiplex”, in relation to a service provided under a local digital sound programme licence, means the local radio multiplex service in which the service provided under that licence is or is to be included.

(5) For the purposes of this paragraph a person who holds a licence to provide local digital sound programme services provides such a service if, and only if—

- (a) the service is one provided by him and is included in a local radio multiplex service for which he holds a local radio multiplex licence; or
- (b) under a contract between that person and a person who holds a licence to provide a local radio multiplex service, the person holding the licence to provide the radio multiplex service is required to include that local digital sound programme service in that multiplex service.

Commencement

Sch. 14(3) para. 12(1)-(5)(b): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

13 Powers supplemental to powers under paragraphs 11 and 12

- (1) An order under paragraph 11 or 12 may make provision for treating—
- (a) persons who are connected with a person who holds a licence,
 - (b) persons who are associates of a person who holds a licence or of a person who is connected with a person who holds a licence, and
 - (c) persons who (whether alone or together with such persons as may be described in the order) participate in a body which holds a licence or is treated as doing so by virtue of paragraph (a) or (b),

as if each of them were also a holder of the licence for the purposes of a requirement imposed under that paragraph.

- (2) An order under paragraph 12 may make provision for treating—
- (a) persons who are connected with a person who provides a local digital sound programme service,
 - (b) persons who are associates of a person who provides such a service or of a person who is connected with a person who provides such a service, and
 - (c) persons who (whether alone or together with such persons as may be described in the order) participate in a body who provides such a service or is treated as doing so by virtue of paragraph (a) or (b),

as if each of them were also a person providing the service for the purposes of a requirement imposed under that paragraph.

- (3) An order under paragraph 11 or 12 may also make provision for treating—
- (a) persons who are connected with each other,
 - (b) persons who are associates of each other, and
 - (c) persons who (whether alone or together with such persons as may be described in the order) participate in a body,

as if they and such other persons who are connected with, associates of or participants in any of them as may be described in the order were the same person for the purposes of a requirement imposed under that paragraph.

- (4) An order under paragraph 11 may make provision—
- (a) as to the circumstances in which a newspaper is to be treated as a national newspaper or a local newspaper for the purposes of a requirement imposed under that paragraph;
 - (b) as to the person or persons who are to be treated for any such purposes as running a newspaper;
 - (c) as to the determination for any such purposes of the area within which a local newspaper is circulating; and

(d) as to what is to constitute the national market share or local market share of any newspaper or of a number of newspapers taken together; and provision made by virtue of this paragraph may apply, with or without modifications, any of the provisions of paragraph 3 or 4 of this Schedule [or section 5(6AA) to (6AD) of the Broadcasting Act 1990]¹ .

(5) Power to make provision with respect to any matter by any order under paragraph 11 or 12 includes power—

- (a) to make provision with respect to that matter by reference to the making or giving by OFCOM, in accordance with the order, of any determination, approval or consent; and
- (b) to confer such other discretions on OFCOM as the Secretary of State thinks fit.

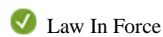
(6) Sub-paragraph (5) of paragraph 12 applies for the purposes of this paragraph as it applies for the purposes of that paragraph.

Notes

- ¹ Words inserted by Media Ownership (Radio and Cross-media) Order 2011/1503 art.9 (June 15, 2011; the enabling authority contained in 2003 c.21 Sch.14 Pt 2 para.10 is repealed by SI 2011/1503 together with the repeal of Sch.14 Pt 1 para.1(2) and the remaining provisions of Sch.14 Pt 2, thereby removing various restrictions as specified in the Explanatory Note of SI 2011/1503)

Commencement

Sch. 14(3) para. 13(1)-(6): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

14 Transitional provision for orders under paragraphs 11 and 12

(1) This paragraph applies where—

- (a) immediately after the coming into force of an order under paragraph 11 or 12, a person (“the person in contravention”) is in contravention, in any respect, of a requirement imposed under that paragraph; and
- (b) immediately before the coming into force of the order, that person—
 - (i) held one or more relevant licences; but
 - (ii) was not, in that respect, in contravention of a requirement imposed under that paragraph.

(2) This paragraph does not apply in the case of the first order to be made under paragraph 11 or 12 if the person in contravention was, immediately before the coming into force of the order, in contravention, in relation to one or more of the relevant licences, of a requirement imposed under Part 3 or 4 of Schedule 2 to the 1990 Act.

(3) In sub-paragraphs (1) and (2) the reference to a relevant licence is—

- (a) in relation to the coming into force of an order under paragraph 11, a local sound broadcasting licence; and
- (b) in relation to the coming into force of an order under paragraph 12, a local digital sound programme licence.

(4) The contravention mentioned in sub-paragraph (1)(a), to the extent that it arises by reason of the coming into force of the order, is to be disregarded (in the case of the person in contravention) in relation to any time which falls—

- (a) after the coming into force of the order; and
- (b) before there is a relevant change of circumstances.

(5) Where the contravention is one arising under paragraph 11 in the case of a person who held one or more local sound broadcasting licences immediately before the coming into force of the order, there is a relevant change of circumstances if—

- (a) another person becomes the holder of any of those licences, otherwise than in consequence of a transaction under which the person in contravention ceases to be a holder of the licence; or
- (b) the person in contravention becomes the holder of another local sound broadcasting licence.

(6) A change of circumstances is not a relevant change of circumstances by virtue of sub-paragraph (5)(b) unless the licence of which the person in contravention becomes the holder is one the holding of which, with the holding of licences already held by him, would (apart from sub-paragraph (4)) constitute a contravention of a requirement imposed under paragraph 11.

(7) Where the contravention is one arising under paragraph 12 in the case of a person who, under a local digital sound programme licence, was providing one or more local digital sound programme services immediately before the coming into force of the order, there is a relevant change of circumstances if—

- (a) another person becomes the holder of that licence, otherwise than in consequence of a transaction under which the person in contravention ceases to be a holder of the licence; or
- (b) the person in contravention becomes the provider of another local digital sound programme service provided under that licence.

(8) A change of circumstances is not a relevant change of circumstances by virtue of sub-paragraph (7)(b) unless the service of which the person in contravention becomes the provider is one the provision of which, with the services already provided by him, would (apart from sub-paragraph (4)) constitute a contravention of a requirement imposed under paragraph 12.

(9) For the purposes of this paragraph, in its application in relation to a contravention of a requirement imposed under paragraph 11 or 12—


- (a) references to holding a licence or providing a local digital sound programme service are to be construed in accordance with the provision having effect for the purposes of that requirement; and
- (b) the persons who are taken to be holding a local digital sound programme licence immediately before the coming into force of the order include every person who at that time would, in accordance with that provision, be treated as providing local digital sound programme services that were being provided at that time under that licence.

Commencement

Sch. 14(3) para. 14(1)-(9)(b): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

PART 4

RELIGIOUS BODIES ETC.

 Law In Force

15 Approval required for religious bodies etc. to hold licences

- (1) A person mentioned in paragraph 2(1) of Part 2 of Schedule 2 to the 1990 Act (religious bodies etc.) is not to hold a Broadcasting Act licence not mentioned in paragraph 2(1A) of that Part unless—
- (a) OFCOM have made a determination in his case as respects a description of licences applicable to that licence; and
 - (b) that determination remains in force.
- (2) OFCOM are to make a determination under this paragraph in a person's case and as respects a particular description of licence if, and only if, they are satisfied that it is appropriate for that person to hold a licence of that description.
- (3) OFCOM are not to make a determination under this paragraph except on an application made to them for the purpose.
- (4) OFCOM must publish guidance for persons making applications to them under this paragraph as to the principles that they will apply when determining for the purposes of sub-paragraph (2) what is appropriate.
- (5) OFCOM must have regard to guidance for the time being in force under sub-paragraph (4) when making determinations under this paragraph.
- (6) OFCOM may revise any guidance under sub-paragraph (4) by publishing their revisions of it.
- (7) The publication of guidance under sub-paragraph (4), or of any revisions of it, is to be in whatever manner OFCOM consider appropriate.

Commencement

Sch. 14(4) para. 15(1)-(7): September 18, 2003 subject to transitional provisions specified in SI 2003/1900 art.5 (SI 2003/1900 art. 2(2), art. 5, Sch. 2 para. 1)

 Law In Force

16 Power to amend Part 4 of Schedule

The Secretary of State may by order repeal or otherwise modify the restriction imposed by this Part of this Schedule.

Commencement

Sch. 14(4) para. 16: September 18, 2003 subject to transitional provisions specified in SI 2003/1900 art.5 (SI 2003/1900 art. 2(2), art. 5, Sch. 2 para. 1)

PART 5**SUPPLEMENTAL PROVISIONS OF SCHEDULE**

✓ Law In Force

17 Procedure for orders

(1) Before making an order under any provision of this Schedule (other than one that is confined to giving effect to recommendations made by OFCOM in a report of a review under section 391), the Secretary of State must consult OFCOM.

(2) No order is to be made containing provision authorised by any provision of this Schedule unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

Commencement

Sch. 14(5) para. 17(1)-(2): September 18, 2003 for purposes specified in SI 2003/1900 Sch.2; December 12, 2003 otherwise (SI 2003/1900 art. 2(2), Sch. 2 para. 1; SI 2003/3142 art. 2)

✓ Law In Force

18 Interpretation of Schedule

(1) Part 1 of Schedule 2 to the 1990 Act applies for construing this Schedule as it applies for construing Part 2 of that Schedule.

(2) References in this paragraph to an area overlapping another include references to its being the same as, or lying wholly inside, the other area.

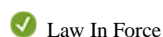
Commencement

Sch. 14(5) para. 18(1)-(2): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

SCHEDULE 15
AMENDMENTS OF BROADCASTING ACTS

Section 360

PART 1
AMENDMENTS OF THE 1990 ACT



Law In Force

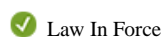
1 Licences under Part 1

- (1) Section 3 of the 1990 Act (licensing under Part 1) shall be amended as follows.
- (2) For “the Commission” and “The Commission”, wherever occurring, there shall be substituted “OFCOM”.
- (3) In subsection (1), for “Chapter II, III, IV or V of this Part” there shall be substituted “Chapter 2 or 5 of this Part or section 235 of the Communications Act 2003”.
- (4) For subsection (8) (saving for telecommunications licences) there shall be substituted—

“ (8) The holding by a person of a licence under this Part shall not relieve him of—
 (a) any liability in respect of a failure to hold a licence under section 1 of the Wireless Telegraphy Act 1949; or
 (b) any obligation to comply with requirements imposed by or under Chapter 1 of Part 2 of the Communications Act 2003 (electronic communications networks and electronic communications services).”

Commencement

Sch. 15(1) para. 1(1)-(4): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

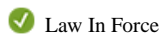
2 General licence conditions

- (1) Section 4 of the 1990 Act (general licence conditions) shall be amended as follows.
- (2) For “the Commission”, wherever occurring, there shall be substituted “OFCOM”.
- (3) In subsection (1), in each of paragraphs (a) and (c), after “this Act” there shall be inserted “, the Broadcasting Act 1996 or the Communications Act 2003”.
- (4) In subsection (3) (fixing of fees), the words from “and the amount” onwards shall be omitted.

- (5) In subsection (5) (provision of false information to be breach of condition)—
- (a) for “imposed under this Part” there shall be substituted “contained in the licence”; and
 - (b) after “and 42” there shall be inserted “or (as the case may be) sections 237 and 238 of the Communications Act 2003 (enforcement of television licensable content service licences)”.

Commencement

Sch. 15(1) para. 2(1)-(5)(b): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

3 Restrictions on licence holding

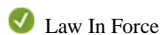
- (1) Section 5 of the 1990 Act (restrictions on licence holding) shall be amended as follows.
- (2) For “The Commission” and “the Commission”, wherever occurring, there shall be substituted “OFCOM”.
- (3) In subsection (2) (incidental requirements to provide information), after paragraph (d) there shall be inserted—
- “(da) impose conditions in a licence requiring the licence holder, if a body corporate, to give OFCOM notice, after they have occurred and irrespective of whether proposals for them have fallen to be notified, of changes, transactions or events affecting—
 - (i) shareholdings in the body; or
 - (ii) the directors of the body;
 - (db) impose conditions in a licence enabling OFCOM to require the licence holder to provide them with such information as they may reasonably require for determining—
 - (i) whether the licence holder is a disqualified person in relation to that licence by virtue of Part 2 of Schedule 2; or
 - (ii) whether any such requirements as are mentioned in subsection (1)(b) have been and are being complied with by or in relation to the licence holder;”.
- (4) In subsection (6)—
- (a) in paragraph (a), for “complained of” there shall be substituted “constituting their grounds for revoking the licence”; and
 - (b) in paragraph (b)(i), for “Parts III and IV of Schedule 2” there shall be substituted “the requirements imposed by or under Schedule 14 to the Communications Act 2003,”.
- (5) In subsection (6A)—
- (a) paragraph (a) shall cease to have effect; and
 - (b) in paragraph (b), for “Part IV of that Schedule” there shall be substituted “Part 1 of Schedule 14 to the Communications Act 2003”.

(6) Subsection (6B) shall cease to have effect.

(7) In subsection (7), for the words from “a failure” to the end of paragraph (c) there shall be substituted “a disqualification under Part 2 of Schedule 2 to this Act or a contravention of a requirement imposed by or under Schedule 14 to the Communications Act 2003”.

Commencement

Sch. 15(1) para. 3(1)-(7): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



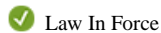
Law In Force

4 Repeal of previous regulatory regime

Sections 6 to 12 of the 1990 Act (which contain the mechanism for regulation in relation to licences under Part 1 of that Act) shall cease to have effect.

Commencement

Sch. 15(1) para. 4: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

5 Prohibition on providing television services without a licence

(1) Section 13 of the 1990 Act (prohibition on providing television services without a licence) shall be amended as follows.

(2) In subsection (1) (offence of providing such service without a licence), for “service falling within section 2(1)(a), (aa), (b), (c), (cc) or (d)” there shall be substituted “relevant regulated television service”.

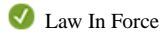
(3) After that subsection there shall be inserted—

“(1A) In subsection (1) ‘relevant regulated television service’ means a service falling, in pursuance of section 211(1) of the Communications Act 2003, to be regulated by OFCOM, other than a television multiplex service.”

(4) In subsection (2) (exemption orders made after consulting the ITC), for “the Commission” there shall be substituted “OFCOM”.

Commencement

Sch. 15(1) para. 5(1)-(4): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



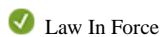
Law In Force

6 Television broadcasting on Channel 3

In section 14 of the 1990 Act (establishment of Channel 3), for “The Commission” and “the Commission”, wherever occurring, there shall be substituted “OFCOM”.

Commencement

Sch. 15(1) para. 6: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

7 Applications for Channel 3 licences

(1) Section 15 of the 1990 Act (applications for Channel 3 licences) shall be amended as follows.

(2) For “the Commission” and “The Commission”, wherever occurring, there shall be substituted “OFCOM”.

(3) In subsection (2), for “specified in section 16(2) or (3) (as the case may be)” there shall be substituted

“that have to be imposed under Chapter 4 of Part 3 of the Communications Act 2003 by conditions relating to—

- (a) the public service remit for that service,
- (b) programming quotas,
- (c) news and current affairs programmes, and
- (d) programme production and regional programming.”

(4) In subsection (3)—

(a) in paragraph (b), for “specified in section 16(2) or (3) (as the case may be)” there shall be substituted

“that have to be imposed under Chapter 4 of Part 3 of the Communications Act 2003 by conditions relating to—

- (i) the public service remit for that service,
 - (ii) programming quotas,
 - (iii) news and current affairs programmes, and
 - (iv) programme production and regional programming”;
- (b) paragraphs (c) to (e) shall be omitted.

(5) After subsection (3) there shall be inserted—

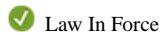
“(3A) For the purposes of subsection (1)(d)(ii)—

- (a) different percentages may be specified for different accounting periods; and
- (b) the percentages that may be specified for an accounting period include a nil percentage.”

(6) In subsection (4), for “paragraphs (b) to (e)” there shall be substituted “paragraphs (b)”.

Commencement

Sch. 15(1) para. 7(1)-(6): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

8 Procedure on consideration of applications for Channel 3 licences

(1) Section 16 of the 1990 Act (consideration of applications for Channel 3 licences) shall be amended as follows.

(2) For “the Commission”, wherever occurring, there shall be substituted “OFCOM”.

(3) In subsection (1), for “specified in subsection (2) or (3) below (as the case may be)” there shall be substituted

“that have to be imposed under Chapter 4 of Part 3 of the Communications Act 2003 by conditions relating to—

- (i) the public service remit for that service,
- (ii) programming quotas,
- (iii) news and current affairs programmes, and
- (iv) programme production and regional programming”.

(4) Subsections (2) and (3) of that section shall cease to have effect.

(5) In subsection (4) of that section—

- (a) for “specified in subsection (2) or (3) (as the case may be),” there shall be substituted

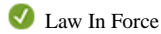
“that have to be imposed under Chapter 4 of Part 3 of the Communications Act 2003 by conditions relating to—

- (a) the public service remit for that service,
 - (b) programming quotas,
 - (c) news and current affairs programmes, and
 - (d) programme production and regional programming;”;
- (b) the words from “and in applying” onwards shall be omitted.

(6) Subsections (5) to (8) shall cease to have effect.

Commencement

Sch. 15(1) para. 8(1)-(6): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

9 Television broadcasting on Channel 3

(1) Section 17 of the 1990 Act (award of licences to person submitting highest bid) shall be amended as follows.

(2) For “the Commission” and “The Commission”, wherever occurring, there shall be substituted “OFCOM”.

(3) In subsection (12)(b), for “specified in section 16(2) or (3) (as the case may be)” there shall be substituted

“that have to be imposed under Chapter 4 of Part 3 of the Communications Act 2003 by conditions relating to—

- (i) the public service remit for that service,
- (ii) programming quotas,
- (iii) news and current affairs programmes, and
- (iv) programme production and regional programming”.

Commencement

Sch. 15(1) para. 9(1)-(3): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

10 Financial conditions of licence and failures to begin a service

In sections 17A to 19 of the 1990 Act (financial conditions in Channel 3 licences and failures to begin a service), for “The Commission” and “the Commission”, wherever occurring, there shall be substituted “OFCOM”.

Commencement

Sch. 15(1) para. 10: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

✓ Law In Force

11 Changes of control in period after award of licence

(1) Section 21 of the 1990 Act (changes of control in period immediately after award of licence) shall be amended as follows.

(2) For “the Commission” and “The Commission”, wherever occurring, there shall be substituted “OFCOM”.

(3) In subsection (2), in the definition of “associated programme provider”, for the words from “appears” to “inclusion” there shall be substituted “is or is likely to be involved, to a substantial extent, in the provision of the programmes included”.

Commencement

Sch. 15(1) para. 11(1)-(3): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

✓ Law In Force

12 Temporary provision of Channel 3 service for an additional area

In section 22 of the 1990 Act (temporary provision of regional Channel 3 Service for additional area), for “the Commission”, wherever occurring, there shall be substituted “OFCOM”.

Commencement

Sch. 15(1) para. 12: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

✓ Law In Force

13 Appointment of members of C4 Corporation

In section 23 of the 1990 Act (appointment of C4C members), for “the Commission”, wherever occurring, there shall be substituted “OFCOM”.

Commencement

Sch. 15(1) para. 13: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

✓ Law In Force

14 Channel 4 licence

In section 24(3) of the 1990 Act (Channel 4 licence), for “the Commission” there shall be substituted “OFCOM”.

Commencement

Sch. 15(1) para. 14: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

✓ Law In Force

15 Channel 5

In section 28 of the 1990 Act (Channel 5), for “The Commission” and “the Commission”, wherever occurring, there shall be substituted “OFCOM”.

Commencement

Sch. 15(1) para. 15: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

✓ Law In Force

16 Application to Channel 5 of Channel 3 provisions

(1) In section 29 of the 1990 Act (application to Channel 5 of Channel 3 provisions)—

(a) subsection (2)(b) and the word “and” immediately preceding it, and

(b) subsection (3),

shall cease to have effect.

(2) In subsection (2)(a) of that section, for “the Commission” there shall be substituted “OFCOM”.

Commencement

Sch. 15(1) para. 16(1)-(2): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

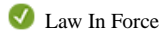
✓ Law In Force

17 Announcement of programme Schedules

In section 37(1) of the 1990 Act (conditions requiring announcement of programme Schedules), for “the Commission” there shall be substituted “OFCOM”.

Commencement

Sch. 15(1) para. 17: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

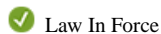
18 Enforcement of conditions of Channel 3, Channel 4 and Channel 5 licences

(1) In sections 40 to 42 of the 1990 Act (enforcement of licences), for “the Commission” and “The Commission”, wherever occurring, there shall be substituted “OFCOM”.

(2) In sections 41(1) and 42(1)(a) of that Act (which contain provisions relating to the enforcement of directions under Part 1 of that Act), after “this Part”, in each place, there shall be inserted “, Part 5 of the Broadcasting Act 1996 or Part 3 of the Communications Act 2003”.

Commencement

Sch. 15(1) para. 18(1)-(2): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



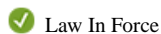
Law In Force

19 Restricted services

In section 42B(1) of the 1990 Act (licensing of restricted services), for “the Commission”, wherever occurring, there shall be substituted “OFCOM”.

Commencement

Sch. 15(1) para. 19: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

20 Additional television services

(1) Section 48 of the 1990 Act (additional services) shall be further amended as follows.

(2) In subsection (1)—

(a) for “telecommunication” there shall be substituted “electronic”; and

(b) for paragraphs (a) and (b) there shall be substituted “on a relevant frequency”.

(3) In subsection (2), for paragraphs (a) and (b) there shall be substituted

“any part of the signals which—

- (a) is not required for the purposes of the television broadcasting service for the purposes of which the frequency has been made available; and
- (b) is determined by OFCOM to be available for the provision of additional services;”.

(4) After that subsection there shall be inserted—

“(2A) For the purposes of this Part, if they consider it appropriate to do so, OFCOM may, while an additional services licence is in force, from time to time modify the determination made under subsection (2)(b) for the purposes of that licence in any manner that does not reduce the amount of spare capacity made available for the licensed services; and when so modified any such licence shall have effect accordingly.”

(5) In subsection (3)—

- (a) for “The Commission” there shall be substituted “OFCOM”; and
- (b) for “(2)(a)” there shall be substituted “(2)(b)”; and
- (c) for paragraphs (a) to (c) there shall be substituted—

“(a) to the obligations contained in any code under section 303 of the Communications Act 2003 by virtue of subsection (5) of that section; and
(aa) to any need of the person providing the television broadcasting service in question to be able to use part of the signals carrying it for providing services (in addition to those provided for satisfying those obligations) which—

- (i) are ancillary to programmes included in the service and directly related to their contents; or
- (ii) relate to the promotion or listing of such programmes.”

(6) In subsection (4), for paragraphs (a) and (b) there shall be substituted—

- “(a) to provide services for the satisfaction in his case of obligations mentioned in subsection (3)(a); and
- (b) to provide in relation to his television broadcasting service any such services as are mentioned in subsection (3)(aa).”

(7) For subsection (6) there shall be substituted—

“(6) In this section—

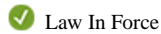
- ‘electronic signals’ means signals within the meaning of section 32 of the Communications Act 2003;
- ‘relevant frequency’ means a frequency made available by OFCOM for the purposes of a television broadcasting service.”

(8) This paragraph does not affect the validity of a licence granted or last renewed before the television transfer date, or the services licensed by any such licence.

Commencement

Sch. 15(1) para. 20(1)-(2)(a): July 25, 2003 (SI 2003/1900 art. 2(1), Sch. 1 para. 1)

Sch. 15(1) para. 20(2)(b)-(8): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

21 Licensing of additional television services

(1) Section 49 of the 1990 Act (licensing of additional television services) shall be amended as follows.

(2) For “the Commission”, wherever occurring, there shall be substituted “OFCOM”.

(3) In subsection (1), for the words from “of the following” to “48(1)(b)” there shall be substituted “relevant frequency”.

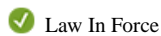
(4) For subsections (2) and (3) there shall be substituted—

“(1A) An additional services licence is not required for an additional service that is comprised in the public teletext service (within the meaning of Part 3 of the Communications Act 2003).”

(5) In subsection (10), at the end there shall be inserted “and ‘relevant frequency’ has the same meaning as in section 48.”

Commencement

Sch. 15(1) para. 21(1)-(5): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

22 Applications for additional services licences

(1) Section 50 of the 1990 Act (applications for additional services licences) shall be amended as follows.

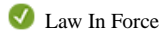
(2) For “the Commission” and “The Commission”, wherever occurring, there shall be substituted “OFCOM”.

(3) In subsection (1)(b)(ii), the words “(subject to the approval of the Secretary of State)” shall be omitted.

(4) Subsection (7) shall cease to have effect.

Commencement

Sch. 15(1) para. 22(1)-(4): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

23 Procedure on application etc. for additional television services licences

(1) Section 51 of the 1990 Act (consideration of applications for licences for additional television services) shall be amended as follows.

(2) For “the Commission”, wherever occurring, there shall be substituted “OFCOM”.

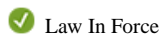
(3) In subsection (1), for paragraph (a) (requirement of approval of technical plans) there shall be substituted—

“(a) that the technical plan submitted under section 50(3)(b), in so far as it involves the use of an electronic communications network (within the meaning of the Communications Act 2003), contains proposals that are acceptable to them; and”.

(4) Subsections (2) and (7) shall cease to have effect.

Commencement

Sch. 15(1) para. 23(1)-(4): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

24 Additional payments in respect of additional television services licences

In section 52 of the 1990 Act (additional payments in respect of additional television services licences), for “the Commission”, wherever occurring, there shall be substituted “OFCOM”.

Commencement

Sch. 15(1) para. 24: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

25 Duration of additional television services licences

(1) Section 53 of the 1990 Act (duration and renewal of additional television services licences) shall be amended as follows.

(2) In subsection (1), for the words before paragraph (a) there shall be substituted—

“(1) A licence to provide additional services on a frequency which is a relevant frequency for the purposes of section 48 or (in the case of a licence granted before the television transfer date) was assigned under section 65—”.

(3) In subsection (2), after “not later than” there shall be inserted “the day falling three months before”.

(4) In subsections (4) to (11), for “the Commission”, wherever occurring, there shall be substituted “OFCOM”.

(5) In subsection (8), for the words from “payable” onwards there shall be substituted “the cash bid of the licence holder were the licence (instead of being renewed) to be granted for the period of the renewal on an application made in accordance with section 50(3).”

(6) After that subsection there shall be inserted—

“(8A) For the purposes of subsection (7)(b)—

- (a) different percentages may be specified for different accounting periods; and
- (b) the percentages that may be specified for an accounting period include a nil percentage.”

(7) After subsection (11) there shall be inserted—

“(12) A determination for the purposes of subsection (11)—

- (a) must be made at least one year before the date determined; and
- (b) must be notified by OFCOM to the person who holds the licence in question.

(13) In this section ‘the television transfer date’ has the same meaning as in the Communications Act 2003.”

Commencement

Sch. 15(1) para. 25(1)-(7): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

26 Additional television services not to interfere with other transmissions

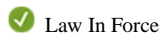
(1) Section 54 of the 1990 Act (additional television services not to interfere with other transmissions) shall be amended as follows.

(2) In subsection (1), for “the Commission” there shall be substituted “OFCOM”.

(3) Subsection (2) shall cease to have effect.

Commencement

Sch. 15(1) para. 26(1)-(3): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

27 Enforcement of additional television services licences

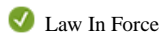
(1) Section 55 of the 1990 Act (further provision in relation to additional television services licences) shall be amended as follows.

(2) For “the Commission” and “The Commission”, wherever occurring, there shall be substituted “OFCOM”.

(3) In subsection (4) at the end there shall be inserted “and, in the case of a licence renewed under section 53 as if the reference in section 42(4) to the end of the period for which the licence is to continue in force were a reference to the end of the period for which it has been renewed.”

Commencement

Sch. 15(1) para. 27(1)-(3): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

28 The Welsh Authority

(1) Section 58 of the 1990 Act (sources of programmes for S4C) shall be amended as follows.

(2) In subsection (1), for “comply with their duty under section 57(2)(b)” there shall be substituted “fulfil so much of their public service remit in relation to S4C under paragraph 3 of Schedule 12 to the Communications Act 2003 as is contained in sub-paragraph (2)(a) and (b) of that paragraph”.

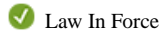
(3) In subsection (2)(a), for “comply with section 57(3)” there shall be substituted “fulfil so much of their public service remit in relation to S4C under paragraph 3 of Schedule 12 to the Communications Act 2003 as is contained in sub-paragraph (2)(c) of that paragraph”.

(4) After subsection (5) there shall be inserted—

“(6) In this section ‘programme’ does not include an advertisement.”

Commencement

Sch. 15(1) para. 28(1)-(4): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

29 Distribution of licensed public service channels

(1) Section 66 of the 1990 Act (requirements relating to transmission and distribution of services) shall be amended as follows.

(2) For “the Commission”, wherever occurring, there shall be substituted “OFCOM”.

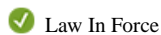
(3) In subsections (1) and (2), for “for general reception” there shall be substituted “so as to be available for reception by members of the public”.

(4) After subsection (2) there shall be inserted—

“(2A) In subsections (1) and (2) ‘available for reception by members of the public’ shall be construed in accordance with section 361 of the Communications Act 2003”.

Commencement

Sch. 15(1) para. 29(1)-(4): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

30 Enforcement of licences held by BBC companies

In section 66A of the 1990 Act (enforcement of licences held by BBC companies), for “the Commission”, wherever occurring, there shall be substituted “OFCOM”.

Commencement

Sch. 15(1) para. 30: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

31 Interpretation of Part 1

(1) Section 71 of the 1990 Act (interpretation) shall be amended as follows.

(2) For the definitions of “S4C” and “on S4C” there shall be substituted—

“‘S4C’ has the same meaning as in Part 3 of the Communications Act 2003;”.

(3) For the definitions of “television broadcasting service” and “television programme service” there shall be substituted—

“‘television broadcasting service’, ‘television licensable content service’ and ‘television programme service’ each has the same meaning as in Part 3 of the Communications Act 2003;”.

Commencement

Sch. 15(1) para. 31(1)-(3): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

✓ Law In Force

32 Licensing functions of OFCOM

(1) Section 85 of the 1990 Act (licensing of independent radio services) shall be amended as follows.

(2) In subsections (1) and (2), for “the Authority” and “The Authority”, wherever occurring, there shall be substituted “OFCOM”.

(3) In subsection (1), for “such licences to provide independent radio services as they may determine” there shall be substituted “licences to provide relevant independent radio services”.

(4) Subsections (3) and (4) (duty to secure the meeting of a variety of tastes and interests and to ensure fair and effective competition) shall cease to have effect.

(5) After subsection (7) there shall be inserted—

“(8) In this section ‘relevant independent radio services’ means the following services so far as they are services falling to be regulated under section 245 of the Communications Act 2003—

- (a) sound broadcasting services;
- (b) radio licensable content services;
- (c) additional radio services.”

Commencement

Sch. 15(1) para. 32(1)-(5): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

✓ Law In Force

33 Licences under Part 3 of the 1990 Act

(1) Section 86 of the 1990 Act (licences under Part 3) shall be amended as follows.

(2) For “the Authority” and “The Authority”, wherever occurring, there shall be substituted “OFCOM”.

(3) For subsection (9) of that section there shall be substituted—

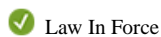
“(9) The holding of a licence by a person shall not relieve him of—

(a) any liability in respect of a failure to hold a licence under section 1 of the Wireless Telegraphy Act 1949; or

(b) any obligation to comply with requirements imposed by or under Chapter 1 of Part 2 of the Communications Act 2003 (electronic communications networks and electronic communications services).”

Commencement

Sch. 15(1) para. 33(1)-(3): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

34 General licence conditions

(1) Section 87 of the 1990 Act (general licence conditions) shall be amended as follows.

(2) For “the Authority”, wherever occurring, there shall be substituted “OFCOM”.

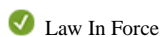
(3) In subsection (1), in each of paragraphs (a) and (d), after “this Act” there shall be inserted “, the Broadcasting Act 1996 or the Communications Act 2003”.

(4) In subsection (2), sub-paragraph (ii) of paragraph (b) and the word “or” immediately preceding it shall be omitted.

(5) In subsection (3) (fixing of fees), the words from “and the amount” onwards shall be omitted.

Commencement

Sch. 15(1) para. 34(1)-(5): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

35 Restrictions on holding licences

(1) Section 88 of the 1990 Act (restrictions on the holding of licences) shall be amended as follows.

(2) For “The Authority” and “the Authority”, wherever occurring, there shall be substituted “OFCOM”.

(3) In subsection (2) (incidental requirements to provide information), after paragraph (d) there shall be inserted—

“(da) impose conditions in a licence requiring the licence holder, if a body corporate, to give OFCOM notice, after they have occurred and irrespective of whether proposals for them have fallen to be notified, of changes, transactions or events affecting—

- (i) shareholdings in the body; or
- (ii) the directors of the body;

(db) impose conditions in a licence enabling OFCOM to require the licence holder to provide them with such information as they may reasonably require for determining—

- (i) whether the licence holder is a disqualified person in relation to that licence by virtue of Part 2 of Schedule 2; or
- (ii) whether any such requirements as are mentioned in subsection (1)(b) have been and are being complied with by or in relation to the licence holder;”.

(4) In subsection (6)—

- (a) in paragraph (a), for “complained of” there shall be substituted “constituting their grounds for revoking the licence”; and
- (b) in paragraph (b)(i), for “Parts III and IV of Schedule 2” there shall be substituted “the requirements imposed by or under Schedule 14 to the Communications Act 2003”.

(5) In subsection (6A)—

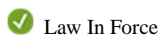
- (a) paragraph (a) shall cease to have effect; and
- (b) in paragraph (b), for “Part IV of that Schedule” there shall be substituted “Part 1 of Schedule 14 to the Communications Act 2003”.

(6) Subsection (6B) shall cease to have effect.

(7) In subsection (7), for the words from “a failure” to the end of paragraph (c) there shall be substituted “a disqualification under Part 2 of Schedule 2 to this Act or a contravention of a requirement imposed by or under Schedule 14 to the Communications Act 2003,”.

Commencement

Sch. 15(1) para. 35(1)-(7): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

36 Disqualification of persons convicted of transmission offences

(1) Section 89 of the 1990 Act (offences giving rise to disqualification) shall be amended as follows.

(2) In subsection (1), for paragraph (a) there shall be substituted—

“(a) an offence under section 1(1) of the Wireless Telegraphy Act 1949 (the 1949 Act) consisting in the establishment or use of a station for wireless telegraphy, or the installation or use of wireless telegraphy apparatus, for the purpose of making

a broadcast (within the meaning of section 9 of the Marine, &c., Broadcasting (Offences) Act 1967);

(aa) an offence under section 1A of the 1949 Act (keeping wireless telegraphy station or apparatus available for unauthorised use) where the relevant contravention of section 1 would constitute an offence falling within paragraph (a);

(ab) an offence under section 1B or 1C of the 1949 Act (unlawful broadcasting offences);”.

(3) In subsection (3), for the words from “concerned” onwards there shall be substituted

“concerned in—

(a) the provision of the licensed service or the making of programmes included in it; or

(b) the operation of a station for wireless telegraphy used for broadcasting the service.”

(4) This paragraph does not impose a disqualification in respect of any offence committed before the commencement of this paragraph.

Commencement

Sch. 15(1) para. 36(1)-(4): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

37 Offence of providing regulated radio services

(1) Section 97 of the 1990 Act (prohibition on providing services without a licence) shall be amended as follows.

(2) In subsection (1), for the words from “independent” to “84(1)(d), (e) or (f)” there shall be substituted “relevant regulated radio service”.

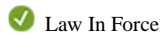
(3) After that subsection there shall be inserted—

“(1A) In subsection (1) ‘relevant regulated radio service’ means a service falling to be regulated by OFCOM under section 245 of the Communications Act 2003, other than a radio multiplex service.”

(4) In subsection (2) (exemption orders made after consulting the Radio Authority), for “the Authority” there shall be substituted “OFCOM”.

Commencement

Sch. 15(1) para. 37(1)-(4): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

38 Applications for national licences

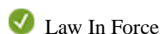
- (1) Section 98 of the 1990 Act (applications for national licences) shall be amended as follows.
- (2) For “the Authority” and “The Authority”, wherever occurring, there shall be substituted “OFCOM”.
- (3) In subsection (3)(a) (proposals to accompany application)—
 - (a) the word “both”, and
 - (b) sub-paragraph (ii) and the word “and” immediately preceding it,shall be omitted.
- (4) After subsection (3) there shall be inserted—

“(3A) For the purposes of subsection (1)(d)(ii)—

 - (a) different percentages may be specified for different accounting periods; and
 - (b) the percentages that may be specified for an accounting period include a nil percentage.”
- (5) In subsection (4) (provision of further information), after “paragraphs (a),” there shall be inserted “(aa),”.
- (6) In subsection (6)(b) (publication of details of successful applicant), after “subsection (3)(a)” there shall be inserted “and (aa)”.

Commencement

Sch. 15(1) para. 38(1)-(6): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



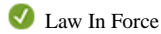
Law In Force

39 Consideration of applications for a national licence

- (1) Section 99 of the 1990 Act (consideration of applications for national licence) shall be amended as follows.
- (2) For “the Authority”, wherever occurring, there shall be substituted “OFCOM”.
- (3) In paragraph (a) of subsection (1) (proposals to accompany application)—
 - (a) the word “both”, and
 - (b) sub-paragraph (ii) and the word “and” immediately preceding it,shall be omitted.
- (4) In paragraph (b) of that subsection, after “maintain that service” there shall be inserted “and any proposed simulcast radio service corresponding to that service”.

Commencement

Sch. 15(1) para. 39(1)-(4): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



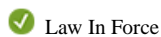
Law In Force

40 Award of national licences

In section 100 of the 1990 Act (award of national licences to person submitting highest cash bid), for “the Authority” and “The Authority”, wherever occurring, there shall be substituted “OFCOM”.

Commencement

Sch. 15(1) para. 40: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

41 Failure to begin providing licensed service

(1) Section 101 of the 1990 Act (failure to begin providing licensed service) shall be amended as follows.

(2) For “the Authority”, wherever occurring, there shall be substituted “OFCOM”.

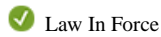
(3) In subsection (1)—

- (a) in paragraph (a) for “the service in question” there shall be substituted “the licensed national service or that he does not intend to provide a corresponding simulcast radio service that he is required to provide by a condition imposed under section 100A”; and
- (b) in paragraph (b), for “that service” there shall be substituted “the licensed national service or any such simulcast radio service”.

(4) In subsection (2), for “the service in question” there shall be substituted “the licensed national service or the simulcast radio service”.

Commencement

Sch. 15(1) para. 41(1)-(4): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



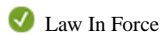
Law In Force

42 Additional payments in respect of national licences

In section 102 of the 1990 Act (additional payments in respect of national licences), for “the Authority”, wherever occurring, there shall be substituted “OFCOM”.

Commencement

Sch. 15(1) para. 42: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

43 Restrictions affecting change in control of holder of national licence

(1) Section 103 of the 1990 Act (restrictions on change of control of national licence) shall be amended as follows.

(2) For “the Authority” and “The Authority”, wherever occurring, there shall be substituted “OFCOM”.

(3) In subsection (2) (interpretation)—

(a) in the definition of “associated programme provider”, for the words from “appears” to “inclusion” there shall be substituted “is or is likely to be involved, to a substantial extent, in the provision of the programmes included”; and

(b) in the words after the definition of “the relevant period”, for the words from “as if” onwards there shall be substituted “as it has effect for the purposes of that Schedule.”

Commencement

Sch. 15(1) para. 43(1)-(3)(b): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

44 Renewal of national licences

(1) Section 103A of the 1990 Act (renewal of national licences) shall be amended as follows.

(2) For “the Authority”, wherever occurring, there shall be substituted “OFCOM”.

(3) In subsection (1), for “eight” there shall be substituted “twelve”.

(4) In subsection (2), after “not later than” there shall be inserted “the day falling three months before”.

(5) In subsection (3), paragraph (a) and in paragraph (b) the words “in any other case” shall cease to have effect.

(6) In subsection (4), for paragraph (b) there shall be substituted—

“(b) the applicant gave notice to OFCOM, within the period of one month beginning with the commencement of section 42 of the Broadcasting Act 1996, of his intention to provide a simulcast radio service, and”.

(7) For subsection (7) there shall be substituted—

“(7) The amount determined under subsection (6)(b) must be equal to the amount which, in OFCOM's opinion, would have been the cash bid of the licence holder were the licence (instead of being renewed) to be granted for the period of the renewal on an application made in accordance with section 98.

(7A) For the purposes of subsection (6)(c)—

- (a) different percentages may be specified for different accounting periods; and
- (b) the percentages that may be specified for an accounting period include a nil percentage.”

(8) After subsection (10) there shall be inserted—

“(10A) In the case of a pre-transfer national licence (including one for a period extended under section 253 of the Communications Act 2003)—

- (a) the licence is not to be capable of being renewed under this section if it has already been renewed under this section before the radio transfer date; and
- (b) on the renewal of the licence, it shall be the duty of OFCOM to secure that the renewed licence contains only such provision as would be included in a national licence granted by OFCOM under this Part after the radio transfer date.”

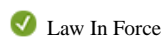
(9) After subsection (11) there shall be inserted—

“(12) A determination for the purposes of subsection (11)—

- (a) must be made at least one year before the date determined; and
- (b) must be notified by OFCOM to the person who holds the licence in question.”

Commencement

Sch. 15(1) para. 44(1)-(9): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

45 Applications for local licences

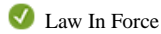
(1) Section 104 of the 1990 Act (application for local licences) shall be amended as follows.

(2) For “the Authority” and “The Authority”, wherever occurring, there shall be substituted “OFCOM”.

(3) In subsection (6), for the words from the beginning to “shall be made” there shall be substituted “An application for a licence to provide a restricted service shall be made”.

Commencement

Sch. 15(1) para. 45(1)-(3): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



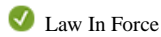
Law In Force

46 Renewal of local licences

- (1) Section 104A of the 1990 Act (renewal of local licences) shall be amended as follows.
- (2) For “the Authority” and “The Authority”, wherever occurring, there shall be substituted “OFCOM”.
- (3) In subsection (1), for “eight” there shall be substituted “twelve”.
- (4) In subsection (3), after “not later than” there shall be inserted “the day falling three months before”.
- (5) After subsection (12) there shall be inserted—
 - “(12A) In the case of a pre-transfer local licence (including one for a period extended under section 253 of the Communications Act 2003)—
 - (a) the licence is not to be capable of being renewed under this section if it has already been renewed under this section before the radio transfer date; and
 - (b) on the renewal of the licence, it shall be the duty of OFCOM to secure that the renewed licence contains only such provision as would be included in a local licence granted by OFCOM under this Part after the radio transfer date.”
- (6) In subsection (13)(d), for “paragraph 3A of Part I of Schedule 2” there shall be substituted “paragraph 8(2) of Schedule 14 to the Communications Act 2003”.
- (7) After subsection (13) there shall be inserted—
 - “(14) A determination for the purposes of subsection (13)(c)—
 - (a) must be made at least one year before the date determined; and
 - (b) must be notified by OFCOM to the person who holds the licence in question.”

Commencement

Sch. 15(1) para. 46(1)-(7): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

47 Special procedure for applications for local licences

(1) Section 104B of the 1990 Act (special procedure for applications for local licences) shall be amended as follows.

(2) For “the Authority”, wherever occurring, there shall be substituted “OFCOM”.

(3) After subsection (1) there shall be inserted—

“(1A) In subsection (1)(c) the reference to the service in question, in relation to a case in which it is a pre-transfer local licence that is due to expire, is a reference to the equivalent local service for which a licence is capable of being granted at times on or after the radio transfer date.”

Commencement

Sch. 15(1) para. 47(1)-(3): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

48 Special requirements relating to grant of local licences

(1) Section 105 of the 1990 Act (special requirements relating to grant of local licences) shall be amended as follows.

(2) For “the Authority” there shall be substituted “OFCOM”.

(3) For paragraph (d) (duty to have regard to the extent to which proposed service supported by persons living in the area) there shall be substituted—

“(d) the extent to which there is evidence that, amongst persons living in that area or locality, there is a demand for, or support for, the provision of the proposed service.”

Commencement

Sch. 15(1) para. 48(1)-(3): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



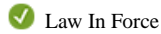
Law In Force

49 Requirements as to character and coverage of services

In subsections (1) to (4) and (6) of section 106 of the 1990 Act (requirements as to character and coverage of services), for “the Authority”, wherever occurring, there shall be substituted “OFCOM”.

Commencement

Sch. 15(1) para. 49: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



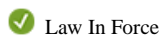
Law In Force

50 Enforcement of licences

In sections 109 to 111A of the 1990 Act (enforcement of licences), for “the Authority” and “The Authority”, wherever occurring, there shall be substituted “OFCOM”.

Commencement

Sch. 15(1) para. 50: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

51 Power to suspend licences to provide radio licensable content services from a satellite

(1) Section 111B of the 1990 Act (power to suspend licence to provide satellite service) shall be amended as follows.

(2) For “the Authority”, wherever occurring, there shall be substituted “OFCOM”.

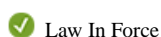
(3) In subsection (1)—

(a) in paragraph (a), for “satellite service” there shall be substituted “radio licensable content service”;

(b) in paragraph (b), for the words from “included in the licence” to the end of the paragraph there shall be substituted “which in compliance with section 263 of the Communications Act 2003 is included in the licence for the purpose of securing the objective mentioned in section 319(2)(b) of that Act, and”.

Commencement

Sch. 15(1) para. 51(1)-(3)(b): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

52 Additional radio services

(1) Section 114 of the 1990 Act (additional radio services) shall be amended as follows.

(2) In subsection (1)—

- (a) for “telecommunication” there shall be substituted “electronic”; and
- (b) for paragraphs (a) and (b) there shall be substituted “on a relevant frequency”.

(3) In subsection (2), for paragraphs (a) and (b) there shall be substituted

“any part of the signals which—

- (a) is not required for the purposes of the sound broadcasting service for the purposes of which the frequency has been made available; and
- (b) is determined by OFCOM to be available for the provision of additional services;”.

(4) After that subsection there shall be inserted—

“(2A) At any time while an additional services licence is in force, OFCOM may, if they consider it appropriate to do so, modify or further modify the determination made for the purposes of that licence under subsection (2)(b); and where there has been such a modification or further modification, the licence shall have effect accordingly.

(2B) A modification or further modification under subsection (2A) must not reduce the amount of spare capacity made available for the licensed services.”

(5) In subsection (3), for the words from the beginning to “subsection (2)(a)” there shall be substituted “OFCOM shall, when determining under subsection (2)”.

(6) For subsection (6) there shall be substituted—

“(6) In this section ‘electronic signal’ means a signal within the meaning of section 32 of the Communications Act 2003.

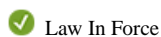
(7) In this section and section 115 ‘relevant frequency’ means a frequency made available by OFCOM for the purposes of a sound broadcasting service.”

(7) This paragraph does not affect the validity of a licence granted or last renewed before the radio transfer date, or the services licensed by any such licence.

Commencement

Sch. 15(1) para. 52(1)-(2)(a): July 25, 2003 (SI 2003/1900 art. 2(1), Sch. 1 para. 1)

Sch. 15(1) para. 52(2)(b)-(7): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

53 Licensing of additional radio services

(1) Section 115 of the 1990 Act (licensing of additional radio services) shall be amended as follows.

(2) For “The Authority” and “the Authority”, wherever occurring, there shall be substituted “OFCOM”.

(3) In subsection (1), for the words from “of the following” to “114(1)(b)” there shall be substituted “relevant frequency”.

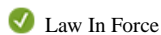
(4) In subsection (4), at the end there shall be inserted “and who would not be in contravention of the requirements imposed by or under Schedule 14 to the Communications Act 2003 if he held such a licence”.

(5) In subsection (8), for “local, restricted or satellite service” there shall be substituted “local or restricted service or to provide a radio licensable content service”.

Commencement

Sch. 15(1) para. 53(1), (4): September 18, 2003 (SI 2003/1900 art. 2(2), Sch. 2 para. 1)

Sch. 15(1) para. 53(2)-(3), (5): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

54 Applications for additional radio services licences

(1) Section 116 of the 1990 Act (applications for additional radio services licences) shall be amended as follows.

(2) For “the Authority” and “The Authority”, wherever occurring, there shall be substituted “OFCOM”.

(3) In subsection (1)(b)(iii), the words “(subject to the approval of the Secretary of State)” shall be omitted.

Commencement

Sch. 15(1) para. 54(1)-(3): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

55 Procedure for awarding additional radio services licences

(1) Section 117 of the 1990 Act (procedure for awarding additional radio services licences) shall be amended as follows.

(2) For “the Authority”, wherever occurring, there shall be substituted “OFCOM”.

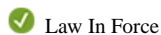
(3) In subsection (1), for paragraph (a) (requirement of approval of technical plans) there shall be substituted—

“(a) that the technical plan submitted under section 116(3)(b), in so far as it involves the use of an electronic communications network (within the meaning of the Communications Act 2003), contains proposals that are acceptable to them; and”.

(4) Subsections (2) and (7) shall cease to have effect.

Commencement

Sch. 15(1) para. 55(1)-(4): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



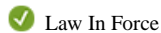
Law In Force

56 Additional payments in respect of additional radio services licences

In section 118 of the 1990 Act (additional payments in respect of additional radio services licences), for “the Authority”, wherever occurring, there shall be substituted “OFCOM”.

Commencement

Sch. 15(1) para. 56: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

57 Additional radio services not to interfere with other transmissions

(1) Section 119 of the 1990 Act (additional radio services not to interfere with other transmissions) shall be amended as follows.

(2) In subsection (1), for “the Authority” there shall be substituted “OFCOM”.

(3) Subsection (2) shall cease to have effect.

Commencement

Sch. 15(1) para. 57(1)-(3): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



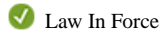
Law In Force

58 Enforcement of additional radio services licences

In section 120 of the 1990 Act (enforcement of additional radio services licences), for “the Authority” and “The Authority”, wherever occurring, there shall be substituted “OFCOM”.

Commencement

Sch. 15(1) para. 58: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

59 Interpretation

In subsection (1) of section 126 of the 1990 Act (interpretation of Part 3)—

(a) for the definition of “independent radio service” there shall be substituted—

“‘independent radio service’ means a service falling to be regulated under section 245 of the Communications Act 2003;”;

(b) for the definitions of “local service”, “national service”, “restricted service” and “satellite service” there shall be substituted—

“‘local service’, ‘national service’ and ‘restricted service’ each has the same meaning as in section 245 of the Communications Act 2003;

‘pre-transfer local licence’ and ‘pre-transfer national licence’ each has the same meaning as in section 253 of that Act;

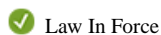
‘radio licensable content service’ has the same meaning as in Part 3 of that Act;

‘radio transfer date’ has the same meaning as in that Act;”;

(c) in the definition of “sound broadcasting service” for the words from “(as defined” to the end there shall be substituted “(within the meaning of Part 3 of the Communications Act 2003);”.

Commencement

Sch. 15(1) para. 59(a)-(c): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

60 Duty to provide advance information about programmes

In column 1 of the Table in section 176(7) of the 1990 Act (persons who are the providers of services for the purposes of the obligations to give advance information about programmes)—

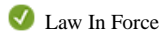
(a) for “regulation by the Independent Television Commission” there shall be substituted “regulation by OFCOM”;

(b) for “The television broadcasting service provided by the Welsh Authority and the service referred to in section 57(1A)(a)” there shall be substituted “The public television services of the Welsh Authority (within the meaning of Part 2 of Schedule 12 to the Communications Act 2003);”;

- (c) for “section 84(2)(a)(i)” there shall be substituted “section 126(1)”;
- (d) for “the Radio Authority”, in both places, there shall be substituted “OFCOM”.

Commencement

Sch. 15(1) para. 60(a)-(d): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

61 Proscription of foreign satellite services

- (1) Section 177 of the 1990 Act (proscription of foreign satellite stations) shall be amended as follows.
- (2) In subsection (2), for “the Independent Television Commission or the Radio Authority consider that the quality of any relevant” there shall be substituted “OFCOM consider that the quality of any”.
- (3) In subsection (3), for the words from the beginning to “Authority” there shall be substituted “OFCOM”.
- (4) In subsection (6), the definition of “relevant foreign satellite service” shall be omitted.

Commencement

Sch. 15(1) para. 61(1)-(4): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

62 Financing of Gaelic Broadcasting

- (1) Section 183 of the 1990 Act (financing of Gaelic Broadcasting) shall be amended as follows.
- (2) For “the Commission”, wherever occurring, there shall be substituted “OFCOM”.
- (3) In subsection (2), for “by them under this section to be” there shall be substituted “by the Independent Television Commission under this section and”.
- (4) This paragraph—
 - (a) so far as it relates to subsection (1) of section 183 has effect in relation only to financial years beginning after the television transfer date; and
 - (b) so far as it relates to subsection (2) of that section does not apply to amounts paid for earlier financial years.

Commencement

Sch. 15(1) para. 62(1)-(4)(b): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force With Amendments Pending

63 Gaelic Broadcasting in Scotland

(1) Section 184 of the 1990 Act (broadcasting of programmes in Gaelic on Channel 3 in Scotland) shall be amended as follows.

(2) In subsection (1), for the words “subsection (2)” there shall be substituted “subsection (1)(a)”.

(3) In subsection (3), for the words from “The conditions” to “the purpose of” there shall be substituted “The regulatory regime for a service to which this section applies includes the conditions that OFCOM consider appropriate for”.

(4) After that subsection there shall be inserted—

“(3A) Section 263 of the Communications Act 2003 (regulatory regime) applies in relation to conditions included by virtue of subsection (3) in the regulatory regime for a licensed service as it applies in relation to conditions which are so included by virtue of a provision of Chapter 4 of Part 3 of that Act.”

(5) In subsection (4)(b), for “the Commission” there shall be substituted “OFCOM”.

Amendments Pending

Sch. 15(1) para. 63: repealed by Digital Economy Act 2010 c. 24, Sch. 2 para. 1 (date to be appointed)

Commencement

Sch. 15(1) para. 63(1)-(5): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

64 Maintenance of the national television archive

(1) In section 185 of the 1990 Act (maintenance of the national television archive)—

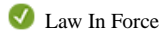
(a) for “The Commission” and “the Commission”, wherever occurring, there shall be substituted “OFCOM”.

(b) in subsection (5), the definition of “the Commission” shall be omitted.

(2) This paragraph so far as it relates to subsection (1) of that section has effect in relation only to financial years beginning after the television transfer date.

Commencement

Sch. 15(1) para. 64(1)-(2): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

65 Modification of networking arrangements

(1) Section 193 of the 1990 Act (modification of networking arrangements in consequence of competition legislation) shall be amended as follows.

(2) In subsection (1), for the words from “the Office of Fair Trading” to “relevant authority)” there shall be substituted “the relevant authority”.

(3) After subsection (2) there shall be inserted—

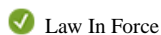
“(2A) In subsection (1), ‘relevant authority’ means—

- (a) in relation to a relevant order falling within subsection (2)(a), the Office of Fair Trading, the Competition Commission or (as the case may be) the Secretary of State;
- (b) in relation to a relevant order falling within subsection (2)(b), the Office of Fair Trading, the Competition Commission, the Secretary of State or (as the case may be) OFCOM.”

(4) In subsection (4), for “section 39(1) above” there shall be substituted “section 290(4) of the Communications Act 2003”.

Commencement

Sch. 15(1) para. 65(1)-(4): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

66 Search warrants

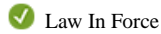
(1) Section 196 of the 1990 Act (grant of search warrant to person authorised by the Independent Television Commission or the Radio Authority) shall be amended as follows.

(2) In subsection (1), for “the relevant authority” there shall be substituted “OFCOM”.

(3) Subsection (2) (definition of “relevant authority”) shall be omitted.

Commencement

Sch. 15(1) para. 66(1)-(3): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



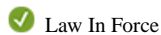
Law In Force

67 Notices

In section 199(5) of the 1990 Act (publication of notices), for paragraphs (a) and (b) there shall be substituted “by OFCOM under section 21, 41, 42, 55, 103, 109, 110, 111 or 120”.

Commencement

Sch. 15(1) para. 67: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

68 Interpretation

(1) Section 202 of the 1990 Act (general interpretation) shall be amended as follows.

(2) In subsection (1), after the definition of “modifications” there shall be inserted—

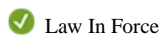
“‘OFCOM’ means the Office of Communications;”.

(3) After subsection (6) there shall be inserted—

“(6A) Subsections (2) and (3) of section 362 of the Communications Act 2003 (persons by whom services provided) are to apply for the purposes of this Act as they apply for the purposes of Part 3 of that Act.”

Commencement

Sch. 15(1) para. 68(1)-(3): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

69 Disqualified persons

(1) Schedule 2 to the 1990 Act (restrictions on the holding of licences) shall be amended as follows.

(2) In paragraph 1(1) of Part 1, after the definition of “associate” there shall be inserted—

“‘Broadcasting Act licence’ means a licence under Part 1 or 3 of this Act or Part 1 or 2 of the Broadcasting Act 1996;”.

(3) In paragraph 1(6) of Part 1 (meaning of “more than a 20 per cent. interest”), for “20 per cent.”, wherever occurring, there shall be substituted “5 per cent.”.

(4) In Part 2 (disqualified persons), for “a licence granted by the Commission or the Authority”, wherever occurring, there shall be substituted “a Broadcasting Act licence”.

(5) In paragraph 1(1)(i) of Part 2 (bodies controlled by persons falling within paragraphs (a) to (g)), for “(a)” there shall be substituted “(c)”.

(6) In paragraph 3(1) of Part 2, for “by the Authority” there shall be substituted “under Part 3 of this Act or Part 2 of the Broadcasting Act 1996”.

(7) In paragraph 4(1) of Part 2, for “that body” there shall be substituted “OFCOM”.

(8) In paragraph 4(2) of Part 2—

(a) in paragraph (a), for “by the Commission, means a body” there shall be substituted “under Part 1 of this Act or Part 1 of the Broadcasting Act 1996, means a person”; and

(b) in paragraph (b), for “by the Authority, means a body” there shall be substituted “under Part 3 of this Act or Part 2 of the Broadcasting Act 1996, means a person”.

(9) In paragraph 5A of Part 2—

(a) in sub-paragraph (1)(a), the words “granted by the Commission”,

(b) sub-paragraph (1)(b) and the word “and” immediately preceding it,

(c) in sub-paragraph (2), the words “granted by the Authority”,

shall be omitted.

Commencement

Sch. 15(1) para. 69(1)-(9)(c): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

 Law In Force

70 C4C

(1) Schedule 3 to the 1990 Act (provision about constitution and management of C4C) shall be amended as follows.

(2) For “the Commission”, wherever occurring, there shall be substituted “OFCOM”.

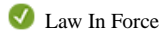
(3) In paragraph 2(1) (persons disqualified from membership of the Corporation), for paragraphs (b) to (d) there shall be substituted

“or

(b) a member or employee of OFCOM.”

Commencement

Sch. 15(1) para. 70(1)-(3): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



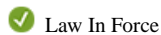
Law In Force

71 The Welsh Authority

- (1) Schedule 6 to the 1990 Act (provision about constitution and management of the Welsh Authority) shall be amended as follows.
- (2) In paragraph 2 (persons disqualified from membership of the Authority)—
- (a) sub-paragraph (1) shall be omitted; and
 - (b) in sub-paragraph (2)(b), for “the Commission” there shall be substituted “OFCOM”.
- (3) In paragraph 12(1A), for the words from “the general fund” onwards there shall be substituted “the assets of the Authority that are not comprised in that fund; and accordingly, the statement must deal with liabilities separately according to whether they fall to be met from that fund or from those assets.”

Commencement

Sch. 15(1) para. 71(1)-(3): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

72 Computation of qualifying revenue

- (1) Schedule 7 to the 1990 Act (computation of “qualifying revenue”) shall be amended as follows.
- (2) In Part 1, for “the Commission” and “The Commission”, wherever occurring, there shall be substituted “OFCOM”.
- (3) In Part 2, for “the Authority” and “The Authority”, wherever occurring, there shall be substituted “OFCOM”.

Commencement

Sch. 15(1) para. 72(1)-(3): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

73 The Gaelic Television Committee

- (1) Schedule 19 to the 1990 Act (Gaelic Television Committee) shall be amended as follows.
- (2) For “the Commission” and “The Commission”, wherever occurring, there shall be substituted “OFCOM”.
- (3) For “Committee”, wherever occurring, there shall be substituted “Service”.
- (4) In paragraph 8(c), the words “and (where the expenses relate to the Commission's functions in connection with sound programmes) the Radio Authority” shall be omitted.
- (5) In paragraph 11(4), the words “or the Radio Authority” and “or (as the case may be) the Authority” shall be omitted.

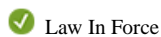
Commencement

Sch. 15(1) para. 73(1)-(5): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

PART 2

AMENDMENTS OF THE 1996 ACT

Multiplex services and digital programme services



Law In Force

74

- (1) Section 1 of the 1996 Act (interpretation) shall be amended as follows.
- (2) For subsection (1) there shall be substituted—

“(1) In this Part ‘multiplex service’ means (except where the context otherwise requires) a television multiplex service.”
- (3) In subsection (4), for “for general reception” there shall be substituted “so as to be available for reception by members of the public”.
- (4) For subsection (4A) there shall be substituted—

“(4A) In subsection (4), ‘available for reception by members of the public’ means available for reception by members of the public (within the meaning of Part 3 of the Communications Act 2003) in the United Kingdom or another EEA State, or in an area of the United Kingdom or of such a State.”

(5) For subsection (7) of that section there shall be substituted—

“(7) In this section ‘broadcast’ means broadcast otherwise than from a satellite.”

Commencement

Sch. 15(2) para. 74(1)-(5): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Meaning of qualifying service

✓ Law In Force

75

In section 2 of the 1996 Act (meaning of “qualifying service” etc.), for subsections (2) to (6) there shall be substituted—

“(2) In this Part ‘qualifying service’ means any of the following, so far as they are provided with a view to their being broadcast in digital form—

- (a) a television broadcasting service included in Channel 3;
- (b) Channel 4;
- (c) Channel 5;
- (d) S4C Digital;
- (e) a television programme service provided by the Welsh Authority with the approval of the Secretary of State under section 205 of the Communications Act 2003;
- (f) the digital public teletext service.”

Commencement

Sch. 15(2) para. 75: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Licences under Part 1

✓ Law In Force

76

(1) Section 3 of the 1996 Act (licences under Part 1 of that Act) shall be amended as follows.

(2) In subsection (1), for “the Independent Television Commission (in this Part referred to as the ‘the Commission’)” there shall be substituted “OFCOM”.

(3) In subsections (3) to (7), for “The Commission” and “the Commission”, wherever occurring, there shall be substituted “OFCOM”.

(4) For subsection (8) there shall be substituted—

“(8) The holding by a person of a licence under this Part shall not relieve him of—


(a) any liability in respect of a failure to hold a licence under section 1 of the Wireless Telegraphy Act 1949; or

(b) any obligation to comply with requirements imposed by or under Chapter 1 of Part 2 of the Communications Act 2003 (electronic communications networks and electronic communications services).”

Commencement

Sch. 15(2) para. 76(1)-(4): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Licence conditions

 Law In Force

77

(1) Section 4 of the 1996 Act (general licence conditions) shall be amended as follows.

(2) For “the Commission”, wherever occurring, there shall be substituted “OFCOM”.

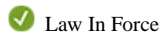
(3) In subsection (1), in each of paragraphs (a) and (c), for “the 1990 Act or this Act” there shall be substituted “this Act, the 1990 Act or the Communications Act 2003”.

(4) In subsection (3) (fixing fees), the words from “and the amount” onwards shall be omitted.

Commencement

Sch. 15(2) para. 77(1)-(4): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Restrictions on digital licence holding

**78**

- (1) Section 5 of the 1996 Act (restrictions on holding licences) shall be amended as follows.
- (2) For “The Commission” and “the Commission”, wherever occurring, there shall be substituted “OFCOM”.
- (3) In subsection (2) (incidental requirements to provide information), after paragraph (d) there shall be inserted—
- “(da) impose conditions in a licence requiring the licence holder, if a body corporate, to give OFCOM notice, after they have occurred and irrespective of whether proposals for them have fallen to be notified, of changes, transactions or events affecting—
 - (i) shareholdings in the body; or
 - (ii) the directors of the body;
 - (db) impose conditions in a licence enabling OFCOM to require the licence holder to provide them with such information as they may reasonably require for determining—
 - (i) whether the licence holder is a disqualified person in relation to that licence by virtue of Part 2 of Schedule 2 to the 1990 Act; or
 - (ii) whether any such requirements as are mentioned in subsection (1)(b) have been and are being complied with by or in relation to the licence holder;”.
- (4) In subsection (6)—
- (a) in paragraph (a), for “complained of” there shall be substituted “constituting their grounds for revoking the licence”.
 - (b) in paragraph (b)(i), for “Parts III and IV of Schedule 2 to the 1990 Act” there shall be substituted “the requirements imposed by or under Schedule 14 to the Communications Act 2003”.
- (5) In subsection (7)—
- (a) paragraph (a) shall cease to have effect; and
 - (b) in paragraph (b), for “Part IV of that Schedule” there shall be substituted “Part 1 of Schedule 14 to the Communications Act 2003”.
- (6) In subsection (8), for the words from “a failure” to the end of paragraph (c) there shall be substituted “a disqualification under Part 2 of Schedule 2 to the 1990 Act or a contravention of a requirement imposed by or under Schedule 14 to the Communications Act 2003,”.

Commencement

Sch. 15(2) para. 78(1)-(6): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Multiplex licences

✓ Law In Force

79

- (1) Section 7 of the 1996 Act (multiplex licences) shall be amended as follows.
- (2) For “the Commission” and “The Commission”, wherever occurring, there shall be substituted “OFCOM”.
- (3) In subsection (4)—
- (a) after paragraph (c) there shall be inserted—

“(ca) the applicant's proposals as to the number (if any) of digital sound programmes services which are to be broadcast, as to the characteristics of each of those services and as to the areas in which they would be provided;”
 - (b) in paragraph (d) for “those services” there shall be substituted “the services mentioned in paragraphs (c) and (ca)”.

Commencement

Sch. 15(2) para. 79(1)-(3)(b): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Award of multiplex licences

✓ Law In Force

80

- (1) Section 8 of the 1996 Act (award of multiplex licences) shall be amended as follows.
- (2) For “the Commission”, wherever occurring, there shall be substituted “OFCOM”.
- (3) In subsection (2)(f), after “digital programme service” there shall be inserted “, digital sound programme service”.

Commencement

Sch. 15(2) para. 80(1)-(3): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Power to require two or more multiplex licences to be granted to one person

✓ Law In Force

81

In section 9 of the 1996 Act (grant of two or more multiplex licences to one person), for “The Commission” and “the Commission”, wherever occurring, there shall be substituted “OFCOM”.

Commencement

Sch. 15(2) para. 81: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Award of multiplex licences subject to conditions

✓ Law In Force

82

(1) Section 10 of the 1996 Act (award of multiplex licences subject to conditions) shall be amended as follows.

(2) For “The Commission” and “the Commission”, wherever occurring, there shall be substituted “OFCOM”.

(3) In subsection (1)(a), for “the 1990 Act or this Act” there shall be substituted “this Act, the 1990 Act or Part 3 of the Communications Act 2003”.

Commencement

Sch. 15(2) para. 82(1)-(3): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Failure to provide licensed service and revocation

✓ Law In Force


83

In section 11 of the 1996 Act (failure to provide licensed service and revocation), for “the Commission”, wherever occurring, there shall be substituted “OFCOM”.

Commencement

Sch. 15(2) para. 83: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Conditions attached to multiplex licences

 Law In Force


84

In section 12 of the 1996 Act (conditions attached to multiplex licences), for “the Commission”, wherever occurring, there shall be substituted “OFCOM”.

Commencement

Sch. 15(2) para. 84: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Additional payments in respect of multiplex licences

 Law In Force

85

In section 13 of the 1996 Act (additional payments in respect of multiplex licences), for “the Commission”, wherever occurring, there shall be substituted “OFCOM”.

Commencement

Sch. 15(2) para. 85: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Multiplex revenue



86

(1) Section 14 of the 1996 Act (multiplex revenue) shall be amended as follows.

(2) In subsection (1)—

- (a) for “section 13(1)” there shall be substituted “this Part”;
- (b) for “the holder of a multiplex licence” there shall be substituted “the person who is the multiplex provider in relation to any television multiplex service or any general multiplex service”;
- (c) in paragraph (a), for “the multiplex service to which the licence relates” there shall be substituted “the relevant multiplex”;
- (d) in paragraph (b) for “of any qualifying service by means of the multiplex service” there shall be substituted “by means of the multiplex service of any service which is a qualifying service or which (without being a qualifying service) is provided by the BBC”;
- (e) in paragraphs (c) and (d), for “the holder of the multiplex licence” and “the multiplex service”, in each place where they occur there shall be substituted, respectively, “the multiplex provider” and “the relevant multiplex”.

(3) In subsections (2) to (8)—

- (a) for the words “the holder of the multiplex licence” and “the licence holder”, wherever occurring, there shall be substituted, in each case, “the multiplex provider”; and
- (b) for “the Commission”, wherever occurring, there shall be substituted “OFCOM”.

(4) In subsection (9)—

- (a) for “a multiplex licence”, in each place, there shall be substituted “a television multiplex service or a general multiplex service”;
- (b) for “the multiplex service to which the licence relates”, in each place, there shall be substituted “that multiplex service”;
- (c) after the definition of “additional services provider” there shall be inserted—

“‘multiplex provider’ —

- (a) in relation to a television multiplex service for which a person holds a licence under this Part, means the licence holder; and
- (b) in relation to a television multiplex service which is not licensed under this Part or a general multiplex service, means the person who provides that service;”

(d) after the definition of “programme provider” there shall be inserted—

“‘the relevant multiplex’ —


- (a) in relation to a multiplex provider falling within paragraph (a) of the definition of that expression, means the television multiplex service to which his licence relates; and
- (b) in relation to any other multiplex provider, means the television multiplex service or general multiplex service which is provided by him;

and this section and section 15 shall have effect as if references in this section to digital programme services included references to digital sound programme services and references to digital additional services included references to digital additional services within the meaning of Part 2.”

Commencement

Sch. 15(2) para. 86(1)-(4)(d): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Attribution of multiplex revenue to multiplex providers

 Law In Force

87

(1) Section 15 of the 1996 Act (attribution of multiplex revenue to licence holder) shall be amended as follows.

(2) In subsection (1)—

- (a) for “the holder of a multiplex licence” there shall be substituted “the person who is the multiplex provider in relation to any television multiplex service”;
- (b) for “of multiplex services in that period,” there shall be substituted “in that period of television multiplex services,”;
- (c) for “the holder of the multiplex licence” there shall be substituted, “the multiplex provider”.

(3) In subsection (2)—

- (a) for “a multiplex service” there shall be substituted “a television multiplex service or a general multiplex service”;
- (b) for “the holder of the multiplex licence”, wherever occurring, there shall be substituted “the multiplex provider”.

(4) In subsection (3)—

- (a) for “the Commission” there shall be substituted “OFCOM”; and
- (b) for “the holder of the multiplex licence” there shall be substituted “the multiplex provider”.

(5) In subsection (4)—

- (a) after ““additional services provider”” there shall be inserted “, `multiplex provider””; and
- (b) for “a multiplex licence” there shall be substituted “a television multiplex service or a general multiplex service”.

Commencement

Sch. 15(2) para. 87(1)-(5)(b): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Duration of multiplex licences

✓ Law In Force

88

(1) Section 16 of the 1996 Act (duration and renewal of multiplex licences) shall be amended as follows.

(2) For “the Commission”, wherever occurring, there shall be substituted “OFCOM”.

(3) In subsection (3), after “not later than” there shall be inserted “the day falling three months before”.

(4) After subsection (12), there shall be inserted—

“(12A) A determination for the purposes of subsection (12)—

(a) must be made at least one year before the date determined; and

(b) must be notified by OFCOM to the person who holds the licence in question.”

Commencement

Sch. 15(2) para. 88(1)-(4): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Enforcement of multiplex licences

✓ Law In Force

89

In section 17 of the 1996 Act (enforcement of multiplex licences), for “the Commission” and “The Commission”, wherever occurring, there shall be substituted “OFCOM”.

Commencement

Sch. 15(2) para. 89: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Licensing of digital programme services

✓ Law In Force

90

(1) Section 18 of the 1996 Act (licensing of digital programme services) shall be amended as follows.

(2) In subsections (1) to (4), for “the Commission”, wherever occurring, there shall be substituted “OFCOM”.

(3) Subsections (5) and (6) (application of sections 6 to 12 of the 1990 Act) shall cease to have effect.

Commencement

Sch. 15(2) para. 90(1)-(3): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Conditions of licences for digital programme services

✓ Law In Force

91

(1) Section 19 of the 1996 Act (conditions of licences for digital programme services) shall be amended as follows.

(2) In subsection (3)—

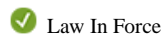
- (a) for “the Commission”, wherever occurring, there shall be substituted “OFCOM”;
- (b) in paragraphs (a) and (c), for “the holder of a multiplex licence” there shall be substituted, in each case, “the provider of a television multiplex service or general multiplex service”;
- (c) in paragraph (a), for “by means of a multiplex service” there shall be substituted “by means of that provider's service”; and
- (d) in paragraph (a)(i), for “the identity of the multiplex service” there shall be substituted “the identity of the service by means of which it will be broadcast”.

(3) Subsections (2) and (4) to (10) of that section shall cease to have effect.

Commencement

Sch. 15(2) para. 91(1)-(3): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Duration and enforcement of multiplex licenses

**92**

(1) Section 23 of the 1996 Act (enforcement of digital programme licences) shall be amended as follows.

(2) For “the Commission” and “The Commission”, wherever occurring, there shall be substituted “OFCOM”.

(3) In subsection (4), for the words from “multiplex service” onwards there shall be substituted “television multiplex service or general multiplex service, means the last accounting period of the multiplex provider”.

(4) In subsection (5), for “multiplex service, the first accounting period of the holder of the multiplex licence” there shall be substituted “television multiplex service or general multiplex service, the first accounting period of the multiplex provider”.

(5) After that subsection there shall be inserted—

“(5A) In subsections (4) and (5) ‘multiplex provider’ has the same meaning as in section 14.”

(6) In subsection (8) for “apology” there shall be substituted “statement of findings”.

Commencement

Sch. 15(2) para. 92(1)-(6): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Digital additional services**93**

(1) Section 24 of the 1996 Act (digital additional services) shall be amended as follows.

(2) In subsection (1), for paragraphs (a) and (b) there shall be substituted—

“(a) is provided by a person with a view to its being broadcast in digital form (whether by him or some other person) so as to be available for reception by members of the public;

(b) is so provided with a view either—

(i) to the broadcasting being by means of a television multiplex service or by means of a general multiplex service; or

(ii) to the members of the public in question being or including members of the public in an EEA State other than the United Kingdom, or in an area of such a State;

and

(c) is not a Channel 3 service, Channel 4, Channel 5, a public television service of the Welsh Authority, the digital public teletext service, a digital programme service, a digital sound programme service, an ancillary service or a technical service.”

(3) In subsection (2) (meaning of ancillary service)—

(a) for “an independent analogue broadcaster” there shall be substituted “a relevant public service broadcaster”; and

(b) for paragraphs (a) and (b) there shall be substituted—

“(a) assistance for disabled people in relation to some or all of the programmes included in a digital programme service or qualifying service provided by him;

(b) a service (apart from advertising) that relates to the promotion or listing of programmes included in such a service or in a digital sound programme service so provided; or

(c) any other service (apart from advertising) that is ancillary to one or more programmes so included, and relates directly to their contents.”

(4) In subsection (3)(a), after “digital programme services” there shall be inserted “, digital sound programme services”.

(5) After subsection (3) there shall be inserted—

“(3A) In this section—

‘assistance for disabled people’ has the same meaning as in Part 3 of the Communications Act 2003;

‘available for reception by members of the public’ shall be construed in accordance with section 361 of that Act;

‘public television service of the Welsh Authority’ means—

(a) S4C Digital; or

(b) any television programme service the provision of which by the Authority is authorised by or under section 205 of that Act and which is provided in digital form;

‘relevant public service broadcaster’ means any of the following—

(a) a person licensed under Part 1 of the 1990 Act to provide a Channel 3 service;

(b) the Channel 4 Corporation;

(c) a person licensed under Part 1 of the 1990 Act to provide Channel 5;

(d) the BBC;

(e) the Welsh Authority;

(f) the public teletext provider.”

Commencement

Sch. 15(2) para. 93(1)-(5): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Licensing of digital additional services

✓ Law In Force

94

(1) Section 25 of the 1996 Act (licensing of digital additional services) shall be amended as follows.

(2) In subsections (1) to (4), for “the Commission”, wherever occurring, there shall be substituted “OFCOM”.

(3) After subsection (4) there shall be inserted—

“(4A) A digital additional services licence is not required for a service that is or is comprised in a qualifying service.”

(4) Subsections (5) and (6) (application of sections 6 to 12 of the 1990 Act) shall cease to have effect.

Commencement

Sch. 15(2) para. 94(1)-(4): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Conditions of digital additional services licence

✓ Law In Force

95

(1) Section 26 of the 1996 Act (conditions of licences for digital additional services) shall be amended as follows.

(2) In subsection (2)—

(a) for “the Commission”, wherever occurring, there shall be substituted “OFCOM”;

(b) in paragraphs (a) and (c), for “the holder of a multiplex licence” there shall be substituted, in each case, “the provider of a television multiplex service or general multiplex service”;


(c) in paragraph (a), for “by means of a multiplex service” there shall be substituted “by means of that provider's service”; and

(d) in paragraph (a)(i), for “the identity of the multiplex service” there shall be substituted “the identity of the service by means of which it will be broadcast”.

Commencement

Sch. 15(2) para. 95(1)-(2)(d): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Enforcement of digital additional television services licences

 Law In Force

96

(1) Section 27 of the 1996 Act (enforcement of digital additional television services licences) shall be amended as follows.

(2) For “the Commission” and “The Commission”, wherever occurring, there shall be substituted “OFCOM”.

(3) In subsection (4), for the words from “multiplex service” onwards there shall be substituted “television multiplex service or general multiplex service, means the last accounting period of the multiplex provider”.

(4) In subsection (5), for “multiplex service, the first accounting period of the holder of the multiplex licence” there shall be substituted “television multiplex service or general multiplex service, the first accounting period of the multiplex provider”.


(5) After that subsection there shall be inserted—

“(5A) In subsections (4) and (5) ‘multiplex provider’ has the same meaning as in section 14.”

Commencement

Sch. 15(2) para. 96(1)-(5): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Digital broadcasting of Gaelic programmes

 Law In Force

97

(1) Section 32 of the 1996 Act (digital broadcasting of Gaelic programmes) shall be amended as follows.

(2) In subsection (1), for “the Commission to include in any multiplex licence granted in respect of one frequency to which section 28 applies” there shall be substituted “OFCOM to include in no more than one relevant multiplex licence”.

(3) In subsection (7), for “Comataidh Craolaidh Gaidhlig” there shall be substituted “Seirbheis nam Meadhanan Gàidhlig”.

(4) For subsection (9) there shall be substituted—

“(9) In this section—

‘Gaelic’ means the Gaelic language as spoken in Scotland;

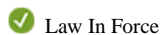
‘relevant multiplex licence’ means a multiplex licence in respect of which the Secretary of State has made an order under section 243(3) of the Communications Act 2003;

‘television broadcasting service’ has the same meaning as in Part 3 of the Communications Act 2003.”

Commencement

Sch. 15(2) para. 97(1)-(4): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Review of digital television broadcasting



Law In Force

98

(1) Section 33 of the 1996 Act (review of digital television broadcasting) shall be amended as follows.

(2) For “the Commission”, wherever occurring, there shall be substituted “OFCOM”.

(3) In subsection (1)(a)(ii), for the words “services specified in section 2(3), S4C Digital, the qualifying teletext service” there shall be substituted “following services, namely, Channel 3 services, Channel 4, Channel 5, the public television services of the Welsh Authority (within the meaning of Part 2 of Schedule 12 to the Communications Act 2003), the digital public teletext service”.

Commencement

Sch. 15(2) para. 98(1)-(3): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Enforcement of licences held by BBC companies

✓ Law In Force

99

In section 35 of the 1996 Act (enforcement of licences held by BBC companies), for “the Commission”, wherever occurring, there shall be substituted “OFCOM”.

Commencement

Sch. 15(2) para. 99: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Interpretation of Part 1

✓ Law In Force

100

In section 39(1) (interpretation of Part 1)—

(a) after the definition of “digital programme service” there shall be inserted—

“‘digital public teletext service’ has the same meaning as in Part 3 of the Communications Act 2003;

‘digital sound programme service’ has the same meaning as in Part 2 of this Act;

‘general multiplex service’ has the same meaning as in that Part;”.

(b) for the definition of “public teletext provider” there shall be substituted—

“‘public teletext provider’ means the person for the time being licensed under Part 1 of the 1990 Act to provide the public teletext service (within the meaning of Part 3 of the Communications Act 2003);”

(c) for the definitions of “S4C” and “on S4C” and of “S4C Digital” and “on S4C Digital” there shall be substituted—

“‘S4C’ and ‘S4C Digital’ each has the same meaning as in Part 3 of the Communications Act 2003;”.

(d) after the definition of “technical service” there shall be inserted—

“‘television multiplex service’ has the meaning given by section 241 of the Communications Act 2003.”

Commencement

Sch. 15(2) para. 100(a)-(d): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Radio multiplex services

✓ Law In Force

101

(1) Section 40 of the 1996 Act (radio multiplex services) shall be amended as follows.

(2) For subsections (1) to (3) there shall be substituted—

“(1) In this Part ‘radio multiplex service’ means a radio multiplex service within the meaning of Part 3 of the Communications Act 2003.”

(3) In subsection (4) (local and national multiplex services), the words “provided on a frequency or frequencies assigned to the Authority under section 45(1)” shall be omitted.

(4) In subsection (5), for “for general reception” there shall be substituted “so as to be available for reception by members of the public”.

(5) For subsection (8) of that section there shall be substituted—

“(8) In this section—

‘available for reception by members of the public’ shall be construed in accordance with section 361 of the Communications Act 2003;

‘broadcast’ means broadcast otherwise than from a satellite.”

Commencement

Sch. 15(2) para. 101(1)-(5): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Licences under Part 2 of the 1996 Act

✓ Law In Force

102

(1) Section 42 of the 1996 Act (licences under Part 2) shall be amended as follows.

(2) In subsection (1), for “the Radio Authority (in this Part referred to as ‘the Authority’)” there shall be substituted “OFCOM”.

(3) In subsections (2), (5) and (6), for “The Authority” and “the Authority”, wherever occurring, there shall be substituted “OFCOM”.

(4) For subsection (3) (variation of licences) there shall be substituted—

“(3) OFCOM may vary a licence by a notice served on the licence holder.

(3A) OFCOM shall not vary—

(a) the period for which a licence having effect for a specified period is to continue in force, or

(b) increase the total amount of digital capacity specified in a national radio multiplex licence for the purposes of section 48(1A),

unless the licence holder consents.

(3B) OFCOM shall not make any other variation of a licence unless the licence holder has been given a reasonable opportunity of making representations to OFCOM about the variation.”

(5) In subsection (4) (exceptions from power to vary licences), for “Paragraph (a) of subsection (3)” there shall be substituted “Paragraph (a) of subsection (3A)”.

(6) For subsection (7) there shall be substituted—

“(7) The holding of a licence by a person shall not relieve him—

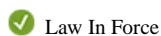
(a) of any liability in respect of a failure to hold a licence under section 1 of the Wireless Telegraphy Act 1949; or

(b) of any obligation to comply with requirements imposed by or under Chapter 1 of Part 2 of the Communications Act 2003 (electronic communications networks and electronic communications services).”

Commencement

Sch. 15(2) para. 102(1)-(6): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

General licence conditions



Law In Force

103

(1) Section 43 of the 1996 Act (general licence conditions) shall be amended as follows.

(2) For “the Authority”, wherever occurring, there shall be substituted “OFCOM”.

(3) In subsection (1) (conditions may include conditions to give effect to duties imposed by or under 1990 Act or 1996 Act)—

(a) in paragraph (a), for “the 1990 Act or this Act” there shall be substituted “this Act, the 1990 Act or the Communications Act 2003”; and

(b) in paragraph (d), after “this Act” there shall be inserted “, the 1990 Act or the Communications Act 2003”.

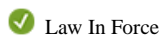
(4) In subsection (2), sub-paragraph (ii) of paragraph (b) and the word “or” immediately preceding it shall be omitted.

(5) In subsection (3) (fixing of fees), the words from “and the amount” onwards shall be omitted.

Commencement

Sch. 15(2) para. 103(1)-(5): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Restrictions on holding licences



Law In Force

104

(1) Section 44 of the 1996 Act (restrictions on the holding of licences) shall be amended as follows.

(2) For “The Authority” and “the Authority”, wherever occurring, there shall be substituted “OFCOM”.

(3) In subsection (2) (incidental requirements to provide information), after paragraph (d) there shall be inserted—

“(da) impose conditions in a licence requiring the licence holder, if a body corporate, to give OFCOM notice, after they have occurred and irrespective of whether proposals for them have fallen to be notified, of changes, transactions or events affecting—

(i) shareholdings in the body; or

(ii) the directors of the body;

(db) impose conditions in a licence enabling OFCOM to require the licence holder to provide them with such information as they may reasonably require for determining—

(i) whether the licence holder is a disqualified person in relation to that licence by virtue of Part 2 of Schedule 2 to the 1990 Act; or

(ii) whether any such requirements as are mentioned in subsection (1)(b) have been and are being complied with by or in relation to the licence holder;”.

(4) In subsection (6)—

- (a) in paragraph (a), for “complained of” there shall be substituted “constituting their grounds for revoking the licence”; and
- (b) in paragraph (b)(i), for “Parts III and IV of Schedule 2 to the 1990 Act” there shall be substituted “the requirements imposed by or under Schedule 14 to the Communications Act 2003”.

(5) In subsection (7)—

- (a) paragraph (a) shall cease to have effect; and
- (b) in paragraph (b), for “Part IV of that Schedule” there shall be substituted “Part 1 of Schedule 14 to the Communications Act 2003”.

(6) In subsection (8), for the words from “a failure” to the end of paragraph (c) there shall be substituted “a disqualification under Part 2 of Schedule 2 to the 1990 Act or a contravention of a requirement imposed by or under Schedule 14 to the Communications Act 2003,”.

Commencement

Sch. 15(2) para. 104(1)-(6): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

National radio multiplex licences

✓ Law In Force

105

(1) Section 46 of the 1996 Act (national radio multiplex licences) shall be amended as follows.

(2) For “the Authority” and “The Authority”, wherever occurring, there shall be substituted “OFCOM”.

(3) In subsection (1)(d), for “a direction” there shall be substituted “a condition”.

Commencement

Sch. 15(2) para. 105(1)-(3): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Award of national radio multiplex licences

✓ Law In Force

106

In section 47 of the 1996 Act (award of national radio multiplex licences), for “the Authority”, wherever occurring, there shall be substituted “OFCOM”.

Commencement

Sch. 15(2) para. 106: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Reservation of capacity for independent national broadcasters

✓ Law In Force

107

(1) Section 48 of the 1996 Act (reservation of digital capacity for independent broadcasters) shall be amended as follows.

(2) For subsections (1) to (3) there shall be substituted—

“(1A) OFCOM must ensure that the conditions included in national radio multiplex licences (taken together) secure that an amount of digital capacity on the multiplex frequencies is reserved for every independent national broadcaster for the broadcasting of a simulcast radio service provided by that broadcaster.

(1B) Where the conditions of a licence for a national radio multiplex service reserve capacity on the frequency made available for that service for the broadcasting of a simulcast radio service provided by an independent national broadcaster, those conditions must also include the condition specified in subsection (1C).

(1C) That condition is the condition that OFCOM consider appropriate for securing that, in consideration of the making by the independent national broadcaster of the payments which—

(a) are agreed from time to time between him and the licence holder, or

(b) in default of agreement, are determined under this section,

the licence holder uses, for the broadcasting of a simulcast radio service provided by that broadcaster, such of the reserved digital capacity as may be requested, from time to time, by that broadcaster.

(1D) Where conditions are included under this section in a national radio multiplex licence reserving capacity for an independent national broadcaster, OFCOM may include conditions relating to the broadcasting of the simulcast radio service in the licence for the national service provided by that broadcaster.”

(3) In subsections (4) to (6), for “the Authority”, wherever occurring, there shall be substituted “OFCOM”.

(4) In subsection (4), for “subsection (3)(a)” there shall be substituted “subsection (1C)”.

(5) After subsection (6) there shall be inserted—

“(7) In this section ‘the multiplex frequencies’ means the frequencies made available for the purposes of licensed national radio multiplex services.”

Commencement

Sch. 15(2) para. 107(1)-(5): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Reservation of digital capacity for BBC

✓ Law In Force

108

(1) Section 49 of the 1996 Act (reservation of digital capacity for BBC) shall be amended as follows.

(2) In subsections (1) to (3) and (6), for “the Authority”, wherever occurring, there shall be substituted “OFCOM”.

(3) In subsection (4) (determination of capacity to be reserved), for the words from “If the BBC” to “the Secretary of State, who may” there shall be substituted “If the BBC do not give their consent to the proposals within such period as OFCOM may specify in their notice under subsection (3), OFCOM shall”.

(4) In subsection (5), for words from “the Secretary of State” onwards there shall be substituted “OFCOM shall give the BBC an opportunity of making representations to them about their proposals.”

(5) In subsection (6), after “and the BBC” there shall be inserted “or (in default of agreement) determined under this section”.

(6) After that subsection there shall be inserted—

“(7) Where the holder of the licence and the BBC fail to agree—

(a) the payments to be made under a condition included in the licence in accordance with subsection (6), or

(b) the other terms that are to apply in relation to the use of digital capacity in accordance with such a condition,

either of them may refer the matter to OFCOM for determination.

(8) Before making a determination under subsection (7), OFCOM must give the licence holder and the BBC an opportunity of making representations to them about the matter.


(9) In making any determination under subsection (7), OFCOM shall have regard to—

- (a) the expenses incurred, or likely to be incurred, by the licence holder in providing the local radio multiplex service in question, and
- (b) the terms on which persons providing local radio multiplex services contract with persons providing local digital additional services for the broadcasting of those services.”

Commencement

Sch. 15(2) para. 108(1)-(6): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Local radio multiplex licences

 Law In Force

109

- (1) Section 50 of the 1996 Act (local radio multiplex licences) shall be amended as follows.
- (2) For “the Authority” and “The Authority”, wherever occurring, there shall be substituted “Ofcom”.
- (3) In subsection (1)(b), for “the Secretary of State has” there shall be substituted “Ofcom have”.
- (4) In subsection (2)(d), for “direction under section 49” substitute “determination under section 49(4)”.

Commencement

Sch. 15(2) para. 109(1)-(4): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Award of local multiplex licences

 Law In Force

110

- (1) Section 51 of the 1996 Act (award of local multiplex licences) shall be amended as follows.
- (2) For “the Authority”, wherever occurring, there shall be substituted “Ofcom”.
- (3) In subsection (2), for paragraph (f) there shall be substituted—

“(f) the extent to which there is evidence that, amongst persons living in that area or locality, there is a demand for, or support for, the provision of the proposed service; and”.

Commencement

Sch. 15(2) para. 110(1)-(3): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Power to require two or more local radio multiplex licences to be granted to one person

✓ Law In Force

111

In section 52 of the 1996 Act (power to require two or more local radio multiplex licences to be granted to one person), for “The Authority” and “the Authority” there shall be substituted “OFCOM”.

Commencement

Sch. 15(2) para. 111: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Failure to begin to provide licensed service

✓ Law In Force

112

In section 53 of the 1996 Act (failure to provide licensed service), for “the Authority”, wherever occurring, there shall be substituted “OFCOM”.

Commencement

Sch. 15(2) para. 112: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Conditions which may be attached to radio multiplex licences

✓ Law In Force

113

In section 54 of the 1996 Act (conditions which may be attached to a radio multiplex licence), for “the Authority”, wherever occurring, there shall be substituted “OFCOM”.

Commencement

Sch. 15(2) para. 113: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Additional payments to be made in respect of national radio multiplex licences

✓ Law In Force

114

In section 55 of the 1996 Act (additional payments to be made in respect of national radio multiplex licences) for “the Authority”, wherever occurring, there shall be substituted “OFCOM”.

Commencement

Sch. 15(2) para. 114: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Multiplex revenue

✓ Law In Force

115

(1) Section 56 of the 1996 Act (multiplex revenue) shall be amended as follows.

(2) In subsection (1)—

- (a) for “section 55(1)” there shall be substituted “this Part”;
- (b) for “the holder of a national radio multiplex licence” there shall be substituted “the person who is the multiplex provider in relation to a national radio multiplex service”;
- (c) in paragraph (a)(i), “to which the licence relates” shall be omitted;
- (d) in paragraphs (c) and (d), for “the holder of the radio multiplex licence” there shall be substituted “the multiplex provider”.

(3) In subsections (2) to (8)—

- (a) for “the holder of the radio multiplex licence”, “the licence holder” and “the holder of the multiplex licence”, wherever occurring, there shall be substituted, in each case, “the multiplex provider”; and
- (b) for “the Authority”, wherever occurring, there shall be substituted “OFCOM”.

(4) In subsection (9)—

- (a) for “a national radio multiplex licence”, in each place, there shall be substituted “a national radio multiplex service”;
- (b) for “the radio multiplex service to which the licence relates”, in each place, there shall be substituted “that radio multiplex service”;
- (c) after the definition of “additional services provider” there shall be inserted—


“‘multiplex provider’ —

- (a) in relation to a national radio multiplex service for which a person holds a licence under this Part, means the licence holder; and
- (b) in relation to a national radio multiplex service which is not licensed under this Part, means the person who provides that service.”

Commencement

Sch. 15(2) para. 115(1)-(4)(c): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Attribution of radio multiplex revenue

 Law In Force

116

(1) Section 57 of the 1996 Act (attribution of radio multiplex revenue) shall be amended as follows.

(2) In subsection (1)—

- (a) for “the holder of a national radio multiplex licence” there shall be substituted “the person who is the multiplex provider in relation to a national radio multiplex service”; and
- (b) for “the holder of the national radio multiplex licence” there shall be substituted “the multiplex provider”.

(3) In subsection (2), for “the holder of the radio multiplex licence”, wherever occurring, there shall be substituted “the multiplex provider”.

(4) In subsection (3)—

- (a) for “the Authority” there shall be substituted “OFCOM”; and
- (b) for “the holder of the national radio multiplex licence” there shall be substituted “the multiplex provider”.

(5) In subsection (4)—

- (a) after “‘additional services provider’” there shall be inserted “, ‘multiplex provider’”; and

(b) for “a national radio multiplex licence” there shall be substituted “a national radio multiplex service”.

Commencement

Sch. 15(2) para. 116(1)-(5)(b): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Duration and renewal of radio multiplex licences

✓ Law In Force

117

(1) Section 58 of the 1996 Act (duration and renewal of radio multiplex licences) shall be amended as follows.

(2) For “the Authority” and “The Authority”, wherever occurring, there shall be substituted “OFCOM”.

(3) In subsection (3), after “not later than” there shall be inserted “the day falling three months before”.

(4) Subsection (5) (consent of the Secretary of State for exercise of certain powers in connection with renewal) shall cease to have effect.

(5) After subsection (12) there shall be inserted—

“(12A) A determination for the purposes of subsection (12)—

(a) must be made at least one year before the date determined; and

(b) must be notified by OFCOM to the person who holds the licence in question.”

Commencement

Sch. 15(2) para. 117(1)-(5): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Enforcement of radio multiplex licences

✓ Law In Force


118

In section 59 of the 1996 Act (enforcement of radio multiplex licences), for “the Authority” and “The Authority”, wherever occurring, there shall be substituted “OFCOM”.

Commencement

Sch. 15(2) para. 118: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Digital sound programme licensing

 Law In Force

119

(1) Section 60 of the 1996 Act (digital sound programme licensing) shall be amended as follows.

(2) For “the Authority”, wherever occurring, there shall be substituted “OFCOM”.

(3) After subsection (6), there shall be inserted—

“(6A) Section 89 of the 1990 Act (disqualification from being licence holder or concerned with the provision of a programme service if convicted of a transmitting offence) shall apply in relation to a licence under this section as it applies to a licence under Part 3 of that Act, but with the omission of paragraph (b) of subsection (3) of that section and of the word ‘or’ immediately before that paragraph.”

(4) Sub-paragraph (3) does not impose a disqualification in respect of any offence committed before the commencement of that sub-paragraph.

Commencement

Sch. 15(2) para. 119(1)-(4): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Conditions of digital sound programme licences

 Law In Force

120

(1) Section 61 of the 1996 Act (conditions of licences for digital sound programme services) shall be amended as follows.

(2) In subsection (2)—

(a) for “the Authority”, wherever occurring, there shall be substituted “OFCOM”;

- (b) in paragraphs (a) and (c), for “the holder of a radio multiplex licence”, there shall be substituted, in each case, “the provider of a radio multiplex service, of a television multiplex service or of a general multiplex service”;
- (c) in paragraph (a) for “by means of a radio multiplex service” there shall be substituted “by means of the multiplex service”; and
- (d) in paragraph (a)(i) for “radio multiplex service” there shall be substituted “multiplex service”.

Commencement

Sch. 15(2) para. 120(1)-(2)(d): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Enforcement of digital sound programme licences

✓ Law In Force

121

(1) Section 62 of the 1996 Act (enforcement of digital sound programme licences) shall be amended as follows.

(2) For “the Authority” and “The Authority”, wherever occurring, there shall be substituted “OFCOM”.

(3) In subsection (4), for the words from “national radio multiplex service” onwards there shall be substituted “relevant multiplex service, means the last accounting period of the multiplex provider”.

(4) In subsection (5)—

- (a) for “national radio multiplex service” there shall be substituted “relevant multiplex service”;
- (b) for “holder of the national radio multiplex licence” there shall be substituted “multiplex provider”; and
- (c) for “the radio multiplex service” and “that radio multiplex service” there shall be substituted “that relevant multiplex service”.

(5) After subsection (5A) (inserted by Schedule 13) there shall be inserted—

“(5B) For the purposes of this section, a service is a relevant multiplex service if it is—

- (a) a national radio multiplex service;
- (b) a television multiplex service; or
- (c) a general multiplex service.

(5C) In this section, “multiplex provider” —


- (a) in relation to a national radio multiplex service, means the multiplex provider within the meaning of section 56; and
- (b) in relation to a television multiplex service or a general multiplex service, means the multiplex provider within the meaning of section 14.”

(6) In subsection (10) for “apology” there shall be substituted “statement of findings”.

Commencement

Sch. 15(2) para. 121(1)-(6): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Digital additional sound services

 Law In Force


122

In section 64 of the 1996 Act (licensing of digital additional sound services), for “the Authority”, wherever occurring, there shall be substituted “Ofcom”.

Commencement

Sch. 15(2) para. 122: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Conditions of digital additional sound service

 Law In Force

123

(1) Section 65 of the 1996 Act (conditions of licences for digital additional sound services) shall be amended as follows.

(2) In subsection (2)—

- (a) for “the Authority”, wherever occurring, there shall be substituted “Ofcom”;
- (b) in paragraphs (a) and (c), for “the holder of a radio multiplex licence”, there shall be substituted, in each case, “the provider of a radio multiplex service or of a general multiplex service”;
- (c) in paragraph (a) for “by means of a radio multiplex service” there shall be substituted “by means of the multiplex service”; and
- (d) in paragraph (a)(i) for “radio multiplex service” there shall be substituted “multiplex service”.

Commencement

Sch. 15(2) para. 123(1)-(2)(d): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Enforcement of digital additional sound services licences

✓ Law In Force

124

(1) Section 66 of the 1996 Act (enforcement of digital additional services licences) shall be amended as follows.

(2) For “the Authority” and “The Authority”, wherever occurring, there shall be substituted “OFCOM”.

(3) In subsection (4), for “national radio multiplex service” there shall be substituted “relevant multiplex service”.

(4) In subsection (5), for the words from “national radio multiplex service” onwards there shall be substituted “relevant multiplex service, means the last accounting period of the multiplex provider”.

(5) In subsection (6)—

(a) for “national radio multiplex service” there shall be substituted “relevant multiplex service”;

(b) for “holder of the national radio multiplex licence” there shall be substituted “multiplex provider”; and

(c) for “the radio multiplex service” and “that radio multiplex service” there shall be substituted “that relevant multiplex service”.

(6) After subsection (6A) (inserted by Schedule 13) there shall be inserted—

“(6B) For the purposes of this section, a service is a relevant multiplex service if it is—

(a) a national radio multiplex service; or

(b) a general multiplex service.

(6C) In this section, “multiplex provider” —

(a) in relation to a national radio multiplex service, means the multiplex provider within the meaning of section 56; and

(b) in relation to a general multiplex service, means the multiplex provider within the meaning of section 14.”

(7) In subsection (10) for “apology” there shall be substituted “statement of findings”.

Commencement

Sch. 15(2) para. 124(1)-(7): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Review of digital radio broadcasting

✓ Law In Force

125

In section 67 of the 1996 Act (review of digital radio broadcasting), for “the Authority”, wherever occurring, there shall be substituted “OFCOM”.

Commencement

Sch. 15(2) para. 125: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Interpretation

✓ Law In Force

126

In section 72(1) of the 1996 Act (interpretation), for the definition of “radio multiplex service” there shall be substituted—

“‘radio multiplex service’ means a radio multiplex service within the meaning of Part 3 of the Communications Act 2003;

‘the radio transfer date’ has the same meaning as in the Communications Act 2003;”.

Commencement

Sch. 15(2) para. 126: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Listed events

✓ Law In Force

127

(1) Section 98 of the 1996 Act (categories of service for the purposes of Part 4 of that Act) shall be amended as follows.

(2) In subsection (3), for the words from “television” onwards there shall be substituted “licence for the purposes of section 363 of the Communications Act 2003”.

(3) In subsection (5), for “The Commission” there shall be substituted “OFCOM”.

(4) In subsection (6), for “transmission for general reception of television programmes by satellite” there shall be substituted “broadcasting of television programmes from a satellite so as to be available for reception by members of the public (within the meaning of Part 3 of the Communications Act 2003)”.

Commencement

Sch. 15(2) para. 127(1)-(4): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

✓ Law In Force

128

In sections 101, 101B, 102 and 103 of the 1996 Act (restrictions on, and penalties for, televising listed and designated events), for “The Commission” and “the Commission”, wherever occurring, there shall be substituted “OFCOM”.

Commencement

Sch. 15(2) para. 128: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

✓ Law In Force

129


(1) Section 104 of the 1996 Act (code of guidance) shall be amended as follows.

(2) For “the Commission”, wherever occurring, there shall be substituted “OFCOM”.

(3) In subsection (4)(d), the words “by the Commission” and “by them” shall be omitted.

Commencement

Sch. 15(2) para. 129(1)-(3): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)


 Law In Force

130

In section 104A of the 1996 Act (provision of information about listed and designated events), for “the Commission”, wherever occurring, there shall be substituted “OfCOM”.

Commencement

Sch. 15(2) para. 130: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

 Law In Force

131

In section 105(1) of the 1996 Act (interpretation of Part 4 etc.), the definition of “the Commission” shall be omitted.

Commencement

Sch. 15(2) para. 131: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Broadcasting standards


 Law In Force

132

- (1) Part 5 of the 1996 Act (the Broadcasting Standards Commission) shall be amended as follows.
- (2) For “the BSC” and “The BSC”, wherever occurring in any of sections 107, 110, 111, 114, 115, 118 to 121 there shall be substituted “OfCOM”.

Commencement

Sch. 15(2) para. 132(1)-(2): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)


 Law In Force

133

In section 107(5)(b) of the 1996 Act (code relating to avoidance of unjust or unfair treatment etc.), for “the service referred to in section 57(1A)(a) of the 1990 Act” there shall be substituted “any public service of the Welsh Authority (within the meaning of Part 2 of Schedule 12 to the Communications Act 2003)”.

Commencement

Sch. 15(2) para. 133: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

 Law In Force


134

In section 115 of the 1996 Act (consideration of fairness complaints)

- (a) in subsection (2)(d), for “to (c)” there shall be substituted “or (b)”; and
 - (b) in subsection (8), for “they shall send a statement of” there shall be substituted “OFCOM shall send a copy of”.
-

Commencement

Sch. 15(2) para. 134(a)-(b): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

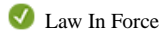
 Law In Force

135

In section 117 of the 1996 Act (duty of broadcasting body to retain recordings of programmes), for “sections 115 and 116” there shall be substituted “section 115”.

Commencement

Sch. 15(2) para. 135: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

136

(1) For subsections (1) and (2) of section 119 of the 1996 Act there shall be substituted—

“(1) Where OFCOM have considered and adjudicated upon a fairness complaint, they may direct the relevant person to publish the matters mentioned in subsection (3) in such manner, and within such period, as may be specified in the directions.”

(2) In that section—

- (a) in subsection (4), for “subsection (2)” there shall be substituted “subsection (1)”;
- (b) in subsection (5), for “(3)(a), (b) or (c)” there shall be substituted “(3)(a) or (b)”;
- (c) in subsection (6), for “broadcasting or regulatory body” there shall be substituted “relevant person” and for “them” there shall be substituted “him”;
- (d) in subsection (8), the words “or standards complaint” and in paragraph (c) the words “, a regulatory body” shall be omitted;
- (e) in subsection (10), for paragraphs (a) and (b) there shall be substituted “a relevant person”; and
- (f) subsection (12) shall cease to have effect.

(3) After subsection (11) of that section there shall be inserted—

“(11A) In this section “relevant person” means—

- (a) in a case where the relevant programme was broadcast by a broadcasting body, that body; and
- (b) in a case where the relevant programme was included in a licensed service, the licence holder providing that service.”

Commencement

Sch. 15(2) para. 136(1)-(3): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

137


In section 130(1) of the 1996 Act (interpretation of Part 5), for paragraphs (b) and (c) of the definition of “licensed service” there shall be substituted—

- “(aa) the public teletext service,
- (b) any relevant independent radio service (within the meaning of section 85 of the 1990 Act),
- (c) any additional service (within the meaning of Part 1 of the 1990 Act) which is licensed under that Part,”.

Commencement

Sch. 15(2) para. 137: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Disqualification on grounds related to political objects

 Law In Force

138

(1) Section 143 of the 1996 Act (disqualification on grounds related to political objects) shall be amended as follows.

(2) In each of subsections (1) and (2)—

- (a) for “the Independent Television Commission” and “the Commission” there shall be substituted “OFCOM”; and
- (b) for “section 5(1) of the 1990 Act, or as the case may be section 5(1) of this Act” there shall be substituted “section 5(1) or 88(1) of the 1990 Act or section 5(1) or 44(1) of this Act”.

(3) In subsection (1), for “Part I or II of the 1990 Act or Part I of this Act” there shall be substituted “Part 1 or 3 of the 1990 Act or Part 1 or 2 of this Act,”.

(4) In subsection (2), for “Parts I or II of the 1990 Act or Part I of this Act” there shall be substituted “Part 1 or 3 of the 1990 Act or Part 1 or 2 of this Act,”.

(5) Subsections (3) and (4) shall cease to have effect.

(6) In subsection (5), for “to (4)” there shall be substituted “and (2)”.

(7) In subsection (6), for paragraphs (a) and (b) there shall be substituted “the duties imposed on OFCOM by sections 5(1) and 88(1) of the 1990 Act and sections 5(1) and 44(1) of this Act.”

Commencement

Sch. 15(2) para. 138(1)-(7): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Offence of providing false information

✓ Law In Force

139

(1) Section 144 of the 1996 Act (offence of providing false information) shall be amended as follows.

(2) In subsection (1), for “to the relevant authority a statement”, in each place, there shall be substituted “a statement to OFCOM”.

(3) In subsection (2), for “the relevant authority” there shall be substituted “OFCOM”.

(4) Subsection (5) shall cease to have effect.

Commencement

Sch. 15(2) para. 139(1)-(4): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Disqualification for supplying false information

✓ Law In Force

140

(1) Section 145 of the 1996 Act (disqualification for offence of supplying false information) shall be amended as follows.

(2) In subsection (5), for “the relevant authority” there shall be substituted “OFCOM”.

(3) In subsection (7)—

(a) for “5(1)(a) and 88(1)(a)” there shall be substituted “5(1)(a) and (2)(db), 32(12) and 88(1)(a) and (2)(db)”; and

(b) for “5(1)(a) and 44(1)(a)” there shall be substituted “5(1)(a) and (2)(db) and 44(1)(a) and (2)(db)”.

(4) In subsection (8) of that section, for the definition of “licence” there shall be substituted—

“‘licence’ means a licence under Part 1 or 3 of the 1990 Act or under Part 1 or 2 of this Act;”.

Commencement

Sch. 15(2) para. 140(1)-(4): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Interpretation

✓ Law In Force

141

In section 147(1) of the 1996 Act (general interpretation), after the definition of “the BBC” there shall be inserted—

“‘OFCOM’ means the Office of Communications;”.

Commencement

Sch. 15(2) para. 141: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Computation of qualifying revenue

✓ Law In Force

142

(1) Schedule 1 to the 1996 Act (computation of “multiplex revenue” etc.) shall be amended as follows.

(2) In Part 1, for “the Commission” and “The Commission”, wherever occurring, there shall be substituted “OFCOM”.

(3) In Part 2, for “the Authority” and “The Authority”, wherever occurring, there shall be substituted “OFCOM”.

Commencement


Sch. 15(2) para. 142(1)-(3): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

[SCHEDULE 15A**Video-sharing platform services: appropriate measures for the purposes of section 368Z1(1)****Section 368Z1(1)****] ¹****Notes**

- ¹ Added by Audiovisual Media Services Regulations 2020/1062 Pt 4 reg.48 (November 1, 2020: insertion has effect subject to transitional provision specified in SI 2020/1062 Pt 7)

*[Appropriate measures] ¹***Notes**

- ¹ Added by Audiovisual Media Services Regulations 2020/1062 Pt 4 reg.48 (November 1, 2020: insertion has effect subject to transitional provision specified in SI 2020/1062 Pt 7)


 Law In Force

[1.

Paragraphs 2 to 9 set out the measures which it may be appropriate for a person who provides a video-sharing platform service to take in relation to that service for the purposes mentioned in section 368Z1(1).

] ¹**Notes**

- ¹ Added by Audiovisual Media Services Regulations 2020/1062 Pt 4 reg.48 (November 1, 2020: insertion has effect subject to transitional provision specified in SI 2020/1062 Pt 7)

 Law In Force

[2.

Include terms and conditions to the effect that if a person uploads to the service a video that contains any restricted material, that person must bring it to the attention of the person who is providing the service.

] ¹**Notes**

- ¹ Added by Audiovisual Media Services Regulations 2020/1062 Pt 4 reg.48 (November 1, 2020: insertion has effect subject to transitional provision specified in SI 2020/1062 Pt 7)

✓ Law In Force

[3.

Include terms and conditions to the effect that a person must not upload to the service a video containing relevant harmful material.

]¹

Notes

¹ Added by Audiovisual Media Services Regulations 2020/1062 Pt 4 reg.48 (November 1, 2020: insertion has effect subject to transitional provision specified in SI 2020/1062 Pt 7)

✓ Law In Force

[4.

Include terms and conditions to the effect that—

- (a) a person must not upload to the service a video containing an audiovisual commercial communication for a product mentioned in section 368Z(2),
- (b) a person must not upload to the service a video containing an audiovisual commercial communication for an alcoholic drink unless that communication meets the requirements in section 368Z(3), (4) and (5), and
- (c) a person must not upload to the service a video containing an audiovisual commercial communication for anything else unless that communication meets the requirements in section 368Z(4) and (5).

]¹

Notes

¹ Added by Audiovisual Media Services Regulations 2020/1062 Pt 4 reg.48 (November 1, 2020: insertion has effect subject to transitional provision specified in SI 2020/1062 Pt 7)

✓ Law In Force

[5.

Provide functionality for a person uploading a video to the service to declare whether, as far as they know or can reasonably be expected to know, the video contains an audiovisual commercial communication, and include terms and conditions to the effect that a person uploading a video must use the functionality to make such a declaration.

]¹

Notes

¹ Added by Audiovisual Media Services Regulations 2020/1062 Pt 4 reg.48 (November 1, 2020: insertion has effect subject to transitional provision specified in SI 2020/1062 Pt 7)

✓ Law In Force

[6.

Establish and operate—

- (a) transparent and user-friendly mechanisms for viewers to report or flag harmful material which is available on the service to the person providing the service;
- (b) systems through which the person providing the service explains to persons using the service what effect has been given to the reporting and flagging referred to in sub-paragraph (a);
- (c) systems for obtaining assurance as to the age of potential viewers;
- (d) easy to use systems allowing viewers to rate harmful material.

]¹

Notes

- ¹ Added by Audiovisual Media Services Regulations 2020/1062 Pt 4 reg.48 (November 1, 2020: insertion has effect subject to transitional provision specified in SI 2020/1062 Pt 7)
-

✓ Law In Force

[7.

Provide for parental control systems in relation to restricted material.

]¹

Notes

- ¹ Added by Audiovisual Media Services Regulations 2020/1062 Pt 4 reg.48 (November 1, 2020: insertion has effect subject to transitional provision specified in SI 2020/1062 Pt 7)
-

✓ Law In Force

[8.

In relation to the implementation of the measures set out in paragraphs 6 and 7, establish and operate a complaints procedure which must be transparent, easy to use and effective, and must not affect the ability of a person to bring a claim in civil proceedings.

]¹

Notes

- ¹ Added by Audiovisual Media Services Regulations 2020/1062 Pt 4 reg.48 (November 1, 2020: insertion has effect subject to transitional provision specified in SI 2020/1062 Pt 7)
-

✓ Law In Force

[9.

Provide information and tools for individuals using the service with the aim of improving their media literacy, and raise awareness of the availability of such information and tools.

] ¹**Notes**

- ¹ Added by Audiovisual Media Services Regulations 2020/1062 Pt 4 reg.48 (November 1, 2020: insertion has effect subject to transitional provision specified in SI 2020/1062 Pt 7)

[Interpretation] ¹**Notes**

- ¹ Added by Audiovisual Media Services Regulations 2020/1062 Pt 4 reg.48 (November 1, 2020: insertion has effect subject to transitional provision specified in SI 2020/1062 Pt 7)

✓ Law In Force

[10.

In this Schedule—

"audiovisual commercial communication" has the meaning given by section 368Z13;

"harmful material" means—

- (a) relevant harmful material, or
- (b) restricted material;

"parental control systems" means systems designed to be used by an adult responsible for a person under the age of 18, to control whether or how such persons are able to access videos or audiovisual commercial communications included in a video-sharing platform service;

"relevant harmful material" means—

- (a) material referred to in section 368E(1), or
- (b) material referred to in section 368E(3)(za) (read as if the reference to an on-demand programme service were to a video-sharing platform service);

"restricted material" means—

- (a) material which is prohibited material within the meaning of section 368E by virtue of falling within paragraph (a) or (b) of subsection (3) of that section, or
- (b) specially restricted material within the meaning of section 368E (see subsection (5) of that section);


"video" has the meaning given by section 368Z13;

"video-sharing platform service" has the meaning given by section 368S.

] ¹**Notes**

- ¹ Added by Audiovisual Media Services Regulations 2020/1062 Pt 4 reg.48 (November 1, 2020: insertion has effect subject to transitional provision specified in SI 2020/1062 Pt 7)

SCHEDULE 16**FURTHER AMENDMENTS IN CONNECTION WITH MEDIA MERGERS****Section 389***Competition Act 1980 (c. 21)*

 Law In Force


1

In section 11C(1) of the Competition Act 1980 (application of section 117 of the Enterprise Act 2002 (c. 40)) for the words ““the OFT,”” there shall be substituted ““the OFT, OFCOM,””.

Commencement

Sch. 16 para. 1: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Gas Act 1986 (c. 44)

 Law In Force

2

In section 41EB(4) of the Gas Act 1986 (application of section 117 of the Enterprise Act 2002) for the words ““the OFT,”” there shall be substituted ““the OFT, OFCOM,””.

Commencement

Sch. 16 para. 2: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Electricity Act 1989 (c. 29)

✓ Law In Force

3

In section 56CB(4) of the Electricity Act 1989 (application of section 117 of the Enterprise Act 2002) for the words ““the OFT,”” there shall be substituted ““the OFT, OFCOM,””.

Commencement

Sch. 16 para. 3: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Railways Act 1993 (c. 43)

✓ Law In Force

4

(1) The Railways Act 1993 shall be amended as follows.

(2) In section 13B(4) of that Act (application of section 117 of the Enterprise Act 2002) for the words ““the OFT,”” there shall be substituted ““the OFT, OFCOM,””.

(3) In section 15C(2G) of that Act (application of section 117 of the Enterprise Act 2002) for the words ““the OFT,”” there shall be substituted ““the OFT, OFCOM,””.

(4) In Schedule 4A to that Act, in paragraphs 10A(4) and 15(2G) (application of section 117 of the Enterprise Act 2002) for the words ““the OFT,”” there shall, in both places, be substituted ““the OFT, OFCOM,””.

Commencement

Sch. 16 para. 4(1)-(4): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

[[...]]¹

Notes

¹ Repealed by Financial Services Act 2012 c. 21 Sch.19 para.1 (April 1, 2013)

✗ Repealed

5 [...] ¹

Notes

¹ Repealed by Financial Services Act 2012 c. 21 Sch.19 para.1 (April 1, 2013)

Postal Services Act 2000 (c. 26)


 Repealed

6 [...]¹

Notes

¹ Repealed by Postal Services Act 2011 c. 5 Sch.12(2) para.69 (October 1, 2011)

Transport Act 2000 (c. 38)

 Law In Force

7

(1) The Transport Act 2000 shall be amended as follows.


(2) In section 12B(4) (application of section 117 of the Enterprise Act 2002 (c. 40)) for the words ““the OFT,”” there shall be substituted ““the OFT, OFCOM,””.

(3) In section 18(9) (application of section 117 of the Enterprise Act 2002) for the words ““the OFT,”” there shall be substituted ““the OFT, OFCOM,””.

Commencement

Sch. 16 para. 7(1)-(3): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Enterprise Act 2002 (c. 40)

 Law In Force

8

(1) Section 43 of the Enterprise Act 2002 (intervention notices under section 42) shall be amended as follows.

- (2) In subsection (4)(a) (final determination of matters to which intervention notice relates)—
- (a) after the word “OFT” there shall be inserted “or (if relevant) OFCOM”; and
 - (b) after the word “44” there shall be inserted “or (as the case may be) 44A”.
- (3) After subsection (5) there shall be inserted—

“(6) In this Part “OFCOM” means the Office of Communications.”

Commencement

Sch. 16 para. 8(1)-(3): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

✓ Law In Force

9

In section 45(1)(b) of that Act (circumstances in which the Secretary of State may make a public interest reference to the Competition Commission) after the words “section 44” there shall be inserted “, and any report of OFCOM which is required by virtue of section 44A,”.

Commencement

Sch. 16 para. 9: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

✓ Law In Force

10

After section 50(2) of that Act (reports on references in public interest cases) there shall be inserted—

“(2A) Where the report relates to a reference under section 45 which has been made after a report of OFCOM under section 44A, the Commission shall give a copy of its report (whether or not published) to OFCOM.”

Commencement

Sch. 16 para. 10: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

✓ Law In Force

11

In section 57(2) of that Act (duty to bring representations to attention of Secretary of State) after the words “the OFT”, in both places where they occur, there shall be inserted “, OFCOM”.

Commencement

Sch. 16 para. 11: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

✓ Law In Force

12

In section 58(4)(b) of that Act (retrospective effect of orders modifying specified considerations) after the word “OFT,” there shall be inserted “OFCOM,”.

Commencement

Sch. 16 para. 12: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

✓ Law In Force

13

In section 60(4)(a) of that Act (final determination of matters to which special intervention notice relates)—

- (a) after the word “OFT” there shall be inserted “or (if relevant) OFCOM”; and
- (b) after the word “61” there shall be inserted “or (as the case may be) 61A”.

Commencement

Sch. 16 para. 13(a)-(b): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

✓ Law In Force

14

In section 62(1)(b) of that Act (circumstances in which the Secretary of State may make a special public interest reference to the Competition Commission) after the words “section 61” there shall be inserted “, and any report of OFCOM which is required by virtue of section 61A,”.

Commencement

Sch. 16 para. 14: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

✓ Law In Force

15

After section 65(2) of that Act (reports on references in special public interest cases) there shall be inserted—

“(2A) Where the report relates to a reference under section 62 which has been made after a report of OFCOM under section 61A, the Commission shall give a copy of its report (whether or not published) to OFCOM.”

Commencement

Sch. 16 para. 15: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

✓ Law In Force

16

In section 67(1)(b) of that Act (intervention to protect legitimate interests)—

- (a) the words from “which” to “or 33” shall cease to have effect;
- (b) for the words “that section” there shall be substituted “section 22 or 33”; and
- (c) after the word “concerned” there shall be inserted “(whether or not there would otherwise have been a duty to make such a reference)”.

Commencement

Sch. 16 para. 16(a)-(c): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

✓ Law In Force

17


In section 68(2)(c) of that Act (scheme for protecting legitimate interests)—

- (a) the words from “which”, where it occurs for the second time, to “or 33” shall cease to have effect; and

(b) for the words “that section” there shall be substituted “section 22 or 33 (whether or not there would otherwise have been a duty to make such a reference)”.

Commencement

Sch. 16 para. 17(a)-(b): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

 Law In Force

18

(1) Section 107 of that Act (further publicity requirements) shall be amended as follows.

(2) In subsection (3) (duties of the Secretary of State to publish), after paragraph (b), there shall be inserted—


“(ba) any report of OFCOM under section 44A or 61A which has been received by him;”.

(3) In subsection (9)(a) (publication of reports of OFT in public interest cases) after the words “section 44” there shall be inserted “, and any report of OFCOM under section 44A,”.

(4) In subsection (10)(a) (publication of reports of OFT in special public interest cases) after the words “section 61” there shall be inserted “, and any report of OFCOM under section 61A,”.

Commencement

Sch. 16 para. 18(1)-(4): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

 Law In Force

19

In section 108 of that Act (defamation) after the words “the OFT,” there shall be inserted “OFCOM,”.

Commencement

Sch. 16 para. 19: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

✓ Law In Force

20

(1) Section 117 of that Act (false or misleading information) shall be amended as follows.

(2) In subsection (1)(a) (offence of supplying false or misleading information to the OFT etc.) after the word “OFT,” there shall be inserted “OFCOM,”.

(3) In subsection (2) (offence of supplying false or misleading information to another person for use by OFT etc.) after the word “OFT,” there shall be inserted “OFCOM,”.

Commencement

Sch. 16 para. 20(1)-(3): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

✓ Law In Force

21

In section 118(1) of that Act (excisions from reports) before the word “or” at the end of paragraph (a) there shall be inserted—

“(aa) a report of OFCOM under section 44A or 61A;”.

Commencement

Sch. 16 para. 21: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

✓ Law In Force

22

In section 120(1) of that Act (review of decisions under Part 3) after the word “OFT,” there shall be inserted “OFCOM,”.

Commencement

Sch. 16 para. 22: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

✓ Law In Force


23

(1) Section 121 of that Act (fees) shall be amended as follows.

- (2) In subsection (1)—
- (a) after the words “the OFT”, where they occur for the second time, there shall be inserted “, OFCOM”; and
 - (b) the words “, Part V of the Fair Trading Act 1973 (c. 41)” shall cease to have effect.
- (3) In subsection (2)—
- (a) at the end of paragraph (a) there shall be inserted the word “or”; and
 - (b) paragraph (b), and the word “or” at the end of the paragraph, shall cease to have effect.
- (4) In subsection (4)(c)—
- (a) sub-paragraph (i);
 - (b) the word “and” at the end of the sub-paragraph; and
 - (c) in sub-paragraph (ii), the words “in any other case,”;
- shall cease to have effect.
- (5) In subsection (8)—
- (a) after the words “the OFT”, where they occur for the second time, there shall be inserted “, OFCOM”; and
 - (b) the words “, Part V of the Act of 1973” shall cease to have effect.
- (6) Subsection (10) shall cease to have effect.

Commencement

Sch. 16 para. 23(1)-(6): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

 Law In Force

24

- (1) Section 124 of that Act (orders and regulations under Part 3) shall be amended as follows.
- (2) In subsection (3) after the word “34” there shall be inserted “, 59(6A)”.
- (3) In subsection (4) after the word “40(8),” there shall be inserted “44(11),”.
- (4) In subsection (6) after the word “34,” there shall be inserted “44(11), 59(6A),”.

Commencement

Sch. 16 para. 24(1)-(4): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

 Law In Force

25

- (1) Section 130 of that Act (index of defined expressions) shall be amended as follows.

(2) After the entry relating to “Anti-competitive outcome” there shall be inserted—

“Broadcasting		Section 44(9)”.
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(3) After the entry relating to “Market in the United Kingdom” there shall be inserted—

“Media public interest consideration		Section 44(8)”.
--------------------------------------	--	---------------------

(4) After the entry for “Modify” there shall be inserted—


“Newspaper		Section 44(10)
Newspaper enterprise		Section 58A(3)”.

(5) After the entry for “Notified arrangements” there shall be inserted—

“OFCOM		Section 43(6)”.
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Commencement

Sch. 16 para. 25(1)-(5): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

 Law In Force

26

In section 180(2) of that Act (application of section 117 of that Act for the purposes of Part 4 of that Act) after the word “alone” there shall be inserted “and as if the references to OFCOM were omitted”.

Commencement

Sch. 16 para. 26: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

SCHEDULE 17

MINOR AND CONSEQUENTIAL AMENDMENTS

Section 406

Interpretation



1

(1) In any Act or instrument amended by this Schedule—

“communications service” means any of the following services—

- (a) an electronic communications service;
- (b) the provision of directory information by means of an electronic communications network for the purpose of facilitating the use of an electronic communications service provided by means of that network;
- (c) the installation, maintenance, adjustment, repair, alteration, moving, removal or replacement of apparatus which is or is to be connected to an electronic communications network;

“electronic communications apparatus” has the same meaning as in the electronic communications code;

“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of this Act;

“electronic communications code network” means—

- (a) so much of an electronic communications network or [infrastructure system]¹ provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106; and
- (b) an electronic communications network which the Secretary of State or a Northern Ireland department is providing or proposing to provide;

“electronic communications code operator” means a person in whose case the electronic communications code is applied by a direction under section 106;

“electronic communications network” and “electronic communications service” each has the same meaning as in this Act;

“former PTO” means a person—

- (a) who is a provider of a public electronic communications network or a public electronic communications service which, immediately before the date on which the repeal by this Act of section 7 of the Telecommunications Act 1984 (c. 12) comes into force, was designated as a public telecommunication system under section 9 of that Act; and
- (b) who, immediately before that date, was authorised to provide that network or service by a licence to which section 8 of that Act applied;

“operator”, in relation to an electronic communications code network, means—

- (a) the electronic communications code operator providing that network; or
- (b) the Secretary of State or a Northern Ireland department, to the extent that they are providing or proposing to provide that network;

“provide” and cognate expressions, in relation to an electronic communications network, an electronic communications service or associated facilities, are to be construed in accordance with section 32(4) of this Act;

“public electronic communications network” and “public electronic communications service” each has the same meaning as in Chapter 1 of Part 2 of this Act.

(2) In this paragraph—

- (a) [...] ²

(b) “electronic communications code”, “electronic communications code network”, “electronic communications code operator”, “public electronic communications network” and “public electronic communications service” each has the meaning given in sub-paragraph (1) [;]³

[(c) “infrastructure system” has the same meaning as in the electronic communications code and references to providing an infrastructure system are to be construed in accordance with paragraph 7 of that code.]³


Notes

- ¹ Words substituted by Communications Act 2003 and the Digital Economy Act 2017 (Consequential Amendments to Primary Legislation) Regulations 2017/1285 Sch.1(1) para.8(2)(a) (December 28, 2017 being the day on which 2017 c.30 s.4 and Sch.1 and 3 come fully into force)
- ² Repealed by Communications Act 2003 and the Digital Economy Act 2017 (Consequential Amendments to Primary Legislation) Regulations 2017/1285 Sch.1(1) para.8(2)(b)(i) (December 28, 2017 being the day on which 2017 c.30 s.4 and Sch.1 and 3 come fully into force)
- ³ Added by Communications Act 2003 and the Digital Economy Act 2017 (Consequential Amendments to Primary Legislation) Regulations 2017/1285 Sch.1(1) para.8(2)(b)(ii) (December 28, 2017 being the day on which 2017 c.30 s.4 and Sch.1 and 3 come fully into force)

Commencement

Sch. 17 para. 1(1)–(2)(b): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Official Secrets Act 1911

 Law In Force

2

For the purposes of the Official Secrets Act 1911 (c. 28), any electronic communications station or office belonging to, or occupied by, the provider of a public electronic communications service shall be a prohibited place.

Commencement

Sch. 17 para. 2: July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Law of Property Act 1925

The text of this provision varies depending on jurisdiction or other application. See parallel texts relating to:
[Scotland, Wales and Northern Ireland](#) | [England](#)

 Repealed

Scotland, Wales and Northern Ireland

3 [...]¹

Notes

¹ Repealed by Commons Act 2006 c. 26 Sch.6(2) para.1 (April 1, 2012 as SI 2012/739)


England

[...]¹

Notes

¹ Repealed by Commons Act 2006 c. 26 Sch.6(2) para.1 (October 1, 2007 as SI 2007/2584)

Public Health Act 1925

 Law In Force

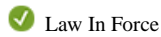
4

In section 10 of the Public Health Act 1925 (c. 71) (Crown application), for the words from “telecommunication apparatus” to “system” there shall be substituted “electronic communications apparatus kept installed for the purposes of an electronic communications code network”.

Commencement

Sch. 17 para. 4: July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

London Overground Wires, etc Act 1933

**5**

- (1) The London Overground Wires, etc. Act 1933 (c. xliv) shall be amended as follows.
- (2) In section 11 (saving for safety regulations), for “any telecommunication apparatus made” there shall be substituted “any electronic communications apparatus made”.
- (3) In section 14 (savings in respect of telecommunications code system)—
- (a) for “telecommunication apparatus kept installed for the purposes of a telecommunications code system” there shall be substituted “electronic communications apparatus kept installed for the purposes of an electronic communications code network”;
 - (b) for the words from “conferred by” onwards there shall be substituted “conferred by or in accordance with the electronic communications code on the operator of any such network.”

Commencement

Sch. 17 para. 5(1)–(3)(b): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Wireless Telegraphy Act 1949**6 [...]¹****Notes**

- ¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)
-

**7 [...]¹****Notes**

- ¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)
-

**8 [...]¹****Notes**

- ¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)
-

 Repealed

9 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

 Repealed

10 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

 Repealed

11 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

 Repealed

12 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

 Repealed

13 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

 Repealed

14 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

 Repealed

15 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

 Repealed

16 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

 Repealed

17 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)


 Repealed

18 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

Coast Protection Act 1949

 Law In Force

19

In section 47 of the Coast Protection Act 1949 (c. 74) (savings), in paragraph (b), for the words from “the telecommunications code” to “system” there shall be substituted “the electronic communications code on the operator of an electronic communications code network”.

Commencement

Sch. 17 para. 19: July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

National Parks and Access to the Countryside Act 1949

✓ Law In Force

20

- (1) The National Parks and Access to the Countryside Act 1949 (c. 97) shall be amended as follows.
- (2) In section 20(2) (byelaws for protection of nature reserves not to interfere with certain rights)—
- (a) for “the running of a telecommunications code system” there shall be substituted “the provision of an electronic communications code network”;
 - (b) for “the telecommunications code” there shall be substituted “the electronic communications code”;
 - (c) for “such system” there shall be substituted “such network”.
- (3) In section 60(5)(f) (exceptions from rights of public where access agreement etc. in force), for “or a telecommunications code system” there shall be substituted “or an electronic communications code network”.

Commencement

Sch. 17 para. 20(1)-(3): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

London County Council (General Powers) Act 1949

✓ Law In Force


21

In section 7(6) of the London County Council (General Powers) Act 1949 (c. 1v) (interference by works etc. for provision of heat), for “telecommunication apparatus kept installed for the purposes of a telecommunications code system” there shall be substituted “electronic communications apparatus kept installed for the purposes of an electronic communications code network”.

Commencement

Sch. 17 para. 21: July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Local Government (Miscellaneous Provisions) Act 1953

 Law In Force

22

(1) Section 6 of the Local Government (Miscellaneous Provisions) Act 1953 (c. 26) (supplementary provisions as to omnibus shelters etc.) shall be amended as follows.

(2) For “telecommunication apparatus”, wherever occurring, there shall be substituted “electronic communications apparatus”.

(3) In subsection (1)—

(a) for “a telecommunications code system” there shall be substituted “an electronic communications code network”;

(b) for “that system” there shall be substituted “that network”.

(4) In subsection (2), for “system” there shall be substituted “network”.

Commencement

Sch. 17 para. 22(1)-(4): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Army Act 1955

 Repealed

23 [...]¹

Notes

¹ Repealed by Armed Forces Act 2006 c. 52 Sch.17 para.1 (October 31, 2009 as SI 2009/1167)

Air Force Act 1955


 Repealed

24 [...]¹

Notes

¹ Repealed by Armed Forces Act 2006 c. 52 Sch.17 para.1 (October 31, 2009 as SI 2009/1167)

Lough Neagh and Lower Bann Drainage and Navigation Act (Northern Ireland) 1955

 Law In Force

25

In section 17(2) of the Lough Neagh and Lower Bann Drainage and Navigation Act (Northern Ireland) 1955 (c. 15 (N.I.)) (application of paragraph 23 of telecommunications code)—

- (a) for “the telecommunications code” there shall be substituted “the electronic communications code”;
- (b) for “telecommunication apparatus” there shall be substituted “electronic communications apparatus”.

Commencement

Sch. 17 para. 25(a)-(b): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Naval Discipline Act 1957

 Repealed

26 [...]¹

Notes

¹ Repealed by Armed Forces Act 2006 c. 52 Sch.17 para.1 (October 31, 2009 as SI 2009/1167)

Opencast Coal Act 1958

✓ Law In Force

27

(1) In section 45 of the Opencast Coal Act 1958 (c. 69) (saving for apparatus installed for the purposes of telecommunications code system)—

- (a) for “telecommunication apparatus”, wherever occurring, there shall be substituted “electronic communications apparatus”;
- (b) for “a telecommunications code system”, wherever occurring, there shall be substituted “an electronic communications code network”;
- (c) for “the telecommunications code”, wherever occurring, there shall be substituted “the electronic communications code”;
- (d) for “that system” there shall be substituted “that network”.

Commencement

Sch. 17 para. 27(1)-(1)(d): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Pipe-lines Act 1962

✓ Law In Force

28

In section 40 of the Pipe-lines Act 1962 (c. 58) (avoidance of interference with telecommunications code systems)—

- (a) for “telecommunication apparatus”, in both places, there shall be substituted “electronic communications apparatus”;
- (b) for “a telecommunications code system” there shall be substituted “an electronic communications code network”;
- (c) for “such system” there shall be substituted “such network”;
- (d) for “the telecommunications code” there shall be substituted “the electronic communications code”.

Commencement

Sch. 17 para. 28(a)-(d): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

London County Council (General Powers) Act 1963

✓ Law In Force

29

In section 17(4)(a) of the London County Council (General Powers) Act 1963 (c. xvii) (interference from provision of illuminations, floodlighting, etc.), for “telecommunication apparatus kept installed for the purposes of a telecommunications code system” there shall be substituted “electronic communications apparatus kept installed for the purposes of an electronic communications code network”.

Commencement

Sch. 17 para. 29: July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Harbours Act 1964

✓ Law In Force

30

In section 53 of the Harbours Act 1964 (c. 40) (application of telecommunications code for certain works)—

- (a) for “telecommunications code” there shall be substituted “electronic communications code”;
- (b) for “telecommunication apparatus” there shall be substituted “electronic communications apparatus”.

Commencement

Sch. 17 para. 30(a)-(b): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

New Towns Act (Northern Ireland) 1965

**31**

(1) Section 25 of the New Towns Act (Northern Ireland) 1965 (c. 13 (N.I.)) shall be amended as follows.

(2) In subsections (9A), (9C) and (9D)—

- (a) for “telecommunication apparatus”, wherever occurring, there shall be substituted “electronic communications apparatus”;
- (b) for “a telecommunications code system” there shall be substituted “an electronic communications code network”;
- (c) for “that system” there shall be substituted “that network”;
- (d) for “the telecommunications code”, wherever occurring, there shall be substituted “the electronic communications code”.

(3) In subsection (9B) for “any telecommunications code system” there shall be substituted “any electronic communications code network”.

Commencement

Sch. 17 para. 31(1)–(3): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Marine, &c., Broadcasting (Offences) Act 1967

**32 [...]¹**

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

**33 [...]¹**

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

**34 [...]¹**

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

 Repealed

35 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

 Repealed

36 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

Wireless Telegraphy Act 1967

 Repealed

37 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

 Repealed

38 [...]¹

Notes

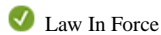
¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

 Repealed

39 [...]¹

Notes

¹ Repealed by Enterprise and Regulatory Reform Act 2013 c. 24 Sch.21(1) para.2 (June 25, 2013)

Countryside Act 1968

Law In Force

40

- (1) The Countryside Act 1968 (c. 41) shall be amended as follows.
- (2) In section 41 (exceptions from powers to make byelaws etc.), in subsections (4) and (12)—
- (a) for “the running of a telecommunications code system” there shall be substituted “the provision of an electronic communications code network”;
 - (b) for “the telecommunications code” there shall be substituted “the electronic communications code”;
 - (c) for “such system” there shall be substituted “such network”.
- (3) In paragraph 6 of Schedule 2 (exceptions from procedure for taking common land)—
- (a) for “the telecommunications code” there shall be substituted “the electronic communications code”;
 - (b) for “a telecommunications code system” there shall be substituted “an electronic communications code network”.

Commencement

Sch. 17 para. 40(1)-(3)(b): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Greater London Council (General Powers) Act 1969

Law In Force

41

- In section 7(6) of the Greater London Council (General Powers) Act 1969 (c. lli) (effect of exercise of power to stop up streets)—
- (a) for “the telecommunications code” there shall be substituted “the electronic communications code”;
 - (b) for “telecommunications code system” there shall be substituted “electronic communications code network”.

Commencement

Sch. 17 para. 41(a)-(b): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Harbours Act (Northern Ireland) 1970

✓ Law In Force

42

In section 37 of the Harbours Act (Northern Ireland) 1970 (c. 1 (N.I.)) (application of telecommunications code for certain works)—

- (a) for “telecommunications code” there shall be substituted “electronic communications code”;
- (b) for “telecommunication apparatus” there shall be substituted “electronic communications apparatus”.

Commencement

Sch. 17 para. 42(a)-(b): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Thames Barrier and Flood Prevention Act 1972

✓ Law In Force


43

In section 20(1)(a) of the Thames Barrier and Flood Prevention Act 1972 (c. xlv) (power to make subsidiary works etc.), for “telecommunication installations” there shall be substituted “electronic communications installations”.

Commencement

Sch. 17 para. 43: July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Fair Trading Act 1973

 Law In Force

44

In section 137(3) of the Fair Trading Act 1973 (c. 41) (meaning of “supply of services”), for paragraph (f) there shall be substituted—

“(f) includes the making of arrangements, by means of such an agreement as is mentioned in paragraph 29 of Schedule 2 to the Telecommunications Act 1984, for the sharing of the use of any electronic communications apparatus, and”.

Commencement

Sch. 17 para. 44: July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Drainage (Northern Ireland) Order 1973

 Law In Force

45

In paragraph 3 of Schedule 9 to the Drainage (Northern Ireland) Order 1973 (S.I. 1973/69 (N.I. 1))—

- (a) for “telecommunication apparatus”, wherever occurring, there shall be substituted “electronic communications apparatus”;
- (b) for “a telecommunications code system”, wherever occurring, there shall be substituted “an electronic communications code network”;
- (c) for “telecommunications code”, wherever occurring (except in the expression “telecommunications code system”), there shall be substituted “electronic communications code”;

(d) for “any such system” and “that system” there shall be substituted, respectively, “any such network” and “that network”.

Commencement

Sch. 17 para. 45(a)-(d): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Water and Sewerage Services (Northern Ireland) Order 1973


 Repealed

46 [...]¹

Notes

¹ Repealed by Water and Sewerage Services (Northern Ireland) Order 2006/3336 Sch.13 para.1 (April 1, 2007 subject to transitional, transitory and savings provisions specified in SR 2007/194 art.3 and Sch.2)

Consumer Credit Act 1974

 Law In Force

47

In section 16(6) of the Consumer Credit Act 1974 (c. 39) (exempt agreements) for “public telecommunications operator specified in the order” there shall be substituted “provider of a public electronic communications service who is specified in the order”.

Commencement

Sch. 17 para. 47: July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

House of Commons Disqualification Act 1975

✓ Law In Force

48

In Part 2 of Schedule 1 to the House of Commons Disqualification Act 1975 (c. 24) (bodies of which all members are disqualified), in the appropriate place, there shall be inserted—

“Seirbheis nam Meadhanan Gàidhlig”.

Commencement

Sch. 17 para. 48: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Northern Ireland Assembly Disqualification Act 1975

✓ Law In Force

49

In Part 2 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (c. 25) (bodies of which all members are disqualified), in the appropriate place, there shall be inserted—

“Seirbheis nam Meadhanan Gàidhlig”.

Commencement

Sch. 17 para. 49: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Welsh Development Agency Act 1975

✓ Law In Force

50

(1) Section 19 of the Welsh Development Agency Act 1975 (c. 70) (the Agency and the media) shall be amended as follows.


(2) In subsection (9), for “the appropriate authority”, in both places, there shall be substituted “the Office of Communications”.

(3) In subsection (11), in the definition of “relevant licence” for “the Independent Television Commission or the Radio Authority” there shall be substituted “the Office of Communications”.

Commencement

Sch. 17 para. 50(1)-(3): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Building Regulations (Northern Ireland) Order 1979

 Law In Force


51

In paragraph 14 of Schedule 1 to the Building Regulations (Northern Ireland) Order 1979 (S.I. 1979/1709 (N.I. 16)) (building regulations), for “telecommunications services” there shall be substituted “communications services”.

Commencement

Sch. 17 para. 51: July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Local Government, Planning and Land Act 1980

 Law In Force

52

(1) Part 3 of Schedule 28 to the Local Government, Planning and Land Act 1980 (c. 65) (provisions about land acquired by urban development corporations) shall be amended as follows.


(2) In paragraphs 5, 6, 13, 14 and 16—

- (a) for “the telecommunications code”, wherever occurring, there shall be substituted “the electronic communications code”;
- (b) for “a telecommunications code system” and “any telecommunications code system”, wherever occurring, there shall be substituted “an electronic communications code network”;
- (c) for “telecommunication apparatus”, wherever occurring, there shall be substituted “electronic communications apparatus”;
- (d) for “such system” and “the system”, wherever occurring, there shall be substituted, respectively, “such network” and “the network”.

Commencement

Sch. 17 para. 52(1)-(2)(d): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Highways Act 1980


 Law In Force

53

In section 35(11)(c) and (12) of the Highways Act 1980 (c. 66) (regulation of rights to maintain apparatus on walkways), for “telecommunications code systems” there shall be substituted “electronic communications code networks”.

Commencement

Sch. 17 para. 53: July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

 Law In Force

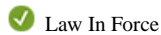
54

In section 115D of that Act (limits on powers to restrict access to highways), for paragraph (d) there shall be substituted—

“(d) as to prevent the operator of an electronic communications code network having access to any electronic communications apparatus kept installed for the purposes of that network under, in, on or over the highway.”

Commencement

Sch. 17 para. 54: July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))



Law In Force

55

In section 142(5) of that Act (protection of telecommunications apparatus by conditions in licences to plant trees etc. in a highway), for “telecommunications code systems” there shall be substituted “electronic communications code networks”.

Commencement

Sch. 17 para. 55: July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))



Law In Force

56

(1) This paragraph applies to the following provisions of that Act—

- (a) the definition of “statutory undertakers” in section 144(6) (power to erect flagpoles etc. on highways);
- (b) the definition of “statutory undertakers” in section 169(4) (control of scaffolding on highways);
- (c) the definition of “statutory undertakers” in section 170(3) (control of mixing mortar etc. on highways);
- (d) section 177(4) and (12) (licence to build over highway not to interfere with telecommunications code systems);
- (e) section 178(5) (exceptions to restriction on placing rails etc. over highways);
- (f) section 329(4A) (interpretation);
- (g) section 334 (savings for operators of telecommunications code systems).

(2) In the provisions to which this paragraph applies—

- (a) for “a telecommunications code system” and “any telecommunications code system”, wherever occurring, there shall be substituted “an electronic communications code network”;
- (b) for “the telecommunications code system” there shall be substituted “the electronic communications code network”;
- (c) for “telecommunication apparatus”, wherever occurring, there shall be substituted “electronic communications apparatus”;
- (d) for “telecommunications code”, wherever occurring (except in the expression “telecommunications code system”), there shall be substituted “electronic communications code”;
- (e) for “system”, wherever occurring (except in the expression “telecommunications code system”), there shall be substituted “network”.

Commencement

Sch. 17 para. 56(1)-(2)(e): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

New Towns Act 1981

✓ Law In Force

57

- (1) This paragraph applies to the following provisions of the New Towns Act 1981 (c. 64)—
- (a) section 16(2) (exception to extinguishment of rights over land compulsorily acquired);
 - (b) section 19(2) (saving from the power to override certain rights);
 - (c) section 24 (apparatus kept installed for purposes of telecommunications code system);
 - (d) section 26(8) (extinguishment of rights of way and removal of apparatus);
 - (e) section 39(7) (power of development corporation to transfer undertakings).
- (2) In the provisions to which this paragraph applies—
- (a) for “in accordance with the telecommunications code”, wherever occurring, there shall be substituted “in accordance with the electronic communications code”;
 - (b) for “a telecommunications code system” and “any telecommunications code system”, wherever occurring, there shall be substituted “an electronic communications code network”;
 - (c) for “telecommunication apparatus”, wherever occurring, there shall be substituted “electronic communications apparatus”;
 - (d) for “the running of the telecommunications code system” there shall be substituted “the provision of the electronic communications code network”;
 - (e) for “the running of such a system” there shall be substituted “the provision of such a network”;
 - (f) for “such system” and “the system”, wherever occurring, there shall be substituted, respectively, “such network” and “the network”.

Commencement

Sch. 17 para. 57(1)-(2)(f): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Acquisition of Land Act 1981

✓ Law In Force

58

(1) The Acquisition of Land Act 1981 (c. 67) shall be amended as follows.

(2) In section 28 (acquisition of land by the creation of new rights), after paragraph (h) there shall be inserted—

“(i) paragraph 3(3) of Schedule 4 to the Communications Act 2003.”

(3) In section 32(6A) (exception to power to extinguish certain public rights of way)—

(a) for the words from “telecommunication apparatus” to “telecommunications code system” there shall be substituted “electronic communications apparatus kept installed for the purposes of an electronic communications code network”; and

(b) in paragraph (a), for “system” there shall be substituted “network”.

Commencement

Sch. 17 para. 58(1)-(3)(b): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Housing (Northern Ireland) Order 1981

✓ Law In Force

59

In Article 159A of the Housing (Northern Ireland) Order 1981 (S.I. 1981/156 (N.I. 3)) (application of telecommunications code to the Northern Ireland Housing Executive)—

(a) for “telecommunications code”, wherever occurring, there shall be substituted “electronic communications code”;

(b) for “telecommunication apparatus”, wherever occurring, there shall be substituted “electronic communications apparatus”;


(c) for “a telecommunications code system” there shall be substituted “an electronic communications code network”;

(d) for “that system” there shall be substituted “that network”.

Commencement

Sch. 17 para. 59(a)-(d): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Civil Aviation Act 1982

 Law In Force

60

In section 48(7)(b) of the Civil Aviation Act 1982 (c. 16) (Secretary of State to give notice of orders stopping up highways for civil aviation purposes), for “a telecommunications code system” there shall be substituted “an electronic communications code network”.

Commencement

Sch. 17 para. 60: July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Representation of the People Act 1983

 Law In Force

61

In section 92(1)(c) of the Representation of the People Act 1983 (c. 2) (broadcasting from outside the United Kingdom), for “the Independent Television Commission or the Radio Authority” there shall be substituted “the Office of Communications”.

Commencement

Sch. 17 para. 61: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

✓ Law In Force

62

(1) Section 93 of that Act (broadcasting of local items during election period) shall be amended as follows.

(2) In subsection (4), for the words from the beginning to “each” there shall be substituted “The Office of Communications shall”.

(3) In subsection (6)—

(a) in the definition of “broadcasting authority”, for “the Independent Television Commission, the Radio Authority” there shall be substituted “the Office of Communications”;

(b) in the definition of “relevant services”, for paragraphs (b) and (c) there shall be substituted—

“(b) in relation to the Office of Communications, means services licensed under Part 1 or 3 of the Broadcasting Act 1990 or Part 1 or 2 of the Broadcasting Act 1996.”

Commencement

Sch. 17 para. 62(1)-(3)(b): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Telecommunications Act 1984

✓ Law In Force

63

(1) Sections 44 to 46 of the Telecommunications Act 1984 (c. 12) (offences relating to modification and interception of messages and to assaults on the persons engaged on the business of a telecommunications operator) shall cease to have effect.

(2) No proceedings shall be capable of being begun at any time after the commencement of this paragraph for any offence under any of those sections which was committed before the commencement of this paragraph.

(3) Any proceedings for an offence under any of those sections which have been begun before the commencement of this paragraph but in which there has not yet been a conviction must be discontinued immediately.

Commencement

Sch. 17 para. 63(1)-(3): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

 Repealed

64 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

 Repealed

65 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

 Repealed

66 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

 Repealed

67 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

 Repealed

68 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

 Repealed

69 [...]¹

Notes


¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

 Repealed

70 [...]¹

Notes

¹ Repealed by Investigatory Powers Act 2016 c. 25 Sch.10(8) para.1 (August 22, 2018: repeal has effect as SI 2018/873 reg.3(1) subject to savings specified in 2016 c.25 s.270 and Sch.9 paras 7 and 10)

 Law In Force

71


(1) Section 98 of that Act (use of conduits for telecommunications purposes) shall be amended as follows.

(2) In subsection (1), for the words “telecommunication apparatus”, wherever occurring, there shall be substituted “electronic communications apparatus”.

(3) In subsection (5)(a), for the words “telecommunication purposes” there shall be substituted “the purposes of any electronic communications network or of any electronic communications service”.

Commencement

Sch. 17 para. 71(1)-(3): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

 Law In Force

72

(1) Section 101 of that Act (general restrictions on disclosure of information) shall be amended as follows.

(2) [...]¹

(3) In subsection (2)(a)—

(a) the words “or transferred” shall be omitted; and

(b) for the words “, the Director or the Commission by or under this Act” there shall be substituted “or OFCOM by or under this Act (except functions assigned by or under Part 6)”.

(4) In subsection (2)(b), after “the Rail Regulator” there shall be inserted “, OFCOM”.

(5) In subsection (3), after paragraph (p) there shall be inserted—

“(q) the Communications Act 2003 (excluding the provisions of that Act which are enactments relating to the management of the radio spectrum within the meaning of that Act).”

(6) Subsection (4) shall cease to have effect.

(7) In subsection (6), for “the Director” there shall be substituted “OFCOM”.


Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

Commencement

Sch. 17 para. 72(1)-(3)(b), (5)-(6): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Sch. 17 para. 72(4), (7): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

 Law In Force

73

In section 104 of that Act (orders and schemes), after subsection (1) there shall be inserted—

“(1A) Section 403 of the Communications Act 2003 (procedure for regulations and orders made by OFCOM) applies to every power of OFCOM to make an order under a provision of this Act.

(1B) The approval of the Secretary of State is required for the making by OFCOM of an order under section 85 or 86 above.

(1C) A statutory instrument containing an order made by OFCOM under section 85 or 86 above shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

Commencement

Sch. 17 para. 73: July 25, 2003 for purposes specified in SI 2003/1900 Sch.1 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2); December 29, 2003 otherwise (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(1), art. 3(2), Sch. 1 para. 1)

✓ Law In Force

74

In section 106(1) of that Act (general interpretation), after the definition of “modifications” there shall be inserted—

“‘OFCOM’ means the Office of Communications;”.

Commencement

Sch. 17 para. 74: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

✓ Law In Force

75

In paragraph 18(2) of Schedule 2 to that Act (notices affixed to overhead apparatus), for “paragraph 24(4)(a)” there shall be substituted “paragraph 24(2A)(a)”.

Commencement

Sch. 17 para. 75: July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Cinemas Act 1985

✓ Law In Force

76


In section 21(1) of the Cinemas Act 1985 (c. 13) (interpretation), for the definition of “film exhibition” there shall be substituted—

“‘film exhibition’ means any exhibition of moving pictures other than an exhibition of items included in a programme service (within the meaning of the Communications Act 2003) that is being simultaneously received (or virtually so) by the exhibitor”.

Commencement

Sch. 17 para. 76: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Surrogacy Arrangements Act 1985

 Law In Force

77

In section 3 of the Surrogacy Arrangements Act 1985 (c. 49) (advertisements about surrogacy), for “a telecommunication system”, wherever occurring, there shall be substituted “an electronic communications network”.

Commencement

Sch. 17 para. 77: July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Bankruptcy (Scotland) Act 1985

 Repealed

78 [...]¹

Notes

- ¹ Repealed by Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016/1034 Sch.2(1) para.1 (November 30, 2016 subject to savings specified in SI 2016/1034 art.7(3))
-

Housing Act 1985

 Law In Force

79


- (1) The Housing Act 1985 (c. 68) shall be amended as follows.
- (2) In section 295(2)(b) (extinguishment of other rights over land acquired), for “telecommunications systems” there shall be substituted “electronic communications networks”.
- (3) In section 298(2) and (3) (telecommunications apparatus)—
- (a) for “telecommunication apparatus”, wherever occurring, there shall be substituted “electronic communications apparatus”;
 - (b) for “a telecommunications code system”, wherever occurring, there shall be substituted “an electronic communications code network”;

- (c) for “the telecommunications code”, wherever occurring, there shall be substituted “the electronic communications code”;
- (d) for “the system” and “a system” there shall be substituted, respectively, “the network” and “a network”.

Commencement

Sch. 17 para. 79(1)-(3)(d): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Airports Act 1986

 Law In Force

80

In section 62 of the Airports Act 1986 (c. 31) (provisions as to telecommunication apparatus)—

- (a) for “the telecommunications code”, wherever occurring, there shall be substituted “the electronic communications code”;
- (b) for “telecommunication apparatus” and “telecommunications apparatus”, wherever occurring, there shall be substituted “electronic communications apparatus”;
- (c) for “a telecommunications code system”, wherever occurring, there shall be substituted “an electronic communications code network”;
- (d) in subsection (3), for “that system” there shall be substituted “that network”.

Commencement

Sch. 17 para. 80(a)-(d): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Gas Act 1986

 Law In Force

81


In section 4AA(4)(b) of the Gas Act 1986 (c. 44) (general duties of Secretary of State and Authority), for sub-paragraph (i) there shall be substituted—

“(i) communications services and electronic communications apparatus, or”.

Commencement

Sch. 17 para. 81: July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Insolvency Act 1986

 Law In Force

82

(1) The Insolvency Act 1986 (c. 45) shall be amended as follows.

(2) In section 233 (supplies of telecommunications services etc. in cases of administration or liquidation)—

(a) in subsection (3), for paragraph (d) there shall be substituted—

“(d) a supply of communications services by a provider of a public electronic communications service.”;

(b) in subsection (5), for paragraph (d) there shall be substituted—

“(d) ‘communications services’ do not include electronic communications services to the extent that they are used to broadcast or otherwise transmit programme services (within the meaning of the Communications Act 2003).”

(3) In section 372 (supplies of telecommunications services etc. in cases of bankruptcy)—

(a) in subsection (4), for paragraph (d) there shall be substituted—

“(d) a supply of communications services by a provider of a public electronic communications service.”;

(b) in subsection (5), for paragraph (c) there shall be substituted—

“(c) ‘communications services’ do not include electronic communications services to the extent that they are used to broadcast or otherwise transmit programme services (within the meaning of the Communications Act 2003).”

(4) In Schedule 2A (exceptions to prohibition on appointment of administrative receiver), in paragraph 10, after sub-paragraph (2) there shall be inserted—

“(2A) For the purposes of section 72D a business is also regulated to the extent that it consists in the provision of a public electronic communications network or a public electronic communications service.”

Commencement

Sch. 17 para. 82(1)-(4): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Company Directors Disqualification Act 1986

✓ Law In Force

83

In section 9E(2) of the Company Directors Disqualification Act 1986 (c. 46) (interpretation), for paragraph (a) there shall be substituted—

“(a) the Office of Communications;”.

Commencement

Sch. 17 para. 83: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Channel Tunnel Act 1987

✓ Law In Force

84

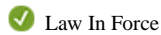
For section 32 of the Channel Tunnel Act 1987 (c. 53), there shall be substituted—

“32 Exclusion of rights under electronic communications code

No rights shall be exercisable by any person by virtue of the electronic communications code in relation to any land comprised in the tunnel system and lying in or under the bed of the sea.”

Commencement

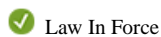
Sch. 17 para. 84: July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

**85**

In paragraph 3(2)(b) of Schedule 2 to that Act (supplementary provisions as to scheduled works etc.), for “telecommunications” there shall be substituted “electronic communications”.

Commencement

Sch. 17 para. 85: July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

**86**

(1) Part 10 of Schedule 7 to that Act (protection of telecommunications operators) shall be amended as follows.

(2) In paragraph 1(1), for “a telecommunications operator” there shall be substituted “an operator of an electronic communications code network”.


(3) In paragraphs 2 to 7—

- (a) for “telecommunication apparatus”, wherever occurring, there shall be substituted “electronic communications apparatus”;
- (b) for “a telecommunications code system”, “a telecommunication system” and “any telecommunications code system”, wherever occurring, there shall be substituted “an electronic communications code network”;
- (c) for “that telecommunications system” there shall be substituted “that network”;
- (d) for “the telecommunications operator”, wherever occurring, there shall be substituted “the operator”;
- (e) for “any telecommunications operator”, wherever occurring, there shall be substituted “any operator of an electronic communications code network”;
- (f) for “a system” and “that system”, wherever occurring, there shall be substituted, respectively, “a network” and “that network”;
- (g) for “the system”, wherever occurring, there shall be substituted “the electronic communications code network”.

Commencement

Sch. 17 para. 86(1)-(3)(g): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1)

Consumer Protection (Northern Ireland) Order 1987

 Law In Force

87

(1) Article 29 of the Consumer Protection (Northern Ireland) Order 1987 (S.I. 1987/2049 (N.I. 20)) (restrictions on disclosure of information) shall be amended as follows.

(2) In paragraph (3), after sub-paragraph (n), there shall be inserted—


“(o) the Communications Act 2003.”

(3) In paragraph (6) for “the Director General of Telecommunications” there shall be substituted “the Office of Communications”.

Commencement

Sch. 17 para. 87(1)-(3): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Income and Corporation Taxes Act 1988

 Law In Force


88

In section 567(2)(b) of the Income and Corporation Taxes Act 1988 (c. 1) (meaning of “construction operations”), for “telecommunication apparatus” there shall be substituted “electronic communications apparatus”.

Commencement

Sch. 17 para. 88: July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Norfolk and Suffolk Broads Act 1988

 Law In Force

89


In section 25(1) of the Norfolk and Suffolk Broads Act 1988 (c. 4) (interpretation), in the definition of “statutory undertaker”, for paragraph (d) there shall be substituted—

“(d) any electronic communications code operator;”.

Commencement

Sch. 17 para. 89: July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Malicious Communications Act 1988

 Law In Force

90

In section 1(2A)(a) of the Malicious Communications Act 1988 (c. 27) (offence of sending electronic communications with intent to cause distress or anxiety), for “a telecommunication system (within the meaning of the Telecommunications Act 1984)” there shall be substituted “an electronic communications network”.

Commencement

Sch. 17 para. 90: July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Copyright, Designs and Patents Act 1988

✓ Law In Force

91

(1) Section 69 of the Copyright, Designs and Patents Act 1988 (c. 48) (no infringement of copyright by use of recordings for certain supervisory purposes) shall be amended as follows.

(2) In subsection (2)—

(a) for paragraph (a) there shall be substituted—

“(a) section 167(1) of the Broadcasting Act 1990, section 115(4) or (6) or 117 of the Broadcasting Act 1996 or paragraph 20 of Schedule 12 to the Communications Act 2003;”;

(b) in paragraph (b), for the words from “by virtue of” to “1990” there shall be substituted “by virtue of section 334(1) of the Communications Act 2003”;

(c) in paragraph (c), for “Radio Authority” there shall be substituted “OFCOM”;

(d) after paragraph (c) there shall be inserted—

“(d) section 334(3) of the Communications Act 2003.”

(3) For subsection (3) there shall be substituted—

“(3) Copyright is not infringed by the use by OFCOM in connection with the performance of any of their functions under the Broadcasting Act 1990, the Broadcasting Act 1996 or the Communications Act 2003 of—

(a) any recording, script or transcript which is provided to them under or by virtue of any provision of those Acts; or

(b) any existing material which is transferred to them by a scheme made under section 30 of the Communications Act 2003.

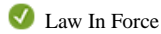
(4) In subsection (3), ‘existing material’ means—

(a) any recording, script or transcript which was provided to the Independent Television Commission or the Radio Authority under or by virtue of any provision of the Broadcasting Act 1990 or the Broadcasting Act 1996; and

(b) any recording or transcript which was provided to the Broadcasting Standards Commission under section 115(4) or (6) or 116(5) of the Broadcasting Act 1996.”

Commencement

Sch. 17 para. 91(1)-(3): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

92

(1) Section 73 of that Act (no breach of copyright by certain retransmissions of [wireless broadcasts by cable]¹) shall be amended as follows.

(2) In subsection (6)—

(a) for paragraphs (c) and (d) there shall be substituted—

“(c) the public teletext service,

(d) S4C Digital, and”;

(b) for the words after paragraph (e) there shall be substituted—

“and expressions used in this subsection have the same meanings as in Part 3 of the Communications Act 2003.”

(3) For subsection (7) there shall be substituted—

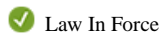
“(7) In this section ‘relevant requirement’ means a requirement imposed by a general condition (within the meaning of Chapter 1 of Part 2 of the Communications Act 2003) the setting of which is authorised under section 64 of that Act (must-carry obligations).”

Notes

¹ Words substituted subject to the savings specified in SI 2003/2498 reg.32 by Copyright and Related Rights Regulations 2003/2498 Sch.1(2) para.23 (December 29, 2003: substitution came into force on October 31, 2003 but cannot take effect until December 29, 2003, the date upon which 2003 c.21 Sch.17 para.92(1) came into force; substitution has effect subject to the savings specified in SI 2003/2498 reg.32)

Commencement

Sch. 17 para. 92(1)-(3): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

93

(1) Paragraph 17 of Schedule 2 to that Act (no infringement of performance rights by use of recordings for certain supervisory purposes) shall be amended as follows.

(2) In sub-paragraph (2)—

(a) for paragraph (a) there shall be substituted—

- “(a) section 167(1) of the Broadcasting Act 1990, section 115(4) or (6) or 117 of the Broadcasting Act 1996 or paragraph 20 of Schedule 12 to the Communications Act 2003;”;
- (b) in paragraph (b), for the words from “by virtue of” to “1990” there shall be substituted “by virtue of section 334(1) of the Communications Act 2003”;
- (c) in paragraph (c), for “Radio Authority” there shall be substituted “OFCOM”;
- (d) after paragraph (c) there shall be inserted—

“(d) section 334(3) of the Communications Act 2003.”

(3) For sub-paragraph (3) there shall be substituted—


“(3) The rights conferred by Part 2 are not infringed by the use by OFCOM in connection with the performance of any of their functions under the Broadcasting Act 1990, the Broadcasting Act 1996 or the Communications Act 2003 of—

- (a) any recording, script or transcript which is provided to them under or by virtue of any provision of those Acts; or
 - (b) any existing material which is transferred to them by a scheme made under section 30 of the Communications Act 2003.
- (4) In subsection (3), ‘existing material’ means—
- (a) any recording, script or transcript which was provided to the Independent Television Commission or the Radio Authority under or by virtue of any provision of the Broadcasting Act 1990 or the Broadcasting Act 1996; and
 - (b) any recording or transcript which was provided to the Broadcasting Standards Commission under section 115(4) or (6) or 116(5) of the Broadcasting Act 1996.”

Commencement

Sch. 17 para. 93(1)-(3): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Housing Act 1988

 Law In Force

94

(1) Part 2 of Schedule 10 to the Housing Act 1988 (c. 50) (provisions about land acquired by a housing action trust) shall be amended as follows.

(2) In paragraphs 4, 5, 11, 12 and 14—

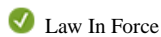
- (a) for “the telecommunications code”, wherever occurring, there shall be substituted “the electronic communications code”;
- (b) for “a telecommunications code system” and “any telecommunications code system”, wherever occurring, there shall be substituted “an electronic communications code network”;

- (c) for “telecommunications apparatus” and “telecommunication apparatus”, wherever occurring, there shall be substituted “electronic communications apparatus”;
- (d) for “such system” and “the system”, wherever occurring, there shall be substituted, respectively, “such network” and “the network”.

Commencement

Sch. 17 para. 94(1)-(2)(d): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Road Traffic Act 1988



Law In Force

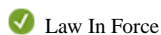
95

In section 21(3)(b) of the Road Traffic Act 1988 (c. 52) (exception from prohibition of driving etc on cycle tracks for statutory undertakers), for the words from “a telecommunications code system” to “1984)” there shall be substituted “an electronic communications code network”.

Commencement

Sch. 17 para. 95: July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Water Act 1989



Law In Force

96

(1) Section 174 of the Water Act 1989 (c. 15) (general restrictions on disclosure of information) be amended as follows.

(2) In subsection (2)(d), for sub-paragraph (iv) there shall be substituted—

“(iv) the Office of Communications;”.

(3) In subsection (3), after paragraph (ln) there shall be inserted—

“(lo) the Communications Act 2003;”.

Commencement

Sch. 17 para. 96(1)-(3): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Road Traffic (Driver Licensing and Information Systems) Act 1989

✓ Law In Force

97

(1) The Road Traffic (Driver Licensing and Information Systems) Act 1989 (c. 22) shall be amended as follows.

(2) For section 9(3) (requirement for licence to operate driver information systems) there shall be substituted—

“(3) The holding by a person of a licence under this section shall not relieve him of—

- (a) any liability in respect of a failure to hold a licence under section 1 of the Wireless Telegraphy Act 1949; or
- (b) any obligation to comply with requirements imposed by or under Chapter 1 of Part 2 of the Communications Act 2003 (electronic communications networks and electronic communications services).”

(3) In paragraph 4 of Schedule 4 (application of telecommunications code to licence holders), for the words “(application of telecommunications code)” there shall be substituted “(procedure for works involving alteration of electronic communications apparatus)”.

(4) In paragraph 8 of Schedule 5 (undertakers' works affecting driver information systems)—

(a) in the definition of “relevant undertaker”, for paragraph (b) there shall be substituted—

“(b) any electronic communications code operator;”;

(b) in the definition of “undertaker's works”, in paragraph (b), for “a telecommunication system run by him” there shall be substituted “an electronic communications code network provided by him”.

Commencement

Sch. 17 para. 97(1)-(4)(b): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Electricity Act 1989

✓ Law In Force

98

In section 3A(4)(b) of the Electricity Act 1989 (c. 29) (general duties of Secretary of State and Authority), for sub-paragraph (i) there shall be substituted—

“(i) communications services and electronic communications apparatus, or”.

Commencement

Sch. 17 para. 98: July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

✓ Law In Force

99

(1) Schedule 4 to that Act (other powers etc. of licence holders) shall be amended as follows.

(2) In paragraphs 3(1)(d) and 5—

(a) for “telecommunication apparatus”, wherever occurring, there shall be substituted “electronic communications apparatus”;

(b) for “a telecommunication system” there shall be substituted “an electronic communications code network”; and

(c) for “telecommunications code”, wherever occurring, there shall be substituted “electronic communications code”.

(3) In paragraph 4(1), for paragraph (c) there shall be substituted—

“(c) any electronic communications code operator or any former PTO; and”.

Commencement

Sch. 17 para. 99(1)-(3): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Local Government and Housing Act 1989

✓ Law In Force

100

In section 88(1)(e)(i) of the Local Government and Housing Act 1989 (c. 42) (electronic communication), for “a telecommunication system (within the meaning of the Telecommunications Act 1984)” there shall be substituted “an electronic communications network”.

Commencement

Sch. 17 para. 100: July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Insolvency (Northern Ireland) Order 1989

✓ Law In Force

101

(1) The Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)) shall be amended as follows.

(2) In Article 197(3) (supplies of water, electricity, etc.) for sub-paragraph (c) to the end there shall be substituted—

“(c) a supply of communications services by a provider of a public electronic communications service,
and in this paragraph ‘communications services’ do not include electronic communications services to the extent that they are used to broadcast or transmit programme services (within the meaning of the Communications Act 2003).”

(3) In Article 343(4) (supplies of water, electricity, etc.) for sub-paragraph (c) to the end there shall be substituted—

“(c) a supply of communications services by a provider of a public telecommunications service,
and in this paragraph ‘communications services’ do not include electronic communications services to the extent that they are used to broadcast or transmit programme services (within the meaning of the Communications Act 2003).”

Commencement

Sch. 17 para. 101(1)–(3): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Town and Country Planning Act 1990

✓ Law In Force

102

In section 148(1) of the Town and Country Planning Act 1990 (c. 8) (interpretation of Chapter 1), in the definition of “statutory undertakers”, for “public telecommunications operators” there shall be substituted “electronic communications code operators and former PTOs”.

Commencement

Sch. 17 para. 102: July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

✓ Law In Force

103

(1) This paragraph applies to the following provisions of that Act—

- (a) section 236(2) (exception to extinguishment of rights over land compulsorily acquired);
- (b) section 237(3) (saving from power to override certain rights);
- (c) section 256 (Secretary of State's orders affecting telecommunications apparatus);
- (d) section 260 (orders by other authorities affecting telecommunication apparatus);
- (e) section 272 (extinguishment of rights of telecommunications code system operators);
- (f) section 273(7) and (8) (notices given to developing authority);
- (g) section 274(2) (making of orders);

(h) section 279(3) (right to compensation).

(2) In each of the provisions to which this paragraph applies—

- (a) for “telecommunications code”, wherever occurring (except in the expression “telecommunications code system”), there shall be substituted “electronic communications code”;
- (b) for “a telecommunications code system” and “any telecommunications code system”, wherever occurring, there shall be substituted “an electronic communications code network”;
- (c) for “telecommunications apparatus” and “telecommunication apparatus”, wherever occurring, there shall be substituted “electronic communications apparatus”;
- (d) for “the telecommunications code system”, wherever occurring, there shall be substituted “the electronic communications code network”;
- (e) for “system”, wherever occurring (except in the expression “telecommunications code system”), there shall be substituted “network”.

Commencement

Sch. 17 para. 103(1)-(2)(e): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

✓ Law In Force

104

In section 280 of that Act (measures of compensation)—

- (a) for “a telecommunications code system” there shall be substituted “an electronic communications code network”;
- (b) for “the running of the telecommunications code system”, wherever occurring, there shall be substituted “the provision of the electronic communications code network”.

Commencement

Sch. 17 para. 104(a)-(b): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

✓ Law In Force

105


In paragraph 1(a) of Schedule 13 to that Act (blighted land), for sub-paragraph (ii) there shall be substituted—

“(ii) of the provision by an electronic communications code operator of an electronic communications code network or the provision by a former PTO of a public electronic communications network or a public electronic communications service, or”.

Commencement

Sch. 17 para. 105: July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Planning (Listed Buildings and Conservation Areas) Act 1990

 Law In Force

106

(1) The Planning (Listed Buildings and Conservation Areas) Act 1990 (c. 9) shall be amended as follows.

(2) In section 51(2) (saving for ending of rights over land compulsorily acquired), for paragraphs (b) and (c) there shall be substituted—

“(b) to any right conferred by or in accordance with the electronic communications code on the operator of an electronic communications code network, or
(c) to any electronic communications apparatus kept installed for the purposes of any such network.”

(3) In section 91(3) (meaning of “statutory undertakers” in certain sections), in paragraph (a) for “a public telecommunications operator” there shall be substituted “an electronic communications code operator and to a former PTO”.

Commencement

Sch. 17 para. 106(1)-(3): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

London Local Authorities (No. 2) Act 1990

**107**

(1) Section 5 of the London Local Authorities (No. 2) Act 1990 (c. xxx) (crime prevention) shall be amended as follows.

(2) For subsection (1)(b) there shall be substituted—

“(b) providing within their area an electronic communications service which is distributed—

(i) only to persons on a single set of premises; and

(ii) by an electronic communications network which is wholly within those premises and is not connected to an electronic communications network any part of which is outside those premises;”.

(3) In subsection (1)(c), for “telecommunications system” there shall be substituted “electronic communications network or electronic communications service”.

(4) After subsection (4), there shall be inserted—

“(4A) For the purposes of subsection (1)(b)—

(a) a set of premises is a single set of premises if, and only if, the same person is the occupier of all the premises; and

(b) two or more vehicles are capable of constituting a single set of premises if, and only if, they are coupled together.”

(5) For subsection (5), there shall be substituted—

“(5) In this section—

‘premises’ includes a vehicle; and

‘vehicle’ includes a vessel, aircraft or hovercraft.’

Commencement

Sch. 17 para. 107(1)-(5): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

New Roads and Street Works Act 1991**108**

(1) In the New Roads and Street Works Act 1991 (c. 22)—

(a) paragraph 7 of Schedule 4 (streets with special engineering difficulties), and

(b) paragraph 7 of Schedule 6 (roads with special engineering difficulties),

shall be amended as follows.

(2) For “telecommunication apparatus”, wherever occurring, there shall be substituted “electronic communications apparatus”.

(3) In sub-paragraph (3)(c)—

- (a) for “a telecommunication system” there shall be substituted “an electronic communications network”; and
- (b) for “a system” there shall be substituted “a network”.

Commencement

Sch. 17 para. 108(1)-(3)(b): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Coal Mining Subsidence Act 1991

✓ Law In Force

109

In section 52(1) of the Coal Mining Subsidence Act 1991 (c. 45) (interpretation) in the definition of “statutory undertakers”, in paragraph (b) for “any public telecommunications operator” there shall be substituted “any electronic communications code operator, any former PTO”.

Commencement

Sch. 17 para. 109: July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Water Industry Act 1991


✓ Law In Force

110

In section 219 of the Water Industry Act 1991 (c. 56) (general interpretation), in the definition of “accessories”, for “telecommunication apparatus (within the meaning of Schedule 2 to the Telecommunications Act 1984)” there shall be substituted “electronic communications apparatus”.

Commencement

Sch. 17 para. 110: July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

 Law In Force

111

(1) Schedule 13 to that Act (protective provisions in respect of certain undertakings) shall be amended as follows.


(2) In paragraph 1(5), for paragraph (c) there shall be substituted—

“(c) any undertaking consisting in the provision of an electronic communications network;”.

(3) In paragraph 4, for “telecommunication apparatus” there shall be substituted “electronic communications apparatus”.

Commencement

Sch. 17 para. 111(1)-(3): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

 Law In Force

112

(1) Schedule 15 to that Act (disclosure of information) shall be amended as follows.

(2) In Part 1, for “The Director General of Telecommunications” there shall be substituted “The Office of Communications”.


(3) In Part 2, after the entry relating to the Enterprise Act 2002, there shall be inserted—

“The Communications Act 2003.”

Commencement

Sch. 17 para. 112(1)-(3): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Water Resources Act 1991


 Law In Force

113

In section 221 of the Water Resources Act 1991 (c. 57) (general interpretation), in the definition of “accessories”, for “telecommunication apparatus (within the meaning of Schedule 2 to the Telecommunications Act 1984)” there shall be substituted “electronic communications apparatus”.

Commencement

Sch. 17 para. 113: July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

 Law In Force

114

(1) Schedule 22 to that Act (general provisions protecting undertakings) shall be amended as follows.

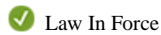
(2) In paragraph 1(4), for paragraph (c) there shall be substituted—

“(c) any undertaking consisting in the provision of an electronic communications network;”.

(3) In paragraph 5, for “telecommunication apparatus” there shall be substituted “electronic communications apparatus”.

Commencement

Sch. 17 para. 114(1)-(3): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))



Law In Force

115

- (1) Schedule 24 to that Act (disclosure of information) shall be amended as follows.
- (2) In Part 1, for “The Director General of Telecommunications” there shall be substituted “The Office of Communications”.
- (3) In Part 2, after the entry relating to the Enterprise Act 2002, there shall be inserted—

“The Communications Act 2003.”

Commencement

Sch. 17 para. 115(1)-(3): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Land Drainage Act 1991

Law In Force

116


In paragraph 1(1) of Schedule 6 to the Land Drainage Act 1991 (c. 59) (protection for particular undertakings), for paragraph (c) there shall be substituted—

“(c) any undertaking consisting in the provision of an electronic communications code network;”.

Commencement

Sch. 17 para. 116: July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Planning (Northern Ireland) Order 1991

 Law In Force

117


In Articles 103 (making of orders) and 104 (telecommunication apparatus) of the Planning (Northern Ireland) Order 1991 (S.I. 1991/1220 (N.I. 11))—

- (a) for “telecommunications code”, wherever occurring (except in the expression “telecommunications code system”) there shall be substituted “electronic communications code”;
- (b) for “a telecommunications code system” and “any telecommunications code system”, wherever occurring, there shall be substituted “an electronic communications code network”;
- (c) for “telecommunication apparatus”, wherever occurring, there shall be substituted “electronic communications apparatus”;
- (d) for “system” (except in the expression “telecommunications code system”) there shall be substituted “network”.

Commencement

Sch. 17 para. 117(a)-(d): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Charities Act 1992

 Law In Force


118

In section 60(6)(c) of the Charities Act 1992 (c. 41) (making of payments to professional fund-raisers etc.), for “telecommunication apparatus” there shall be substituted “electronic communications apparatus”.

Commencement

Sch. 17 para. 118: July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Carriage of Goods by Sea Act 1992

 Law In Force


119

In section 1(5) of the Carriage of Goods by Sea Act 1992 (c. 50), for “a telecommunication system” there shall be substituted “an electronic communications network”.

Commencement

Sch. 17 para. 119: July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Electricity (Northern Ireland) Order 1992

 Law In Force

120

The Electricity (Northern Ireland) Order 1992 (S.I. 1992/231 (N.I. 1)) shall be amended as follows.

Commencement

Sch. 17 para. 120: July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

✓ Law In Force

121

In Article 61 (restrictions on disclosure of information)—

(a) for paragraph (2)(b)(vi) there shall be substituted—

“(vi) the Office of Communications;”;

(b) after paragraph (3)(u) there shall be inserted—

“(v) the Communications Act 2003;”.

Commencement

Sch. 17 para. 121(a)-(b): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

✓ Law In Force

122

(1) Schedule 4 (other powers etc. of licence holders) shall be amended as follows.

(2) In paragraph 1(1)—

(a) for “a public telecommunications operator” there shall be substituted “an electronic communications code operator”;

(b) for “telecommunication system” there shall be substituted “electronic communications network”.

(3) In paragraphs 4 and 6 for “public telecommunications operator” there shall be substituted “electronic communications code operator”.

(4) In paragraphs 3(1) and (2), 5(1), (2), (3) and (4), 6(1) and 9—

(a) for “telecommunication apparatus”, wherever occurring, there shall be substituted “electronic communications apparatus”;

(b) for “a telecommunication system”, wherever occurring, there shall be substituted “an electronic communications network”;


(c) for “telecommunications code”, wherever occurring, there shall be substituted “electronic communications code”.

Commencement

Sch. 17 para. 122(1)-(4)(c): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Leasehold Reform, Housing and Urban Development Act 1993 Repealed**123 [...]**¹**Notes**

¹ Repealed by Housing and Regeneration Act 2008 c. 17 Sch.16 para.1 (December 1, 2008 as SI 2008/3068)


Cardiff Bay Barrage Act 1993 Law In Force**124**

In Schedule 2 to the Cardiff Bay Barrage Act 1993 (c. 42) (supplementary provisions about Development Corporation works)—

- (a) in paragraph 1(c), for “telecommunication” there shall be substituted “electronic communications”;
- (b) in paragraph 16, for “telecommunication apparatus” there shall be substituted “electronic communications apparatus”.

Commencement

Sch. 17 para. 124(a)-(b): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

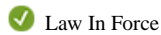
 Law In Force**125**

In paragraph 3(2)(c) of Schedule 4 to that Act (exception to extinguishment of rights over land compulsorily acquired)—

- (a) for “the telecommunications code” there shall be substituted “the electronic communications code”;
- (b) for “a telecommunications code system” there shall be substituted “an electronic communications code network”;
- (c) for “such system;” there shall be substituted “such network.”

Commencement

Sch. 17 para. 125(a)-(c): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))



Law In Force

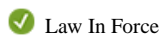
126

In paragraph 21 of Schedule 7 to that Act (powers of survey etc. in connection with groundwater damage)—

- (a) in sub-paragraphs (5)(b)(ii) and (7), for “a relevant telecommunications licenceholder” there shall be substituted “a provider of a public electronic communications network”;
- (b) in sub-paragraphs (6) and (7), for “or licenceholder” there shall be substituted “or provider”;
- (c) in sub-paragraph (6), for “running of the telecommunication system” there shall be substituted “provision of the public electronic communications network”.

Commencement

Sch. 17 para. 126(a)-(c): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Railways Act 1993

Law In Force

127

(1) Section 145 of the Railways Act 1993 (c. 43) (general restrictions on disclosure of information) be amended as follows.

(2) In subsection (2)(b), for sub-paragraph (iv) there shall be substituted—

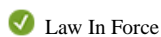
“(iv) the Office of Communications,”.

(3) In subsection (3), after paragraph (qs) there shall be inserted—

“(qt) the Communications Act 2003;”.

Commencement

Sch. 17 para. 127(1)-(3): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Roads (Northern Ireland) Order 1993

Law In Force

128

(1) This paragraph applies to the following provisions of the Roads (Northern Ireland) Order 1993 (S.I. 1993/3160 (N.I. 15))—

- (a) Article 12(2) (road bridges over railways);
- (b) Article 70(2) (consultation on exercise of power to erect structure on road);
- (c) Article 72(2) (control of scaffolding on roads);
- (d) Article 73(2) (restriction on placing rails etc. over roads);
- (e) Article 78(2) (excavations in a road);
- (f) Article 79(2) (placing of apparatus in or under roads);
- (g) Article 82(3) (excavations near a road);
- (h) Article 83(2) (alteration of wall, fence or drain at the side of a road);
- (i) Schedule 9 (savings for telecommunications apparatus).


(2) In each of the provisions to which this paragraph applies—

- (a) for “a telecommunications code system” and “any telecommunications code system”, wherever occurring, there shall be substituted “an electronic communications code network”;
- (b) for “telecommunication apparatus”, wherever occurring, there shall be substituted “electronic communications apparatus”;
- (c) for “telecommunications code”, wherever occurring (except in the expression “telecommunications code system”), there shall be substituted “electronic communications code”;
- (d) for “that system”, “any such system” and “the system”, wherever occurring, there shall be substituted, respectively, “that network”, “any such network” and “the network”;
- (e) for “the telecommunications code system” there shall be substituted “the electronic communications code network”.

Commencement

Sch. 17 para. 128(1)-(2)(e): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Value Added Tax Act 1994

 Law In Force

129

(1) The Value Added Tax Act 1994 (c. 23) shall be amended as follows.

(2) In section 33 (refunds of VAT in certain cases)—

(a) in subsection (3), for paragraph (j) there shall be substituted—

“(j) the appointed news provider referred to in section 280 of the Communications Act 2003; and”;

(b) in subsection (5), for “a nominated” there shall be substituted “an appointed”.

(3) In Part 2 of Schedule 9 (exemptions), in Note (1) in Group 12 (fund-raising events by charities etc.), for “a telecommunications system (within the meaning of the Telecommunications Act 1984)” there shall be substituted “an electronic communications network”.

Commencement

Sch. 17 para. 129(1), (3): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Sch. 17 para. 129(2)-(2)(b): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Criminal Justice and Public Order Act 1994

 Law In Force

130

(1) Section 163 of the Criminal Justice and Public Order Act 1994 (c. 33) (local authority powers to provide closed-circuit television) shall be amended as follows.

(2) For subsection (1)(b) there shall be substituted—

“(b) providing within their area an electronic communications service which is distributed—

(i) only to persons on a single set of premises; and

(ii) by an electronic communications network which is wholly within those premises and is not connected to an electronic communications network any part of which is outside those premises;”.

(3) In subsection (1)(c), for “telecommunications system” there shall be substituted “electronic communications network or electronic communications service”.

(4) After subsection (3), there shall be inserted—

“(3A) For the purposes of subsection (1)(b)—

(a) a set of premises is a single set of premises if, and only if, the same person is the occupier of all the premises; and

(b) two or more vehicles are capable of constituting a single set of premises if, and only if, they are coupled together.”

(5) In subsection (4), for the definition of “telecommunications system” there shall be substituted—

“‘premises’ includes a vehicle; and

‘vehicle’ includes a vessel, aircraft or hovercraft.”

Commencement

Sch. 17 para. 130(1)-(5): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Airports (Northern Ireland) Order 1994

 Law In Force

131

In Article 12 of the Airports (Northern Ireland) Order 1994 (S.I. 1994/426 (N.I. 1)) (provisions as to telecommunications apparatus)—

(a) for “telecommunications apparatus”, wherever occurring, there shall be substituted “electronic communications apparatus”;

(b) for “the telecommunications code”, wherever occurring, there shall be substituted “the electronic communications code”;


(c) for “a telecommunications code system”, wherever occurring, there shall be substituted “an electronic communications code network”;

(d) in paragraph (3), for “that system” there shall be substituted “that network”.

Commencement

Sch. 17 para. 131(a)-(d): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Merchant Shipping Act 1995

 Law In Force

132


In section 91(7) of the Merchant Shipping Act 1995 (c. 21) (report of dangers to navigation), in the definition of “controlled station for wireless telegraphy”—

- (a) after “Secretary of State” there shall be inserted “or by the Office of Communications”; and
- (b) for “by him” there shall be substituted “by the Office of Communications”.

Commencement

Sch. 17 para. 132(a)-(b): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Criminal Procedure (Scotland) Act 1995

 Partially In Force

133

(1) The Criminal Procedure (Scotland) Act 1995 (c. 46) shall be amended as follows.

(2) In section 302(9)(a) (interpretation), at the end there shall be inserted “nor an offence to which Schedule 6 to the Communications Act 2003 (fixed penalties for wireless telegraphy offences) applies.”

(3) In Schedule 9 (certificates as to proof of certain routine matters), at the end there shall be inserted—

“The Communications Act 2003Section 363(1) and (2) (offence of unauthorised	A person authorised to do so by the British Broadcasting Corporation	In relation to premises at an address specified in the certificate, whether on a date so specified any television licence (for
---	--	--

installation or use of a television receiver)

the purposes of that section) was, in records maintained on behalf of the Corporation in relation to such licences, recorded as being in force; and, if so, particulars so specified of such record of that licence.”

Commencement

Sch. 17 para. 133(1), (3): April 1, 2004 (SI 2003/3142 art. 4(2), Sch. 2 para. 1)

Sch. 17 para. 133(2): Date to be appointed (not yet in force)

British Waterways Act 1995

✓ Law In Force

134

In section 3(1) of the British Waterways Act 1995 (c. i) (interpretation), in the definition of “relevant undertaker”, in paragraph (f), for the words from the beginning to “in that Act)” there shall be substituted “any provider of an electronic communications network having any electronic communications apparatus”.

Commencement

Sch. 17 para. 134: July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Street Works (Northern Ireland) Order 1995

✓ Law In Force

135

(1) Paragraph 7 of Schedule 2 to the Street Works (Northern Ireland) Order 1995 (S.I. 1995/3210 (N.I. 19)) (streets with special engineering difficulties) shall be amended as follows.

(2) For “telecommunication apparatus”, wherever occurring, there shall be substituted “electronic communications apparatus”.

(3) In sub-paragraph (3)(c)—

- (a) for “a telecommunication system” there shall be substituted “an electronic communications network”;
- (b) for “a system” there shall be substituted “a network”.

Commencement

Sch. 17 para. 135(1)-(3)(b): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Housing Act 1996


 Repealed

136 [...]¹

Notes

- ¹ Repealed by Housing and Regeneration Act 2008 (Consequential Provisions) Order 2010/866 Sch.4 para.1 (April 1, 2010)
-

Housing Grants, Construction and Regeneration Act 1996

 Law In Force

137

In section 105(1)(b) of the Housing Grants, Construction and Regeneration Act 1996 (c. 53) (meaning of “construction operations”), for “telecommunication apparatus” there shall be substituted “electronic communications apparatus”.

Commencement

Sch. 17 para. 137: July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Channel Tunnel Rail Link Act 1996



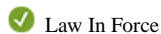
Law In Force

138

In Schedule 6 to the Channel Tunnel Rail Link Act 1996 (c. 61) (planning conditions), in the table in paragraph 6(4) and the table in paragraph 15(4), for “telecommunications masts”, in each place, there shall be substituted “electronic communications masts”.

Commencement

Sch. 17 para. 138: July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))



Law In Force

139

(1) Part 4 of Schedule 15 to that Act (protection of telecommunications operators) shall be amended as follows.

(2) In paragraph 1(1), for “telecommunications operator” there shall be substituted “an operator of an electronic communications code network”.

(3) In paragraphs 2 to 4—

- (a) for “telecommunications code”, wherever occurring, there shall be substituted “electronic communications code”;
- (b) for “telecommunications apparatus”, wherever occurring, there shall be substituted “electronic communications apparatus”;
- (c) for “a telecommunications operator”, wherever occurring, there shall be substituted “an operator”;
- (d) for “any telecommunications operator”, wherever occurring, there shall be substituted “any operator of an electronic communications code network”;
- (e) for “the telecommunications operator”, wherever occurring, there shall be substituted “the operator”;
- (f) for “telecommunications system” there shall be substituted “electronic communications code network”.


(4) In paragraph 5—

- (a) for “telecommunications apparatus”, wherever occurring, there shall be substituted “electronic communications apparatus”;
- (b) for “telecommunications operator”, in the first place where it occurs, there shall be substituted “operator of an electronic communications code network”;
- (c) for “telecommunications operator”, in each other place where it occurs, there shall be substituted “operator”.

Commencement

Sch. 17 para. 139(1)-(4)(c): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Gas (Northern Ireland) Order 1996


 Law In Force

140

The Gas (Northern Ireland) Order 1996 (S.I. 1996/275 (N.I. 2)) shall be amended as follows.

Commencement

Sch. 17 para. 140: July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

 Law In Force

141

In Article 44 (restrictions on disclosure of information)—

(a) in paragraph (3)(b), for head (vi) there shall be substituted—

“(vi) the Office of Communications;”;

(b) in paragraph (4), after sub-paragraph (v) there shall be inserted—

“(w) the Communications Act 2003.”

Commencement

Sch. 17 para. 141(a)-(b): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))



Law In Force

142

(1) Schedule 3 (other powers etc. of licence holders) shall be amended as follows.

(2) In paragraph 1(1)—

- (a) for “a public telecommunications operator” there shall be substituted “an electronic communications code operator”;
- (b) for “telecommunication system” there shall be substituted “electronic communications network”.

(3) In paragraphs 4 and 6 for “public telecommunications operator” there shall be substituted “electronic communications code operator”.

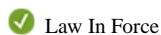
(4) In paragraphs 3(1), (2) and (3), 5(1) and (2), 6(1) and 8—

- (a) for “telecommunication apparatus”, wherever occurring, there shall be substituted “electronic communications apparatus”;
- (b) for “a telecommunication system”, wherever occurring, there shall be substituted “an electronic communications network”;
- (c) for “telecommunications code”, wherever occurring, there shall be substituted “electronic communications code”.

Commencement

Sch. 17 para. 142(1)-(4)(c): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Construction Contracts (Northern Ireland) Order 1997



Law In Force


143

In Article 4(1)(b) of the Construction Contracts (Northern Ireland) Order 1997 (S.I. 1997/274 (N.I. 1)) (meaning of “construction operations”), for “telecommunication apparatus” there shall be substituted “electronic communications apparatus”.

Commencement

Sch. 17 para. 143: July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Waste and Contaminated Land (Northern Ireland) Order 1997

 Law In Force

144

In Article 2(2) of the Waste and Contaminated Land (Northern Ireland) Order 1997 (S.I. 1997/2778 (N.I. 19)) (meaning of “industrial waste” for “telecommunication services”) there shall be substituted “communications services”.

Commencement

Sch. 17 para. 144: July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Wireless Telegraphy Act 1998

 Repealed

145 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

 Repealed

146 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

 Repealed

147 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

 Repealed

148 [...]¹

Notes

- ¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)
-

 Repealed

149 [...]¹

Notes

- ¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)
-

 Repealed

150 [...]¹

Notes

- ¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)
-

 Repealed

151 [...]¹

Notes

- ¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)
-

Finance Act 1998

 Repealed

152 [...]¹

Notes

- ¹ Repealed by Taxation (International and Other Provisions) Act 2010 c. 8 Sch.10(12) para.1 (April 1, 2010 for corporation tax purposes, for accounting periods ending on or after that day, for income tax and capital gains tax purposes, for the tax year 2010-11 and subsequent tax years, and for petroleum revenue tax purposes, for chargeable periods beginning on or after July 1, 2010)
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Competition Act 1998

**153**

(1) Schedule 7 to the Competition Act 1998 (c. 41) (members of Commission appointed under certain enactments) shall be amended as follows.

(2) In paragraph 2(1)(d), for sub-paragraph (iii) there shall be substituted—

“(iii) section 194(1) of the Communications Act 2003;”.

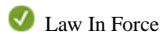
(3) In paragraph 19A(9), in the definition of “special reference group”, after paragraph (n) there shall be inserted

“or

(o) section 193 of the Communications Act 2003.”

Commencement

Sch. 17 para. 153(1)-(3): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

**154**

In paragraph 1 of Schedule 7A to that Act (procedural rules), in the definition of “special investigation”, for “and (n)” there shall be substituted “, (n) and (o)”.

Commencement

Sch. 17 para. 154: July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Regional Development Agencies Act 1998**155 [...]¹**

Notes

¹ Repealed by Public Bodies Act 2011 c. 24 Sch.6 para.1 (July 1, 2012: repeal has effect as SI 2012/1662 at 00.02)

Finance Act 1999

✓ Law In Force

156

In section 132(10) of the Finance Act 1999 (c. 16) (power to provide for use of electronic communications), for “a telecommunication system (within the meaning of the Telecommunications Act 1984)” there shall be substituted “an electronic communications service”.

Commencement

Sch. 17 para. 156: July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Greater London Authority Act 1999

✓ Law In Force

157

(1) Section 235 of the Greater London Authority Act 1999 (c. 29) (restrictions on disclosure of information) shall be amended as follows.

(2) In subsection (2)(c), for sub-paragraph (iv) there shall be substituted—

“(iv) the Office of Communications,”.

(3) In subsection (3), after paragraph (rs) there shall be inserted—

“(rt) the Communications Act 2003;”.

Commencement

Sch. 17 para. 157(1)-(3): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Electronic Communications Act 2000

✓ Law In Force

158

In section 15(1) of the Electronic Communications Act 2000 (c. 7) (general interpretation), in the definition of “electronic communication”, for “a telecommunication system (within the meaning of the Telecommunications Act 1984)” there shall be substituted “an electronic communications network”.

Commencement

Sch. 17 para. 158: July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Television Licences (Disclosure of Information) Act 2000

✓ Law In Force

159

In section 5 of the Television Licences (Disclosure of Information) Act 2000 (c. 15) (interpretation)—

(a) for the definitions of “the BBC” and “television licence” there shall be substituted—

“‘the BBC’ means the British Broadcasting Corporation;”;

(b) after the definition of “prescribed” there shall be inserted—

“‘television licence’ means a licence for the purposes of section 363 of the Communications Act 2003;”.

Commencement

Sch. 17 para. 159(a)-(b): April 1, 2004 (SI 2003/3142 art. 4(2), Sch. 2 para. 1)

Finance Act 2000

✓ Law In Force

160

In paragraph 8 of Schedule 38 to the Finance Act 2000 (c. 17) (regulations for providing incentives for electronic communications), in the definition of “electronic communications”, for “a

telecommunication system (within the meaning of the Telecommunications Act 1984)” there shall be substituted “an electronic communications service”.

Commencement

Sch. 17 para. 160: July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Regulation of Investigatory Powers Act 2000

✓ Law In Force

161

(1) The Regulation of Investigatory Powers Act 2000 (c. 23) shall be amended as follows.

(2) In section 26(6)(a) (surveillance carried out for detecting unlicensed TV use), for “section 1 of the Wireless Telegraphy Act 1949)” there shall be substituted “Part 4 of the Communications Act 2003)”.

(3) In Part 1 of Schedule 1 (relevant public authorities for the purposes of sections 28 and 29 of that Act), after paragraph 23 there shall be inserted—

“23A

The Office of Communications.”

Commencement

Sch. 17 para. 161(1), (3): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Sch. 17 para. 161(2): April 1, 2004 (SI 2003/3142 art. 4(2), Sch. 2 para. 1)

Postal Services Act 2000

✓ Law In Force

162

(1) The Postal Services Act 2000 (c. 26) shall be amended as follows.

(2) In section 125(2)(a) (communications delivered otherwise than electronically), for “a telecommunication system (within the meaning of the Telecommunications Act 1984)” there shall be substituted “an electronic communications network”.

(3) [...] ¹

Notes

¹ Repealed by Postal Services Act 2011 c. 5 Sch.12(2) para.70 (October 1, 2011)

Commencement

Sch. 17 para. 162(1)-(3)(b): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Utilities Act 2000

✓ Law In Force

163

(1) Section 105 of the Utilities Act 2000 (c. 27) (general restrictions on disclosure of information) shall be amended as follows.

(2) In subsection (5), for paragraph (d) there shall be substituted—

“(d) the Office of Communications;”.

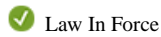
(3) In subsection (6), after paragraph (s) there shall be inserted—

“(t) the Communications Act 2003.”

Commencement

Sch. 17 para. 163(1)-(3): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Freedom of Information Act 2000

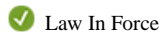
**164**

In Part 6 of Schedule 1 to the Freedom of Information Act 2000 (c. 36) (public authorities), there shall be inserted at the appropriate place—

“The Consumer Panel established under section 16 of the Communications Act 2003.”

Commencement

Sch. 17 para. 164: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Countryside and Rights of Way Act 2000**165**

(1) The Countryside and Rights of Way Act 2000 (c. 37) shall be amended as follows.

(2) In section 17(4) (byelaws not to interfere with certain rights), for paragraph (c) there shall be substituted—

“(c) with the provision of an electronic communications code network or the exercise of any right conferred by or in accordance with the electronic communications code on the operator of any such network.”

(3) In paragraph 8 of Schedule 1 (excepted land), for “a telecommunications code system” there shall be substituted “an electronic communications code network”.

Commencement

Sch. 17 para. 165(1)-(3): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Transport Act 2000



Law In Force

166

(1) Paragraph 3 of Schedule 9 to the Transport Act 2000 (c. 38) (air traffic information) shall be amended as follows.

(2) In sub-paragraph (2), for paragraph (d) there shall be substituted—

“(d) the Office of Communications;”.

(3) In sub-paragraph (3)—

(a) after paragraph (q) there shall be inserted—

“(qa) the Broadcasting Act 1996;”;

(b) after paragraph (ra) there shall be inserted—

“(rb) the Communications Act 2003;”.

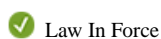
Commencement

Sch. 17 para. 166(1)-(2), (3)(b): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Sch. 17 para. 166(3): July 25, 2003

Sch. 17 para. 166(3)(a): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Political Parties, Elections and Referendums Act 2000



Law In Force

167

(1) The Political Parties, Elections and Referendums Act 2000 (c. 41) shall be amended as follows.


(2) In section 11(3) (broadcasters to have regard to Electoral Commission's views on political broadcasts), for the words from “and Sianel” to “regard” there shall be substituted “shall have regard, in determining its policy with respect to party political broadcasts,”.

(3) In paragraph 4(6) of Schedule 12 (broadcasters to have regard to Electoral Commission's views on referendum campaign broadcasts), for the words from “and Sianel” to “regard” there shall be substituted “shall have regard, in determining its policy with respect to referendum campaign broadcasts by designated organisations,”.

Commencement

Sch. 17 para. 167(1)-(3): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Vehicles (Crime) Act 2001

 Law In Force

168

In [31(2)(a) and 40(6) of the Vehicles (Crime) Act 2001 (c. 3)]¹ (transmission of representations and service of notices etc.), for “a telecommunication system (within the meaning of the Telecommunications Act 1984 (c. 12))” there shall be substituted “an electronic communications network”.


Notes

¹ Word repealed by Scrap Metal Dealers Act 2013 c. 10 s.19(1)(e) (October 1, 2013 subject to transitional provisions as specified in SI 2013/1966 art.5)

Commencement

Sch. 17 para. 168: July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Criminal Justice and Police Act 2001

 Law In Force

169


In the table in section 1(1) of the Criminal Justice and Police Act 2001 (c. 16) (offences leading to penalties on the spot), after the entry relating to section 12 of that Act there shall be inserted—

“Section 127(2) of the Communications Act 2003	Using public electronic communications network in order to cause annoyance, inconvenience or needless anxiety”.
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Commencement

Sch. 17 para. 169: July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Electronic Communications Act (Northern Ireland) 2001

 Law In Force


170

In section 4(1) of the Electronic Communications Act (Northern Ireland) 2001 (c. 9 (N.I.)) (interpretation), in the definition of “electronic communication”, for “a telecommunication system (within the meaning of the Telecommunications Act 1984)” there shall be substituted “an electronic communications network”.

Commencement

Sch. 17 para. 170: July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Office of Communications Act 2002

 Law In Force

171

Sections 2, 4, 5 and 6 of the Office of Communications Act 2002 (c. 11) shall cease to have effect.

Commencement

Sch. 17 para. 171: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

✓ Law In Force

172

(1) The Schedule to that Act shall be amended as follows.

(2) The following shall cease to have effect—

- (a) paragraph 1(4);
- (b) paragraph 8(5);
- (c) paragraph 17(8) and (9); and
- (d) paragraph 20.

(3) For paragraph 8(1) there shall be substituted—

“(1) It shall be the duty of OFCOM so to conduct their affairs as to secure that their revenues so far as they—

- (a) derive from the exercise of powers to impose charges or fees in respect of the carrying out of particular functions, and
- (b) do not fall to be paid into the Consolidated Fund of the United Kingdom or of Northern Ireland,

are at least sufficient to enable OFCOM to meet the costs of carrying out the functions to which the revenues relate.”

(4) After paragraph 14(3) (executive committees of OFCOM to include member or employee of OFCOM) there shall be inserted—

“(3A) Sub-paragraph (3) has effect in the case of a committee of OFCOM which—

- (a) is not the Content Board, but
- (b) has functions that are confined to functions falling within section 13(2) of the Communications Act 2003 (functions within the Content Board's remit),

as if the reference in that sub-paragraph to a member of OFCOM included a reference to a member of the Content Board who is not a member of OFCOM.”

Commencement

Sch. 17 para. 172(1)-(4): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Tobacco Advertising and Promotion Act 2002

✓ Law In Force

173

(1) Section 12 of the Tobacco Advertising and Promotion Act 2002 (c. 36) (exclusion from that Act of advertising on television and radio) shall be amended as follows.

(2) For subsection (3) there shall be substituted—

“(3) This subsection applies to—

- (a) a service falling within section 211(1) of the Communications Act 2003 (independent television services regulated by the Office of Communications) which is not an additional television service (within the meaning of Part 3 of that Act); and
- (b) an additional television service comprised in the public teletext service (within the meaning of that Part).”

(3) For subsection (5) there shall be substituted—

“(5) This subsection applies to a service which—

- (a) falls within section 245(1) of the Communications Act 2003 (independent radio services regulated by the Office of Communications); but
- (b) is not a digital additional sound service (within the meaning of Part 3 of that Act).”

Commencement

Sch. 17 para. 173(1)-(3): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Enterprise Act 2002

✓ Law In Force

174

(1) The Enterprise Act 2002 (c. 40) shall be amended as follows.

(2) In section 126(6) (service of documents electronically), for “a telecommunication system (within the meaning of the Telecommunications Act 1984 (c. 12))” there shall be substituted “an electronic communications network”.

(3) In section 128(5) (supply of services and market for services etc.), for “section 189(2) of the Broadcasting Act 1990 (c. 42)” there shall be substituted “paragraph 29 of Schedule 2 to the Telecommunications Act 1984”.

(4) In section 136 (investigations and reports on market investigation references)—

(a) in subsection (7), after paragraph (g) there shall be inserted—

“(h) in relation to the Office of Communications, sections 370 and 371 of the Communications Act 2003.”;

(b) in subsection (8), for “or the Civil Aviation Authority” there shall be substituted “, the Civil Aviation Authority or the Office of Communications”.

(5) In section 168 (regulated markets)—

(a) in subsection (3)(e), for “section 39(1) of the Broadcasting Act 1990 (c. 42)” there shall be substituted “section 290 of the Communications Act 2003”;

(b) for subsection (4)(e), there shall be substituted—

“(e) in relation to any networking arrangements (within the meaning given by section 290 of the Communications Act 2003), the duty of the Office of Communications under subsection (1) of section 3 of that Act to secure the matters mentioned in subsection (2)(c) of that section;”;

(c) for subsection (5)(g), there shall be substituted—

“(g) the Office of Communications;”.

(6) In section 234(5) (supply of services), for “section 189(2) of the Broadcasting Act 1990 (c. 42)” there shall be substituted “paragraph 29 of Schedule 2 to the Telecommunications Act 1984”.

(7) In Schedule 15 (enactments conferring functions), in the appropriate place, there shall be inserted—


“Communications Act 2003.”

Commencement

Sch. 17 para. 174(1)-(2), (4)-(4)(b), (6)-(7): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Sch. 17 para. 174(3), (5)-(5)(c): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Income Tax (Earnings and Pensions) Act 2003

 Law In Force

175

(1) The Income Tax (Earnings and Pensions) Act 2003 (c. 1) shall be amended as follows.

(2) [...] ¹

(3) [...] ²

Notes

¹ Repealed by Finance Act 2006 c. 25 Sch.26(3)(6) para.1 (April 6, 2006: repeal has effect for the year 2006-07 and subsequent years of assessment)

² Repealed by Finance Act 2006 c. 25 Sch.26(3)(7) para.1 (April 6, 2006: repeal has effect for the year 2006-07 and subsequent years of assessment subject to 2006 c.25 s.61(3))

Commencement


Sch. 17 para. 175(1)-(3): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), Sch. 1 para. 1)

SCHEDULE 18

TRANSITIONAL PROVISIONS

Section 406

General

 Law In Force

1

(1) This paragraph applies where, at any time before the coming into force of a transfer made by virtue of section 2—

- (a) any subordinate legislation has been made in the carrying out of the transferred functions by the person from whom the transfer is made; or
- (b) any other thing has been done by or in relation to that person for the purposes of or in connection with the carrying out of those functions.

(2) The subordinate legislation or other thing—

- (a) is to have effect, on and after the coming into force of the transfer, and so far as necessary for its purposes, as if it had been made or done by or in relation to OFCOM; and
- (b) in the case of subordinate legislation to which section 403 applies when it is made by OFCOM, shall so have effect as if made in accordance with the requirements of that section.

(3) Where any subordinate legislation, direction, authorisation or notice has effect in accordance with this paragraph—

- (a) so much of it as authorises or requires anything to be done by or in relation to the person from whom the transfer is made is to have effect in relation to times after the coming into force of the transfer as if it authorised or required that thing to be done by or in relation to OFCOM; and
- (b) other references in the subordinate legislation, direction, authorisation or notice to the person from whom the transfer is made are to have effect, in relation to such times, as references to OFCOM.

Commencement

Sch. 18 para. 1(1)-(3)(b): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Steps taken in anticipation of passing or coming into force of Act

**2**

- (1) This paragraph applies where the Secretary of State or OFCOM is or are required—
- (a) by a provision of this Act, or
 - (b) by virtue of an amendment made by this Act,
- to take steps before exercising a power or performing a duty.
- (2) The requirement is capable of being satisfied by the taking of the steps in anticipation of effect being given to the provision by virtue of which the power or duty is—
- (a) conferred or imposed on the Secretary of State or OFCOM; or
 - (b) transferred to OFCOM.
- (3) For the purposes of sub-paragraph (2) it is immaterial—
- (a) that the provision by virtue of which the power or duty is conferred, imposed or transferred had not been enacted, or had not come into force, when the steps were taken; and
 - (b) in the case of steps taken before the enactment of that provision, that the provision the effect of which was anticipated was modified before being enacted.
- (4) In relation to provisions brought into force as mentioned in subsection (1) of section 408 for the purpose of enabling specified functions to be carried out by the Director or the Secretary of State—
- (a) this paragraph has effect in relation to steps taken by the Director or the Secretary of State as it has in relation to steps taken by OFCOM; and
 - (b) subsection (5) of that section applies in relation to steps taken by the Director or the Secretary of State in anticipation of effect being given to those provisions as it would apply to anything done by the Director or the Secretary of State for the purposes of, or in connection with, the carrying out of those functions.
- (5) Where a requirement is satisfied by virtue of this paragraph by steps taken in anticipation of effect being given to a provision—
- (a) representations made to or other things done in relation to OFCOM, or the Director or the Secretary of State, in consequence of the taking of those steps, and
 - (b) any requirements framed by reference to the time at which those steps were taken,
- are to have effect as if the provision in question had come into force before those steps were taken.

Commencement

Sch. 18 para. 2(1)–(5)(b): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Savings for agreements referring to the termination of a 1984 Act licence



3

(1) This paragraph applies where a term or condition of an agreement in force immediately before the abolition of licensing provides—

- (a) for the agreement, or a provision of it, to cease to have effect,
- (b) for the agreement to become capable of being terminated,
- (c) for a requirement to pay or repay an amount (whether liquidated or unliquidated) to arise under the agreement, or to arise earlier than it would otherwise have arisen,
- (d) for a security to become enforceable, or
- (e) for rights or obligations of a person under the agreement to be different or to be modified,

if a person (whether or not a party to the agreement) ceases to hold a licence under section 7 of the 1984 Act, or ceases to do so in a manner or in circumstances described in the agreement.

(2) Where a person ceases to hold a licence in consequence of the provisions of this Act removing the requirement to hold a licence under section 7 of the 1984 Act—

- (a) the term or condition is not to apply; and
- (b) the rights and obligations of the parties to the agreement are to be the same (subject to the following sub-paragraphs) as they would have been had the person in question continued to hold such a licence.

(3) In relation to times after the abolition of licensing, that term or condition is to have effect as if the reference in that term or condition—

- (a) to a person's ceasing to hold a licence under section 7 of the 1984 Act, or
- (b) to his ceasing to do so in a particular manner or particular circumstances, were a reference to his becoming subject to a direction under this Act by virtue of which he is prohibited from providing the whole or a part of an electronic communications network or electronic communications service.

(4) In sub-paragraph (3) the reference to a person's becoming subject to a direction by virtue of which he is prohibited from providing the whole or a part of an electronic communications network or electronic communications service—

- (a) does not include a reference to his becoming subject to a direction imposing a prohibition for a fixed period of less than eighteen months or to a direction that will have to be revoked if not confirmed; but
- (b) except in the case of a direction imposing a prohibition for such a fixed period, does include a reference to the confirmation of a direction that would otherwise have had to be revoked.

(5) This paragraph does not apply in the case of a term or condition of an agreement if, on an application to the court by one or both of the parties to the agreement, the court directs—

- (a) that this paragraph is not to apply; or
- (b) that it is to apply with such modifications, or subject to the payment of such compensation, as the court may specify in the direction.

(6) In determining whether to give a direction under sub-paragraph (5) or what modifications or compensation to specify in such a direction the court must have regard to the following—

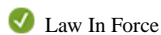
- (a) whether either or both of the parties to the agreement contemplated the abolition of the licensing requirements of the 1984 Act when they entered into the agreement; and

- (b) the extent (if any) to which the provisions of this paragraph represent what it would have been reasonable for the parties to have agreed had they both known at that time what provision was to be made by this Act and when it was to come into force.
- (7) For the purposes of this paragraph—
- (a) references to ceasing to hold a licence include references to its expiring or being revoked; and
 - (b) references to a licence under section 7 of the 1984 Act include references to a licence under that section of a particular description.
- (8) In this paragraph “the court” means the High Court or the Court of Session.
- (9) This paragraph has effect subject to paragraph 14.

Commencement

Sch. 18 para. 3(1)-(9): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Saving for agreements with special provision for 1984 Act licence holders



Law In Force

4

- (1) This paragraph applies in a case to which paragraph 3 does not apply and in which a term or condition of an agreement in force immediately before the abolition of licensing provides for rights or obligations of a person (“the contracting party”) under the agreement to be different or to be modified according to whether or not he or another person (whether or not a party to the agreement)—
- (a) is or has become the holder of a licence under section 7 of the 1984 Act; or
 - (b) is or has become the holder of such a licence in a manner or in circumstances described in the agreement.
- (2) In relation to times after the abolition of licensing, that term or condition is to have effect as if the rights and obligations to which the contracting party is entitled or subject under the agreement were, except in a case falling within sub-paragraph (3), those for which the agreement provides in relation to a case in which the person in question—
- (a) is or has become the holder of such a licence; or
 - (b) is or has become the holder of such a licence in that manner or in those circumstances.
- (3) The excepted case is where that person is subject to a direction under this Act by virtue of which he is prohibited from providing the whole or a part of an electronic communications network or electronic communications service.

(4) In sub-paragraph (3) the reference to a person's being subject to a direction by virtue of which he is prohibited from providing the whole or a part of an electronic communications network or electronic communications service—

- (a) does not include a reference to his being subject to a direction imposing a prohibition for a fixed period of less than eighteen months or to a direction that will have to be revoked if not confirmed; but
- (b) except in the case of a direction imposing a prohibition for such a fixed period, does include a reference to his being subject to a direction which would have had to be revoked if not confirmed but which has been confirmed.

(5) This paragraph does not apply in the case of a term or condition of an agreement if, on an application to the court by one or both of the parties to the agreement, the court directs—

- (a) that this paragraph is not to apply; or
- (b) that it is to apply with such modifications, or subject to the payment of such compensation, as the court may specify in the direction.

(6) In determining whether to give a direction under sub-paragraph (5) or what modifications or compensation to specify in such a direction the court must have regard to the following—

- (a) whether either or both of the parties to the agreement contemplated the abolition of the licensing requirements of the 1984 Act when they entered into the agreement; and
- (b) the extent (if any) to which the provisions of this paragraph represent what it would have been reasonable for the parties to have agreed had they both known at that time what provision was to be made by this Act and when it was to come into force.

(7) For the purposes of this paragraph references to a licence under section 7 of the 1984 Act include references to a licence under that section of a particular description.

(8) In this paragraph “the court” means the High Court or the Court of Session.

Commencement

Sch. 18 para. 4(1)-(8): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

General saving for agreements conditional on certain Broadcasting Act licences



Law In Force

5

(1) This paragraph has effect where an agreement in force immediately before the coming into force of a provision of this Act removing a requirement for a relevant Broadcasting Act licence provides—

- (a) for the agreement to cease to have effect, or
- (b) for it to be capable of being terminated,

if a party to the agreement ceases to hold a relevant Broadcasting Act licence of a particular description, or so ceases in a manner described in the agreement.

(2) In this paragraph “relevant Broadcasting Act licence” means—

- (a) a licence under Part 1 of the 1990 Act to provide a satellite television service or a licensable programme service;
- (b) a licence under that Part to provide the service mentioned in section 49(2) of that Act;
- (c) a licence under Part 2 of that Act to provide a local delivery service; or
- (d) a licence under Part 3 of that Act to provide a formerly regulated radio service (within the meaning of section 251 of this Act).

(3) The agreement is not to cease to have effect, or to be capable of being terminated, by reason only of the coming into force of the provisions of this Act under which the requirement for the licence is removed.

(4) In relation to times after the commencement of the provision of this Act removing the requirement for a licence to provide a satellite television service or a licensable programme service, a reference to such a licence in the provision of the agreement in question is to have effect as a reference to a licence granted or having effect as if granted as a licence to provide a television licensable content service.

(5) In relation to times after the commencement of the provision of this Act removing the requirement for a licence to provide the service mentioned in section 49(2) of the 1990 Act, a reference to such a licence in the provision of the agreement in question is to have effect as a reference to a licence to provide the public teletext service.

(6) In relation to times after the commencement of the provision of this Act removing the requirement for a licence to provide a licensable sound programme service, a reference to such a licence in the provision of the agreement in question is to have effect as a reference to a licence to provide a radio licensable content service.

(7) References in this paragraph to a provision having effect if a person ceases to hold a licence include references—

- (a) to a provision having effect if a licence of his expires without being renewed; and
- (b) to a provision having effect if his licence is revoked.

(8) Expressions used in this paragraph and in Part 3 of this Act have the same meanings in this paragraph as in that Part.

Commencement

Sch. 18 para. 5(1)-(8): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Orders under Part 2 of the Deregulation and Contracting Out Act 1994


 Repealed

6 [...]¹

Notes

- ¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)
-

Pre-commencement proposals relating to universal service matters

 Law In Force

7

- (1) Where a proposal for the designation of a person as a universal service provider has been confirmed under regulation 4(10) of the Electronic Communications (Universal Service) Regulations 2003 (S.I. 2003/33), the designation is to have effect after the commencement of section 66 of this Act as a designation in accordance with regulations under that section.
- (2) Where in any person's case a proposal to set a condition has been confirmed under regulation 4(10) or 5(4) of those regulations, that condition is to have effect after the commencement of that section as a condition set by OFCOM under section 45 of this Act and applied to that person.
- (3) Where an appeal under regulation 6 of those regulations against a decision under them has been brought but not concluded before the commencement of section 192 of this Act—
- (a) that appeal is to be stayed or sisted as from the commencement of the section; but
 - (b) the appellant is to have a new right of appeal under the section against the decision (as it has effect by virtue of this paragraph) as if—
 - (i) it were the corresponding decision made by OFCOM under Chapter 1 of Part 2 of this Act; and
 - (ii) it had been made immediately after the commencement of the section.
- (4) Tribunal rules (within the meaning of Chapter 3 of Part 2 of this Act) may, in relation to an appeal stayed or sisted under sub-paragraph (3), make transitional provision for requiring steps taken and things done for the purposes of that appeal to be taken into account, to the extent set out in the rules, in the case of an appeal brought by virtue of paragraph (b) of that sub-paragraph.

Commencement

Sch. 18 para. 7(1)-(4): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Local loop notifications

✓ Law In Force

8

- (1) This paragraph applies where, as a result of a market power determination made by OFCOM for the purposes of a provision of Chapter 1 of Part 2 of this Act, they conclude that a person who is for the time being LLU notified is no longer a person falling to be so notified.
- (2) OFCOM must give a notification of their conclusion to—
 - (a) the Secretary of State; and
 - (b) the notified person.
- (3) On receiving a notification under sub-paragraph (2) the Secretary of State must withdraw the LLU notification of the person in question.
- (4) For the purposes of this paragraph a person is LLU notified if he is a person who, for the purposes of Regulation (EC) No. 2887/2000 of the European Parliament and of the Council on unbundled access to the local loop, is notified to the European Commission as having significant market power in an identified market, and “LLU notification” shall be construed accordingly.
- (5) Section 192 applies to a decision by OFCOM to give a notification under this paragraph as it applies to a decision by them under Part 2 of this Act.

Commencement

Sch. 18 para. 8(1)-(5): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Conditions relating to premium rate services and conditions corresponding to SMP or access-related conditions

✓ Law In Force

9

- (1) This paragraph applies where OFCOM give a continuation notice to the holder of a licence granted under section 7 of the 1984 Act.
- (2) A continuation notice is a notice that a provision contained in a condition of the licence is to have effect, after the abolition of licensing—
 - (a) to the extent specified in the notice; and
 - (b) subject to such modifications (if any) as may be so specified.
- (3) OFCOM are not to give a continuation notice except to the extent that they consider that provision to which it will give effect, as modified by the notice, (“the continued provision”)—
 - (a) regulates the provision of premium rate services; or
 - (b) falls within sub-paragraph (4).

- (4) The continued provision falls within this sub-paragraph in so far as it corresponds to provision of one or more of the following descriptions—
- (a) provision that OFCOM have power to include in SMP conditions;
 - (b) provision authorised by section 73(2) or (4) for inclusion in access-related conditions;
 - (c) provision relating to matters mentioned in Article 16 of the Universal Service Directive or Article 7 of the Access Directive.
- (5) A continuation notice relating to provision corresponding to anything that OFCOM have power to include in SMP conditions—
- (a) may identify the market by reference to which an SMP condition replacing the provision would have to be set; and
 - (b) in so far as the provision corresponds to anything that OFCOM have power to include only in SMP apparatus conditions, must do so.
- (6) OFCOM are not to give a continuation notice relating to provision corresponding to anything that OFCOM have power to include only in SMP apparatus conditions except to the extent that it has effect in relation to the supply of electronic communications apparatus of a description supplied in the market identified in the notice as the market by reference to which SMP conditions replacing the continued provision would have to be set.
- (7) The modifications for which a continuation notice may provide—
- (a) must be confined to modifications for the purpose of securing that the provision to which they relate continues to have effect for so long as the notice is in force; but
 - (b) in the case of provision which is expressed to impose a requirement to be met before the abolition of licensing, may include a modification under which that requirement must continue to be met for so long as the notice remains in force.
- (8) Notwithstanding any repeal or revocation made by this Act—
- (a) the continued provision,
 - (b) every provision made by a direction, determination or consent given or made for the purposes of the continued provision, and
 - (c) so far as necessary for giving effect to anything mentioned in paragraph (a) or (b), every provision made by or under the licence under the 1984 Act that is not so mentioned,
- are to remain in force for so long as the continuation notice is in force.
- (9) A continuation notice shall cease to have effect if OFCOM give a notice to that effect to the holder of the licence.
- (10) Where the continued provision is one that OFCOM have power to include only in an SMP apparatus condition, it shall be their duty, as soon as reasonably practicable after giving the continuation notice—
- (a) to carry out an analysis of the market which, under sub-paragraph (5), is identified in that notice;
 - (b) to take all other steps necessary for enabling them to decide whether or not to set an SMP apparatus condition by reference to that market for the purpose of replacing the continued provision; and
 - (c) to decide whether or not to exercise their power to set such a condition for that purpose.
- (11) In the case of every other continued provision falling within sub-paragraph (4), it shall be OFCOM's duty, as soon as reasonably practicable after giving the continuation notice—

- (a) to take all steps necessary for enabling them to decide whether or not to set a condition of any other description under Chapter 1 of Part 2 of this Act for the purpose of replacing the continued provision; and
- (b) to decide whether or not to exercise their power to set a condition under that Chapter for that purpose.

(12) It shall be the duty of OFCOM—

- (a) as soon as reasonably practicable after making a decision required by sub-paragraph (10) or (11), but
- (b) in a case where that decision is a decision to set a condition, not before the coming into force of that condition,

to give a notice under sub-paragraph (9) with respect to the continuation notice.

(13) The duties imposed by sub-paragraphs (10) to (12) apply only where OFCOM have not previously given a notice under sub-paragraph (9) with respect to the continuation notice in question.

(14) This paragraph has effect in the case of a licence granted under section 7 of the 1984 Act to persons of a particular class as if—

- (a) references to the holder of that licence were references to the members of that class; and
- (b) the manner in which a continuation notice or notice under sub-paragraph (9) is to be given to members of that class were by its publication in such manner as, in OFCOM's opinion, is appropriate for bringing it to the attention of the members of that class who are affected by the notice.

[(14A) Sections 185 to 191 apply to a dispute relating to a provision of a kind mentioned in paragraph (4), other than a dispute relating to provision that OFCOM have power to include in SMP apparatus conditions, as they apply to disputes of a kind mentioned in subsections (1A) and (2) of section 185.]¹

(15) Section 192 applies to a decision by OFCOM to give a notice under this paragraph as it applies to a decision by them under Part 2 of this Act.

(16) In this paragraph “Access Directive”, “electronic communications apparatus”, “the provision of premium rate services”, “SMP condition”, “SMP apparatus condition” and “Universal Service Directive” each has the same meaning as in Chapter 1 of Part 2 of this Act.

Notes

¹ Added by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.100(a) (May 26, 2011)

Commencement

Sch. 18 para. 9(1)-(16): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Pre-commencement proposals relating to market power determinations



10

- (1) Sub-paragraph (2) has effect where a proposal for—
- (a) the identification of a market,
 - (b) the making of a market power determination, or
 - (c) the setting of conditions by reference to a proposal for a market power determination,
- has been confirmed under regulation 8 of the Electronic Communications (Market Analysis) Regulations 2003 (S.I. 2003/330).
- (2) If, at any time after the commencement of section 45, OFCOM—
- (a) are satisfied that a procedure has been followed in relation to the proposal that satisfies the requirements of Article 7 of the Framework Directive, and
 - (b) publish a notification to that effect 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 the proposal,
- the proposal (with such modifications, if any, as are specified in the notification) is to have effect, from the publication of the notification, in accordance with sub-paragraph (3).
- (3) The proposal is to have effect as follows—
- (a) in the case of a proposal for identifying a market, as an identification of a services market in accordance with and for the purposes of section 79 of this Act;
 - (b) in the case of a proposal for the making of a market power determination, as a market power determination made in accordance with and for the purposes of Chapter 1 of Part 2 of this Act; and
 - (c) in the case of a proposal for setting conditions, as if the conditions were SMP services conditions set under section 45 of this Act and applied to the same person as the condition in the proposal.
- (4) Where an appeal under regulation 11 of those regulations against a decision under them has been brought but not concluded before the commencement of section 192 of this Act—
- (a) that appeal is to be stayed or sisted as from the commencement of the section; but
 - (b) the appellant is to have a new right of appeal under the section against the decision (as it has effect by virtue of this paragraph) as if—
 - (i) it were the corresponding decision made by OFCOM under Chapter 1 of Part 2 of this Act; and
 - (ii) it had been made immediately after the commencement of the section.
- (5) Tribunal rules (within the meaning of Chapter 3 of Part 2 of this Act) may, in relation to an appeal stayed or sisted under sub-paragraph (4), make transitional provision for requiring steps taken and things done for the purposes of that appeal to be taken into account, to the extent set out in the rules, in the case of an appeal brought by virtue of paragraph (b) of that sub-paragraph.
- (6) Section 192 applies to a decision by OFCOM to publish a notification under this paragraph as it applies to a decision by them under Part 2 of this Act.
- (7) In this paragraph “the Framework Directive” has the same meaning as in Chapter 1 of Part 2 of this Act.

Commencement

Sch. 18 para. 10(1)-(7): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Savings for licence conditions relating to accounting

✓ Law In Force

11

(1) This paragraph applies where a licence granted under section 7 of the 1984 Act contains conditions which impose requirements with respect to—

- (a) the keeping of accounts or financial information; or
- (b) the provision of accounts and financial information to the Director.

(2) OFCOM may give a notice to the holder of the licence as respects so much of those conditions as relates to—

- (a) the keeping of accounts for a period current at the time of the abolition of licensing; and
- (b) the provision of accounts and financial information in relation to any such period or in relation to periods ending before the abolition of licensing.

(3) In the case of a licence granted otherwise than to a particular person, a notice under this paragraph may be given to the licence holders by being published in such manner as OFCOM consider appropriate for bringing it to their attention.

(4) Notwithstanding any repeal or revocation made by this Act—

- (a) the licence under the 1984 Act is to continue in force to the extent that it imposes requirements as respects which a notice has been given under this paragraph; but
- (b) those requirements, so far as they require the provision of accounts or information to the Director, are to have effect in relation to times after the abolition of licensing, as requirements to provide the accounts or information to OFCOM.

(5) Section 192 applies to a decision by OFCOM to give a notice under this paragraph as it applies to a decision by them under Part 2 of this Act.

Commencement

Sch. 18 para. 11(1)-(5): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Charges under Telecommunications Act licences

✓ Law In Force

12

(1) Where any amount is required by a licence under section 7 of the 1984 Act to be paid to the Director in respect of a period beginning before the abolition of licensing, that liability is to have effect after the abolition of licensing as a liability to pay to OFCOM so much of that amount as does not relate to times after the abolition of licensing.

(2) For the purpose of determining how much of an amount payable to the Director relates to times after the abolition of licensing, an apportionment is to be made according to how much of that period had expired before the abolition of licensing.

Commencement

Sch. 18 para. 12(1)–(2): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Enforcement of breaches of licence conditions

✓ Law In Force

13

(1) This paragraph applies to—

- (a) any provision to which effect is given, after the abolition of licensing, by a continuation notice under paragraph 9;
- (b) conditions in respect of which notices under paragraph 11 have been given;
- (c) liabilities under paragraph 12; and
- (d) conditions of a licence under section 7 of the 1984 Act requiring compliance by the licence holder with directions given by the Director under regulation 6 of the Telecommunications (Interconnection) Regulations 1997 (S.I. 1997/2931).

(2) Notwithstanding any repeal or revocation made by this Act, after the abolition of licensing, OFCOM are, for the purpose of enforcing anything to which this paragraph applies, to have all the enforcement powers previously exercisable by the Director under the 1984 Act.

(3) Those powers are to be exercisable in accordance with this paragraph irrespective of whether the contraventions occurred before or after the abolition of licensing.

(4) For the purpose of exercising those powers, references to the likelihood that a person will again be in contravention of a condition include references to whether he will be in contravention of any equivalent obligation imposed—

- (a) by section 38 of this Act;
- (b) by conditions set under section 45 of this Act; or
- (c) by directions under section 190 of this Act.

(5) OFCOM are not to exercise any powers conferred by virtue of this paragraph if they consider that the exercise of those powers [would, immediately before exit day, have been]¹ incompatible with the requirements of the Directives.

(6) In this paragraph “enforcement powers” includes—

- (a) the Director's powers under sections 16 to 18 and 53 of the 1984 Act; and
- (b) in the case of a licence issued to a particular person, every power of his under the licence to require information for the purpose of computing the amount of the liability to a charge.

(7) In this paragraph “the Directives” means the Authorisation Directive or any of the following Directives (as defined in Chapter 1 of Part 2 of this Act)—

- (a) the Access Directive;
- (b) the Framework Directive;
- (c) the Universal Service Directive.

(8) In sub-paragraph (7) “the Authorisation Directive” means Directive 2002/20/EC of the European Parliament and of the Council on the authorisation of electronic communications networks and services [, as amended by Directive 2009/140/EC of the European Parliament and of the Council]².

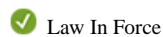
Notes

- ¹ Words substituted by Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019/246 Sch.1(1) para.43 (December 31, 2020: shall come into force on IP completion day not exit day as specified in 2020 c.1 s.39(1) and Sch.5 para.1(1))
- ² Words inserted by Electronic Communications and Wireless Telegraphy Regulations 2011/1210 Sch.1 para.100(b) (May 26, 2011)

Commencement

Sch. 18 para. 13(1)-(8): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Saving for agreements having effect by reference to licensing regime



Law In Force

14

(1) This paragraph has effect where an agreement entered into for the purposes of a condition of a licence under section 7 of the 1984 Act has effect immediately before the abolition of licensing subject to a provision which entitles a party to it to terminate the agreement if he or another party ceases to be a Schedule 2 public operator.

(2) The right of termination is not to be exercisable by reason of the effect of the coming into force of any provision of this Act if—

(a) a general condition,
(b) an access-related condition, or
(c) a provision made by or having effect as if made under an SMP condition,
imposes requirements on one or both of the parties to the agreement that correspond to those for the purposes of which the agreement was originally entered into.

(3) In any such case, the agreement shall have effect in relation to times after the abolition of licensing as if references in the agreement to a Schedule 2 public operator were references to the provider of a public electronic communications network.


(4) In this paragraph “Schedule 2 public operator” has the same meaning as in Schedule 1 to the Telecommunications (Licence Modifications) (Standard Schedules) Regulations 1999 (S.I. 1999/2450).

(5) Expressions used in this paragraph and in Chapter 1 of Part 2 of this Act have the same meanings in this paragraph as in that Chapter.

Commencement

Sch. 18 para. 14(1)-(5): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Fees for approvals for the purposes of licence conditions

 Law In Force

15

(1) This paragraph has effect where a general condition set under section 45 of this Act requires apparatus to be approved by reference to a standard previously designated for the purposes of section 24(6) of the 1984 Act.

(2) The Secretary of State may by order provide for the charging of fees in respect of the giving of approvals for the purposes of the condition.

(3) Fees charged under this paragraph are to be paid to the person giving the approvals and, to the extent authorised by the Secretary of State, may be retained by that person.


(4) To the extent that they are not retained by that person, the fees must be paid into the Consolidated Fund.

(5) Any order made under section 24(13) of the 1984 Act that is in force immediately before the coming into force of the repeal of section 24 of that Act shall have effect after the coming into force of the repeal as an order made under this paragraph.

Commencement

Sch. 18 para. 15(1)-(5): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Allocated telephone numbers

 Law In Force

16

(1) Where immediately before the abolition of licensing telephone numbers are allocated to a person holding a licence under section 7 of the 1984 Act for the purposes of the conditions of that licence, those numbers shall be treated, after the abolition of licensing as allocated to that person for the purposes of general conditions such as are mentioned in section 58 of this Act.

(2) An allocation having effect by virtue of sub-paragraph (1) may be withdrawn by OFCOM at any time, but only in accordance with section 61 of this Act.

(3) An allocation shall only continue to have effect in accordance with this paragraph for so long as the person to whom the allocation was made for the purposes of the licence conditions is a communications provider.

(4) The power by virtue of section 58 for general conditions to make provision for the making of periodic payments in respect of the allocation of telephone numbers shall be exercisable, at any time after the coming into force of that section, in relation to an allocation having effect by virtue of this paragraph as it has effect in relation to an allocation made under that section.

(5) Expressions used in this paragraph and in Chapter 1 of Part 2 of this Act have the same meanings in this paragraph as in that Chapter.

Commencement

Sch. 18 para. 16(1)-(5): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Electronic communications code

**17**

(1) Sub-paragraph (2) applies where, immediately before the coming into force of section 106 of this Act, the telecommunications code set out in Schedule 2 to the 1984 Act applies to a person by virtue of the provisions of his licence under section 7 of that Act.

(2) That person shall be treated after the commencement of section 106 of this Act as a person in whose case the electronic communications code applies by virtue of a direction given by OFCOM.

(3) The deemed direction shall be assumed to be one given in relation to so much of any electronic communications network as—

(a) was included immediately before the commencement of section 106 of this Act in the telecommunication system which was the operator's system for the purposes of the application of the code; or

(b) which would have been so included if it had been being provided at that time.

(4) So much of the code in Schedule 2 to the 1984 Act as has effect immediately before the commencement of Schedule 3 to this Act—

(a) in relation to telecommunication apparatus, or

(b) in relation a telecommunication system,

is to have effect after the commencement of that Schedule in relation to so much of the apparatus or system as is electronic communications apparatus or the operator's network for the purposes of the application of that Schedule to this Act by virtue of this paragraph or section 106(3)(b) of this Act.

(5) A right which for the purposes of the code in Schedule 2 to the 1984 Act has effect immediately before the commencement of Schedule 3 to this Act as conferred for purposes connected with the provision of a telecommunication service is to have effect after the commencement of that Schedule as conferred for the purposes of the corresponding electronic communications service.

(6) Any agreement which, immediately before the repeal of the provisions contained in section 10(3A) and (3B) of the 1984 Act or section 189 of the 1990 Act, is a relevant agreement for the purposes of those provisions shall be deemed in relation to times after the coming into force of that repeal to be a relevant agreement for the purposes of paragraph 29 of the electronic communications code.

(7) In this paragraph “the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of this Act.

Commencement

Sch. 18 para. 17(1)-(7): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Saving for guarantees of liabilities of telecommunications code operators



Law In Force

18

(1) This paragraph applies where, immediately before the abolition of licensing, a person holding a licence under section 7 of the 1984 Act (“the operator”)—

- (a) is a person to whom the telecommunications code applies in respect of the running of a telecommunications system by him (“the operator's system”); and
- (b) in pursuance of a condition of his licence imposed for the purpose of securing that sufficient funds are available to meet code-related liabilities specified in the licence, is a party to any guarantee arrangements.

(2) Arrangements are guarantee arrangements for the purposes of this paragraph if they are arrangements under which a person (the “guarantor”) is obliged, in circumstances specified in the arrangements, to make payments in respect of a failure by the operator to meet a code-related liability specified in the licence.

(3) The guarantor's obligation to make payments under the guarantee arrangements is not to arise by reason only of the abolition of licensing.

(4) In relation to times after the abolition of licensing, the guarantee arrangements are to have effect, notwithstanding the operator's licence having ceased to have effect on the abolition of licensing and subject to sub-paragraph (7), as if the following references continued to have effect—

- (a) references in those arrangements to the code-related liabilities specified in the licence; and
- (b) (subject to sub-paragraph (5)(a)) references, for the purposes of any provision identifying the circumstances in which payments are to be made under the arrangements, to events specified in the licence.

(5) In relation to such times, those arrangements are also to have effect—

- (a) as if references (directly or indirectly) to the revocation, or to the expiration without renewal, of the operator's licence were references to his becoming subject to a direction by virtue of which he is prohibited from providing the whole or a part of his network; and
- (b) as if references to the telecommunications code were references to the electronic communications code.

(6) In sub-paragraph (5) the reference to a person's becoming subject to a direction by virtue of which he is prohibited from providing the whole or a part of an electronic communications network—

- (a) does not include a reference to his becoming subject to a direction imposing a prohibition for a fixed period of less than eighteen months or to a direction that will have to be revoked if not confirmed; but
- (b) except in the case of a direction imposing a prohibition for such a fixed period, does include a reference to the confirmation of a direction that would otherwise have had to be revoked.

(7) The guarantor is not to be liable in respect of any liability arising in connection with or as a result of activities carried on after the abolition of licensing except in so far as those activities are activities carried on for the purposes of providing the operator's network.

(8) In this paragraph “code-related liabilities”, in relation to the operator, means liabilities arising or incurred by him—

- (a) by reason of the application to him of the telecommunications code;
- (b) by reason of its ceasing to apply to him; or

(c) otherwise in respect of activities carried on by him in connection with running the operator's system.

(9) In this paragraph—

“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of this Act;

“the operator's network” means so much of any electronic communications network provided by the operator as is a network in relation to which the electronic communications code applies in the operator's case by virtue of paragraph 17(3)(a) of this Schedule;

“the telecommunications code” means the code set out in Schedule 2 to the 1984 Act (as it had effect immediately before the abolition of licensing).

Commencement

Sch. 18 para. 18(1)-(9) definition of “the telecommunications code”: July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Compulsory purchase

✓ Law In Force

19

Where—

(a) a compulsory purchase order made under section 34 or 35 of the 1984 Act,

(b) a vesting order, or an application for a vesting order, made under section 36 of that Act,
or

(c) an authorisation given by the Secretary of State under section 37, 38 or 39 of that Act,
is effective immediately before the commencement of Schedule 4 to this Act, it is to have effect after the commencement of that Schedule as if made or given under that Schedule.

Commencement

Sch. 18 para. 19(a)-(c): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Notices under section 1D of the Wireless Telegraphy Act 1949

 Repealed

20 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

Notices under regulations under section 3 of the Wireless Telegraphy Act 1998


 Repealed

21 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

Disputes about interconnection

 Law In Force

22

(1) Where—

(a) before the revocation by this Act of the Telecommunications (Interconnection) Regulations 1997 (S.I. 1997/2931) a dispute was referred to the Director under regulation 6 of those regulations, and

(b) that dispute has not been resolved when the revocation comes into force,

Chapter 3 of Part 2 of this Act (except sections 189 and 190) is to have effect as if that dispute were a dispute which, immediately after the commencement of section 185 of this Act, was referred to OFCOM under that section.

(2) Where a dispute—

(a) has arisen or arises about anything occurring or existing before the time when the revocation of those regulations comes into force (“the relevant time”),

(b) relates to matters disputes about which would (before that time) have been referable to the Director under regulation 6,

(c) is neither a dispute which was referred to him before that time nor a dispute arising after that time which is referable to OFCOM under section 185, and

(d) is referred to OFCOM after that time either during the transitional period or in a case in which OFCOM are satisfied that the circumstances that prevented the making of a reference before the end of that period are exceptional,

sub-paragraph (1) is to have effect as if the dispute were a dispute arising before the relevant time in the case of which a reference to the Director had been made under regulation 6 before that time.

(3) Where OFCOM make a determination for resolving a dispute falling to be resolved in accordance with sub-paragraph (1) or (2)—

- (a) their powers on making that determination are to be those which would have been exercisable by the Director under those regulations (instead of those under Chapter 3 of Part 2);
- (b) conditions of a licence under section 7 of the 1984 Act requiring compliance with directions given by the Director under regulation 6 of those regulations are to continue to have effect as if they also applied to directions given by OFCOM by virtue of paragraph (a); and
- (c) paragraph 13 of this Schedule has effect as if the reference in sub-paragraph (1)(d) to directions given by the Director under that regulation included a reference to directions given by OFCOM by virtue of paragraph (a) of this sub-paragraph.

(4) But OFCOM are not to give a direction by virtue of sub-paragraph (3)(a) containing provision which they would have no power to include in—

- (a) a condition set under Chapter 1 of Part 2 of this Act; or
- (b) a direction under section 190.

(5) Where the Director gave a direction under regulation 6 of those regulations at any time before the coming into force of their revocation, the direction is to continue, after the revocation comes into force, to have effect (and be enforceable in accordance with paragraph 13 of this Schedule) to the extent that it is continued in force under this paragraph.

(6) The direction is continued in force under this paragraph only where OFCOM have at any time after the passing of this Act given notice to the persons to whom it applies that it is continued in force.

(7) OFCOM are to give such a notice only if they consider that the direction makes provision corresponding to that which they have power to include in—

- (a) conditions set under Chapter 1 of Part 2 of this Act; or
- (b) directions under section 190.

(8) OFCOM may at any time by notice to the person to whom it applies revoke (in whole or in part) a direction which—

- (a) was given by virtue of sub-paragraph (3)(a); or
- (b) is a direction to which a notice under sub-paragraph (6) relates.

(9) Where a direction which OFCOM have power to revoke under sub-paragraph (8) makes provision corresponding to anything that OFCOM have power to include in a condition set under Chapter 1 of Part 2 of this Act, it shall be their duty, as soon as reasonably practicable after giving the direction or as the case may be the notice under sub-paragraph (6)—

- (a) to take all steps necessary for enabling them to decide whether or not to set such a condition for the purpose of replacing the direction; and
- (b) to decide whether or not to exercise their power to set a condition under that Chapter for that purpose.

(10) It shall be the duty of OFCOM—

- (a) as soon as reasonably practicable after making a decision required by sub-paragraph (9), but
- (b) in a case where that decision is a decision to set a condition, not before the coming into force of that condition,

to give a notice under sub-paragraph (8) revoking the direction in question.

(11) The duties imposed by sub-paragraphs (9) and (10) apply only where OFCOM have not previously revoked the direction in question.

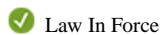
(12) Section 192 applies to a decision by OFCOM to give a notice under this paragraph as it applies to a decision by them under Part 2 of this Act.

(13) In this paragraph “transitional period” means the period which is the transitional period (within the meaning of section 408) in relation to this paragraph.

Commencement

Sch. 18 para. 22(1)–(13): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Appeals against wireless telegraphy and telecommunications decisions



Law In Force

23

(1) This paragraph applies where—

- (a) a decision was made before the commencement of section 192;
- (b) the decision has effect after the commencement of a provision of this Act as a decision made by OFCOM, or is a decision not to do something which (if done) would so have had effect; and
- (c) the decision is one against which an appeal was or could have been brought under—
 - (i) [...] ¹
 - (ii) section 46B of the 1984 Act.

(2) If no such appeal has been brought before the commencement of section 192 of this Act, that section applies to the decision as it applies to decisions by OFCOM under Part 2 of this Act [...] ², but as if that section had been in force when the decision was made.

(3) If an appeal under [...] ³ section 46B of the 1984 Act—

- (a) has been brought against the decision, but
- (b) has not been concluded before the commencement of section 192 of this Act, the court in which it was brought may stay or sist the appeal as from the commencement of that section of this Act.

(4) If the court stays or sists the appeal under sub-paragraph (3), the appellant is to have a new right of appeal under section 192 against the decision as if (subject to sub-paragraph (7)) it were a decision to which that section applies that had been made immediately after the commencement of that section.

(5) Tribunal rules (within the meaning of Chapter 3 of Part 2 of this Act) may, in relation to an appeal stayed or sisted under sub-paragraph (3), make transitional provision—

(a) for requiring steps taken and things done for the purposes of that appeal to be taken into account, to the extent set out in the rules, in the case of an appeal brought by virtue of sub-paragraph (4); and

(b) for enabling the Tribunal in an appeal under sub-paragraph (4) to give directions to OFCOM as to the carrying out of functions of theirs that are the same as or correspond to those in the course of carrying out which the maker of the appealed decision made that decision.

(6) If, in a case falling within sub-paragraph (3), the court does not stay or sist the appeal—

(a) it must determine the appeal in the manner in which the Tribunal is required under section 195 of this Act to determine an appeal under section 192; but

(b) its powers on determining the appeal include a power to give directions to OFCOM as to the carrying out of any functions of theirs that correspond to those in the course of which the appealed decision was made.

(7) On an appeal brought or continued under this paragraph against a decision, the court or the Tribunal, in determining what was the appropriate action for the maker of the decision to take, must determine that question according to the law in force at the time when the decision was made.

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

² Words repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007: repeal has effect subject to savings specified in 2006 c.36 Sch.8 para.23)

³ Words repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

Commencement

Sch. 18 para. 23(1)-(7): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Section 94 of the Telecommunications Act 1984

 Repealed

24 [...]¹

Notes

¹ Repealed by Investigatory Powers Act 2016 c. 25 Sch.10(7) para.101(3) (February 5, 2019: repeal has as SI 2019/174 reg.2(p)(v) effect subject to savings specified in 2016 c.25 s.270 and Sch.9 paras 7 and 10)

Competition Commission: specialist panel members



Law In Force

25

The persons who—

- (a) have been appointed as members of the Competition Commission by the Secretary of State under section 13(10) of the 1984 Act, and
 - (b) hold office immediately before the date on which section 194 comes into force,
- shall continue to hold office as members of the Competition Commission as if they had been appointed to that office by the Secretary of State under section 194(1).

Commencement

Sch. 18 para. 25(a)-(b): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Transitory amendments to telecommunications terms in Broadcasting Act 1990



Law In Force

26

(1) This paragraph has effect, in the case of each of the provisions of the 1990 Act to which it applies, in relation to times between—

- (a) the commencement of Chapter 1 of Part 2 of this Act; and
- (b) the commencement of so much of this Act (apart from this paragraph) as amends or repeals that provision.

(2) The provisions of the 1990 Act set out in sub-paragraph (3) shall have effect (subject to sub-paragraph (4)) as if—

- (a) for every reference to a telecommunication system there were substituted a reference to an electronic communications network; and
- (b) for references to running such a system there were substituted references to providing it.

(3) Those provisions of the 1990 Act are—

- (a) section 46 (licensable programme services);
- (b) section 51(1)(a) (procedures for consideration of applications for additional services licences);
- (c) section 72 (local delivery services);
- (d) section 75 (procedures for consideration of applications for local delivery licences);
- (e) section 112 (licensable sound programme services);
- (f) section 117(1)(a) (procedures for consideration of applications for additional services licences);
- (g) section 181 (apparatus deemed to be apparatus for wireless telegraphy).

(4) Sections 46(2) (licensable programme services), 112(2) (licensable sound programme services) and 201(2) (programme services) of the 1990 Act shall each have effect as if for paragraph (b) there were substituted—

“(b) a service which satisfies the conditions in section 233(5) of the Communications Act 2003;”.

(5) In sections 48 and 114 of the 1990 Act (additional services), references to electronic signals shall have effect as references to signals within the meaning of section 32 of this Act.

(6) Section 75(2) of the 1990 Act (consultation with relevant licensing authorities) shall have effect as if in paragraph (b) for the words “would be required to be licensed” there were substituted “is a system which (but for repeals made by the Communications Act 2003) would have been required to be licensed”.

(7) In section 181 of the 1990 Act (apparatus deemed to be apparatus for wireless telegraphy), “connected” —

(a) shall continue to be construed in accordance (notwithstanding its repeal) with section 4 of the 1984 Act; but


(b) shall be so construed as if, in that section of the 1984 Act, a reference to an electronic communications network were substituted for every reference to a telecommunication system.

(8) Part 5 of Schedule 2 to the 1990 Act (restriction on holding of licences by operators of public telecommunication systems) and the Broadcasting (Restrictions on the Holding of Licences) Order 1991 (S.I. 1991/1176) shall have effect as if references to a national public telecommunications operator were references to a person who provides an electronic communications network so as to make it available for use by members of the public in the whole, or substantially the whole, of the United Kingdom.

Commencement

Sch. 18 para. 26(1)–(8): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Activities of the Welsh Authority

 Law In Force

27

(1) No approval shall be required under section 205 for the continued provision after the commencement of that section of any service that was being provided by the Welsh Authority immediately before the commencement of that section.


(2) Where any activities are being carried on immediately before the commencement of section 206 by the Welsh Authority, no approval is required under that section in respect of the continued carrying on of the activities by the Authority.

(3) Where any activities are being carried on immediately before the commencement of section 206 by an S4C company, no approval is required under that section in respect of the carrying on after that commencement by that company or another S4C company of those activities.

Commencement

Sch. 18 para. 27(1)-(3): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Gaelic Broadcasting

 Law In Force

28

The persons who are members of Comataidh Craolaidh Gàidhlig immediately before the date on which section 208 comes into force—

- (a) shall continue to hold office as members of Seirbheis nam Meadhanan Gàidhlig as if they had been appointed to that office by OFCOM;
- (b) shall hold and vacate office in accordance with the terms of their appointment by the ITC;
- (c) shall hold office for the period for which they were appointed by the ITC; and
- (d) after the end of that period, shall be eligible for re-appointment as members of Seirbheis nam Meadhanan Gàidhlig.

Commencement

Sch. 18 para. 28(a)-(d): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

 Law In Force

29

(1) The continuance in force of the Multiplex Licence (Broadcasting of Programmes in Gaelic) Order 1996 (S.I. 1996/2758) made under section 32 of the 1996 Act is not affected by the amendment of that section by Schedule 15 to this Act.

- (2) But in relation to times after the television transfer date, that order shall have effect as if—
- (a) the reference in that order to the ITC were a reference to OFCOM; and

- (b) the reference to the application of section 28 of the 1996 Act to a frequency were omitted.

Commencement

Sch. 18 para. 29(1)-(2)(b): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Pre-transfer Broadcasting Act licences

✓ Law In Force

30

(1) Subject to any express provision made by this Act in relation to a particular description of Broadcasting Act licence, neither—

- (a) the transfer from a pre-commencement regulator to OFCOM of the function of granting or awarding such licences or of any other power exercisable in relation to such licences, nor

- (b) any other modification by or by virtue of this Act of the power to grant or award such licences or of a provision having effect in relation to such licences,

shall affect the continuing validity of a licence by or under which the provision of a service is authorised immediately before the coming into force of the transfer or modification.

(2) Accordingly, such a licence shall continue to have effect, after the coming into force of the transfer or modification—

- (a) on the same terms and conditions and for the same period as it would have done if this Act had not been passed; but

- (b) as if, in relation to times after the coming into force of any relevant transfer of functions to OFCOM, every reference in the licence to a pre-commencement regulator were a reference to OFCOM.

(3) Sub-paragraph (2) is subject to the following provisions of this Act—

- (a) those under which a licence is to have effect as if the period for which it is granted were the period determined under this Act; and

- (b) those under which the conditions of a licence fall to be varied for the purpose of imposing a condition required by this Act.

(4) Anything done at any time before the relevant transfer date under or for the purposes of enforcing any provision of a Broadcasting Act licence is to have effect in relation to times on or after that date—

- (a) to the extent that it was done by or in relation to the ITC or Radio Authority, and

- (b) so far as necessary for preserving its effect or for facilitating the taking of further action by OFCOM,

as a thing done by or in relation to OFCOM.

(5) In sub-paragraph (4) “relevant transfer date” —

- (a) in relation to licences under Part 1 of the 1990 Act or Part 1 of the 1996 Act, means the television transfer date; and
- (b) in relation to licences under Part 3 of the 1990 Act or Part 2 of the 1996 Act, means the radio transfer date.

Commencement

Sch. 18 para. 30(1)-(5)(b): July 25, 2003 (SI 2003/1900 art. 2(1), Sch. 1 para. 1)

Channels 3 and 5

✓ Law In Force

31

A determination made by the ITC under or for the purposes of section 14 or 28 of the 1990 Act (Channels 3 and 5) is to have effect on and after the television transfer date as a determination under that section by OFCOM.

Commencement

Sch. 18 para. 31: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Saving pending replacement of licences for Channels 3 and 5 and the public teletext service

✓ Law In Force

32


- (1) The regulatory regime for a Channel 3 service, and that for Channel 5 and the existing teletext service, shall not include the self-regulation conditions in any case in which the service or (as the case may be) Channel 5 is provided under a licence granted before the television transfer date.
- (2) In sub-paragraph (1) “the self-regulation conditions” means the conditions which (apart from that sub-paragraph) are included by virtue of sections 265 to 269 of this Act in the regulatory regime for Channel 3 services, for Channel 5 and for the public teletext service.
- (3) In relation to a licence granted before the television transfer date for a Channel 3 service, Channel 5 or the existing teletext service, section 263 shall have effect as if the reference in subsection (3)(a) of that section to a corresponding or additional service to be provided in analogue form were a reference to a corresponding or additional service to be provided in digital form.

(4) In this paragraph “the existing teletext service” means the existing service within the meaning of section 221 of this Act.

Commencement

Sch. 18 para. 32(1)-(4): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Digital additional licences

 Law In Force

33

(1) This paragraph applies where immediately before the coming into force of section 242 of this Act a person holds a digital additional services licence under Part 1 of the 1996 Act in respect of a digital sound programme service and with a view to the inclusion of the broadcasting of that service by means of a television multiplex service licensed under Part 1 of the 1996 Act.

(2) The licence is to have effect on and after the coming into force of section 242 of this Act as if it were a national digital sound programme licence or (as the case may be) were comprised in any national digital sound programme licence already held by the licence holder for the service in question.

(3) Where a licence has effect in accordance with this paragraph, it shall not (to the extent that it so has effect) authorise the broadcasting of the digital sound programme service in question by means of a radio multiplex service.

(4) In this paragraph—

“digital additional services licence” has the same meaning as in Part 1 of the 1996 Act; and

“national digital sound programme licence” has the same meaning as in Part 2 of that Act.

Commencement

Sch. 18 para. 33(1)-(4) definition of “national digital sound programme licence”: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Programme quotas

✓ Law In Force

34

Any order which—

- (a) was made under section 16(5)(a) of the 1990 Act (definitions of “qualifying programmes” and “independent productions”), and
- (b) is in force immediately before the commencement of sections 277 and 309 of this Act and paragraphs 1 and 7 of Schedule 12 to this Act,

is to have effect in relation to times after the commencement of those sections and those paragraphs as an order made in exercise of the corresponding powers conferred by those sections and those paragraphs.

Commencement

Sch. 18 para. 34(a)-(b): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Continuity in relation to appointed news provider

✓ Law In Force

35

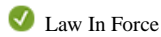
Where a body holds an appointment for the purposes of section 31(2) of the 1990 Act immediately before the date of the commencement of section 280 of this Act—

- (a) that appointment shall have effect in relation to times on and after that date as an appointment for the purposes of arrangements entered into in accordance with conditions imposed under section 280 of this Act;
- (b) the arrangements under which that appointment was made shall have effect in relation to such times as arrangements so entered into; and
- (c) so much of the appointment or arrangements, or of any agreement to which the body is a party, as makes provision by reference to the body's ceasing to be nominated under section 32 of the 1990 Act shall have effect in relation to such times as if references to ceasing to be so nominated were references to becoming a body falling within section 281(2) of this Act.

Commencement

Sch. 18 para. 35(a)-(c): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Networking arrangements

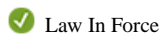
**36**

(1) Where arrangements approved for the purposes of section 39 of the 1990 Act (networking arrangements) are in force immediately before the commencement of section 291 of this Act, those arrangements are to have effect for the purposes of this Act, and of any conditions imposed under that section of this Act, as approved networking arrangements.

(2) For the purposes of proceedings in relation to a report under Schedule 4 to the 1990 Act at any time after the commencement of Schedule 11 to this Act, that report is to have effect as if it were a report under that Schedule to this Act.

Commencement

Sch. 18 para. 36(1)-(2): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Determination of qualifying revenue**37**

(1) A statement of the ITC that is for the time being in force immediately before the television transfer date for the purposes of—

(a) Schedule 7 to the 1990 Act (statement of principles for determining qualifying revenue),
or

(b) Schedule 1 to the 1996 Act (corresponding statement for the purposes of that Act,
is to have effect on and after that date as a statement by OFCOM.

(2) On and after the television transfer date a determination by the ITC under paragraph 2 of Part 1 of either of those Schedules is to have effect as a determination under that paragraph by OFCOM, and sub-paragraph (2) of that paragraph is to have effect accordingly.

Commencement

Sch. 18 para. 37(1)-(2): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Rules for political broadcasts

✓ Law In Force

38

Where—

- (a) rules made by the ITC for the purposes of section 36 of the 1990 Act (party political broadcasts on Channel 3, Channel 4 or Channel 5), or
- (b) rules made by the Radio Authority for the purposes of section 107 of the 1990 Act (party political broadcasts on national radio services),

are in force immediately before the commencement of section 333 of this Act, those rules are to have effect after its commencement as rules made by OFCOM for the purposes of that section of this Act.

Commencement

Sch. 18 para. 38(a)-(b): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Functions under section 88 of the 1990 Act

✓ Law In Force

39

A requirement imposed or notice given before the radio transfer date by the Radio Authority under section 88 of the 1990 Act (restriction on holding of licences) is to have effect on and after that date as if it were imposed or given by OFCOM.

Commencement

Sch. 18 para. 39: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Notices under section 94 of the 1990 Act

✓ Law In Force


40

A notice given by the Secretary of State or any other Minister of the Crown under section 94 of the 1990 Act (government control over licensed services) is to have effect on and after the radio transfer date as a notice given to OFCOM under section 336 of this Act.

Commencement

Sch. 18 para. 40: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Programme standards: television

 Law In Force

41

(1) This paragraph applies as respects times on or after the television transfer date and before the first coming into force, in the case of the holder of a licence under Part 1 of the 1990 Act or Part 1 of the 1996 Act, of conditions imposed under section 325 of this Act.


(2) Sections 6 to 12 of the 1990 Act (general provisions about the content of licensed services) are to have effect in the case of that licence holder as if references in those sections to the ITC were references to OFCOM.

(3) A code drawn up by the ITC under section 6, 7 or 9 of the 1990 Act is to have effect as if it had been drawn up by OFCOM.

Commencement

Sch. 18 para. 41(1)-(3): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Programme standards: radio

 Law In Force

42

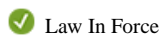
(1) This paragraph applies as respects times on or after the radio transfer date and before the first coming into force, in the case of the holder of a licence under Part 3 of the 1990 Act or Part 2 of the 1996 Act, of conditions imposed under section 325 of this Act.

(2) Sections 90 to 96 of the 1990 Act (general provisions about the content of licensed services) are to have effect as if references in those sections to the Radio Authority were references to OFCOM.

(3) A code drawn up by the Radio Authority under section 90, 91 or 93 of the 1990 Act is to have effect as if it had been drawn up by OFCOM.

Commencement

Sch. 18 para. 42(1)-(3): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Standards code

Law In Force

43

(1) In relation to any time after the commencement of section 319 of this Act, a code in force immediately before its commencement as a code drawn up under section 6, 7, 9, 90, 91 or 93 of the 1990 Act or section 108 of the 1996 Act is to have effect (subject to sub-paragraphs (2) and (3)) as if it were a code issued by OFCOM for the purpose of setting standards under section 319 of this Act.

(2) A code under the 1990 Act shall have effect by virtue of sub-paragraph (1) in relation only to the following—

- (a) in the case of the codes under sections 6, 7 and 9, services the provision of which is authorised by licences under Part 1 of the 1990 Act and S4C; and
- (b) in the case of the codes under sections 90, 91 and 93, services the provision of which is authorised by licences under Part 3 of that Act.

(3) In the case of the code under section 108 of the 1996 Act, the code shall have effect by virtue of sub-paragraph (1)—

- (a) in relation only to services provided by the BBC or the Welsh Authority; and
- (b) to the extent only that it contains provision that applies to those services and, in the case of services provided by the Welsh Authority, relates to matters other than advertising and impartiality.

Commencement

Sch. 18 para. 43(1)-(3)(b): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Local and national radio licences



Law In Force

44

(1) Section 103 of the 1990 Act (restriction on changes of control affecting holders of national licences) is to apply in relation to a pre-transfer national licence as it applies in relation to a national licence within the meaning of Part 3 of the 1990 Act.

(2) Anything done by or in relation to the Radio Authority under any of sections 98 to 102 or 103A of the 1990 Act, so far as it has been done—

(a) before the radio transfer date, and

(b) for the purposes of, or in connection with, the grant or renewal of a pre-transfer national licence,

is to have effect for the purposes of, and in connection with, the grant or renewal of a licence at times on or after that date as if done by or in relation to OFCOM in connection with or for the purposes of the grant or renewal of national licence (within the meaning of Part 3 of that Act).

(3) Anything done by or in relation to the Radio Authority under any of sections 104 to 105 of the 1990 Act, so far as it has been done—

(a) before the radio transfer date, and

(b) for the purposes of, or in connection with, the grant or renewal of a pre-transfer local licence,

is to have effect for the purposes of, and in connection with, the grant or renewal of a licence at times on or after that date as if done by or in relation to OFCOM in connection with, or for the purposes of, the grant or renewal of local licence (within the meaning of Part 3 of that Act).

(4) In this paragraph “pre-transfer local licence” and “pre-transfer national licence” each has the same meaning as in section 253 of this Act.

Commencement

Sch. 18 para. 44(1)-(4): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Section 111B of the 1990 Act

Law In Force

45

(1) Section 111B of the 1990 Act (power to suspend satellite services) is to have effect in relation to a licence to provide a formerly regulated radio service (within the meaning of section 251) as it applies in relation to a licence to provide a radio licensable content service, but as if the reference in subsection (1)(b) of that section to a condition included in the licence in pursuance of the provisions there mentioned included a reference to a condition included in the licence in pursuance of section 90(1)(a) of that Act.

(2) In relation to any time falling—


- (a) on or after the radio transfer date, and
- (b) before the first coming into force, in the case of the holder of a licence under Part 3 of the 1990 Act or Part 2 of the 1996 Act, of conditions imposed under section 325 of this Act,

section 111B of the 1990 Act is to have effect in relation to a licence to provide a radio licensable content service as if the reference in subsection (1)(b) of section 111B of that Act to a condition included in the licence in pursuance of the provisions there mentioned were a reference to a condition included in the licence in pursuance of section 90(1)(a) of that Act.

Commencement

Sch. 18 para. 45(1)-(2)(b): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Section 185 of the 1990 Act

 Law In Force

46

(1) A determination or nomination made for the purposes of section 185 of the 1990 Act (the national television archive) by the ITC is to have effect on and after the television transfer date as a determination or nomination made by OFCOM.

(2) Sub-paragraph (1) applies in the case of a determination so far only as it relates to a financial year beginning on or after the television transfer date.

Commencement

Sch. 18 para. 46(1)-(2): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Section 28 of the 1996 Act

 Law In Force

47

(1) The repeal by this Act of section 28 of the 1996 Act does not affect any power to vary a licence under Part 1 of the 1990 Act which is—

- (a) conferred on the ITC by an order under that section; and
- (b) transferred to OFCOM by this Act.

(2) Nor does it affect so much of any order under that section in force immediately before the repeal as—

(a) modifies section 16 of the 1996 Act in its application in relation to the renewal of a licence first granted before the television transfer date; or

(b) imposes a prohibition on the use of digital capacity reserved before that date;

but so much of any such prohibition as requires the consent of the ITC for the use of any digital capacity shall have effect after the television transfer date as if the consent required were OFCOM's consent.

(3) Sub-paragraph (1) only saves the power so far as it is exercisable in relation to a licence granted before the television transfer date.

Commencement

Sch. 18 para. 47(1)-(3): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Section 48 of the 1996 Act

✓ Law In Force

48

Subsections (4) to (6) of section 48 of the 1996 Act (reservations of capacity for national radio multiplex licences to independent national broadcasters) are to apply in relation to conditions included in pursuance of that section in licences granted before the radio transfer date as they apply in relation to conditions included in licences by virtue of the amendments of that section made by this Act.

Commencement

Sch. 18 para. 48: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Applications for extension of pre-transfer licences

✓ Law In Force

49

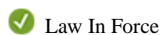
(1) Section 253(4)(a) does not prevent the determination by OFCOM of a day falling less than one year after the making of the determination where—

- (a) OFCOM consider that the day by which they would need to publish a notice is a day which is not more than 15 months after the commencement date; and
 - (b) the determination of that day is made as soon as practicable after the commencement date.
- (2) Where the day determined by OFCOM for the purposes of paragraph (b) of section 253(3) is a day in the period of three months beginning with the day after the determination, that paragraph shall have effect as if for the words “three months before” there were substituted “on”.
- (3) In this paragraph, the “commencement date” is the date on which section 253 comes into force.

Commencement

Sch. 18 para. 49(1)-(3): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Applications for renewal of licences under 1990 Act and 1996 Act



Law In Force

50

- (1) A provision set out in sub-paragraph (2) does not prevent the determination by OFCOM of a date falling less than one year after the making of the determination where—
- (a) OFCOM consider that the relevant date for the purposes of the section in question is a date which is not more than 15 months after the commencement date; and
 - (b) the determination of the relevant date is made as soon as practicable after the commencement date.
- (2) Those provisions are—
- (a) section 53(12) of the 1990 Act;
 - (b) section 103A(12) of the 1990 Act;
 - (c) section 104A(14) of the 1990 Act;
 - (d) section 16(12A) of the 1996 Act;
 - (e) section 58(12A) of the 1996 Act.
- (3) An application which is made before the commencement date in accordance with a provision set out in sub-paragraph (5) shall be treated after that date as if it had been made in accordance with that provision as amended by this Act.
- (4) Where, in a case where a provision set out in sub-paragraph (5) applies, the relevant date for the purposes of the section in question is a date in the period of three months beginning with—
- (a) the commencement date, or
 - (b) the day after the day on which the relevant date is determined,
- that provision shall have effect as if the words “the day falling three months before” were omitted.
- (5) Those provisions are—
- (a) section 53(2) of the 1990 Act;

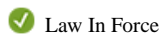
- (b) section 103A(2) of the 1990 Act;
- (c) section 104A(3) of the 1990 Act;
- (d) section 16(3) of the 1996 Act;
- (e) section 58(3) of the 1996 Act.

(6) In this paragraph, the “commencement date”, in relation to any provision set out in sub-paragraph (2) or (5) is the date on which the provision of Schedule 15 inserting or amending that provision comes into force.

Commencement

Sch. 18 para. 50(1)-(6): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Listed events rules



Law In Force

51

(1) Subject to sub-paragraph (2), Part 4 of the 1996 Act (sporting and other events of national interest) is to have effect in relation to times on or after the television transfer date as if anything done before that date by or in relation to the ITC had been done by or in relation to OFCOM.

(2) The code drawn up by the ITC under section 104 of the 1996 Act (code of guidance as to the operation of Part 4) and in force immediately before the commencement of section 301 of this Act is to continue to have effect (notwithstanding the substitutions made by that section of this Act)—

- (a) until the code drawn up by OFCOM under that section comes into force; but
- (b) in relation to times on or after the transfer date and before the coming into force of OFCOM's code, as if references in section 104(2) of that Act and in the code to the ITC were references to OFCOM.

(3) If a provision of sections 300 to 302 of this Act comes into force before the television transfer date, a reference to OFCOM in an amendment made by that provision is to be construed in relation to times before that date as a reference to the ITC.

(4) On the date on which section 300 of this Act comes into force, the Secretary of State shall revise the list maintained for the purposes of Part 4 of the 1996 Act in order to allocate each event which is a listed event on that date either to Group A or to Group B.

(5) Where—

- (a) the events listed in the list in force immediately before the Secretary of State revises it under sub-paragraph (4) are treated, for any of the purposes of the code in force under section 104 of the 1996 Act at that time, as divided into two categories, and
 - (b) the Secretary of State's revision under that sub-paragraph makes the same division,
- section 97(2) of the 1996 Act shall not apply in relation to that revision of that list.

(6) In this paragraph “the transfer date” is the date on which paragraph 13 of Schedule 1 comes into force.

Commencement

Sch. 18 para. 51(1)-(6): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Complaints to the Broadcasting Standards Commission

✓ Law In Force

52

(1) On and after the transfer to OFCOM under this Act of the functions of the Broadcasting Standards Commission under Part 5 of the 1996 Act, that Part is to have effect in relation to a fairness complaint made to, but not disposed of by, the Commission before the transfer as if—

- (a) anything done, or treated as done, by or in relation to the Commission for the purposes of, or in connection with, that complaint had been done by or in relation OFCOM; and
- (b) those functions had been functions of OFCOM at the time when it was done.

(2) Where immediately before the commencement of section 327 of this Act a licence to provide a licensed service (within the meaning of Part 5 of the 1996 Act) contains a condition included in that licence by virtue of section 119(7) of that Act (conditions requiring compliance with BSC directions), that condition is to have effect on and after the coming into force of section 327 of this Act as a condition requiring the licence holder to comply with directions given to him by OFCOM.

(3) In this paragraph “fairness complaint” has the same meaning as in Part 5 of the 1996 Act.

Commencement

Sch. 18 para. 52(1)-(3): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Codes of practice drawn up by the Broadcasting Standards Commission

✓ Law In Force

53

The code of practice drawn up by the Broadcasting Standards Commission under section 107 of the 1996 Act (code in respect of unjust and unfair treatment and infringements of privacy) is to

have effect on and after the transfer under this Act to OFCOM of the Commission's functions under Part 5 of that Act as if it were the code required to be drawn up under that section by OFCOM.

Commencement

Sch. 18 para. 53: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Media ownership provisions

✓ Law In Force

54

(1) Part 4 of Schedule 14 to this Act is to have effect—

- (a) in relation to times before the television transfer date as if references to OFCOM were, in relation to licences under Part 1 of the 1990 Act or Part 1 of the 1996 Act, references to the ITC; and
- (b) in relation to times before the radio transfer date as if references to OFCOM were, in relation to licences under Part 3 of the 1990 Act or Part 2 of the 1996 Act, references to the Radio Authority.

(2) A determination by the ITC or the Radio Authority under paragraph 2(2) of Part 2 of Schedule 2 to the 1990 Act which is in force immediately before the commencement of Part 4 of Schedule 14 to this Act is to have effect on and after its commencement as a determination under paragraph 15 of that Schedule to this Act.

(3) Any guidance issued by the ITC and the Radio Authority under paragraph 2(3) of Part 2 of Schedule 2 to the 1990 Act and in force immediately before the commencement of Part 4 of Schedule 14 to this Act is to have effect on and after its commencement as guidance published under paragraph 15(4) of that Schedule to this Act.

(4) Anything done under paragraph 15 of Schedule 14 by the ITC or the Radio Authority which is in force immediately before the relevant transfer date is to have effect on and after that date as if done under that paragraph by OFCOM.

(5) The following powers under enactments in force before the relevant transfer date shall be exercisable by OFCOM at all times on or after that date in relation to a pre commencement contravention of a requirement imposed by or under Parts 3 to 5 of Schedule 2 to the 1990 Act—

- (a) all the powers and duties of the ITC under section 5 of the 1990 Act and section 5 of the 1996 Act;
- (b) all the powers and duties of the Radio Authority under section 88 of the 1990 Act and section 44 of the 1996 Act; and
- (c) all the other powers and duties of the ITC or the Radio Authority in relation to contraventions of conditions imposed under section 5 or 88 of the 1990 Act or section 5 or 44 of the 1996 Act.

(6) For the purpose of determining whether anything occurring after the relevant transfer date is a pre-commencement contravention of a requirement imposed by or under Parts 3 to 5 of Schedule 2 to the 1990 Act, references in those Parts of that Schedule to the ITC or to the Radio Authority are to be construed as including references to OFCOM.

(7) In this paragraph—

“pre-commencement contravention” means a contravention of a requirement which occurred before the coming into force of the repeal by this Act of the provision by or under which the requirement was imposed; and

“the relevant transfer date” —

(a) in relation to the ITC, means the television transfer date; and

(b) in relation to the Radio Authority, means the radio transfer date.

Commencement

Sch. 18 para. 54(1)-(4): September 18, 2003 (SI 2003/1900 art. 2(2), Sch. 2 para. 1)

Sch. 18 para. 54(5)-(7) definition of "the relevant transfer date" (b): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

TV licences


 Repealed

55 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

Functions under the Enterprise Act 2002

 Law In Force

56

(1) This section has effect in so far as, at any time before the coming into force of section 370 of this Act, anything has been done or is treated as done by or in relation to the Director for the purposes of, or in connection with, the carrying out of any of his functions under the Enterprise Act 2002 (c. 40).

(2) That thing is to have effect on and after that date, and OFCOM may carry out their functions and continue anything begun by that Director, as if—

- (a) that thing had been done by or in relation to OFCOM for the purposes of, or in connection with, their functions under that Act by virtue of that section; and
- (b) the provisions conferring those functions on OFCOM had been in force at the time it was done.

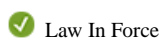
(3) Sub-paragraph (1) does not apply to anything that could not be done by or in relation to OFCOM for the purposes of, or in connection with, the carrying out of their functions under the Enterprise Act 2002 (c. 40).

(4) Where, by virtue of sub-paragraph (3), sub-paragraph (1) does not apply to something, that thing is to have effect instead as if done by or in relation to the Office of Fair Trading

Commencement

Sch. 18 para. 56(1)-(4): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Functions under the Competition Act 1998



Law In Force

57

(1) This paragraph applies in so far as, at any time before the coming into force of section 371 of this Act, anything has been done by or in relation to the Director for the purposes of, or in connection with, the carrying out of any of his functions under the Competition Act 1998 (c. 41).

(2) That thing is to have effect on and after that date, and OFCOM may carry out their functions and continue anything begun by that Director, as if—

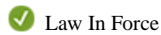
- (a) that thing had been done by or in relation to OFCOM for the purposes of, or in connection with, their functions under that Act by virtue of that section; and
- (b) the provisions conferring those functions on OFCOM had been in force at the time it was done.

(3) Sub-paragraph (1) does not apply to anything that could not be done by or in relation to OFCOM for the purposes of, or in connection with, the carrying out of their functions under the Competition Act 1998.

(4) Where, by virtue of sub-paragraph (3), sub-paragraph (1) does not apply to something, that thing is to have effect instead as if done by or in relation to the Office of Fair Trading

Commencement

Sch. 18 para. 57(1)-(4): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))



Law In Force

58

(1) Where any regulations made under section 54(4) of the Competition Act 1998 (regulations about concurrent functions of regulators and the Office of Fair Trading) are in force at the coming into force of section 371 of this Act, those regulations—

- (a) shall, from that time have effect in relation to functions exercisable concurrently by virtue of section 371 of this Act as they have effect in relation to functions exercisable concurrently by virtue of Part 2 of Schedule 10 to the Competition Act 1998; but
- (b) shall so have effect subject to any amendments or revocations coming into force at or after that time.

(2) Where, at any time before the coming into force of section 371, anything has been done by or in relation to the Director under or for the purposes of any regulations made under section 54(4) of the Competition Act 1998 that thing is to have effect, so far as necessary for the purposes of paragraph 57 of this Schedule, as if done by or in relation to OFCOM.

Commencement

Sch. 18 para. 58(1)-(2): July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

Newspaper mergers

Law In Force

59

(1) Chapter 2 of Part 5 and any related repeals shall, subject to sub-paragraph (2), not apply in relation to—

- (a) a transfer of a newspaper or of newspaper assets (within the meaning given by section 57(2) of the Fair Trading Act 1973 (c. 41)) which has been made before the coming into force of section 373 of this Act; or


(b) a proposed transfer of a newspaper or of newspaper assets in relation to which an application for the consent of the Secretary of State under section 58 of the Act of 1973 has been made before the coming into force of section 373 of this Act.

(2) Chapter 2 of Part 5 and any related repeals shall apply in relation to a proposed transfer of a newspaper or of newspaper assets if—

- (a) an application for the consent of the Secretary of State under section 58 of the Act of 1973 has been made;
- (b) the application is expressed to depend on the operation of subsection (3) or (4) of that section;
- (c) no consent is given by the Secretary of State under subsection (3) or (4) of that section; and
- (d) no further application has been made for the consent of the Secretary of State under that section before the coming into force of section 373 of this Act.

Commencement

Sch. 18 para. 59(1)-(2)(d): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)


 Law In Force

60

Chapter 2 of Part 5 and any related repeals shall apply in relation to any transfer of a newspaper or of newspaper assets which is proposed (and not made) before the coming into force of section 373 of this Act and in relation to which no application has been made for the consent of the Secretary of State under section 58 of the Act of 1973 before the coming into force of that section.

Commencement

Sch. 18 para. 60: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

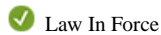
 Law In Force

61

References in paragraphs 59 and 60 to Chapter 2 of Part 5 do not include references to subsections (2) to (4) of section 389 (powers to make transitional and consequential amendments etc.).

Commencement

Sch. 18 para. 61: December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)



Law In Force

62

- (1) The Secretary of State may, instead of any or all of the conditions attached to a consent given by him (or treated as so given) under section 58 of the Fair Trading Act 1973 (c. 41)), accept undertakings under this paragraph to take, or refrain from taking, action specified or described in the undertakings.
- (2) If, and so far as, the Secretary of State accepts an undertaking under this paragraph instead of a condition, that condition shall cease to have effect.
- (3) In deciding whether to accept an undertaking under this paragraph, the Secretary of State may, in particular, consult the Office of Fair Trading and OFCOM.
- (4) An undertaking under this paragraph—
- (a) shall come into force when accepted;
 - (b) may be varied or superseded by another undertaking; and
 - (c) may be released by the Secretary of State.
- (5) The Secretary of State shall, as soon as reasonably practicable, consider any representations received by him in relation to varying or releasing an undertaking under this paragraph.
- (6) Paragraph 10 of Schedule 7 to the Enterprise Act 2002 (c. 40) (order-making power where final undertakings not fulfilled) shall apply in relation to an undertaking under this paragraph as it applies in relation to an undertaking under paragraph 9 of that Schedule to that Act but as if—
- (a) in sub-paragraph (2) the words from “for any” to “66(6)” were omitted; and
 - (b) sub-paragraph (3) were omitted.
- (7) The following provisions of the Enterprise Act 2002 (c. 40) shall apply in relation to an undertaking under this paragraph or an order made by virtue of sub-paragraph (6) as they apply in relation to an undertaking under paragraph 9 of Schedule 7 to that Act or (as the case may be) an order under paragraph 10 of that Schedule to that Act—
- (a) section 90 and Schedule 10 (procedural requirements for certain undertakings and orders);
 - (b) section 91 (register of undertakings and orders);
 - (c) section 92 (duty of OFT to monitor undertakings and orders);
 - (d) section 93 (further role of OFT in relation to undertakings and orders); and
 - (e) section 94 (rights to enforce undertakings and orders).
- (8) Section 402 of this Act shall not apply in relation to the power of the Secretary of State to make an order which is exercisable by virtue of sub-paragraph (6) but supplementary provisions of Part 3 of the Enterprise Act 2002 which relate to the making of an order under paragraph 10 of Schedule 7 to that Act shall apply in relation to the making of an order by virtue of sub-paragraph (6).
- (9) Section 402 of this Act shall not apply in relation to the power of the Secretary of State to make an order under section 91(6)(a) of the Enterprise Act 2002 as applied by virtue of sub-paragraph (7)(b) above but supplementary provisions of Part 3 of the Enterprise Act 2002 which relate to the making of an order under section 91(6)(a) of that Act shall apply in relation to the making of an order under that provision as applied by virtue of sub-paragraph (7)(b) above.

Commencement

Sch. 18 para. 62(1)-(9): December 29, 2003 (SI 2003/3142 art. 3(1), Sch. 1 para. 1)

Orders in Council under section 6 of the Continental Shelf Act 1964


 Repealed

63 [...]¹

Notes

¹ Repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

Interpretation of Schedule

 Law In Force

64

In this Schedule—

“the 1984 Act” means the Telecommunications Act 1984 (c. 12);

“the abolition of licensing” means the coming into force of the repeal by this Act of section 7 of the 1984 Act;

“the Director” means the Director General of Telecommunications;

“the ITC” means the Independent Television Commission.

Commencement

Sch. 18 para. 64 definition of “the 1984 Act”- definition of “the ITC”: July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2) (SI 2003/1900 art. 2(1), art. 3(1), Sch. 1 para. 1; SI 2003/3142 art. 3(2))

SCHEDULE 19**REPEALS****Section 406**

 Partially In Force

(1)**Enactments**

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Telegraph Act 1899 (c. 38)	The whole Act.
Wireless Telegraphy Act 1949 (c. 54)	<p>In section 1—</p> <p>(a) subsection (1A);</p> <p>(b) in subsection (4), the words “other than a television licence” and the words from “; and a television licence” onwards;</p> <p>(c) subsections (6) and (7).</p> <p>Section 1D(1), (2), (7) and (8).</p> <p>Section 1F.</p> <p>Section 2.</p> <p>In section 3(1), the words after paragraph (d) from “and different” to “classes of case:”.</p> <p>Section 9.</p> <p>In section 10(2), the words after paragraph (b).</p> <p>In section 11(1)—</p> <p>(a) paragraph (i) of the proviso;</p> <p>(b) in paragraph (ii) of the proviso the words “, and paragraph (i) of this proviso shall not apply”.</p> <p>Section 14(1A)(e), (2) and (3)(b).</p> <p>Section 15(4)(c) and the word “or” immediately preceding it.</p> <p>Section 19(2A) and (9).</p> <p>Schedule 2.</p>
Army Act 1955 (3 & 4 Eliz. 2 c. 18)	In section 44B(5), the definition of “telecommunication system” and the word “and” immediately preceding it.
Air Force Act 1955 (3 & 4 Eliz. 2 c. 19)	In section 44B(5), the definition of “telecommunication system” and the word “and” immediately preceding it.
Naval Discipline Act 1957 (c. 53)	In section 29B(5), the definition of “telecommunication system” and the word “and” immediately preceding it.
Opencast Coal Act 1958 (c. 69)	In section 45(3), the word “a” before “telecommunication apparatus”.
Continental Shelf Act 1964 (c. 29)	Section 6.
Parliamentary Commissioner Act 1967 (c. 13)	In Schedule 2, the entries relating to the Broadcasting Standards Commission and the Office of the Director General of Telecommunications.
Marine, &c., Broadcasting (Offences) Act 1967 (c. 41)	Section 6(2) and (7).

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Wireless Telegraphy Act 1967 (c. 72)	Section 4. In section 7(5), paragraph (b) and the word “or” immediately preceding it.
Fair Trading Act 1973 (c. 41)	Sections 57 to 62. In section 93B— (a) in subsection (1)(b), the words “the Telecommunications Act 1984 or”; (b) in subsection (5), the words “section 13B of the Telecommunications Act 1984 or”.
House of Commons Disqualification Act 1975 (c. 24)	In Part 2 of Schedule 1, the entries relating to— (a) the Broadcasting Standards Commission; (b) Comataidh Craolaidh Gaidhlig; (c) the Independent Television Commission; (d) the Radio Authority. In Part 3 of Schedule 1, the entry relating to the Director General of Telecommunications.
Northern Ireland Assembly Disqualification Act 1975 (c. 25)	In Part 2 of Schedule 1, the entries relating to— (a) the Broadcasting Standards Commission; (b) the Independent Television Commission; (c) the Radio Authority; (d) the Tribunal established under Part 2 of the Wireless Telegraphy Act 1949. In Part 3 of Schedule 1, the entries relating to— (a) the Director General of Telecommunications; (b) a Director of the successor company within the meaning of Part 5 of the Telecommunications Act 1984.
Welsh Development Agency Act 1975 (c. 70)	In section 19(11), the definition of “appropriate authority”.
British Telecommunications Act 1981 (c. 38)	In section 88— (a) in subsection (1), the words from “, and the special” to “Schedule 5”; (b) in subsection (2), the words “and 5”. In Schedule 4, paragraphs 2 to 18, 21 and 22. In Schedule 5, paragraphs 1 and 3 to 22.
Acquisition of Land Act 1981 (c. 67)	In section 28, paragraph (f).
Telecommunications Act 1984 (c. 12)	Sections 1 to 30. Sections 34 to 49. In section 50, subsections (2) to (6A). Sections 51 to 55. Section 60. Section 61(1) to (6). Section 62. Section 63(1) to (4). Sections 64 to 67. Sections 69 to 71. In section 72— (a) in subsection (1), the words from the beginning to “this Act,” and the words “and development land tax”;

<i>Short title and chapter</i>	<i>Extent of repeal</i>
	<p>(b) subsections (2), (4) and (5).</p> <p>Section 73.</p> <p>Sections 80 and 81.</p> <p>Section 88.</p> <p>Section 90.</p> <p>In section 91—</p> <p>(a) in subsection (2), the words “or section 80(9)(b) above” and the words “for an offence or (as the case may be) for the forfeiture of any apparatus under that section”;</p> <p>(b) in subsection (4), the words “and in section 80(9)(b) above”.</p> <p>Section 92(4).</p> <p>Section 93.</p> <p>Sections 95 to 97.</p> <p>In section 98(9), the words “and `telecommunication apparatus”.</p> <p>In section 101—</p> <p>(a) in subsection (2)(a), the words “or transferred”;</p> <p>(b) subsection (4).</p> <p>Section 102.</p> <p>In section 104—</p> <p>(a) in subsection (1), the words “2, 27L 60(1) or (3), 69(2) or” and “, or paragraph 1 of Schedule 5.”;</p> <p>(b) subsection (3).</p> <p>In section 106(1), the definitions of—</p> <p>(a) “commercial activities connected with telecommunications”;</p> <p>(b) “consumer”, “monopoly situation”, “practice” and “supply”;</p> <p>(c) “the Director”;</p> <p>(d) “directory information service”;</p> <p>(e) “disabled person” and “disabled”;</p> <p>(f) “public telecommunications operator”;</p> <p>(g) “public telecommunications system”;</p> <p>(h) “telecommunication apparatus”;</p> <p>(i) “telecommunication service”;</p> <p>(j) “telecommunications operator”;</p> <p>(k) “telecommunication system”;</p> <p>(l) “transitional period”.</p> <p>Section 107(1), (2) and (4).</p> <p>In section 109—</p> <p>(a) subsections (2) and (3);</p> <p>(b) in subsection (4), the words “and the special transitional provisions with respect to patents for inventions and registered designs contained in Schedule 6 to this Act”;</p> <p>(c) subsections (5) to (7).</p> <p>Schedule 1.</p> <p>In Schedule 2—</p> <p>(a) in paragraph 1(1), the words from “`telecommunications apparatus’ includes any apparatus” onwards;</p> <p>(b) in paragraph 9(2), the words “section 11(1) of this Act.”;</p> <p>(c) in paragraph 10(2)(b), the words “(within the meaning of section 6 of this Act)”;</p>

<i>Short title and chapter</i>	<i>Extent of repeal</i>
	<p>(d) in paragraph 27(1), the words “section 109(2) or (3) of or”.</p> <p>In Schedule 4, paragraphs 2, 3, 12, 16, 28(2), 40, 55(1) and (7), 65, 80(1), 86(1), 89(5) and 90.</p> <p>In Schedule 5—</p> <p>(a) paragraphs 1 to 7;</p> <p>(b) paragraph 8(2) and (4);</p> <p>(c) paragraphs 9 to 14;</p> <p>(d) paragraphs 16 to 29;</p> <p>(e) paragraphs 31 to 33;</p> <p>(f) paragraph 35;</p> <p>(g) paragraphs 38 to 42;</p> <p>(h) paragraph 47;</p> <p>(i) in paragraph 48, in sub-paragraph (1), the words “Part 1 of the Industry Act 1972 and” and in sub-paragraph (2), the words “Part 1 of the Industry Act 1972 or”;</p> <p>(j) paragraphs 49 to 51.</p> <p>Schedule 6.</p>
Companies Consolidation (Consequential Provisions) Act 1985 (c. 9)	In Schedule 2, the entries relating to sections 60(3), 61(4), 66, 70 and 73(1) of and Schedule 5 to the Telecommunications Act 1984.
Surrogacy Arrangements Act 1985 (c. 49)	Section 3(6).
Interception of Communications Act 1985 (c. 56)	Schedule 2.
Housing Act 1985 (c. 68)	Section 298(1).
Airports Act 1986 (c. 31)	Section 62(8).
Insolvency Act 1986 (c. 45)	In Schedule 2A, paragraph 10(1)(a).
Consumer Protection Act 1987 (c. 43)	In Schedule 4, in paragraph 9(1), the words “28(6) and”.
Channel Tunnel Act 1987 (c. 53)	In Part 10 of Schedule 7, paragraph 1(2).
Income and Corporation Taxes Act 1988 (c. 1)	In Schedule 29, in the Table in paragraph 32, the entries relating to sections 62(7) and 72(4) of the Telecommunications Act 1984.
Legal Aid Act 1988 (c. 34)	In Schedule 5, paragraph 11.
Copyright, Designs and Patents Act 1988 (c. 48)	In section 69(2), the word “or” at the end of paragraph (b).
	In Schedule 2, the word “or” at the end of paragraph 17(2)(b).
	In Schedule 7, paragraph 27.
Housing Act 1988 (c. 50)	In Part 2 of Schedule 10, paragraph 19.
Electricity Act 1989 (c. 29)	In Schedule 4, in paragraph 12, the definitions of “public telecommunications operator” and of “telecommunication apparatus”, “telecommunication system” and “the telecommunications code”.
Companies Act 1989 (c. 40)	In Schedule 18, paragraph 28.
	In Schedule 20, paragraph 2.
Planning (Consequential Provisions) Act 1990 (c. 11)	In Schedule 2, paragraph 63.
Courts and Legal Services Act 1990 (c. 41)	In Schedule 10, paragraph 8.
Broadcasting Act 1990 (c. 42)	Sections 1 and 2.
	In section 4(3), the words from “and the amount” onwards.
	In section 5—
	(a) subsection (6A)(a);

<i>Short title and chapter</i>	<i>Extent of repeal</i>
	<p>(b) subsection (6B).</p> <p>Sections 6 to 12.</p> <p>In section 15(3), paragraphs (c) to (e).</p> <p>In section 16—</p> <p>(a) subsections (2) and (3);</p> <p>(b) in subsection (4), the words from “; and in applying” onwards;</p> <p>(c) subsections (5) to (8).</p> <p>Section 20.</p> <p>Section 21A.</p> <p>In section 24, subsections (4) to (6).</p> <p>Sections 25 to 27.</p> <p>In section 29—</p> <p>(a) in subsection (2), paragraph (b) and the word “and” immediately preceding it;</p> <p>(b) subsection (3).</p> <p>Sections 30 to 36.</p> <p>Sections 38 and 39.</p> <p>In section 42A, paragraph (b) and the word “and” immediately preceding it.</p> <p>Chapters 3 and 4 of Part 1.</p> <p>Section 48(5).</p> <p>In section 50—</p> <p>(a) in subsection (1)(b)(ii), the words “(subject to the approval of the Secretary of State)”;</p> <p>(b) subsection (7).</p> <p>Section 51(2) and (7).</p> <p>In section 53(4), the words “before the relevant date”.</p> <p>Section 54(2)</p> <p>In section 56(1)(b), the words “, and have the functions conferred by,”.</p> <p>Section 57.</p> <p>Section 59.</p> <p>Section 60(1) to (3) and (6).</p> <p>In section 61A—</p> <p>(a) subsection (1);</p> <p>(b) in subsection (2) the words “on or after the notified date”;</p> <p>(c) subsections (5) and (6).</p> <p>Section 62.</p> <p>Section 65.</p> <p>In section 66A(2), paragraphs (c) and (d).</p> <p>Sections 68 to 70.</p> <p>In section 71(1)—</p> <p>(a) in the definition of “Channel 3”, the words “by the Commission”;</p> <p>(b) the definitions of “the Commission”, “licensable programme service” and “satellite television service”.</p> <p>Part 2.</p>

<i>Short title and chapter</i>	<i>Extent of repeal</i>
	<p>Sections 83 and 84.</p> <p>In section 85, subsections (3) and (4).</p> <p>In section 87—</p> <p>(a) in subsection (2)(b), sub-paragraph (ii) and the word “or” immediately preceding it;</p> <p>(b) in subsection (3), the words from “and the amount” onwards.</p> <p>In section 88—</p> <p>(a) subsection (6A)(a); and</p> <p>(b) subsection (6B).</p> <p>Section 89(2).</p> <p>Sections 90 to 96.</p> <p>In section 98(3)(a), the word “both” and sub-paragraph (ii) and the word “and” immediately preceding it.</p> <p>In section 99(1)(a), the word “both” and sub-paragraph (ii) and the word “and” immediately preceding it.</p> <p>In section 103A—</p> <p>(a) in subsection (3), the words “before the relevant date”, paragraph (a) and, in paragraph (b), the words “in any other case”;</p> <p>(b) in subsection (8), the words from “(whether because” to “any other reason)”;</p> <p>(c) subsection (10);</p> <p>(d) in subsection (11), the definition of “simulcast radio service”.</p> <p>In section 104A(5), at the end of paragraph (a), the word “and”.</p> <p>In section 104B—</p> <p>(a) subsection (1)(b);</p> <p>(b) subsections (6) and (7).</p> <p>In section 106(1), the words from “, except” onwards.</p> <p>Sections 106A to 108.</p> <p>Section 110(7).</p> <p>Sections 112 and 113.</p> <p>Section 114(5).</p> <p>In section 116(1)(b)(iii), the words “(subject to the approval of the Secretary of State)”.</p> <p>Section 117(2) and (7).</p> <p>Section 119(2).</p> <p>Section 122 to 125.</p> <p>In section 126(1), the definitions of “assigned frequency”, “the Authority” and “licensable sound programme service”.</p> <p>Section 134.</p> <p>In section 177(6), the definition of “relevant foreign satellite service”.</p> <p>Section 180(2) and (3).</p> <p>Section 181.</p> <p>In section 183—</p> <p>(a) in subsection (3), the words “, which shall be called” onwards;</p> <p>(b) subsection (3A);</p> <p>(c) subsections (6) and (7).</p>

<i>Short title and chapter</i>	<i>Extent of repeal</i>
	<p>In section 185(5), the definition of “the Commission”.</p> <p>Section 186.</p> <p>Section 187(1) and (2).</p> <p>In section 188(2), paragraphs (b), (d) and (e).</p> <p>Sections 189 to 191.</p> <p>In section 196—</p> <p>(a) in subsection (1)(a), the words “, 82”;</p> <p>(b) subsection (2).</p> <p>Section 197.</p> <p>Section 199(1) to (4) and (6).</p> <p>In section 201(1), the words “under this Act”.</p> <p>In section 202—</p> <p>(a) in subsection (1), the definition of “telecommunication system”;</p> <p>(b) in subsection (2)(b), the words “1” and “8”;</p> <p>(c) in subsection (5)(a), the words “for general reception, or”.</p> <p>Schedule 1.</p> <p>In Part 1 of Schedule 2—</p> <p>(a) in paragraph 1(1), the definitions of “coverage area”, of “digital programme service”, of “local delivery licence” and “local delivery service”, of “local digital sound programme service” and “national digital sound programme service”, of “local radio multiplex service” and “national radio multiplex service” and of “television multiplex service”;</p> <p>(b) paragraph 1(8);</p> <p>(c) paragraph 3A;</p> <p>(d) paragraph 3B;</p> <p>(e) paragraph 4.</p> <p>In Part 2 of Schedule 2—</p> <p>(a) paragraph 1(1)(a) and (b);</p> <p>(b) in paragraph 1(1)(j)(i), the words “(a), (b) or”;</p> <p>(c) paragraph 1(2) and (3);</p> <p>(d) in paragraph 5A(1)(a), the words “granted by the Commission”;</p> <p>(e) paragraph 5A(1)(b) and the word “and” immediately preceding it;</p> <p>(f) in paragraph 5A(2), the words “granted by the Authority”;</p> <p>(g) paragraph 5A(3).</p> <p>Parts 3 to 5 of Schedule 2.</p> <p>Schedule 4.</p> <p>Schedule 5.</p> <p>In Schedule 6—</p> <p>(a) paragraph 2(1);</p> <p>(b) in paragraph 13(2), the words from “and shall include” onwards.</p> <p>Schedule 8.</p> <p>Schedule 12.</p> <p>In Schedule 18—</p> <p>(a) in Part 1, paragraphs 1(4) to (6), 2(1) and (3) and 4;</p> <p>(b) in Part 2, paragraphs 1(d) and 5.</p> <p>In Schedule 19—</p>

<i>Short title and chapter</i>	<i>Extent of repeal</i>
	<p>(a) in paragraph 8(c), the words “and (where the expenses relate to the Commission's functions in connection with sound programmes) the Radio Authority”;</p> <p>(b) in paragraph 11(4), the words “or the Radio Authority” and “or, as the case may be, the Authority”.</p> <p>In Schedule 20—</p> <p>(a) paragraph 9;</p> <p>(b) paragraph 24(c)(ii);</p> <p>(c) paragraph 38;</p> <p>(d) paragraph 54.</p> <p>In Schedule 22—</p> <p>(a) paragraphs 1 to 3;</p> <p>(b) in paragraph 4, the words “and 45”;</p> <p>(c) paragraph 5.</p>
New Roads and Street Works Act 1991 (c. 22)	<p>In Schedule 4, in paragraph 7(4), the definitions of “telecommunication apparatus” and “telecommunication system”.</p> <p>In Schedule 6, in paragraph 7(4), the definitions of “telecommunication apparatus” and “telecommunication system”.</p>
Taxation of Chargeable Gains Act 1992 (c. 12)	In Schedule 10, paragraph 7.
Charities Act 1992 (c. 41)	In section 60(10), the definition of “telecommunication apparatus”.
Competition and Service (Utilities) Act 1992 (c. 43)	<p>Sections 1 to 10.</p> <p>Section 49.</p> <p>In Schedule 1, paragraphs 1, 2, 3(b) and 4.</p>
Carriage of Goods by Sea Act 1992 (c. 50)	In section 5(1), the definition of “telecommunication system” and the word “and” immediately preceding it.
Tribunals and Inquiries Act 1992 (c. 53)	In Part 1 of Schedule 1, the entry at paragraph 45 relating to wireless telegraphy.
Judicial Pensions and Retirement Act 1993 (c. 8)	<p>Section 26(8)(a).</p> <p>In Schedule 5, the entry relating to the President of the tribunal established under section 9 of the Wireless Telegraphy Act 1949.</p> <p>In Schedule 6, paragraph 58.</p> <p>In Schedule 7, paragraph 5(5)(xxxii).</p>
Leasehold Reform, Housing and Urban Development Act 1993 (c. 28)	In Part 2 of Schedule 20, paragraph 19(1).
Cardiff Bay Barrage Act 1993 (c. 42)	<p>In Schedule 4, in paragraph 3(2), the words following paragraph (c).</p> <p>In Schedule 7, paragraph 21(10).</p>
Local Government (Wales) Act 1994 (c.19)	In Schedule 16, paragraph 72.
Vehicle Excise and Registration Act 1994 (c. 22)	In Schedule 3, paragraph 3(a)(i).
Criminal Justice and Public Order Act 1994 (c. 33)	Section 92.
Deregulation and Contracting Out Act 1994 (c. 40)	<p>Section 8.</p> <p>In Schedule 4, paragraph 3(a).</p>
Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c. 40)	In Schedule 4, paragraph 48(2) and (3).
Criminal Procedure (Scotland) Act 1995 (c. 46)	In Schedule 9, the entry relating to the Wireless Telegraphy Act 1949.

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Arbitration Act 1996 (c. 23)	In Schedule 3, paragraph 7.
Broadcasting Act 1996 (c. 55)	Section 1(1A) to (3).
	Section 2(1), (6) and (7).
	In section 4(3), the words from “and the amount” onwards.
	Section 5(7)(a).
	Section 6.
	In section 11(5), the words from “not exceeding” onwards.
	Section 12(7).
	In section 16(6), the words “before the relevant date”.
	Section 18(5) and (6).
	Section 19(2) and (4) to (10).
	Sections 20 to 22.
	Section 25(5) and (6).
	Section 28.
	In section 29(2), the word “59”.
	Sections 30 and 31.
	In section 33(3)(c), the words “or II”.
	Section 34.
	Section 38.
	In section 39(1), the definitions of “the Commission” and “qualifying teletext service”.
	In section 40(4), the words “provided on a frequency or frequencies assigned to the Authority under section 45(1)”.
	In section 43—
	(a) in subsection (2)(b), sub-paragraph (ii) and the word “or” immediately preceding it;
	(b) in subsection (3), the words from “and the amount” onwards.
	Section 44(7)(a).
	Section 45.
	In section 46(1), paragraph (e).
	Section 47(4).
	Section 54(7).
	In section 56(1)(a)(i), the words “to which the licence relates”.
	In section 58—
	(a) subsection (5);
	(b) in subsection (6), the words “before the relevant date”.
	In section 60, subsections (7) to (10).
	In section 61, subsections (3) and (4).
	Section 68.
	Section 71.
	In section 72(1), the definition of “the Authority”.
	Sections 74 to 76.
	Sections 78 and 79.

<i>Short title and chapter</i>	<i>Extent of repeal</i>
	<p>Section 80(2).</p> <p>Sections 82 to 84.</p> <p>Section 86(3).</p> <p>Sections 87 to 90.</p> <p>Section 91.</p> <p>Section 93.</p> <p>In section 95, subsections (3) to (7).</p> <p>In section 97(3)(b), the words “by the Commission” and “by them”.</p> <p>In section 104(4)(d), the words “by the Commission” and “by them”.</p> <p>In section 105(1), the definitions of “the Commission” and “live”.</p> <p>Section 106.</p> <p>In section 107—</p> <p>(a) subsection (2);</p> <p>(b) in subsection (4)(a), the words “or regulatory”.</p> <p>Sections 108 and 109.</p> <p>In section 110—</p> <p>(a) subsection (2);</p> <p>(b) in subsection (3), the words from “; and in exercising” onwards;</p> <p>(c) in subsection (4), the definition of “a standards complaint” and the word “and” immediately preceding it.</p> <p>Sections 112 and 113.</p> <p>In section 114—</p> <p>(a) in subsection (1), the words “or a standards complaint”;</p> <p>(b) in subsection (2), the words “or a standards complaint” and in paragraph (b) the words “, in the case of a fairness complaint,”.</p> <p>In section 115—</p> <p>(a) in subsection (2), paragraph (c);</p> <p>(b) in subsection (3), paragraph (b) and the word “and” immediately preceding it.</p> <p>Section 116.</p> <p>In section 118, the words “or a standards complaint”.</p> <p>In section 119—</p> <p>(a) in subsection (3), paragraph (c);</p> <p>(b) in subsection (8), the words “or standards complaint” and in paragraph (c) the words “, a regulatory body”;</p> <p>(c) in subsection (9), the words “or standards complaint” and “, 113(1)”;</p> <p>(d) subsection (12).</p> <p>In section 120(1), the words “or a standards complaint”.</p> <p>Sections 122 to 129.</p> <p>In section 130—</p> <p>(a) in subsection (1), in the definition of “licensed service”, the words from “, subject to” to “125(6),”;</p> <p>(b) the definitions in that subsection of “the appropriate regulatory body”, “the BSC”, “financial year”, “local delivery service”, “regulatory body”, “sexual conduct” and “standards complaint”;</p> <p>(c) in subsection (2), paragraph (b) and the word “and” immediately preceding it.</p>

<i>Short title and chapter</i>	<i>Extent of repeal</i>
	<p>Section 142.</p> <p>Section 143(3) and (4).</p> <p>Section 144(5).</p> <p>In section 145(8), the definition of “the relevant authority”.</p> <p>In Schedule 2, paragraphs 1(2)(d) to (f), 4, 5, 6(3), 10 and 11.</p> <p>Schedule 3.</p> <p>Schedule 4.</p> <p>In Schedule 8, paragraph 4.</p> <p>In Schedule 10, paragraphs 1, 3 to 6, 8, 11 to 14, 16, 18 to 20, 22 to 25, 26(a)(ii) and (b) and 27(a).</p>
Channel Tunnel Rail Link Act 1996 (c. 61)	In Part 4 of Schedule 15, in paragraph 1(2), the definitions of “telecommunications code”, “telecommunications operator” and “operator”, “telecommunication apparatus”, “telecommunications code system” and “telecommunication system”.
Telecommunications (Fraud) Act 1997 (c. 4)	The whole Act.
Planning (Consequential Provisions) (Scotland) Act 1997 (c. 11)	In Schedule 2, paragraph 37.
Wireless Telegraphy Act 1998 (c. 6)	<p>In section 1(1), the words “other than a television licence as defined in section 1(7) of that Act”.</p> <p>In section 1(3)—</p> <p>(a) paragraph (a);</p> <p>(b) in paragraph (b) the words from “or provide” to “the Secretary of State”;</p> <p>(c) paragraph (d) and the word “and” immediately preceding it.</p> <p>In section 3—</p> <p>(a) in subsection (1), the words “or determined by him under” and paragraph (a) and the word “and” immediately after it;</p> <p>(b) subsection (2);</p> <p>(c) in subsection (3), paragraph (h) and the word “and” immediately preceding it.</p> <p>Section 5.</p> <p>Schedule 1.</p>
Petroleum Act 1998 (c. 17)	<p>In Schedule 4—</p> <p>(a) in paragraph 2(3), the words “section 6 (wireless telegraphy) and”;</p> <p>(b) paragraph 19.</p>
Competition Act 1998 (c. 41)	<p>In Schedule 1, paragraph 3.</p> <p>In Schedule 7—</p> <p>(a) paragraph 2(1)(d)(iii);</p> <p>(b) in paragraph 19A(9), in the definition of “merger reference group”, the words “section 59 of the Fair Trading Act 1973 (c. 41),” and in the definition of “special reference group” paragraphs (b) and (f) and the word “or” at the end of paragraph (m).</p> <p>In Schedule 7A, in paragraph 1, in the definition of “merger investigation”, the words “section 59 of the Fair Trading Act 1973 (c. 41),”.</p> <p>In Schedule 10—</p> <p>(a) paragraph 2(1) to (6), (8) and (9);</p> <p>(b) paragraph 9(2) to (4) and (6).</p>

<i>Short title and chapter</i>	<i>Extent of repeal</i>
	In Schedule 12, paragraph 14(3).
	In Schedule 13, paragraph 35(2)(a).
Regional Development Agencies Act 1998 (c. 45)	In Schedule 6, paragraph 16(1).
Access to Justice Act 1999 (c. 22)	In Schedule 4, paragraph 26.
Electronic Communications Act 2000 (c. 7)	Sections 11 and 12.
Regulation of Investigatory Powers Act 2000 (c. 23)	Section 18(12)(e).
Postal Services Act 2000 (c. 26)	In Schedule 4, paragraph 3.
Freedom of Information Act 2000 (c. 36)	In Schedule 7, paragraph 3(2)(g).
	In Part 6 of Schedule 1, the entries relating to— (a) the Broadcasting Standards Commission; (b) the Independent Television Commission; (c) the Radio Authority; (d) the Scottish Advisory Committee on Telecommunications; (e) the Welsh Advisory Committee on Telecommunications.
	In Part 7 of Schedule 1, the entry relating to the Northern Ireland Advisory Committee on Telecommunications.
Countryside and Rights of Way Act 2000 (c. 37)	In section 45(1), the definitions of “telecommunications code” and “telecommunications code system”.
Transport Act 2000 (c. 38)	In Schedule 8, paragraph 14(2).
	In Schedule 9, paragraph 3(2)(e).
Political Parties, Elections and Referendums Act 2000 (c. 41)	Section 11(1) and (2).
	In Schedule 12, in paragraph 4, sub-paragraphs (1) to (5) and in sub-paragraph (7) the definitions of “the 1990 Act”, “licence”, “licensed” and “the licensing body”.
	In Schedule 21, paragraph 8.
Criminal Justice and Police Act 2001 (c. 16)	In the table in section 1(1), the entry relating to section 43(1)(b) of the Telecommunications Act 1984.
Anti-terrorism, Crime and Security Act 2001 (c. 24)	In Schedule 4, paragraph 29.
Office of Communications Act 2002 (c. 11)	Section 2.
	Sections 4 to 6.
	In the Schedule, paragraphs 1(4), 8(5), 17(8) and (9) and 20.
Tobacco Advertising and Promotion Act 2002 (c. 36)	Section 12(4).
Enterprise Act 2002 (c. 40)	In section 22(3)(a), the words “69(1),”.
	In section 33(3)(a), the words “69(1),”.
	In section 46(1)(a), the words “69(1),”.
	In section 62(4), the words “section 69(1) or”.
	In section 67(1)(b), the words from “which” to “or 33”.
	In section 68(2)(c), the words from “which”, where it occurs for the second time, to “or 33”.
	Section 69.
	In section 121—

<i>Short title and chapter</i>	<i>Extent of repeal</i>
	<p>(a) in subsection (1), the words “, Part V of the Fair Trading Act 1973 (c. 41)”;</p> <p>(b) in subsection (2), paragraph (b) and the word “or” at the end of the paragraph;</p> <p>(c) in subsection (4)(c), sub-paragraph (i), the word “and” at the end of the sub-paragraph and, in sub-paragraph (ii), the words “in any other case,”;</p> <p>(d) in subsection (8), the words “, Part V of the Act of 1973”;</p> <p>(e) subsection (10).</p> <p>In section 136—</p> <p>(a) in subsection (7), paragraph (a) and the word “and” immediately preceding paragraph (g);</p> <p>(b) in subsection (8), the words “the Director of Telecommunications,”.</p> <p>Section 168(3)(a), (4)(a) and (5)(d).</p> <p>In Schedule 9, paragraphs 1 and 16.</p> <p>In Schedule 25, paragraphs 13(2) to (8), 24(2) to (6), (8) and (9) and 34.</p>
Income Tax (Earnings and Pensions) Act 2003 (c. 1)	In section 320(7), paragraph (d).
European Parliament (Representation) Act 2003 (c. 7)	In section 12(4), in the definition of “programme services”, the words from “(including)” to “local delivery services”.

Note[...]¹

2 The repeal of section 63 of the Telecommunications Act 1984 (c. 12) does not affect the power of the Secretary of State or the Treasury to acquire or subscribe for securities of the successor company or of any subsidiary of the successor company other than pursuant to an enactment.

[...]¹

4 The repeal of paragraph 20 of Schedule 5 to the Telecommunications Act 1984 shall be disregarded for the purposes of Schedule 18 to this Act.

5 The repeals of sections 27A to 27L and in section 50 of the Telecommunications Act 1984 and the repeal of sections 1 to 10 of the Competition and Service Utilities Act 1992 do not have effect in relation to any dispute or other matter referred to the Director General of Telecommunications before the coming into force of the repeals.

6 The repeals of sections 26 and 27 of the 1990 Act have effect subject to section 201(2) of this Act.

(2)

Instruments

<i>Title and number</i>	<i>Extent of revocation</i>
Planning (Northern Ireland) Order 1991 (S.I. 1991/1220 (N.I. 11))	Article 104(5).

<i>Title and number</i>	<i>Extent of revocation</i>
Electricity (Northern Ireland) Order 1992 (S.I. 1992/231 (N.I. 1))	In Schedule 4, in paragraph 1(1), the definitions of “public telecommunications operator” and of “telecommunication apparatus”, “telecommunication system” and “the telecommunications code”.
Telecommunications (Single Emergency Call Number) Regulations 1992 (S.I. 1992/2875)	The whole regulations.
Roads (Northern Ireland) Order 1993 (S.I. 1993/3160 (N.I. 15))	In Article 2(2), the definitions of “telecommunication apparatus”, “the telecommunications code” and “telecommunications code system”.
Airports (Northern Ireland) Order 1994 (S.I. 1994/426 (N.I. 1))	Article 12(7).
Street Works (Northern Ireland) Order 1995 (S.I. 1995/3210 (N.I. 19))	In Schedule 2, in paragraph 7(4), the definitions of “telecommunication apparatus” and “telecommunication system”.
Gas (Northern Ireland) Order 1996 (S.I. 1996/275 (N.I. 2))	In Schedule 3, in paragraph 1, the definitions of “public telecommunications operator” and of “telecommunication apparatus”, “telecommunication system” and “the telecommunications code”.
Race Relations (Northern Ireland) Order 1997 (S.I. 1997/869 (N.I. 6))	Paragraphs 4 and 9 of Schedule 2.
Telecommunications (Voice Telephony) Regulations 1997 (S.I. 1997/1886)	The whole regulations.
Telecommunications (Interconnection) Regulations 1997 (S.I. 1997/2931)	The whole regulations.
Telecommunications (Open Network Provision and Leased Lines) Regulations 1997 (S.I. 1997/2932)	The whole regulations.
Telecommunications (Open Network Provision) (Voice Telephony) Regulations 1998 (S.I. 1998/1580)	The whole regulations.
Telecommunications (Licence Modification) (Standard Schedules) Regulations 1999 (S.I. 1999/2450)	The whole regulations.
Telecommunications (Licence Modification) (Fixed Voice Telephony and International Facilities Operator Licences) Regulations 1999 (S.I. 1999/2451)	The whole regulations.
Telecommunications (Licence Modification) (Mobile Public Telecommunications Operators) Regulations 1999 (S.I. 1999/2452)	The whole regulations.
Telecommunications (Licence Modification) (British Telecommunications plc) Regulations 1999 (S.I. 1999/2453)	The whole regulations.
Telecommunications (Licence Modification) (Cable and Local Delivery Operator Licences) Regulations 1999 (S.I. 1999/2454)	The whole regulations.
Telecommunications (Licence Modification) (Kingston Communications (Hull) PLC) Regulations 1999 (S.I. 1999/2455)	The whole regulations.
Telecommunications (Interconnection) (Carrier Pre-section) Regulations 1999 (S.I. 1999/3448)	The whole regulations.

<i>Title and number</i>	<i>Extent of revocation</i>
Telecommunications (Interconnection) (Number Portability, etc.) Regulations 1999 (S.I. 1999/3449)	The whole regulations.
Telecommunications (Licence Modification) (Satellite Operator Licences) Regulations 2000 (S.I. 2000/1711)	The whole regulations.
Telecommunications (Licence Modification) (Regional Public Access Mobile Radio Operator Licences) Regulations 2000 (S.I. 2000/1712)	The whole regulations.
Telecommunications (Licence Modification) (Amendment) Regulations 2000 (S.I. 2000/1713)	The whole regulations.
Telecommunications (Licence Modification) (Mobile Data Operator Licences) Regulations 2000 (S.I. 2000/1714)	The whole regulations.
Telecommunications (Licence Modification) (Paging Operator Licences) Regulations 2000 (S.I. 2000/1715)	The whole regulations.
Telecommunications (Services for Disabled Persons) Regulations 2000 (S.I. 2000/2410)	The whole regulations.
Telecommunications (Licence Modifications) (Amendment No. 2) Regulations 2000 (S.I. 2000/2998)	The whole regulations.
Telecommunications (Licence Modifications) (Amendment) Regulations 2001 (S.I. 2001/2495)	The whole regulations.

Notes

¹ Words repealed by Wireless Telegraphy Act 2006 c. 36 Sch.9(1) para.1 (February 8, 2007)

Commencement

Sch. 19 para. 1: July 25, 2003 for repeals specified in SI 2003/1900 Sch.1 subject to transitional provisions specified in SI 2003/1900 art.3(1); September 18, 2003 for repeals specified in SI 2003/1900 Sch.2 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2); December 29, 2003 for repeals specified in SI 2003/3142 art.3(1) and Sch.1; April 1, 2004 for repeals specified in SI 2003/3142 art.4(2) and Sch.2; not yet in force otherwise (SI 2003/1900 art. 2(1), art. 2(2), art. 3(1), Sch. 1 para. 1, Sch. 2 para. 1; SI 2003/3142 art. 3(1), art. 3(2), art. 4(2), Sch. 1 para. 1, Sch. 2 para. 1)

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Communications Act, which received Royal Assent on 17th July 2003. They have been prepared by the Department of Trade and Industry and the Department for Culture, Media and Sport in order to assist the reader of the Act. They do not form part of the Act and have not been endorsed by Parliament.

2. These notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So, where a section or part of a section does not seem to require any explanation or comment, none is given.

3. The Act relates to matters within the responsibilities of both the Secretary of State for Trade and Industry and the Secretary of State for Culture, Media and Sport. References to the Secretary of State in the Act mean any Secretary of State. In practice, some of the functions conferred upon the Secretary of State will be exercised by the Secretary of State for Trade and Industry and the Secretary of State for Culture, Media and Sport jointly and others by only one of them. This will reflect their respective ministerial portfolios.

SUMMARY

4. The Act gives effect to the Government's proposals for the reform of the regulatory framework for the communications sector, as set out in the Communications White Paper — *A New Future for Communications* (Cm 5010) — published on 12th December 2000.

5. The main provisions of the Act provide for:

- the transfer of functions to the Office of Communications (OFCOM) from the bodies and office holders which currently regulate the communications sector (which broadly speaking encompasses telecommunications and broadcasting) and manage the radio spectrum;
- OFCOM's general duties in carrying out their functions;
- the replacement of the current system of licensing for telecommunications systems with a new framework for the regulation of electronic communications networks and services;
- the power to develop new mechanisms to enable spectrum to be traded in accordance with regulations made by OFCOM, and a scheme of recognised spectrum access;

* In these explanatory notes, “spectrum” refers to radio spectrum (or radio frequencies) that forms a small part of the electromagnetic spectrum. Radio spectrum is an important and versatile communications medium, used for terrestrial and satellite broadcasting, mobile telephony, fixed wireless access, and many other applications. Radio spectrum is a finite resource and key issues in the effective use of spectrum include the efficient allocation and sharing of frequency channels (both domestically and internationally) and the need to ensure that radio signals from different users and services do not significantly interfere with each other.

- procedures for appealing decisions relating to networks and services and rights of use for spectrum;
- the development of the current system for regulating broadcasting to reflect technological change, to accommodate the switchover from analogue to digital broadcasting and to rationalise the regulation of public service broadcasters;
- the establishment of a Consumer Panel to advise and assist OFCOM and to represent and protect consumer interests;

- the establishment of a Content Board to advise OFCOM, and undertake functions on their behalf, in relation to the content of anything broadcast or otherwise transmitted by means of an electronic communications network and in relation to media literacy;
- the concurrent exercise by OFCOM of powers under the Competition Act 1998 and the Enterprise Act 2002 across the whole of the communications sector (including broadcasting); and
- the application of the merger control regime under the Enterprise Act 2002 to mergers involving newspaper and other media enterprises.

6. There are currently five bodies or office holders who exercise regulatory responsibilities in the communications sector and who will be replaced by OFCOM. These are:

- the Broadcasting Standards Commission, a non-departmental public body which has statutory responsibilities for standards and fairness in broadcasting. It has three main tasks, as established by the Broadcasting Act 1996 (“the 1996 Act”). These are to produce codes of conduct relating to standards and fairness; to consider and adjudicate on complaints; and to monitor, research and report on standards and fairness in broadcasting;
- the Director General of Telecommunications, who is responsible for running the Office of Telecommunications (Ofcom) — the UK telecommunications regulator. Ofcom is a non-ministerial government department. The Director General is responsible under the Telecommunications Act 1984 for administering and enforcing the licences that regulate telecommunications operators. His duties include those of ensuring that adequate telecommunications services are provided throughout the UK; of promoting the interests of consumers; and of maintaining effective competition;
- the Independent Television Commission, the statutory body which licenses and regulates independent television services in the UK, including cable and satellite. Operating under powers derived from the Broadcasting Acts 1990 and 1996, their responsibilities include setting and maintaining the standards for programmes, economic regulation, public service obligations, research, TV advertising regulation and technical quality;
- the Radio Authority, which is the statutory body responsible for regulation and licensing of independent radio broadcasting in the UK, that is to say all non-BBC radio services. Operating under powers derived from the Broadcasting Acts 1990 and 1996, their responsibilities include frequency planning, the awarding of licences, the regulation of programming and radio advertising, and the supervision of the radio ownership system; and
- the Secretary of State, as far as she has a regulatory role in respect of the allocation, maintenance and supervision of non-military radio spectrum in the UK. This role is exercised through the Radiocommunications Agency, an executive agency of the Department of Trade and Industry.

The Office of Communications Act 2002 establishes OFCOM and gives them a single initial function — to prepare to assume regulatory functions at a later stage. It also gives the existing regulators additional functions and duties to assist OFCOM to prepare.

7. One of the central objectives of the Act is the transfer to OFCOM of the functions, property, rights and liabilities of the bodies and office holders that currently regulate the communications sector. OFCOM will then develop and maintain new regulatory rules for the communications sector within the context of a single set of regulatory objectives, and in the light of the changing market environment.

8. In February 2002 the European Parliament and the Council of Ministers adopted four Directives (“the EC Communications Directives”), which set out a package of measures for a common regulatory framework for electronic communications networks and services. Provisions in the Act implement a significant proportion of this new regulatory package in the UK (see Appendices 2 and 3).

OVERVIEW OF THE ACT

9. The Act is in six parts—

- Part 1— Functions of OFCOM
- Part 2— Networks, Services and the Radio Spectrum
- Part 3— Television and Radio Services
- Part 4— Licensing of TV Reception
- Part 5— Competition in Communications Markets
- Part 6— Miscellaneous and Supplemental

TERRITORIAL EXTENT AND TERRITORIAL APPLICATION

10. The large majority of the provisions in the Communications Act are on reserved matters (the exceptions being training and equality of opportunity in broadcast employment). The Act applies to the whole of the United Kingdom (a few procedural matters being dealt with separately for England and Wales, Scotland and Northern Ireland to take account of the different legal systems), with power to extend it by Order in Council to the Channel Islands and the Isle of Man. The Act does not confer functions on the National Assembly for Wales, although the Secretary of State is required to consult the National Assembly for Wales when carrying out a review of the fulfilment by the Welsh Authority of its public service remits (section 339).

COMMENTARY ON SECTIONS

PART 1: FUNCTIONS OF OFCOM

Section 1: Functions and general powers of OFCOM

11. This section sets out the functions of OFCOM. These consist of those functions that prior to commencement were carried out by the Secretary of State and the pre-commencement regulators and which are transferred to OFCOM, together with all other functions conferred on OFCOM by other legislation, including the present Act.

* the meaning of *pre-commencement regulators* is given in subsection (1) of section 405. Those regulators are the Broadcasting Standards Commission, the Director General of Telecommunications, the Independent Television Commission and the Radio Authority. The expression does not include the Radiocommunications Agency, as the Agency is an executive agency of the Department of Trade and Industry and acts in the name of the Secretary of State and, although functions of the Secretary of State are transferred to OFCOM by the Act, the office of the Secretary of State will not cease to exist, unlike the other four regulators.

12. Subsections (3), (4) and (5) provide that OFCOM have power to do anything incidental or conducive to carrying out their functions. This, in particular, includes the power to borrow money (provided that this is done with the consent of, or in accordance with a general authorisation given by, the Secretary of State), the power to undertake research and development work in relation to their functions as well as to promote and arrange for it to be carried out by others, the power to prosecute in England, Wales and Northern Ireland offences relating to matters in respect of which

they have functions, and the power, at their discretion, to compensate (where no legal liability arises) persons adversely affected by OFCOM's activities.

13. Subsection (6) requires OFCOM to establish and maintain offices in England, Wales, Scotland and Northern Ireland.

14. Subsection (7) enables OFCOM to contract out their functions to a third party, where an order providing for such has been made by the Secretary of State under the Deregulation and Contracting Out Act 1994.

Section 2: Transfer of functions of pre-commencement regulators

15. Subsection (1) provides that, from such date as the Secretary of State may appoint for the coming into force of this section, certain functions of the Secretary of State and the functions of the pre-commencement regulators will be transferred to OFCOM. By virtue of section 411 the Secretary of State may appoint different dates for different purposes.

16. Schedule 1 sets out those functions that will be transferred to OFCOM from the pre-commencement regulators. These functions relate to wireless telegraphy, the licensing of television and radio services, the Channel Four Corporation, the proscription of foreign satellite services, Gaelic Broadcasting, the national television archive, the reservation of digital capacity to the BBC, listed events, fairness and privacy in broadcasting, and standards for transmission services. The functions also relate to warrants to enter and search premises to enforce broadcasting licence provisions, variation of existing Channel 3 and Channel 5 licences, and reviewing digital broadcasting.

17. Subsection (2) explains the effect of the transfer of functions to OFCOM on references in existing legislation to the pre-commencement regulators and the Secretary of State. Where necessary, references in existing legislation to any of the pre-commencement regulators or the Secretary of State should be read as if they referred to OFCOM.

18. Subsection (3) provides that, from the appointed date, OFCOM will be able to exercise the functions transferred to them in respect of events or issues arising both before and after the appointed date.

19. Subsection (4) provides that any function transferred is that function as modified by this Act.

20. Paragraph 1 of Schedule 18 (transitional provisions) provides that any subordinate legislation made or any other thing done for the purpose of carrying out the transferred functions by the pre-commencement regulators or the Secretary of State shall from the date of the transfer made by virtue of section 2 have effect as if they had been done by OFCOM.

Section 3: General duties of OFCOM

21. This section sets out the general duties of OFCOM when carrying out their functions. OFCOM's principal duty is: (i) to further the interests of citizens, and (ii) to further consumer interests in relevant markets, where appropriate by promoting competition. "Citizens" are defined in subsection (14) as all members of the public in the United Kingdom; "consumers" are defined in section 405(5).

22. Subsection (2) provides that the particular things that OFCOM are required to secure in carrying out their functions include: (a) the optimal use of the radio spectrum; (b) the availability throughout the United Kingdom of a wide range of electronic communications services; (c) the availability in the UK of a wide range of TV and radio services, comprising high quality services of broad appeal; (d) the maintenance of a sufficient plurality of providers of different television and radio services;

(e) the application, in television and radio services, of standards that provide adequate protection to members of the public from any offensive and harmful material; and (f) the application, in television and radio services, of standards that safeguard people from being unfairly treated and from unwarranted infringements of privacy.

23. Subsection (3) requires OFCOM to have regard in all cases to the principles that regulatory activities should be transparent, accountable, proportionate, targeted and consistent, and to any other principles which appear to OFCOM to represent best regulatory practice.

24. Subsection (4) sets out a list of factors to which OFCOM must have regard, wherever relevant, in the performance of their general duties. These are the desirability of promoting the fulfilment of the purposes of public service television broadcasting, the desirability of promoting competition in relevant markets, the desirability of promoting and facilitating the development and use of effective self-regulation, the desirability of encouraging investment and innovation, the desirability of encouraging the availability and use of high speed data transfer services, the different needs of all existing and potential users of the radio spectrum, the need to guarantee an appropriate level of freedom of expression when applying the standards falling within subsection (2)(e) and (f) to television and radio services, the opinions of consumers and of members of the public generally, the need to protect potentially vulnerable members of society such as children, the elderly, those with disabilities and those on low incomes, the desirability of preventing crime and disorder and the interests of those living in different parts of the country, including rural and urban areas, and of different ethnic communities. They may also have regard, in each case, to the extent to which it is reasonably practicable for them to further their duties under this section.

25. OFCOM must also have particular regard to the interests of consumers in respect of choice, price, quality of service and value for money when performing their duty of furthering the interests of consumers.

26. OFCOM are given a duty to resolve as they see fit any conflicts that arise between their various general duties. However, in cases where their general duties may conflict with their “European duties” (imposed by sections 4, 24 and 25), OFCOM's European duties must prevail.

27. Where OFCOM are resolving conflicts in ‘important’ cases between their duties under subsection (1), they are required as soon as possible after the conflict has been resolved to publish a statement setting out the conflict, how they have resolved it and why they have taken that particular approach, unless they are legally obliged not to publish something which would be in the statement.

28. OFCOM's annual report must include a summary of the manner in which they have resolved conflicts arising from their general duties in ‘important’ cases.

29. ‘Important’ cases are those that include: a major change in OFCOM's activities; are likely to have a significant impact on communications businesses or the general public; or appear to OFCOM to have been of unusual importance.

30. OFCOM's duties under this section do not apply in relation to anything done by OFCOM in the carrying out of their functions under the Competition Act 1998 or the Enterprise Act 2002, unless they are matters to which the Office of Fair Trading is entitled to have regard when operating under those Acts (section 370(11) and section 371(11) of this Act and section 119A(4) of the Enterprise Act 2002 (inserted by Chapter 2 of Part 5 of this Act)).

Section 4: Duties for the purpose of fulfilling Community obligations

31. This section creates a duty, which applies only to certain functions of OFCOM. These are their functions under:

- Chapter 1 of Part 2;
- the enactments relating to the management of the radio spectrum;

* Section 405(1) defines the *enactments relating to the management of the radio spectrum* as the Wireless Telegraphy Act 1949, the Marine, &c., Broadcasting (Offences) Act 1967, the Wireless Telegraphy Act 1967, Part 6 of the Telecommunications Act 1984, the Wireless Telegraphy Act 1998, Chapter 2 of Part 2 of the Act and the other provisions of the Act so far as relating to any of those enactments.

- Chapter 3 of Part 2 relating to network access disputes referred to them under section 185;
- sections 24 and 25, so far as they relate to information required for purposes connected with matters in relation to OFCOM functions specified in this section; and
- section 26, if carried out for the purpose of making information available to the customers of communications providers, the customers of persons who make associated facilities available and persons who use electronic communications networks, electronic communications services or associated facilities.

32. The duty is a duty to act in accordance with six Community requirements. In the event that there is any conflict between this duty and the section 3 duties, the former, which is required by the EC Communications Directives, is to take precedence.

33. The Community requirements are: (i) to promote competition; (ii) to ensure that OFCOM's activities contribute to the development of the European internal market; (iii) to promote the interests of all persons who are citizens of the European Union; (iv) to take account of the desirability of carrying out their functions in a manner which, so far as practicable, does not favour one form of network, service or associated facility, or one means of providing or making available such a network, service or facility over another; (v) to encourage the provision of network access and service interoperability; and (vi) to encourage compliance with international standards to the extent necessary to facilitate service interoperability, and to secure a freedom of choice for customers.

* *network access* is defined in section 151 as meaning (1) interconnection of public electronic communications networks; or (2) any services, facilities or arrangements (other than interconnection) by means of which a communications provider or a person making associated facilities available is able, for the purposes of the provision of an electronic communications service (whether by him or by another), to make use of any network or apparatus comprised in a network, or any service or facility capable of being used to provide a service.

*

service interoperability

is defined in section 151 as interoperability between different electronic communications services.

34. Requirements (i) to (iv) implement Articles 7(1) & (2) and 8 of Directive 2002/21/EC (the “Framework Directive”). Requirement (v) implements Article 5(1) of Directive 2002/19/EC (“the Access Directive”) and Article 18 of the Framework Directive and requirement (vi) implements Article 17(2) and 18 of the Framework Directive. This section also implements Article 20 (3) of the Framework Directive and Article 7(3) of the Authorisation Directive.

Section 5: Directions in respect of networks or spectrum functions

35. This section gives the Secretary of State a power to give directions to OFCOM in respect of: (i) their functions relating to networks, services and the radio spectrum under Part 2 of the Act; and (ii) their functions relating to the management of the radio spectrum not contained in Part 2. Such directions may only be made for one or more of the purposes listed in subsection (3). Those purposes are: national security, relations with foreign countries, compliance with international obligations, public safety and public health.

36. The Secretary of State may not use her powers under this section to direct OFCOM to suspend any person's entitlement to provide electronic communications networks or electronic communications services or to make available associated facilities. This can only be done by a direction given by the Secretary of State in accordance with the provisions of section 132. Section 132 gives the Secretary of State express power to direct OFCOM to suspend or restrict entitlement, where this appears to her to be necessary to protect the public from any threat to public safety or public health or in the interests of national security.

** associated facilities* are defined in section 32.

37. The Secretary of State must publish a direction issued under this section unless publication is against the interests of national security or relations with foreign countries.

Section 6: Duties to review regulatory burdens

38. This section imposes on OFCOM a duty to review their functions so that regulation by OFCOM does not lead to the imposition or maintenance of burdens that are or have become unnecessary. OFCOM must from time to time publish a statement setting out how they propose to comply with this duty and must have regard to that statement when carrying out their functions. When reviewing their duties under this section, OFCOM must consider whether or not their general duties set out in section 3 may be furthered or secured, or are likely to be furthered or secured, by effective self-regulation and, in the light of that, whether it would be appropriate to remove or reduce regulatory burdens.

Section 7: Duty to carry out impact assessments

39. Unless the urgency of a matter makes it impracticable or inappropriate, before implementing an important proposal in connection with the performance of their functions, OFCOM must either carry out and publish their assessment of the likely impact of the proposals or publish a statement setting out their reasons for thinking that it is unnecessary for them to carry out such an assessment. A proposal is an important proposal if it would be likely to involve a major change of their activities or have a significant impact on communications businesses or the general public. OFCOM will decide the form and content of the assessment, having regard to relevant general guidance, but subsection (4) requires that the assessment must set out how the proposal would secure or further the performance of OFCOM's general duties, or how the performance of the duties would be secured or furthered in relation to the proposals. When OFCOM publish an assessment, they must provide persons who are likely to be affected by the proposal with an opportunity to comment on it. OFCOM's annual report must set out the assessments that have been carried out under this section and summarise the decisions taken by OFCOM in relation to proposals in respect of which impact assessments have been carried out.

Section 8: Duty to publish and meet promptness standards

40. This section requires OFCOM to publish a statement setting out promptness standards which they propose to meet in carrying out their functions or transacting business for purposes connected

with the carrying out of their functions. Such time limits will not apply where the Act or any other enactment already sets time limits within which their functions are to be carried out. OFCOM's annual report must summarise the extent to which they have complied with the promptness standards set out under this section.

Section 9: Secretary of State's powers in relation to promptness standards

41. Where the Secretary of State considers that the promptness standards set by OFCOM under section 8 are not satisfactory, she may notify OFCOM. If OFCOM fail to amend the promptness standards to her satisfaction, the Secretary of State may give a direction requiring OFCOM to issue or revise their promptness standards in accordance with its terms. Before issuing a direction, the Secretary of State must give OFCOM an opportunity to comment on her proposal. The Secretary of State cannot use her powers under this section until 12 months have elapsed after the commencement of section 8.

Section 10: Duty to encourage availability of easily usable apparatus

42. This section places a duty on OFCOM to take such steps and enter into such arrangements as appear to them calculated to encourage others to secure that domestic electronic communications apparatus (defined in subsections (4) and (5)) is developed which is capable of being used without modification by the widest possible range of individuals, including those with disabilities; and to secure that such apparatus is as widely available as possible. OFCOM are also to review from time to time whether they need to take further steps to perform their duty under this section. For example, many users find TV remote controls and similar devices inconvenient to use because the buttons are so small. OFCOM might accordingly assist designers by dissemination of research results, ergonomic advice, etc., which might be helpful in identifying ways to minimise such inconvenience.

Section 11: Duty to promote media literacy

43. This section provides that it shall be a duty of OFCOM to enter into arrangements calculated to bring about, or to encourage others to bring about, increased public awareness and understanding of material published by the electronic media, the processes by which such material is selected or made available for publication, the available systems by which access to such published material is or can be regulated, and the available systems by which persons to whom such material is available may control what is received. OFCOM are also required to encourage the development and use of technologies and systems for regulating access to such material, and for facilitating control over what material is received. These could include internet filtering systems, rating systems by which, for example, programmes and videos can be given a classification that indicates the nature of their content, and other technical devices such as PIN-based systems to control viewing. Promotion of the use of such systems could include OFCOM participating in the development of related educational materials.

Section 12: Duty to establish and maintain Content Board

44. This section places OFCOM under a duty to set up and maintain a Content Board (a committee of OFCOM), the functions of which are set out in section 13.

45. Subsections (2) to (11) detail the composition of the Content Board, including OFCOM's duty to ensure that for each of England, Scotland, Wales and Northern Ireland, there is a different member of the Board, and to ensure that a majority of Board members is made up of individuals who are neither members nor employees of OFCOM. The chairman and at least one other member of the

Content Board are to be appointed by OFCOM and must be non-executive members of OFCOM (other than their chairman). No governor or employee of the BBC, nor any member or employee of the Welsh Authority or the Channel Four Television Corporation can be a member of the Board, nor can any person whom OFCOM think has a conflict of interest (although such a conflict will not arise merely through being a member or employee of OFCOM).

46. Subsection (13) provides that, in addition to paying remuneration and expenses under paragraph 14(4) of the Schedule to the Office of Communications Act, OFCOM may pay such sums as they see fit by way of pensions, allowances or gratuities (or provide for the making of such payments) to members of the Content Board who are not members or employees of OFCOM.

Section 13: Functions of the Content Board

47. OFCOM are to determine which of their functions are to be delegated to the Content Board. To such an extent and subject to such restrictions as OFCOM may determine, these must include the functions set out in subsection (2), namely, functions related to broadcast content and media literacy.

48. The Board must ensure that OFCOM are aware of the different interests and factors that need to be taken into account in the carrying out of OFCOM's broadcasting functions as respects different parts of the United Kingdom.

49. The Board may be authorised by OFCOM pursuant to subsection (5) to establish committees or panels to advise it in carrying out its functions. Members of those committees or panels may include persons who are not members of the Content Board.

Section 14: Consumer research

50. This section requires OFCOM to make arrangements to ascertain public opinion and the experiences of consumers on certain issues relating to the communications sector, including electronic communications networks and services, associated facilities and television and radio services and programmes distributed by other electronic media. In general, these arrangements may cover the carrying out of research by OFCOM, by the Content Board or by others. The arrangements must cover the carrying out of research into matters relating to the promotion of media literacy, the setting and observance of programme standards for radio and television, the prevention of unjust and unfair treatment of persons in those programmes and of unwarranted infringements of privacy resulting from those activities.

51. OFCOM are not required to make arrangements under this section in respect of the incidence or investigation of any interference with wireless telegraphy.

Section 15: Duty to publish and take account of research

52. This section requires OFCOM to publish, consider and, to such extent as they think fit, take account of research under section 14. This obligation does not extend to information that is confidential within the meaning of subsections (3) or (4).

Section 16: Consumer consultation

53. This section places OFCOM under a duty to establish and maintain effective arrangements for consulting with consumers, in the markets for services and facilities in relation to which OFCOM have functions, the markets for apparatus used in connection with those services and facilities and the markets for directories capable of being used in connection with an electronic communications network or service. This section implements Article 33(1) of the Universal Service Directive.

54. Such arrangements must include the setting up of an advisory panel to be known as the Consumer Panel. The principal responsibilities of the Consumer Panel will be to advise OFCOM and others on the interests of domestic and small business consumers in relation to the matters listed in subsection (3). Those matters include the provision of electronic communications networks and services and directory enquiry facilities; the making available of associated facilities; the supply of apparatus; service, quality and safety standards; financial and other terms of provision; complaints handling; dispute resolution and remedies; and the availability of information. The matters in subsection (3) about which the Panel are able to give advice do not, however, include matters that concern the contents of anything which is or may be broadcast or otherwise transmitted by means of electronic communications networks. OFCOM may also refer additional matters not included in subsection (3) to the Panel for advice. The Panel may publish such information as they think fit about their advice, the results of their research or the carrying out of their other functions.

* the meaning of *domestic and small business consumer* is given in subsection (10), and covers customers of a communications provider who are not themselves a communications provider, nor an undertaking for which more than 10 people work.

55. Subsection (7) places OFCOM under a duty, when carrying out their functions, to have regard to the advice and research of the Consumer Panel. OFCOM are also obliged to provide the Panel with such information as is necessary to enable the Panel to carry out their functions and such other information requested by the Panel as OFCOM can reasonably be expected to disclose (having regard particularly to confidentiality requirements). OFCOM must ensure that where they intend to disregard any of the Panel's published advice, they both publish this intention and inform the Panel of their reasons for disagreeing with this advice. Finally, the Consumer Panel must report on the carrying out of their functions on an annual basis and must publish their report as soon as practicable after it has been prepared.

Section 17: Membership etc. of the Consumer Panel

56. This section provides for the appointment of the chairman and other members to the Consumer Panel. The power to make all these appointments is conferred on OFCOM, subject to the approval of the Secretary of State. In appointing persons to be members of the Consumer Panel OFCOM must ensure that for each of England, Scotland, Wales and Northern Ireland there is a different member of the Panel capable of representing the interests and opinions of persons living in those parts of the United Kingdom. Also, OFCOM must seek to ensure that the Panel they appoint will be able to represent the interests of the categories of persons listed in subsection (4), which includes persons living in rural areas, persons living in urban areas, small businesses, the disadvantaged, and the elderly. The Panel have a duty, when carrying out their functions, to have regard to the interests of those persons as well as the interests of persons from different parts of the United Kingdom.

57. All appointments to the Panel will be for a fixed period with provision for re-appointment. Members may be removed from the Panel by notice given by OFCOM, but, again, only with the approval of the Secretary of State. Being a member or employee of OFCOM disqualifies a person from becoming a Panel member.

58. Subsection (9) provides that OFCOM may pay to the chairman and to other members of the Consumer Panel such remuneration and allowances as OFCOM consider appropriate.

Section 18: Committees and other procedure of the Consumer Panel

59. The Consumer Panel may make such arrangements as they think fit for committees established by the Panel to give advice to them about matters relating to the carrying out of their functions. The Panel may make arrangements, including those related to quorums and the making of decisions by majority, regulating their own procedure and the procedure for committees established by them. Persons who are not members of the Panel may be members of a committee established by the Panel; however, every committee must include at least one person who is a member of the Panel. OFCOM may pay non-Panel members of a committee such remuneration and expenses as OFCOM may determine.

Section 19: Power to amend remit of Consumer Panel

60. The Secretary of State may by order add to (but not reduce) the list of matters in subsection (3) of section 16 in relation to domestic and small business consumers on which the Consumer Panel may advise OFCOM and other persons. Before making an order under this section, the Secretary of State must consult OFCOM and such other persons as she thinks fit.

Section 20: Advisory committees for different parts of the United Kingdom

61. This section places OFCOM under a duty to exercise their powers under paragraph 14 of the Schedule to the Office of Communications Act 2002 to establish and maintain a committee for each of England, Wales, Scotland and Northern Ireland. Subsection (4) provides that each committee shall have the function of providing advice to OFCOM about the interests and opinions, in relation to communications matters, of persons living in the part of the United Kingdom for which the committee is established.

** Communications matters has the same meaning as in section 3.*

62. Subsections (2) and (3) require each committee to be comprised of a chairman, appointed by OFCOM, and such number of other members as OFCOM think fit. In making the appointments, OFCOM must have regard to the desirability of ensuring that the person appointed is able to represent the interests and opinions in relation to communications matters of persons living in the part of the UK for which the committee has been established.

63. Under subsections (5) and (6), should the Consumer Panel so request, the committees for the different parts of the UK may also, with the consent of OFCOM, provide advice to the Consumer Panel on the interests and opinions of persons in the respective parts of the UK.

Section 21: Advisory committee on elderly and disabled persons

64. This section places OFCOM under a duty to exercise their powers under paragraph 14 of the Schedule to the Office of Communications Act 2002 to establish and maintain a committee to provide advice on the interests in relation to communications matters of elderly persons and of persons with disabilities.

** Communications matters has the same meaning as in section 3.*

65. Subsections (2) and (3) require each committee to be comprised of a chairman, appointed by OFCOM, and such number of other members as OFCOM think fit. In making the appointments, OFCOM must have regard to the desirability of ensuring that the members of the committee include persons who are familiar with the needs of the elderly and of persons who are familiar with the needs of persons with disabilities.

66. Under subsections (5) and (6), should the Consumer Panel so request, the committee may also, with the consent of OFCOM, provide advice to the Consumer Panel on the interests of the elderly and of persons with disabilities.

Section 22: Representation on international and other bodies

67. The Secretary of State may, as respects the United Kingdom, require OFCOM to represent the Government on international and other bodies having communications functions and at international meetings about communications. The Secretary of State may also require OFCOM to become a member of or subscribe to international and other bodies having communications functions.

68. OFCOM may also, as respects the Channel Islands, the Isle of Man or any British overseas territory, at the request of the Secretary of State, represent the Government on international and other bodies having communications functions and at international meetings about communications. However, the Secretary of State cannot require them to do this.

69. Subsection (3) provides that OFCOM must carry out these functions in accordance with directions by the Secretary of State; and subsection (4) provides that this does not allow the Secretary of State to direct that OFCOM must represent any of the Channel Islands, the Isle of Man and the British overseas territories but that if OFCOM do represent any of them, the Secretary of State may direct them how.

* *communications functions* are defined in subsection (5) as any function concerned with the use of the radio spectrum, television or radio broadcasting regulation, or any other matter in respect of which OFCOM have functions.

* subsection (5) also defines *international meetings about communications* as international meetings concerned with the use of the radio spectrum, broadcasting regulation or provision, or any other matter in respect of which OFCOM have functions.

Section 23: Directions for international purposes in respect of broadcasting functions

70. This section gives the Secretary of State the power, by order, to give directions in respect of OFCOM's functions under the enactments relating to broadcasting. Such directions may be given only for the purposes of securing compliance with an international obligation of the United Kingdom.

* *international obligation of the United Kingdom* is defined in section 405(1) to include any Community obligation (within the meaning of the European Communities Act 1972) and any obligation under an international agreement or arrangement to which the United Kingdom is a party.

Section 24: Provision of information to the Secretary of State

71. This section provides that when directed to do so, OFCOM must provide the Secretary of State with such information as is required by the Secretary of State in order to enable her to secure compliance with an international obligation of the United Kingdom. This provision enables the Secretary of State to provide the European Commission with information requested pursuant to Article 25 of the Framework Directive, Article 16 of Directive 2002/20/EC ("the Authorisation Directive"), Article 15(2) and 17 of the Access Directive and Article 36(3) of Directive 2002/22/EC ("the Universal Service Directive").

Section 25: Community requirement to provide information

72. This section provides that OFCOM are under a duty to comply with a requirement to provide the European Commission with information for the purpose of enabling it to perform any of its functions in relation to electronic communications networks or services or associated facilities. This provision is necessary in order to implement Article 5(2) of the Framework Directive and Article 15 of the Access Directive.

Section 26: Publication of information and advice for consumers etc.

73. This section allows OFCOM to publish information and advice for customers of communications providers; customers of persons who make available associated facilities; users of electronic communications networks, electronic communications services or associated facilities; and persons to whom radio and television services are, or may be, provided. OFCOM should, where practicable, not publish confidential or private information relating to a particular individual or body where this might seriously adversely affect the interests of that individual or body.

74. This section implements Article 5(4) and (5) of the Framework Directive, Article 15(1) of the Authorisation Directive, Article 11(2) and 15(1) of the Access Directive, and Article 21(2) of the Universal Service Directive.

Section 27: Training and equality of opportunity

75. This section requires OFCOM to take all such steps as they consider appropriate to: (i) promote the development of opportunities for the training and re-training of persons for employment by broadcasters or for work in connection with the provision of the services that they provide, otherwise than as an employee; (ii) promote equality of opportunity in relation to employment by broadcasters and the training and retraining of persons for such employment; and (iii) promote the equalisation of opportunities for disabled persons in relation to such employment, training and retraining. It is envisaged that, under this section, OFCOM might, for example, carry out or commission research, publish such research or other information, hold conferences and promulgate codes of practice or other guidance.

Section 28: General power to charge for services

76. This section gives OFCOM a general power to prescribe or agree fees to be charged for the services they provide, save in respect of any service that they are under a duty to provide, or for which fees are expressly provided (or prohibited) elsewhere.

Section 29: Secretary of State guarantees for OFCOM borrowing

77. This section allows the Secretary of State to guarantee, in such manner and on such conditions as she thinks fit, the repayment of the principal of any borrowing by OFCOM, the payment of any interest on such borrowing or the discharge of any other financial obligation incurred by OFCOM connected with such borrowing. Subsection (3) limits the total amount payable by the Secretary of State in fulfilling any guarantees she may give to a sum not exceeding £5 million. Subsection (4) enables the Secretary of State to substitute a different total amount, subject to a draft order to that effect being laid before Parliament and approved by the House of Commons (subsection (5)). Where OFCOM give a guarantee under this section, they must lay a statement of the guarantee before each House of Parliament. Subsections (8) and (9) provide that any sums paid by the Secretary of State in fulfilling any guarantee she has given must be repaid by OFCOM as the Secretary of State directs and that payments are to be made with such interest, at such times and in such manner as she may determine.

Section 30: Transfers of property etc. from pre-commencement regulators

78. This section gives the Secretary of State a power to give directions requiring any pre-commencement regulator to make a scheme or schemes for the transfer to OFCOM of any of that regulator's property, rights and liabilities. The Office of Communications Act 2002 gives the Secretary of State a power to require that such schemes are prepared in draft form. Before making such a scheme the pre-commencement regulator must consult OFCOM.

79. Such transfer schemes will become effective only if the Secretary of State approves them. Subsection (6) allows the Secretary of State to approve such schemes subject to modification.

* the meaning of *modification* is given in subsection (1) of section 405 and includes omissions, alterations and additions. Cognate expressions shall be construed accordingly.

80. Subsections (10) and (11) provide for the circumstances in which the Secretary of State may herself prepare a transfer scheme. These are: (i) in order to transfer property, rights and liabilities from herself to OFCOM; and (ii) in order to transfer property, rights and liabilities from a pre-commencement regulator to OFCOM where either (a) the regulator has not complied with a direction of the Secretary of State to prepare a scheme, or (b) the scheme prepared by the regulator is not approved by the Secretary of State.

81. Schedule 2 covers the contents and effect of transfer schemes. It explains that a transfer scheme is to set out the property, rights and liabilities that are to be transferred. As soon as a scheme comes into force, property transferred by that scheme vests in OFCOM, and any agreement made by the transferor has effect as if made in the name of OFCOM. The Secretary of State may retrospectively modify the scheme as appropriate. The Schedule also describes the circumstances in which third parties whose interests are affected by the operation of a scheme — whether due to any diminution in value of their interests or rights, or any increase in the burden of their liabilities — are entitled to compensation. Any dispute as to compensation is to go to arbitration.

Section 31: Transitional functions and abolition of pre-commencement regulators

82. This section imposes a duty on the pre-commencement regulators to take all such steps as are necessary or expedient for ensuring that OFCOM are able effectively to carry out their functions from the time that they are vested in OFCOM. The Secretary of State may direct the pre-commencement regulators as to how to carry out this duty. OFCOM and the pre-commencement regulators must give the Secretary of State all such information and assistance as she requires for the purposes of carrying out her functions under section 30.

83. This section also gives the Secretary of State a power, by order, to appoint a day for the abolition of the offices of the pre-commencement regulators and of the advisory bodies established under section 54 of the Telecommunications Act 1984. The Secretary of State may appoint different days for the abolition of each of the different regulators and advisory bodies.

Section 54 of the Telecommunications Act 1984 provides for the establishment of various advisory bodies to advise the Director General of Telecommunications. The Secretary of State was required to set up an advisory body for matters affecting each of the following: England, Wales, Scotland, Northern Ireland, and the Director was required to establish advisory bodies for matters affecting small businesses, and matters affecting persons who are disabled or of pensionable age. In addition, the Director was empowered to establish such other advisory bodies as he thought fit. Section 54 is repealed by subsection (5) of section 31.

PART 2: NETWORKS, SERVICES AND THE RADIO SPECTRUM

Chapter 1: Electronic Communications Networks and Services

84. Chapter 1 of Part 2 of the Act provides for a new regulatory framework that will apply to all electronic communications networks, electronic communications services and associated facilities. Networks and services make up the communications infrastructure by means of which voice, content and other data are delivered to the consumer (the regulation of television and radio content is dealt with separately under Part 3 of the Act). This new regulatory framework implements a significant proportion of the harmonised framework for the regulation of electronic communications networks and services established by EC Communications Directives (see Appendices 2 and 3). The remainder will be implemented by secondary legislation or, where appropriate, administrative action.

85. The Act abolishes the criminal offence of running a telecommunications system without a licence currently contained in the Telecommunications Act 1984. In the new regulatory framework for electronic communications networks, electronic communications services and associated facilities, there will be no need to apply for a licence. Persons will automatically be entitled to provide an electronic communications network, electronic communications services or to make available associated facilities provided that, where required, they notify OFCOM of this intention and comply with certain regulatory conditions (known as conditions of entitlement) set by OFCOM.

Section 32: Meaning of electronic communications networks and services

86. This section sets out the meanings of the three key concepts — ‘electronic communications network’, ‘electronic communications service’, and ‘associated facility’ — that are referred to throughout this Part.

87. This section implements Article 2(a), (c), (e) and (m) of the Framework Directive.

**electronic communications network* is defined in subsection (1) as a transmission system for the conveyance, by the use of electrical, magnetic or electro-magnetic energy of signals of any description, and associated apparatus, software and stored data. Examples of such networks include satellite networks, fixed networks (whether circuit- or packet-switched, and including the Internet) and mobile terrestrial networks and networks used for radio and television broadcasting, including cable TV networks.

**electronic communications service* is defined in subsection (2) as a service consisting, or having as its principal feature, the conveyance, by means of an electronic communications network, of signals except in so far as it is a content service. Examples of such services include telecommunications services and transmission services in networks used for broadcasting.

**associated facility* is defined in subsection (3) as a facility which is available for use in association with an electronic communications network or service in order to make the provision of that network or service (or other services) possible, or to support the provision of other services. Examples of such facilities include conditional access systems and electronic programme guides.

**content service* is defined in subsection (7) as so much of a service as consists in (i) the provision of material with a view to it being comprised in signals conveyed

over an electronic communications network, or (ii) the exercise of editorial control over the contents of signals conveyed by means of such a network.

*a *signal* is defined in subsection (10) as including anything consisting of speech, music, sounds, visual images and communications or data of any description, and signals serving for the impartation of anything or for actuating or controlling any apparatus.

Section 33: **Advance notification to OFCOM**

88. This section allows OFCOM to designate certain classes of networks, services or associated facilities as requiring notification. Under subsection (1) no one may provide any network, service or associated facility that has been designated in this way, unless he has notified OFCOM in advance of his intention to do so. If a network, service or associated facility already being provided is subsequently designated by OFCOM as requiring notification, the person concerned must notify OFCOM within the time period specified in the designation. OFCOM must also be informed when a person intends to modify or to cease to provide a designated network, service or associated facility.

89. Subsection (5) lists the information that OFCOM may require to be contained in a notification. This basically consists of the information necessary to enable OFCOM to identify the person giving the notification, such as his name and address, a declaration of his proposal to provide, modify or cease to provide the network or service described in the notification or to make available, modify or cease to make available an associated facility, and details of when he intends to commence these activities. OFCOM may also require details of a person who can accept service on behalf of that person and a person who can be contacted if there is an emergency.

90. This section implements Articles 3(2) and (3) and 6(1), of and condition 10 of Part A of the Annex to, the Authorisation Directive.

Section 34: **Designations and requirements for the purposes of s. 33**

91. This section details the procedural requirements imposed on OFCOM regarding the making or withdrawal of a designation by them under section 33. Subsection (1) provides that OFCOM must consult with those likely to be affected by OFCOM's actions, and subsection (2) requires OFCOM to consult with the Secretary of State prior to making or withdrawing a designation.

92. This section forms part of the implementation of Article 6(1) of the Authorisation Directive.

Section 35: **Notification of contraventions of s. 33**

93. This section provides that where OFCOM have reasonable grounds to believe that a person has contravened his obligations under section 33, they may notify that person and allow him a specified period of time (usually one month) in which to make representations to OFCOM and to comply with his obligations.

94. This section and sections 36 and 37 implement Article 10(2) and (3) of the Authorisation Directive in the context of the enforcement of the advance notification requirements.

Section 36: **Enforcement notification for contravention of s. 33**

95. If, by the end of the period specified in the notification given under section 35, OFCOM are satisfied that a person has contravened section 33 and he has not provided them with all the information needed to remedy the contravention, subsection (2) allows OFCOM to serve an enforcement notification on the relevant provider. Such a notification requires the relevant provider to provide OFCOM with the information specified in the notification. Those persons to whom an

enforcement notice has been given are under a duty, enforceable by OFCOM via civil proceedings, to comply with it.

Section 37: Penalties for contravention of s. 33

96. If a person has contravened section 33 and, by the end of the period specified in the notification given under section 35, he has not provided OFCOM with all the information needed to remedy the contravention, OFCOM may impose a penalty. OFCOM may also impose a penalty if a person contravenes a requirement of an enforcement notification given under section 36. In deciding on the amount of a financial penalty under section 37, OFCOM are required to consider whether the financial penalty is appropriate and proportionate, and to take account of any representations made by the person concerned, and any steps taken by him to comply with section 33. The financial penalty shall not, in any event, exceed £10,000.

Section 38: Fixing of charges

97. This section gives OFCOM a power to require providers of particular designated networks, services or associated facilities, universal service providers designated by regulations under section 66 for the purposes of conditions relating to directories and directory enquiry facilities, suppliers of apparatus to whom SMP apparatus conditions apply (under section 93) and also persons to whom the electronic communications code has been applied who do not provide a designated electronic communications network (under section 106(4)), to pay a yearly administrative charge. Any such charges should be set by OFCOM in accordance with pre-determined “charging principles”, designed to ensure that the aggregate charges collected in any one year will just cover OFCOM's costs — in that same year — of carrying out the administrative functions listed in subsection (5). This section implements Articles 6(1), 12 and 13 of, and condition 2 of Part A of the Annex to, the Authorisation Directive. It should, however, be noted that although OFCOM are able to collect an administrative charge from a supplier of apparatus to whom an SMP apparatus condition (i.e. a condition set under section 45(9)) applies or from a provider of a system of conduits to whom the electronic communications code has been applied, the collection of the administrative charge for these purposes is not part of the implementation of those provisions.

98. Charges must also be objectively justifiable, proportionate and transparent. This implements Article 12(1) of the Authorisation Directive.

99. Subsection (9) obliges OFCOM to publish an annual statement of the aggregate charges collected (or to be collected) for that year, and the corresponding aggregate costs incurred in carrying out their administrative functions. Any deficit or surplus must be taken into account in setting charges for the following year. This implements Article 12(2) of the Authorisation Directive.

100. Paragraph 12 of Schedule 18 (transitional provisions) provides that where any licence fees in respect of licences granted under section 7 of the Telecommunications Act 1984 remain outstanding on the abolition of such licences, that liability is to have effect after the abolition as a liability to pay OFCOM so much of the amount outstanding as does not relate to times after the abolition.

101. For the purpose of ascertaining who is liable to pay an administrative charge, sections 135 and 137(6) enable OFCOM to publish a general demand for information.

Section 39: Supplemental provision about fixing charges

102. This section lays down the procedures (including consultation and publication) OFCOM must follow when they are setting administrative charges and determining “charging principles”.

103. Subsections (2) to (4) provide that when setting an administrative charge, OFCOM may make provision for a deduction from the charge in cases where a network, service or associated facility has been provided, or the universal service condition, electronic communications code or SMP apparatus condition has applied, for part of a year only. Conversely, a charge may apply to networks, services or associated facilities that were being provided, or to persons to whom the universal service condition, electronic communications code or SMP apparatus condition applied, in a particular year before the charge for that year was set, as long as this is consistent with the “charging principles” for that year. This would, for example, mean that OFCOM would have the flexibility to set the amount of the charge for a particular year after that charging year has commenced.

Section 40: Notification of non-payment of charges

104. This section allows OFCOM to notify persons who do not pay part or all of the administrative charges due to OFCOM, and sets out the procedures, such as giving notice and allowing for representations, to be followed by OFCOM in such cases. OFCOM may not bring proceedings for the recovery of administrative charges unless they have given a notification under this section.

105. This section and sections 41 to 43 relate to the enforcement of the administrative charge requirements contained in the Act and implement Article 10 of the Authorisation Directive.

Section 41: Penalties for non-payment of charges

106. If a person has failed to pay an administrative charge fixed under section 38 and has not paid the whole of the amount outstanding in the period allowed by the enforcement notification under section 40, OFCOM may fine the notified charge payer. In deciding on the amount of a fine, OFCOM are required to consider whether the fine is appropriate and proportionate, and to take account of any representations made by the person concerned and any steps taken by him to comply with section 38. The maximum fine that may be imposed under this section is twice the amount of the relevant administrative charge for the year in question.

Section 42: Suspending service provision for non-payment

107. This section gives OFCOM a power to suspend a person's entitlement to provide networks, services and/or associated facilities where OFCOM are satisfied that that person is or has been in serious and repeated breach of his obligations to pay administrative charges to OFCOM, that the breaches are not breaches relating only to charges in respect of the application of SMP apparatus conditions, that the bringing of proceedings and the imposition of penalties has failed to secure complete compliance and that such a response is appropriate and proportionate. However, under subsection (6) OFCOM may not issue a direction unless they have given the provider notice of the proposed direction and given him an opportunity to make representations about it and to propose steps to remedy the situation. Subsection (7) provides that this period must be at least one month.

108. A direction by OFCOM under this section may suspend entitlement generally or in relation to particular networks, services or associated facilities, or may restrict the entitlement in the way specified. A direction may impose conditions on the provider in order to protect the provider's customers. Subsection (8) enables OFCOM to revoke or modify suspensions and restrictions where they consider it appropriate to do so.

Section 43: Enforcement of directions under s. 42

109. It is an offence, punishable by a fine, for any person to provide an electronic communications network, electronic communications service or associated facility while he is subject to a direction

suspending his entitlement to do so, or to provide such a network, service or associated facility in contravention of a restriction in such a direction.

110. A contravention of a condition of a direction which results in any person sustaining loss or damage is actionable at the suit or instance of that person. It is a defence for the person providing the electronic communications network, electronic communications service or associated facility to show that he did all that was reasonable to avoid contravening the condition.

Section 44: Duty of OFCOM to keep publicly accessible register

111. This section places OFCOM under a duty to keep an up-to-date public register of designations made under section 33 or section 38, withdrawals of such designations and notifications given to them, or treated as given to them, under section 33. OFCOM must publish (and comply with) a notification setting out the times during which the register is available for public inspection and the fees (if any) that must be paid to inspect the register.

112. This section implements Article 3(3) of the Authorisation Directive.

Section 45: Power of OFCOM to set conditions

113. Under the regulatory framework provided for in Part 2, any person to whom OFCOM applies a condition under section 46 must comply with that condition. Section 45 gives OFCOM the power to set two categories of conditions — general conditions and specific conditions, the latter comprising universal service conditions, access-related conditions, privileged supplier conditions or significant market power (SMP) conditions. Subsection (10)(e) provides that the power to set conditions includes the power to revoke or modify conditions.

114. General conditions are conditions of general application and must be set in accordance with sections 51, 52, 57, 58 or 64. The ability to set such conditions implements Article 6(1) of, and partially implements Part A of the Annex to, the Authorisation Directive. It also implements Article 4(1) and 4(3) of the Access Directive.

115. Universal service conditions are conditions authorised or required under section 67 for the purpose of ensuring that certain minimum electronic communications networks and services and associated facilities are available at all times throughout the UK. The ability to set such conditions implements Article 6(2) of the Authorisation Directive and Articles 3 to 7 and 9 to 11 and Part A of Annex I to of the Universal Service Directive.

116. Access-related conditions are conditions authorised under section 73 for the purpose of ensuring adequate network access within communications infrastructure. The ability to set such conditions implements Article 6(2) of the Authorisation Directive and Articles 5(1) and (2) and 6 of the Access Directive.

**network access* is defined in section 151 as meaning (1) interconnection of public electronic communications networks; or (2) any services, facilities or arrangements (other than interconnection) by means of which a communications provider or a person making associated facilities available is able, for the purposes of the provision of an electronic communications service (whether by him or by another), to make use of any network or apparatus comprised in a network, or any service or facility capable of being used to provide a service.

117. Privileged supplier conditions can be applied where a communications provider enjoys special or exclusive rights in relation to the provision of any non-communications services. They are

intended to ensure the separation of the provider's activities as a communications provider from other aspects of his undertaking, and must comply with section 77. The ability to set such conditions implements Article 13 of the Framework Directive.

118. SMP conditions may be either an SMP services condition authorised or required under sections 87 to 92 or an SMP apparatus condition authorised under section 93. The ability to set SMP services conditions implements Article 6(2) of the Authorisation Directive, Articles 8 to 13 of the Access Directive, Article 16(2) of the Framework Directive and Articles 17 to 19 of the Universal Service Directive. SMP apparatus conditions are out with the scope of the EC Communications Directives because the supply of apparatus is not part of the provision of an electronic communications network or service. The power to set such conditions is therefore additional to the requirements of the Directives.

Section 46: Persons to whom conditions may apply

119. This section lists the persons to whom OFCOM may apply general conditions and specific conditions set in accordance with section 45.

120. Under subsection (2), OFCOM may apply general conditions to all persons providing electronic communications networks or electronic communications services or to all persons providing networks and services of a particular description specified in the general condition. General conditions may not be applied to persons providing associated facilities. Subsection (2) implements Articles 2(a) and 6(1) of the Authorisation Directive.

121. Under subsection (3), OFCOM may apply specific conditions to a particular person specified in the condition. This implements Article (2) of the Authorisation Directive and Article 13 of the Framework Directive.

122. Subsection (4) specifies that OFCOM may also apply a privileged supplier condition generally to public communications providers who enjoy special or exclusive rights in relation to the provision of services in other sectors (other than the provision of associated facilities) or to particular descriptions of public communications providers, as specified by OFCOM in the privileged supplier condition. Subsection (4) implements Article 13 of the Framework Directive.

123. Under subsection (5), universal service conditions may only be applied by OFCOM to particular communications providers, persons providing directories and persons providing directory enquiry facilities designated by OFCOM in accordance with regulations adopted under the provisions of section 66. Subsection (5) implements Article 8 of the Universal Service Directive and Article 6(2) of the Authorisation Directive.

124. Under subsection (6), where an access-related condition is imposed for the purpose of securing end-to-end connectivity as described in section 74(1), OFCOM may apply the condition to any person. In all other cases, access-related conditions may be applied by OFCOM to providers of electronic communications networks or associated facilities. Subsection (6) implements Article 6(2) of the Authorisation Directive and Article 5(1)(a) of the Access Directive.

125. Subsection (7) allows OFCOM to apply an SMP services condition to communications providers and persons providing associated facilities where (i) such persons have been designated as having significant market power in a specific market for electronic communications networks, electronic communications services or associated facilities; or (ii) for the purposes of compliance with an international obligation, it appears necessary to OFCOM to impose a condition that corresponds to an SMP services condition. Subsection (7) implements Article 6(2) of the Authorisation Directive,

Article 16(4) of the Framework Directive, Articles 8(2) of the Access Directive and Articles 17 to 19 of the Universal Service Directive.

126. Finally, subsection (9) permits OFCOM to apply an SMP apparatus condition to persons who supply electronic communications apparatus and have been determined by OFCOM to have significant market power in a specific market for electronic communications apparatus.

127. “Significant market power” is defined in section 78.

Section 47: Tests for setting or modifying conditions

128. OFCOM must not set or modify any general, access-related, privileged supplier, universal service or SMP conditions unless they satisfy the test in subsection (2). This provides that the condition or modification must be objectively justifiable, non-discriminatory, proportionate, and transparent. This implements Articles 6(1) and 14(1) of the Authorisation Directive, Articles 5(3) and 8(4) of the Access Directive and Articles 3(2), 9(5) and 17(2) of the Universal Service Directive.

Section 48: Procedure for setting, modifying and revoking conditions

129. This section sets out the procedural requirements for the setting, modification or revocation of conditions of entitlement. OFCOM are required by subsections (2), (3) and, where appropriate, (4) to consult on any proposal by them to set, modify or revoke a condition and to allow a period of at least one month for representations to be made to them on the matter. OFCOM are obliged by subsection (5) to set, modify or revoke a condition only after considering every representation received, and any international obligations of the UK drawn to their attention by the Secretary of State for this purpose. Subsection (6) requires OFCOM to publish each notification under this section in such manner as brings it to the attention of those to whom it is relevant. This implements Article 6 and 7 of the Framework Directive, Articles 5(3), 6(3), 8(4), and 15(1) of the Access Directive and Article 14(1) of the Authorisation Directive.

Section 49: Directions and approvals for the purposes of a s.45 condition

130. This section sets out the procedure that OFCOM or other authorised persons must follow when giving, modifying or withdrawing a direction, approval or consent that may be given under a condition of entitlement.

131. Where any authorised person other than OFCOM gives, modifies or withdraws a direction, approval or consent, that person must act in accordance with the six Community requirements set out in section 4.

132. Before a direction, approval or consent may be given, modified or withdrawn, a notification must be published that states that there is a proposal to give, modify or withdraw it, that identifies the person making the proposal, that explains what he is proposing and that sets out the direction, approval or consent that he proposes to modify or withdraw, its effect, the reasons for his decision and the period during which persons may comment on the proposal. The representations period must be at least one month, though (provided the notification is not one which needs to be sent to the European Commission in accordance with section 50(4) or (5)) it may be shorter in exceptional circumstances. If the condition to which the direction, approval or consent relates requires the authorised person to publish the notification, he must do so (subsection (7)). Otherwise OFCOM must publish the notification (subsection (8)).

133. An authorised person may adopt the direction, approval or consent, provided they have considered each comment made about the proposal within the period specified by him for comments

and he has had regard to the international obligations of the UK as notified to them by the Secretary of State for the purposes of section 49(9).

134. Any direction, approval or consent given, modified or withdrawn must be objectively justifiable, non-discriminatory, proportionate and transparent. This section implements Articles 6 and 7 of the Framework Directive.

Section 50: Delivery of copies of notifications etc.

135. This section requires the relevant person to send a copy of each of the following to the Secretary of State: (i) a notification under sections 48(1) or (2), (ii) a notification published under section 49(4), (iii) each direction, approval or consent giving effect to a proposal that must be published under section 49(4); and (iv) any instrument modifying or withdrawing a direction, approval or consent giving effect to such proposals.

** The relevant person* means, in relation to a notification, direction, approval or consent, the person by whom it is published or (as the case may be) by whom it has been or is to be given, modified or withdrawn. Where a direction, approval or consent is given, modified or withdrawn by a person other than OFCOM for the purposes of giving effect to a proposal published by OFCOM under section 49(4), OFCOM are the relevant person.

136. The relevant person must also send to the European Commission a copy of each of the following: every notification that is published under section 48(1), which sets out his proposal with respect to an SMP services condition, every direction, approval or consent given under an SMP services condition and every instrument modifying or withdrawing them.

137. OFCOM are required to send to the European Commission and to the regulatory authorities of every other member State, a copy of every notification that they publish under section 48(2), which sets out their proposals with respect to the setting, modification or revocation of an access-related condition falling within section 73(2) or (4) or an SMP services condition, where such proposals would, in OFCOM's opinion, affect trade between member States. This implements Article 7(3) of the Framework Directive.

138. OFCOM must send to the European Commission and to the regulatory authorities of every other member State, a copy of every notification that they publish under section 49(4), which sets out their proposals relating to the giving, modification or withdrawal of a direction, approval or consent under an access-related condition falling within section 73(2) or (4) or an SMP services condition, and where such proposals would, in their opinion, affect trade between member States. Where another person publishes a notification mentioned in section 49(4), he is required by subsection (5) to refer the question of whether the proposal would affect trade between member States to OFCOM, who must decide the matter immediately, and the person publishing the notification must act accordingly.

139. In cases which OFCOM consider would not affect trade between member States, the relevant person must, where he considers it appropriate, send a copy of every notification published under sections 48(1), 48(2) or 49(4), every direction, approval or consent given pursuant to a condition set under section 45 and every instrument modifying or withdrawing them to the European Commission and to such of the regulatory authorities of other member States as the relevant person thinks fit. However, the relevant person is not required to comply with this obligation where the

notification or the notified proposal relates to an SMP apparatus condition or to any direction, approval or consent modifying or withdrawing such a condition.

140. The requirements to send various matters to the European Commission and the national regulatory authorities of other member states set out in this section, implement Articles 8(5), 15(2) and 16(2) of the Access Directive and Article 36(2) of the Universal Service Directive.

Section 51: Matters to which general conditions may relate

141. Sections 51 to 64 set out the scope of OFCOM's power to set general conditions, and the procedural provisions applicable for that purpose.

142. Section 51 provides that, subject to sections 52 to 64, OFCOM may set general conditions only in relation to matters that are listed in subsection (1). The matters listed in subsection (1) include protection of end-users of public electronic communications services; network access and interoperability of services; protection of the integrity of public electronic communications networks and services; prevention (in accordance with European Community obligations) of interference with networks and services; provision for financial contributions towards the cost of universal service; provision of networks and services in the event of disaster; protection of public health; and compliance with relevant international standards. Sections 52 to 64 relate to customer interests, the assignment and use of telephone numbers and must-carry obligations.

* public electronic communications service is defined in section 151 as an electronic communications service provided to the public.

* *public electronic communications network* is defined in section 151 as an electronic communications network provided principally for the purpose of making services available to the public.

* *network access* is defined in section 151 as meaning (1) interconnection of public electronic communications networks; or (2) any services, facilities or arrangements (other than interconnection) by means of which a communications provider or a person making associated facilities available is able, for the purposes of the provision of an electronic communications service (whether by him or by another), to make use of any network or apparatus comprised in a network, or any service or facility capable of being used to provide a service.

* relevant international standards are defined in section 151 as meaning (1) any standards or specifications from time to time drawn up and published in accordance with Article 17 of the Framework Directive; (2) the standards and specifications adopted by the European Standards Organisations; and (3) the international standards and recommendations adopted by the International Telecommunications Union, the International Organisations for Standardisation or the International Electrotechnical Committee.

143. The subject matter set out in subsection (1) implements most of Part A of the Annex to the Authorisation Directive. For more detailed information see the Table in Appendix 2.

144. Subsection (3) provides that general conditions must be of general application. This means that the same general conditions must apply equally to all providers of the particular class of network or service to whom they are expressed to apply.

Section 52: Conditions relating to customer interests

145. Sections 52 to 55 place OFCOM under a duty to ensure that the communications industry has in place effective and accessible machinery for the protection of domestic and small business customers, including procedures for dealing with complaints and disputes. They allow OFCOM to take action if the industry does not voluntarily develop an effective regime for this purpose. Taken together these sections implement Article 34 of the Universal Service Directive and form part of the implementation of condition 8 of Part A of the Annex to the Authorisation Directive.

146. Section 52 provides that OFCOM must set such general conditions (if any) as they consider appropriate for securing that public communications providers establish procedures for dealing with domestic and small business customer complaints, and for resolving domestic and small business customer disputes. OFCOM are to ensure that, so far as they consider appropriate, such procedures are simple, transparent and effective, and that they can be used free of charge. The procedures as respect complaints are to be met through securing compliance with a code of practice that has been approved by OFCOM. The requirement to establish procedures for resolving customer disputes is to be met by the public communications providers establishing dispute resolution arrangements approved by OFCOM. The voluntary Ombudsman scheme for communications disputes recently adopted by Oftel is likely to be submitted to OFCOM for approval under these provisions.

* *public communications provider* is defined in section 151 as the provider of a public electronic communications network or service or an associated facility.

* the meaning of *domestic and small business customer* is given in subsection (6) and covers customers of communications providers who are neither (a) communications providers, nor (b) undertakings for which more than 10 people work.

Section 53: Approval of codes of practice for the purposes of s. 52

147. This section sets out the procedures and criteria for approval by OFCOM of codes of practice for dealing with customer complaints. OFCOM shall only approve such a code if it adequately protects the customers of public communications providers to whom the code applies.

148. Subsection (2) places OFCOM under a duty to keep under review codes of practice previously approved by them and subsection (3) allows OFCOM to approve modifications made to an approved code, to withdraw their approval, or to make their continuing approval conditional on the responsible providers making appropriate modifications to the code within a defined period of time.

149. In considering whether to approve (or to continue to approve) a code of practice, OFCOM are obliged to take into account whether the code is easily understandable by customers, the need for consistency between approved codes of practice and the need to keep the number of different approved codes to a minimum.

Section 54: Approval of dispute procedures for the purposes of s.52

150. This section sets out the procedures and criteria for approval by OFCOM of dispute procedures. Before OFCOM approve a dispute procedure, they must be satisfied that the procedure satisfies the criteria set out in subsection (2), including accountability, independence and transparency, and they must consult the Secretary of State. The procedures and criteria for approval of dispute procedures are similar to those for approval of codes of practice (outlined in the notes to section 53).

Section 55: Orders by OFCOM in the absence of conditions under s. 52

151. This section enables OFCOM, by order, with the consent of the Secretary of State, to take appropriate measures where public communications providers have failed to put in place suitable procedures, standards and policies for complaints handling and dispute resolution, and where OFCOM consider it necessary for the protection of customers or to comply with EU obligations. Appropriate measures by OFCOM may include establishing an independent body corporate to administer and enforce the necessary arrangements, and obliging public communications providers to pay for the establishment and maintenance of such a body.

Section 56: The National Telephone Numbering Plan

152. OFCOM are to publish a document (the National Telephone Numbering Plan) setting out the telephone numbers available for allocation and the restrictions on the adoption and use of telephone numbers allocated under the Plan. One way in which OFCOM might choose to set the numbers out could be as blocks or series of numbers. This implements Article 10(3) of the Framework Directive and Article 27 of the Universal Service Directive. OFCOM are under a duty to review and, if they think fit, to revise the Plan, but subject to the requirements of section 60. OFCOM must also keep day-to-day records of the telephone numbers actually allocated by them under the National Telephone Numbering Plan.

* references to a telephone number are, under subsection (5), references to any number used for identifying the origin, destination or route of an electronic communication. A telephone number is also a number that may be used for selecting a service or for identifying by whose service or network a communication is to be sent; but under subsection (7), the Secretary of State may exclude any description of number from the numbers to be treated as telephone numbers.

* *adoption of a telephone number* occurs, under subsection (6), where a communications provider allocates or transfers that number to a customer or piece of apparatus, or uses that number for identifying the origin, destination or route of an electronic communication, or designates that number for use in selecting a service, or authorises the use of that number by others for any of the purposes mentioned in subsection (5).

* *number* is defined in subsection (10) as including data of any description.

Section 57: Conditions to secure access to telephone numbers

153. OFCOM may set general conditions to ensure that telephone users are able to communicate with every normal telephone number: this implements Article 6(1) of, and condition 4 of Part A of the Annex to the Authorisation Directive and Article 27 and 28 of the Universal Service Directive.

* a *normal telephone number* is defined in subsection (2) as a number allocated under the National Telephone Numbering Plan for the purpose of identifying the destination for, or the recipient of, communications which has been adopted by a communications provider as a number to be used for that purpose or which has been allocated in accordance with section 59 and is used for that purpose by a person other than a communications provider.

Section 58: Conditions about allocation and adoption of numbers

154. Subsections (1) and (2) allow OFCOM to set general conditions which provide for the matters listed, which broadly cover the requirements to be complied with by communications providers in respect of the adoption and use of telephone numbers; procedures for applying to OFCOM for

numbers to be allocated; procedures for the adoption of numbers by communications providers; the circumstances in which numbers are required to be transferred from one provider to another; and payments to be made for allocation and transfer of numbers.

155. Subsection (5) provides that OFCOM may allocate particular telephone numbers by means of an auction.

156. Subsections (6) to (9) apply to any conditions set by OFCOM that enable them to determine the payments (including periodic payments) to be made to them in respect of the allocation or transfer of telephone numbers. OFCOM must stipulate in such conditions the principles in accordance with which they will determine the amounts of any such payments. For example, the amount may be determined by reference to bids at an auction, or to the costs incurred by OFCOM, or to any other factors OFCOM may think fit. OFCOM may require payments to be made by means of a lump sum or periodic payments or both. Conditions set subsequently may modify the amounts of (or the method of determining) periodic payments, except where the amount of these payments has been set by auction. Paragraph 16 of Schedule 18 (transitional provisions) provides that any telephone numbers allocated to a holder of a licence granted under section 7 of the Telecommunications Act 1984 shall be treated as if they were allocated to that person under section 58. This section implements most of Part C of the Annex to the Authorisation Directive. For more detailed information see the Table in Appendix 2.

Section 59: Telephone numbering conditions binding non-providers

157. OFCOM may set conditions to be complied with by persons who are not communications providers in respect of the allocation, transfer and use of telephone numbers. The duty will be enforceable by OFCOM in civil proceedings. OFCOM must comply with sections 47 to 49 when setting, modifying or revoking any telephone numbering condition which applies to non-communications providers or giving, modifying or withdrawing any direction, approval or consent given by them for the purpose of any condition.

Section 60: Modification of documents referred to in numbering conditions

158. This section sets out the procedure that OFCOM must follow when revising or otherwise modifying the National Telephone Numbering Plan or any other document referred to in a numbering condition authorised by section 57 or 58 or set by OFCOM under section 59.

159. Before revising or otherwise modifying a provision of the National Telephone Numbering Plan or other document referred to in a numbering condition (a “relevant provision”), OFCOM must publish a notification that explains the effect of and the reasons for the revisions or modifications. OFCOM must also give no less than one month for persons to comment on the proposal. OFCOM may modify the National Telephone Numbering Plan or other document if they have considered each comment made about the proposal within the period specified by them for comments and they have had regard to international obligations of the UK notified to them by the Secretary of State for the purposes of this section.

160. Any modification of a relevant provision of the National Telephone Numbering Plan or other document must be objectively justifiable, non-discriminatory, proportionate and transparent. This section implements, in part, Article 14.1 of the Authorisation Directive.

Section 61: Withdrawal of telephone number allocations

161. This section sets out the circumstances in which OFCOM may withdraw an allocation of telephone numbers.

162. Subsection (2)(a) and (b) provides that an allocation may be withdrawn by consent, or where this is necessary for a transfer of numbers. subsection (2)(c) and section 62 provide that an allocation may be withdrawn to facilitate a “numbering reorganisation” in respect of a particular series of numbers. Subsection (2)(d) provides that an allocation may be withdrawn in circumstances specified in numbering conditions and for the purpose of securing the best and most efficient use of telephone numbers (subsection (5) provides that subsection (2)(d) does not apply to a numbering reorganisation and that any circumstances specified in a numbering condition must not unduly discriminate between communications providers and users). Subsection (2)(e) and (f) provides that an allocation may be withdrawn where it consists of numbers, or part of a series of numbers, which have not been adopted by the communications providers concerned during the time period stipulated in the general conditions. Before withdrawing an allocation under subsection (2)(e) or (f), OFCOM must follow the procedures set out in subsections (6) and (7) with respect to notification and allowing for representations.

163. An allocation may also be withdrawn where the person allocated the number has repeatedly and seriously contravened the numbering conditions and where no other remedy is likely to secure compliance. Any contraventions of numbering conditions may justify withdrawal of numbers from a non-provider (subsection (4)). This implements Article 10(2) and 10(5) of the Authorisation Directive so far as enforcement of numbering conditions is concerned.

Section 62: Numbering reorganisations

164. An allocation can only be withdrawn for the purposes of a numbering reorganisation if it does not unduly discriminate against particular communications providers, users of the allocated numbers or a particular description of providers or users, and if OFCOM make a replacement allocation of similar numbers to the person affected. OFCOM may not require a new payment to be made for a replacement allocation. However, in cases where periodic payments are still outstanding in respect of the allocation which has been withdrawn, OFCOM may require the balance of those payments to be made in respect of the replacement allocation, with such adjustments as OFCOM may think fit. This implements condition 2 of Part C of the Annex to the Authorisation Directive.

Section 63: General duty as to telephone numbering functions

165. This section places OFCOM under a duty, in carrying out their functions under sections 56 to 62, to ensure the best use of telephone numbers. OFCOM are also required to ensure that communication providers do not discriminate against other providers in relation to the adoption of telephone numbers: this implements Article 10.2 of the Framework Directive.

Section 64: Must-carry obligations

166. General conditions may include provision to ensure that services on the must-carry list are carried by networks which are used by a significant number of end users as their principal means of receiving television.

167. The must-carry list contains the following services: a service of television programmes provided by the BBC in digital form (where the service is one in relation to which OFCOM have functions), digital Channel 3, digital Channel 4, digital Channel 5, S4C Digital and the digital public teletext service.

168. The requirement to carry a listed service will also apply to any ancillary services (such as subtitling or other assistance to disabled people) related to that service, and may be treated as

consisting of such other services comprised in or provided with that service as may be determined by OFCOM.

169. General conditions containing provisions authorised under section 64 must comply with any order made by the Secretary of State under subsection (5) to set the minimum and maximum capacity that a listed service must or may use on a network.

170. The Secretary of State, when setting the maximum or minimum capacity to be used by a listed service, must have regard (a) to the objective of securing that the services on the must-carry list, together with any others to which provisions authorised under section 64 apply, are available for reception by as many members of the public in the United Kingdom as practicable, and (b) to the need to secure that the amount of capacity left available is reasonable and, accordingly, that the burden imposed on the cable operator under this section is proportionate to the public benefit obtained.

171. The Secretary of State can also make an order which sets the terms on which a service on the must-carry list is to be broadcast (or provides for OFCOM to set such terms). This can include a requirement that no payment is made by the service provider or the network provider.

172. The Secretary of State must, from time to time, review the must-carry list and any requirements as to the terms on which services in that list must be broadcast. When carrying out a review the Secretary of State must consult OFCOM and other parties likely to be affected by a modification to the must-carry list. Following such a review, the Secretary of State may, by order, amend the must-carry list. When determining whether or not it is appropriate to amend the list, she must consider the public benefit in doing so, the extent to which a service would otherwise be made available even if not added to the list, the amount of spare network capacity of providers of electronic communications networks to whom the must-carry obligations apply and whether the burden of compliance is proportionate to the objective of securing that must-carry services are made available to the public.

173. She must consult OFCOM and such persons who, in her opinion, are likely to be affected by an order, or who represent any of those persons, as she thinks fit:

- before making an order under subsection (5) (to set minimum and maximum capacity);
- and
- before making an order under subsection (11) (as to the terms of carriage).

This does not apply when a review has been carried out under subsection (7), as a full consultation is already required under subsection (8).

174. This section implements Article 6(1) of, and condition 6 of Part A to the Annex to the Authorisation Directive and Article 31 of the Universal Service Directive.

Section 65: Obligations to be secured by universal service conditions

175. Sections 65 to 72 describe OFCOM's and the Secretary of State's functions relating to universal service.

176. Sections 65 and 67 to 69 implement Articles 3 to 7 and 9 to 11 of, and Part A of Annex I to, the Universal Service Directive. Section 66 implements Article 8 of the Universal Service Directive and Articles 4(2) and 6(2) of the Authorisation Directive and sections 70 to 72 implement Articles 12 to 14 of the Universal Service Directive.

177. Under section 65 the Secretary of State is required by order (which may be varied at any time) ("the universal service order") to set out the electronic communications networks, electronic

communications services, associated facilities, directories and directory enquiry facilities, and particular methods of billing for services or of accepting payment for them that must be provided throughout the UK by universal service providers. Before making or varying the universal service order, the Secretary of State must consult OFCOM and other appropriate persons.

178. The objective behind “universal service” obligations is to ensure that the basic communications services which are used by the majority, and which are essential to full social and economic inclusion, are made available to everyone who reasonably requests them at an affordable price.

Section 66: Designation of universal service providers

179. OFCOM have the power, by regulations, to provide for a procedure for designation of communications providers (or persons who are not communications providers, in the case of supplying directories or directory enquiry facilities) who will be subject to universal service conditions. Such regulations must establish an efficient, objective, transparent, and non-discriminatory procedure for designation. Regulations made under this section are also to provide for a designation to cease to have effect where all the universal service conditions applying to a provider are revoked.

180. Where OFCOM designate a person as a universal service provider, or where a designation ceases to have effect, they must notify this fact to the European Commission. This implements Article 36(1) of the Universal Service Directive.

Section 67: Subject matter of universal service conditions

181. This section enables OFCOM to set universal service conditions for securing the provision of the networks, services and facilities etc. set out in the universal service order published by the Secretary of State under section 65. In setting such conditions OFCOM must have regard to any guidance about matters relating to pricing that is contained in the universal service order.

182. Persons who are subject to universal service conditions will be required to publish up-to-date information demonstrating how successful they are in complying with their obligations. The information is to be framed in accordance with the quality of service parameters, definitions and measurement methods set out in Annex III to the Universal Service Directive. The person may also be required to finance the independent auditing — for accuracy and usefulness — of such information. OFCOM may also impose performance targets.

Section 68: Tariffs etc. for universal services

183. This section requires OFCOM to keep under review universal service tariffs. Universal service conditions can require a common tariff (which includes any pricing structure) or, in specified cases, a special tariff for provision of the networks, services, apparatus, associated facilities, directories and directory enquiry facilities set out in the universal service order. At no time should the customer of a universal services provider be required to pay for any service which is not necessary for the provision of the universal service in question.

Section 69: Directories and directory enquiry facilities

184. This section provides that where the universal service conditions require the provision of directories or directory enquiry services, the provider must not excessively discriminate against any provider who provides information for use in that directory, or against any information so provided.

Section 70: Review of compliance costs

185. This section enables OFCOM periodically to analyse the financial cost to a designated provider of complying with universal service conditions applied to him. OFCOM must then have these costs audited by an independent auditor, or must themselves audit those figures. OFCOM are under a duty to publish their conclusions, alongside a summary of the audit report.

Section 71: Sharing of burden of universal service obligations

186. If, following a study of costs pursuant to section 70, OFCOM conclude that a financial burden is imposed on the provider of universal services, OFCOM must assess whether it would be unfair for that provider to shoulder the entire burden. If OFCOM determine that it would be unfair, and if the provider applies to OFCOM, OFCOM may determine that contributions from other communications providers, who themselves are subject to general conditions, are to be made. Subsection (4) provides that all this should be carried out in accordance with regulations made by OFCOM. These regulations should ensure that the calculation, collection and distribution of such contributions is to be done in an objective, transparent, and non-discriminatory way, and in a manner that avoids or minimises any distortion to competition or demand.

187. Section 51(1)(d) enables OFCOM to set general conditions giving effect to determinations or regulations made under this section. This implements condition 1 of Part A of the Annex to the Authorisation Directive.

Section 72: Report on sharing mechanism

188. This section provides that where regulations that provide for the sharing of the financial burden of providing universal services are in place under section 71, OFCOM must prepare and publish an annual report. However, OFCOM are not obliged to publish any confidential material.

* material is *confidential* if it falls within subsections (7) or (8), i.e. if it relates specifically to the affairs of a particular body, or the private affairs of an individual, in each case where publication could seriously prejudice that body's or person's interests.

Section 73: Permitted subject matter of access-related conditions

189. This section governs OFCOM's power to set access-related conditions. OFCOM may set access-related conditions only in relation to one or more of the matters listed in subsections (2) to (5).

190. Subsection (2) allows OFCOM to set access-related conditions for the purpose of ensuring a level of network access and interoperability which will secure efficiency, sustainable competition and the greatest possible benefit to end-users. These access-related conditions include, but are not limited to, the specific type of access-related conditions set out in section 74. This provision, together with section 74, implements Article 5(1) of and Part II of Annex I to the Access Directive and Article 2(p) of the Framework Directive.

191. Subsection (3) allows OFCOM to set access-related conditions to secure the sharing of apparatus and the division of the costs incurred by those to whom the electronic communications code applies, in cases where there is no viable alternative. This implements Article 12(2) of the Framework Directive.

192. Subsection (4) allows OFCOM to set access-related conditions of a technical or operational nature to ensure the proper operation of an electronic communications network in compliance with

any SMP services conditions falling within section 87(3). Section 87(3) allows OFCOM to set SMP conditions requiring the dominant provider to give entitlements in relation to network access, use of relevant networks and availability of relevant facilities. This provision, together with section 75(1), implements Article 5(2) of the Access Directive.

193. Finally, subsection (5) provides that OFCOM may set access-related conditions in respect of conditional access systems in accordance with section 75(2). This provision, together with sections 75(2) and 76, implements Article 6 of, and Part I of Annex I to, the Access Directive and Article 2(f) of the Framework Directive.

* *conditional access system* is defined in section 75 (see below).

Section 74: Specific types of access-related conditions

194. Section 73(2) allows OFCOM to set access-related conditions for the purpose of ensuring a level of network access and interoperability which will promote efficiency and sustainable competition and the greatest possible benefit end-users. Section 74 provides that such conditions include those designed to ensure end-to-end connectivity. It also provides that conditions can be set for securing that the use of Application Programme Interfaces (APIs) and Electronic Programme Guides (EPGs) is provided on a fair, reasonable and non-discriminatory basis.

* *end-to-end connectivity* is defined in subsection (3) as the ability for two parties to communicate with each other whether they are using the same or different public electronic communications services.

* the meaning of *application programme interface* is given in subsection (3) as a facility for allowing software to use facilities in other software in order to allow someone to access a programme service or become the ultimate user of any network or service by means of which any programme service is broadcast or otherwise transmitted.

* *electronic programme guide* is defined in subsection (3) as any facility by means of which a person may ascertain what programmes are included in a service, and may access that service.

Section 75: Conditional access systems and access to digital services

195. Subsection (1) provides that OFCOM must ensure, when setting an access-related condition of a technical or operational nature for providers with significant market power (SMP), that they take account of all relevant international standards (which are defined in section 151).

196. Subsection (2) provides that OFCOM are under a duty to ensure that access-related conditions are applied to every person who provides a conditional access system in relation to a protected programme service, and that such conditions comply with Part I of Annex I of the Access Directive.

* *conditional access system* is defined in subsection (3) as any arrangements by means of which access to a programme service requires either subscription or authorisation.

* *protected programme service* is defined in subsection (3) as a service which is encrypted such that the programmes on it can only be viewed or listened to in an intelligible form by the use of a conditional access system.

Section 76: Modification and revocation of conditions imposed under s.75

197. This section provides that OFCOM may not modify or revoke any access-related conditions that they have set falling within section 75(2) unless they have carried out a market analysis from which they have concluded that the provider of conditional access systems to whom the condition applies does not have SMP. They must ensure that the proposed modification or revocation will not adversely affect the accessibility to persons of must-carry services or the prospects for effective competition.

Section 77: Imposition of privileged supplier conditions

198. Where a public electronic communications provider enjoys special or exclusive rights in relation to the provision of services in other sectors (other than the provision of associated facilities), OFCOM must set such privileged supplier conditions as they think fit (unless that provider has an annual turnover in relation to all of his communications activities of less than £50 million, in which case OFCOM are not obliged to impose a condition, but may do so if they wish). Such conditions can require such providers to keep separate accounts (all of which should be audited and published), or to have structural separation between different activities. This implements Article 13 of the Framework Directive.

** special or exclusive rights* has the same meaning as in Article 86 of the Treaty establishing the European Community. Although the Treaty does not itself define them, guidance is given in Article 2(1)(f) and (g) of the Commission Transparency Directive OJ [1980] L 195/35. These rights are often, but need not be, given to public undertakings. Exclusive rights are largely self-explanatory but should be analysed in a functional rather than formalistic manner. Case law indicates that special rights are rights granted by a Member State to a limited number of undertakings where this limits — otherwise than according to objective, proportionate and non-discriminatory criteria — the number of undertakings authorised to provide a service in a particular area.

Section 78: Circumstances required for the setting of SMP conditions

199. Sections 78 to 93 concern OFCOM's powers and duties to identify markets, determine whether persons have significant market power (SMP) on those markets, and to impose SMP conditions on persons whom they have determined as having SMP.

200. Section 78 sets out when a person shall be taken to have SMP in relation to a particular market. A person will only be taken to have significant market power where he is, alone or with others, in a position of dominance in a market. A position of dominance must be construed in accordance with any applicable provisions of Article 14 of the Framework Directive, which (at its paragraph 2) defines dominance as 'a position of economic strength affording the person the power to behave to an appreciable extent independently of competitors, customers and ultimately consumers'. A determination of joint dominance must take into account, in particular, the criteria for joint dominance set out in Annex II to the Framework Directive. This implements Article 14 of and Annex II to the Framework Directive.

Section 79: Market power determinations

201. Subsection (1) provides that before making a determination that a person has SMP, OFCOM must first identify the markets in which they consider it will be appropriate to carry out a market analysis and then carry out that analysis. When identifying appropriate services markets and when making SMP determinations in relation to a services market, OFCOM are obliged to take due

account of all relevant European Commission guidelines and recommendations — the first such recommendation was published by the European Commission on 11 February 2003: the recommendation can be viewed on the European Commission website (http://europa.eu.int/information_society/topics/telecoms/regulatory/maindocs/documents/recomen.pdf). The way in which a market is to be identified or a market determination made is by the publication of a notification under subsection (4). This section implements Articles 15 and 16 of the Framework Directive. The Electronic Communications (Market Analyses) Regulations 2003 (S.I. 2003/330) empower Ofcom to carry out market analyses and to make proposals for market power determinations and the setting of conditions in advance of the passing of the Act. Paragraph 10 of Schedule 18 to the Act provides that proposals confirmed under those Regulations have effect under this section and other relevant sections after the provisions of the Act have been commenced.

Section 80: Proposals for identifying markets and for market determination proposals

202. Before identifying a market for the purposes of making a market power determination or making a market power determination, Ofcom must publish a notification of what they are proposing to do. A notification under this section must state that Ofcom are proposing to identify that market or to make a market power determination, set out the effect of the proposal, give their reasons for making the proposal and specify the period (not less than one month from the date of the publication of the notification) within which representations about the proposal may be made to Ofcom.

203. Subject to sections 82 and 83, subsection (6) provides that Ofcom may give effect, with or without notifications, to a proposal notified in accordance with this section, provided they have considered every representation about the proposal made within the period specified by them and they have regard to every international obligation of the United Kingdom (if any) notified to them by the Secretary of State.

204. This section implements Articles 6, 7 and 16(1) of the Framework Directive.

Section 81: Delivery of copies of notifications under ss. 79 and 80

205. Ofcom must send a copy of every notification published under section 79(4) or 80 to the Secretary of State. Ofcom must also send to the European Commission: (i) a copy of every notification published under section 79(4) with respect to a market power determination in relation to an SMP services market; and (ii) a copy of every notification published under section 80 which relates to a proposal to identify a services market or to make a market power determination in relation to such a market; and which in Ofcom's opinion would affect trade between member States. A copy of a notification falling within (ii) must also be sent to the regulatory authorities of every other member State.

206. In all other cases when it appears to them appropriate to do so, Ofcom must send a copy of a notification published under section 80 which relates to a proposal to identify a services market or to make a market power determination in relation to such market to the European Commission and such of the regulatory authorities of the other member States as Ofcom think fit.

207. The various requirements in this section to send matters to the European Commission implement Article 16(2) of the Access Directive, Article 36(2) of the Universal Service Directive and Article 7(3) and (5) of the Framework Directive.

Section 82: European Commission's powers in respect of proposals

208. During the period given for representations under a notification under section 80 relating to an SMP services condition, the European Commission may inform OFCOM that they believe that the proposed market identified in the notice or OFCOM's proposed market determination may not be compatible with the single European market, or with any Community obligations. In such a case, OFCOM may not give effect to their proposal for a further two months. OFCOM must withdraw their proposal if in accordance with the procedure in Article 7(4) of the Framework Directive the Commission, within that two-month period, decides that the proposal must be withdrawn. This implements Article 7(4) of the Framework Directive.

Section 83: Special rules for transnational markets

209. When the European Commission identifies a transnational services market that includes the United Kingdom, OFCOM are required to make arrangements with all other relevant regulatory authorities to deal with the following issues:

- the identification of the market;
- assessing whether a person has SMP in the relevant transnational services market(s);
- the setting of appropriate SMP services conditions as well as the modification or revocation of such conditions; and
- the procedures to be followed to secure that OFCOM and other regulatory authorities comply with their agreed arrangements.

210. This implements Articles 2(b), 15(4) and 16(5) of the Framework Directive.

Section 84: Review of services market identifications and determinations

211. Where OFCOM have identified and analysed a services market for the purposes of making a market power determination, OFCOM must, at such intervals as they consider appropriate, carry out further analyses of the identified market for the purposes of reviewing the determinations made on the basis of the earlier analysis and deciding whether to modify any SMP condition set on the basis of that earlier analysis (subsection (2)). Where OFCOM determine that a person to whom any SMP conditions are applied no longer has SMP, they must revoke every SMP services condition applied to that person by reference to the market power determination made on the basis of the earlier analysis.

212. Subsection (3) requires OFCOM to carry out further analysis of a services market as soon as reasonably practicable after the European Commission makes any recommendation that affects the matters that were (or could have been) taken into account in the earlier market analysis.

213. Before carrying out further analysis for the purposes of subsection (2), OFCOM may review any of their decisions identifying the appropriate markets that they considered in their earlier analysis. Where OFCOM conclude that the appropriate markets have changed, OFCOM must identify the markets they now consider to be appropriate and those markets must be the identified markets for the purposes of further analysis.

214. Sections 79 to 83 apply in relation to the identification of a services market for the purposes of reviewing a market power determination and in relation to the review of such a determination.

215. This section implements Article 16(1) and (3) of the Framework Directive, Article 7(3) of the Access Directive and Articles 16(3) and 18(2) of the Universal Service Directive

Section 85: Review of apparatus market identifications and determinations

216. Where OFCOM have identified and analysed an apparatus market for the purposes of making a market power determination, OFCOM must, at such intervals as they consider appropriate, carry

out further analyses of the identified market for the purposes of reviewing the determinations made on the basis of the earlier analysis and deciding whether to modify any SMP condition set on the basis of that earlier analysis (subsection (2)). Where OFCOM determine that a person to whom any SMP conditions are applied no longer has SMP, they must revoke every SMP apparatus condition applied to that person by reference to the market power determination made on the basis of the earlier analysis.

217. Before carrying out that further analysis OFCOM may review any of their decisions identifying the appropriate markets that they considered in their earlier analysis. Where OFCOM conclude that the appropriate markets have changed, OFCOM must identify the markets they now consider to be appropriate and those markets must be the identified markets for the purposes of further analysis.

218. Sections 79, 80 and 81(1) apply in relation to the identification of an apparatus market for the purposes of reviewing a market power determination and in relation to the review of such a determination.

Section 86: Cases where review required

219. This section prohibits OFCOM from setting an SMP services condition by a notification (other than by a notification which also makes the market power determination by reference to which the condition is set) unless (i) the condition is set by reference to a market power determination which has been reviewed under section 84; or (ii) the condition is set by reference to a market power determination made in relation to a market in which OFCOM are satisfied there has been no material change since the determination was made.

* A change is material for the purposes of this section if it is material to the setting of the condition in question or the modification or revocation in question.

220. OFCOM must not modify or revoke SMP services conditions applying to a person except where: (i) for the purpose of determining whether to make the modification or revocation, they have carried out further analysis under section 84 of the market in question and reviewed the market power determination for the time being in force in that person's case; or (ii) they are satisfied that there has not been a material change in the market identified or otherwise used for the purposes of the market power determination by reference to which the condition was set or last modified.

221. OFCOM must not modify SMP apparatus conditions applying to a person except where, for the purpose of determining whether to make the modification or revocation, they have carried out a further analysis under section 85 of the market in question; and reviewed the market power determination for the time being in force in that person's case.

Section 87: Conditions about network access etc.

222. Sections 87 to 92 make provision about the subject matter of SMP services conditions. Where OFCOM have identified a provider of a public electronic communications network or a person who makes available associated facilities in connection with such a network as having SMP in a services market, they may impose such SMP conditions authorised by this section, as they consider appropriate. These may include conditions requiring the provider to confer entitlements on other providers regarding the provision of network access, the use of that network, and the availability of facilities. Such conditions may include provision for securing fairness and reasonableness in the process and should be set having taken into account the matters set out in subsection (4). These include the feasibility of providing network access; the need to ensure effective long-term competition in the markets; the investment made by the person initially providing or making

available the network or facility in respect of which an entitlement to network access is proposed; the technical and economic viability of installing and using facilities that would make the proposed network access unnecessary; intellectual property rights; and the availability of services throughout the European Union.

223. Subsection (6) provides that SMP service conditions may require a person with SMP to publish such information as OFCOM may direct for the purpose of securing transparency in relation to network access. They may require such a person not to discriminate in relation to any matter connected with network access. They may require such a person to publish the terms and conditions on which the provider will enter an access contract and to modify those terms and conditions.

* an *access contract* is defined in subsection (12) as any contract for the provision, by a dominant provider, of network access, or of associated facilities made available in relation to a public electronic communications network.

224. Subsection (7) provides that OFCOM may set SMP services conditions obliging a dominant provider to maintain separate accounts for such different matters relating to network access or the availability of associated facilities as OFCOM may direct.

225. Subsection (9) provides that OFCOM may set SMP services conditions requiring a person with SMP to comply with price-controls, rules on cost-recovery and cost accounting systems in relation to matters connected with network access or the availability of associated facilities. OFCOM may also, by setting such conditions, direct the provider to adjust its prices.

226. This section, together with sections 88 and 89, implement Articles 8 to 13 of the Access Directive, Article 6(2) of the Authorisation Directive and Article 16(4) of the Framework Directive.

Section 88: Conditions about network access pricing etc.

227. OFCOM may not set conditions under section 87(9) unless it appears to them from a market analysis that the provider in question might charge excessive prices or engage in other anti-competitive pricing behaviour. The condition must also be perceived by OFCOM as being efficient and pro-competitive, and as resulting in the maximum benefit to end-users. In setting an SMP services condition falling within section 87(9), OFCOM must take into account the extent of the investment that the person to whom the condition is to apply would need to make if the condition were to be applied.

Section 89: Conditions about network access in exceptional cases

228. In exceptional circumstances, OFCOM may decide that SMP services conditions additional to those set out in sections 87 and 88 (SMP services conditions about network access) need to be imposed on a provider. Such additional SMP services conditions must be submitted by OFCOM to the European Commission for approval and OFCOM can only apply them once they are approved.

Section 90: Conditions about carrier selection and pre-selection

229. Where the relevant market is one relating to services for the provision of public fixed line telephone networks, OFCOM may set conditions obliging providers with SMP to make a relevant connection facility available to any person to whom they provide a public electronic communications service, or to make interconnection facilities available to a person providing an electronic communications service. OFCOM must also set pricing conditions to ensure that charges imposed by the provider with SMP do not constitute a barrier to use of the facility. Conditions set by OFCOM under this section may impose obligations relating to the manner in which a relevant connection

facility is to be made available or in which the facilities for interconnection that are to be made available to a person providing an electronic communications service. This section implements Article 19 of the Universal Service Directive, Article 6(2) of the Authorisation Directive and Article 16(4) of the Framework Directive.

* *relevant connection facility* is defined in subsection (6) as a facility which allows the end-user to select which carrier to use. This may be specified on every occasion of use (carrier selection), or by designating a carrier in advance (carrier pre-selection).

Section 91: Conditions about regulation of services etc. for end-users

230. This section deals with the situation where the relevant services market is one for the end-users of public electronic communications services, and where access-related conditions, and SMP conditions set under sections 87 to 90, are not sufficient to allow OFCOM to perform their duty under section 4. In such a case, OFCOM may set conditions obliging the provider to comply with such regulatory controls as OFCOM consider appropriate.

231. If such regulatory controls are imposed on tariffs, or on other matters to which costs are relevant, the provider may be obliged to use such cost accounting systems as OFCOM direct, to have those systems annually audited and to publish an annual statement as to its compliance with those obligations. OFCOM must provide the European Commission with whatever information they require about conditions authorised by this section. This section implements Article 17 of the Universal Service Directive, Article 6(2) of the Authorisation Directive and Article 16(4) of the Framework Directive.

Section 92: Conditions about leased lines

232. Where the relevant services market relates to the provision of such leased lines as are identified by the European Commission in the List of Standards published in the Official Journal of the European Communities, OFCOM may set and apply SMP services conditions obliging the provider to apply, so far as required by Annex VII of the Universal Service Directive, the principles of non-discrimination, cost orientation and transparency to dealings regarding leased lines. This section implements Article 18 of, and Annex VII to, the Universal Service Directive, Article 6(2) of the Authorisation Directive and Article 16(4) of the Framework Directive.

* *a leased line* is defined in subsection (4) as an electronic communications service consisting in the reservation of a fixed amount of transmission capacity between fixed points on the same or different electronic communications networks.

Section 93: Conditions about apparatus supply

233. Where OFCOM determine that a supplier of electronic communications apparatus has SMP in an apparatus market, OFCOM may set conditions requiring the supplier to maintain accounting separation between such activities and other matters and also may set price controls in relation to the hiring of telephones which are hardwired to an electronic communications network. The SMP apparatus conditions may only apply to apparatus in respect of which the supplier has been found to have significant market power.

* A telephone is hardwired to an electronic communications network if the telephone has to be physically attached to apparatus in the network by means of a tool before it can be used (subsection (5)).

* Apparatus in relation to SMP apparatus conditions is defined in section 151(1), as apparatus designed or adapted for a use which consists of or includes the sending or receiving of communications or other signals (within the meaning of section 32) that are transmitted by means of an electronic communications network.

Section 94: Notification of contravention of condition

234. This section gives OFCOM powers of enforcement in respect of all types of conditions set pursuant to section 45. Where OFCOM have reasonable grounds to believe that a person is or has been in breach of any condition, they may notify that person accordingly, and allow him a specified period of time in which to make representations to OFCOM and to take steps to comply with the condition or remedy the breach. That period must be one month, other than in the circumstances provided for by subsections (6) and (7) or where the case is an urgent case (see section 98(3)).

235. OFCOM must not give such a notification where they decide that a more appropriate approach lies under the Competition Act 1998, in which case they must publish a notification to that effect.

236. This section, and sections 95 to 100 and 102 and 103, implement Article 10 of the Authorisation Directive and Article 11(6) of the Universal Service Directive in the context of the enforcement of the conditions of entitlement.

Section 95: Enforcement notification for contravention of conditions

237. If, by the end of the period specified in section 94, OFCOM are satisfied that the condition about which the provider was notified has still not been fully complied with, subsection (2) allows OFCOM to serve an enforcement notification on the notified provider. Such a notification requires the notified provider to take such steps as are specified in the notification to comply with the notified condition and remedy the consequences of any contravention, within the period specified in the notification. Those persons to whom an enforcement notification has been given are under a duty, enforceable by OFCOM via civil proceedings, to comply with it.

Section 96: Penalties for contravention of conditions

238. This section allows OFCOM to impose a penalty on a notified provider where a notification of contravention under section 94, has been issued, and the notified provider is in contravention of any of the conditions specified there and has not, within the period allowed by OFCOM for the making of representations, taken steps to comply with the condition(s) concerned and to remedy the consequences. OFCOM may also impose a penalty where a person is in contravention of a requirement of an enforcement notice under section 95. OFCOM must notify the decision to impose a penalty, the reasons for it, and the period within which the penalty is to be paid to the person on whom it is being imposed within one week of that decision.

Section 97: Amount of penalty under s. 96

239. In deciding on the amount of a financial penalty under section 96, OFCOM are required to consider whether the penalty is appropriate and proportionate, and to take account of any representations made by the person concerned, and any steps taken by him to comply with the notified condition. The penalty shall not, in any event, exceed 10 per cent of the turnover of that person's relevant business for the relevant period.

* *relevant business* is defined in subsection (5) to (7) as, broadly, business consisting of the provision of an electronic communications network, electronic communications

service or associated facilities, and the supply of directories, directory enquiry facilities or electronic communications apparatus. In the case of a penalty imposed for the contravention of an SMP apparatus condition, the relevant business is only the business consisting of the supply of electronic communications apparatus.

* *relevant period* is defined in subsection (5) — subject to exceptions for providers who have not been carrying on business for a full year, or who have gone out of business — as the period of one year ending on the 31 March preceding the notification.

Section 98: Power to deal with urgent cases

240. This section gives OFCOM additional powers where they determine that there are reasonable grounds for suspecting that a contravention of a condition of entitlement (other than an SMP apparatus condition) has caused, or creates a risk of, either a serious threat to public safety, public health or national security; or serious economic or operational problems or any communications provider or provider of associated facilities or any person who uses them.

241. In such exceptional circumstances, OFCOM may in a notification of the contravention under section 94, reduce the one-month period allowed to the person who is alleged to be in breach of a condition to make representations and to take steps towards compliance. In addition, OFCOM may suspend the person's entitlement to provide networks, services and/or associated facilities, or may restrict that entitlement in some way (subsection (4)). OFCOM may postpone the entry into effect of the suspension and may also impose such conditions on the person whose service is to be suspended as they consider necessary to protect customers. Those conditions may include requirements for payment of compensation to customers for loss or damage or for annoyance, inconvenience or anxiety caused in consequence of the suspension; however, such conditions have effect only where the direction is confirmed in accordance with section 99.

Section 99: Confirmation of directions under s.98

242. As soon as reasonably practicable after suspending or restricting a person's entitlement under section 98(4), OFCOM must give that person an opportunity of making representations to them about the grounds on which it was given and its effect and of proposing steps to remedy the situation.

243. As soon as practicable after the period allowed by OFCOM for making representations, OFCOM must determine whether the contravention providing the grounds for the suspension or restriction did occur and whether the circumstances made it an urgent case justifying the suspension or restriction. If OFCOM decide that the contravention did occur and that the suspension or restriction was justified, they may confirm the direction. If not, OFCOM must revoke the suspension or restriction. They must notify the person concerned of their decision.

Section 100: Suspending service provision for contraventions of conditions

244. Subject to compliance with section 102, this section gives OFCOM a power to suspend or restrict a person's entitlement to provide electronic communications networks, electronic communications services and/or associated facilities where OFCOM are satisfied that that person is in serious and repeated breach of any conditions imposed on him (other than an SMP apparatus condition) and that an attempt, by the imposition of penalties or the giving of an enforcement notification under section 95 or both, to secure compliance has failed. The suspension or restriction must be appropriate and proportionate to the seriousness of the repeated contraventions.

245. A direction by OFCOM under this section may suspend entitlement generally or in relation to particular networks, services or facilities and may take effect indefinitely or for a fixed period. A direction may also include, where appropriate, conditions, such as the payment of compensation, to protect the customers of a provider. Where appropriate, OFCOM may revoke the suspension or restriction.

Section 101: Suspending apparatus supply for contraventions of conditions

246. Subject to compliance with section 102, OFCOM have the power under section 101 to give a direction suspending or restricting a person from supplying electronic communications apparatus where OFCOM are satisfied that the person is in serious and repeated breach of an SMP apparatus condition and that an attempt, by the imposition of penalties or the giving of an enforcement notification under section 95 or both, to secure compliance has failed. The suspension or restriction must be appropriate and proportionate to the seriousness of the repeated contraventions.

247. A direction by OFCOM under this section may take effect indefinitely or for a fixed period and may require the supplier to take measures to protect its customers. A direction may also include, where appropriate, conditions, such as the payment of compensation, to protect the customers of a supplier. Where appropriate, OFCOM may revoke the suspension or restriction.

Section 102: Procedure for directions under ss. 100 and 101

248. Unless a case is urgent, before exercising their powers under sections 100 and 101, OFCOM must notify a contravening provider or supplier of the proposed direction, allow him the least one month to make representations and consider each representation made by him.

* The meaning of an urgent case is set out in subsection (4) and (5) and arises where there is a serious threat to public safety, public health or national security or a serious economic or operational problem that makes it inappropriate to give a contravening provider or supplier time to make representations.

249. If a case is urgent, OFCOM may give a direction without consulting the relevant contravening provider or supplier. However, as soon as practicable after giving a direction in an urgent case OFCOM must provide the relevant contravening provider or supplier with an opportunity to make representations and to propose steps to remedy the contravention (see subsection (3)).

Section 103: Enforcement of directions under ss. 98, 100 and 101

250. It is an offence for any person to provide a network, service or associated facility or to supply electronic communications apparatus while he is subject to a direction given under sections 98, 100 and 101 suspending his entitlement to do so or where he does so in contravention of any restriction in such a direction. A person found guilty will be liable to a fine.

Section 104: Civil liability for breach of conditions or enforcement notification

251. This section provides that the obligation of a person to comply with any applicable conditions under section 45, or the conditions imposed by a direction under section 98 or 100, or any requirements imposed by an enforcement notification under section 95, is a duty owed to every person who may be affected by the contravention of the condition or requirement. Where a person sustains loss or damage as a result of a breach of that duty or of an act which induces a breach of the duty or interfering with its performance, that person may bring civil proceedings against the provider or supplier concerned. OFCOM's consent is required before proceedings can be brought in respect of a breach of condition under section 45. In any such proceedings, a person may defend

himself by demonstrating that he did everything reasonable and exercised all due diligence to avoid breaching the condition or requirement in question.

Section 105: Consideration and determination of network access questions

252. This section applies where a network access question has arisen and needs to be determined and OFCOM consider that, for the purpose of determining that question, it would be appropriate for them to exercise their powers to set, modify or revoke access-related conditions authorised by section 73(2) or (4) or SMP services conditions authorised by section 87.

* A network access question is defined in subsection (6) as a question relating to network access or the terms or conditions on which network access is or may be provided.

253. Before considering whether, for the purposes of determining the network access question, to set, modify or revoke access-related conditions authorised by section 73(2) or (4) or SMP services conditions authorised by section 84, OFCOM must publish a notification of their proposal. If, after considering the network access question, OFCOM decide not to set, modify or revoke such conditions, they must publish a notification of their decision. This section implements Article 5(4) of the Access Directive.

Section 106: Application of the electronic communications code

254. Sections 106 to 119 and Schedule 3 amend the telecommunications code (set out in Schedule 2 to the Telecommunications Act 1984) in order to translate it into a code applicable to apparatus used in electronic communications networks and services. The telecommunications code is designed to facilitate the installation and maintenance of telecommunications systems. It confers rights on operators to install and maintain apparatus in, over or under land and results in considerably simplified planning procedures, similar to those given to other utilities. These provisions, along with Schedule 2 to the Telecommunications Act 1984, implement Articles 11 and 12(1) of the Framework Directive, and Article 4(1) and 6(1) of, and condition 5 of Part A of the Annex to, the Authorisation Directive.

255. Sections 106 to 119 provide that “the electronic communications code” (as it will in the future be known) will no longer be applied to operators by way of licences (and licence conditions), but rather as a result of directions given by OFCOM in response to applications by individual providers of electronic communications networks or systems of conduits to be used for the provision of electronic communications networks. The principal changes to the code which will be effected under Schedule 3 include the replacement of references in it to telecommunications apparatus, services and systems with references to electronic communications apparatus, services and networks respectively; amendments to enable the application of the code to persons who provide a system of conduits by which an electronic communications network may be provided, but do not actually provide the network; and the addition of a provision to encourage the sharing of apparatus by operators to whom the code applies (which was previously contained in sections 10(3A), (3B) and (3C) of the Telecommunications Act 1984 and section 189 of the Broadcasting Act 1990; now see new paragraph 29 of the code).

256. Section 106 provides that the electronic communications code will apply to any person in respect of whom OFCOM have given a direction for this purpose. Subsection (5), provides that such a direction may specify that the code is to apply to the person concerned only in relation to

particular places, or particular networks or parts of networks or particular conduit systems or parts of conduit systems.

257. Subsection (3)(b) provides that the electronic communications code will also apply to the Secretary of State or any Northern Ireland department if either of them is providing or intends to provide an electronic communications network.

258. Subsection (4) provides that the code may only be applied to a person for the purposes of the provision of an electronic communications network or for the purposes of the provision of a system of conduits to be used in connection with the provision of an electronic communications network.

259. Paragraph 17 of Schedule 18 provides that where, immediately before the coming into force of this section, the code applied to any person by virtue of the conditions of his telecommunications licence, that person shall be treated, after the coming into force of this section, as a person in whose case the code applies by virtue of a direction given by OFCOM.

Section 107: Procedure for directions applying code

260. This section provides that OFCOM may only give a direction applying the code in response to an individual application for this purpose, and specifies the procedures that apply to such applications. Subsection (2) provides that applicants must comply with all requirements as to form, content and manner of application as have been set out by OFCOM in a notification.

261. In deciding whether or not to give a direction applying the code OFCOM, in addition to their general duties and their duties for the purpose of fulfilling Community obligations under sections 3 and 4 respectively, must have regard to a number of factors, including the benefit to the public; the difficulty of providing the network or service without the code; the need to encourage shared use of apparatus; and whether the applicant has sufficient resources to meet any liabilities that may arise as a result of action taken by him under the code.

262. Subsections (6) to (10) lay down the procedures that OFCOM must follow when they propose to give a direction applying the code. These include obligations to publish a reasoned statement of the terms of their proposal, and to allow at least one month for representations to be made by persons likely to be affected. This implements Article 6 of the Framework Directive.

Section 108: Register of persons in whose case code applies

263. Section 108 places OFCOM under a duty to keep an up-to-date public register of persons to whom the code applies and to record in this register every direction given under section 106. OFCOM must publish (and comply with) a notification setting out the hours during which this register will be open to the public and the fees for inspection.

Section 109: Restrictions and conditions subject to which code applies

264. The Secretary of State, following consultation with OFCOM and others may, by regulations, make the application of the code subject to restrictions and conditions. In making such regulations, the Secretary of State must consider OFCOM's general duties and their duties for the purpose of fulfilling Community obligations. She must also consider the environment, road-traffic management, the need to encourage the sharing of apparatus and the need to ensure that the provider will be able to meet any liabilities incurred due to the imposition of the code.

Section 110: Enforcement of restrictions and conditions

265. This section gives OFCOM powers of enforcement in respect of the restrictions and conditions subject to which the electronic communications code applies. Where it appears to OFCOM that a

person to whom the code applies is or has been in breach of any condition or restriction subject to which the code applies, they are obliged to notify that person accordingly and to allow him a specified period of time (usually one month) in which to make representations to OFCOM and to take steps to comply with the condition or restriction or to remedy the breach. This section and sections 111 to 113 implement Article 10 of the Authorisation Directive in the context of the enforcement of those restrictions and conditions.

Section 111: Enforcement notification for contravention of code restrictions

266. If, by the end of the period specified in the notification under section 110, OFCOM are satisfied that the condition or restriction in question has not been complied with, they may serve an enforcement notice on the notified provider. Such a notice requires the provider to comply with the requirements set out in the notice. This duty is enforceable by OFCOM in civil proceedings.

Section 112: Penalties for contravention of code restrictions

267. Where a notified provider has not complied with a requirement notified under section 110 or 111, or remedied the consequences of the notified contravention, OFCOM may impose a penalty. In deciding on the amount of a financial penalty, OFCOM are required to consider whether the fine is appropriate and proportionate, and to take account of any representations made by the person concerned, and any steps taken by him to comply with the condition or restriction in question. The maximum fine that may be imposed under this section is £10,000. The Secretary of State may by order amend this provision so as to substitute a different maximum penalty.

Section 113: Suspension of application of code

268. Subsection (1) allows OFCOM, if satisfied that a person has been in repeated and serious contravention of the requirements under section 38 to pay an administrative charge, that proceedings to recover any outstanding amounts have failed to secure complete compliance with section 38 and have no reasonable prospect of securing compliance and that the imposition of penalties under section 41 has failed to secure compliance, to give a direction suspending the application to that person of the electronic communications code. OFCOM must also be satisfied that the suspension of the application of the code is appropriate and proportionate to the seriousness of the repeated contraventions.

269. Subsection (2) allows OFCOM, having given a direction suspending a provider's entitlement to provide an electronic communications network, or part of such a network under section 42, 100, 132 or 140, to give a further direction suspending the application to that provider of the electronic communications code.

270. Similarly, under subsection (4), if a provider has been in repeated and serious contravention of any restriction or conditions set out in the Secretary of State's regulations made under section 109, OFCOM can by giving a further direction suspend the code in relation to its application to parts of the provider's network which are not yet in existence, or where the disapplication of the code would not prevent the continued provision of the network.

271. Suspension of the application of the code will continue for as long as the suspension of entitlement remains in force (in the case of suspensions under subsection (2)) or until revoked by OFCOM. Suspension means that the provider cannot exercise any right conferred on him by the code but, unless OFCOM otherwise provide in a scheme made under section 117, suspension does not have any other effect on agreements entered into or on actions taken under the code. In other words, the suspension should not affect the rights of the operator to maintain service on the parts

of its network unaffected by the suspension. This section implements Article 14(2) of the Authorisation Directive.

Section 114: Procedure for directions under s. 113

272. Except in an urgent case, OFCOM must not give a direction under section 113(4) suspending the application of the code to any person (“the operator”) unless they have: (i) notified the operator of the proposed suspension and of the steps (if any) that they are proposing to take under section 113; (ii) provided him with an opportunity of (during a period of not less than one month after the date of notification) making representations about the proposals and of proposing steps for remedying the situation that has given rise to the proposed suspension; and (iii) considered every representation and proposal made to them during that period.

273. As soon as practicable after giving a direction under section 113 in an urgent case, OFCOM must provide the operator with an opportunity to make representations about the effect of the direction and of any steps taken under section 113 in connection with the suspension and to propose steps for remedying the situation that has given rise to the situation.

* Subsection (4) provides that a case is urgent for the purposes of this case if OFCOM consider that it would be inappropriate to allow time, before giving a direction under section 113, for the making and consideration of representations, because the circumstances appearing to OFCOM to require the suspension fall within subsection (5).

* The circumstance listed in subsection (5) include a serious threat to public safety, public health or to national security, serious economic or operational problems for persons (apart from the contravening provider or supplier) who are communications providers or persons who make associated facilities available or serious economic or operational problems for persons who make use of electronic communications networks, electronic communications services or associated facilities.

Section 115: Modification and revocation of application of code

274. OFCOM may, by a further direction, alter the code's application under section 106(5) to particular places or particular networks or parts of networks or particular conduit systems or parts of conduit systems. Under subsections (2) and (3), OFCOM may, by a further direction, revoke a direction applying the electronic communications code either on the application of the person to whom the code applies or where such a person ceases to be a communications provider or a provider of a conduit system.

275. Before giving such directions OFCOM must, in accordance with section 106, first publish a notification of their proposal to give the direction and consider any representations made about that proposal. This implements Article 14(1) of the Authorisation Directive.

Section 116: Notification of cessation by person to whom code applies

276. Where the code has been applied to a person who provides an electronic communications network of a type not designated for the purpose of section 33 or who provides a system of conduits, and that person ceases to provide that network or system of conduits, he must notify OFCOM. Failure to do so may result in the provider being penalised an amount not exceeding £1,000. Secretary of State may by order amend this provision so as to substitute a different maximum penalty.

Section 117: Transitional schemes on cessation of application of code

277. This section gives OFCOM a power to put in place a transitional scheme in cases where the code has ceased to apply to a provider by reason of the code being either suspended, revoked or modified in relation to that provider.

278. Subsection (3) gives a non-exhaustive list of the type of provision that might be contained in a transitional scheme. The examples given relate to the removal or retention of apparatus installed under the code, and the restoration of land affected by the code. Such a scheme may also provide for the transfer of rights and liabilities arising out of agreements made or obligations incurred under the code; authorise apparatus on code land to be retained for use by other providers; and provide for any issues arising from the scheme to be referred to OFCOM.

Section 118: Compulsory acquisition of land etc.

279. Schedule 4 confers on code operators the power to purchase compulsorily land in England and Wales and Scotland, where authorised by the Secretary of State and with the consent of OFCOM. In Northern Ireland, code operators may purchase compulsorily land by requesting (with the consent of OFCOM) the Secretary of State to order that land vests in them. This provision re-enacts sections 34 to 40 of the Telecommunications Act 1984 (which are repealed by the Act), with certain consequential amendments to take account of the abolition of the regulatory regime under the Telecommunications Act 1984.

*A code operator is a provider of an electronic communications network to whom OFCOM have applied the electronic communications code.

280. The power to purchase compulsorily extends to land that is required by the code operator for or in connection with the establishment or running of an operator's network. For the purposes of Schedule 4, an operator's network does not include a conduit system.

281. In England and Wales, the Acquisition of Land Act 1981 and, in Scotland, the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 applies to compulsory purchases by code operators as if they were local authorities within the meaning of those Acts. Under these Acts, code operators must make and publish an order so that land owners are given the right to object to the purchase and to have their objections heard. Only after objections have been heard can the Secretary of State be requested to confirm the order. In Northern Ireland, the Secretary of State must follow the procedures laid down in Schedule 6 to the Local Government Act (Northern Ireland) Act 1972 and Schedule 8 to the Health and Personal Social Services (Northern Ireland) Order 1972.

282. Where land is acquired compulsorily in England and Wales and Scotland, the benefit of certain provisions in, respectively, the Town and Country Planning Act 1990 and Town and Country Planning (Scotland) Act 1997 applies to code operators.

283. A code operator may not dispose of any land purchased compulsorily in England, Wales, Scotland or Northern Ireland except with the consent of OFCOM.

284. Paragraph 19 of Schedule 18 (transitional provisions) provides that any compulsory purchase orders, vesting orders or authorisations made by the Secretary of State which are effective immediately before the commencement of Schedule 4 are to have effect after the commencement of that Schedule as if made or given under that Schedule.

285. Paragraphs 6, 7 and 8 of Schedule 4 enable representatives of code operators authorised by the Secretary of State in writing to enter upon and survey (at any reasonable time) any land (except land covered by buildings or used as a garden or pleasure ground) in England, Wales, Scotland and Northern Ireland for the purpose of ascertaining whether it would be suitable for use by them for,

or in connection with, the establishment or running of their networks. The powers of entry conferred on code operators are subject to the following provisions:

- in England and Wales, sections 324(8) and 325(1) to (5), (8) and (9) of the Town and Country Planning Act 1990 (as modified);
- in Scotland, sections 269(9) and 270(1) to (5), (8) and (9) of the Town and Country Planning (Scotland) Act 1997 (as modified); and
- in Northern Ireland, section 40(2) to (5) and (8) of the Land Development Values (Compensation) Act (Northern Ireland) 1965 (as modified).

286. Code operators must make good, or pay compensation for, any damage caused to land or chattels by the exercise of their power of entry. Compensation must also be paid for any disturbance in the enjoyment of land or chattels of any person by the exercise of their power of entry.

287. Paragraph 9(1) of Schedule 4 applies certain provisions of Part 1 of the Compulsory Purchase Act 1965 for the purpose of the acquisition of land in England and Wales by agreement by code operators. Sub-paragraphs (2) and (3) apply the corresponding enactments in Scotland and Northern Ireland, respectively.

288. In exercising her powers under Schedule 4, the Secretary of State must have regard to the duties imposed on OFCOM under sections 3 and 4 of the Act and the need to protect the environment, to ensure that highways are not damaged or obstructed, to minimise interference with traffic and to encourage the sharing of electronic communications apparatus (see paragraph 2).

Section 119: Power to give assistance in relation to certain proceedings

289. This section provides that in actual or prospective proceedings on a question relating to the application of the code, any party to the proceedings (other than the operator) may apply to OFCOM for assistance. OFCOM may grant an application for assistance on any one of the following grounds: (i) that the case raises a question of principle; (ii) that assistance is necessary, for example, because of the complexity of the case; or (iii) by reason of some other special consideration. Examples of the kind of assistance OFCOM might provide are given in subsection (4), and include giving advice or arranging for the giving of advice by a solicitor or counsel, facilitating settlement, or arranging for legal representation.

* The meaning of *operator* is given in the electronic communications code, as amended by paragraph 3(1) of Schedule 3 and is, as the case may be, the person to whom the code is applied by a direction under section 106, or the Secretary of State or the relevant Northern Ireland department.

290. Subsections (6) and (7) allow OFCOM to recover any expenses they incur in providing assistance under this section, by way of a charge on any costs or expenses awarded to the applicant in proceedings or under any compromise or settlement.

Section 120: Conditions regulating premium rate services

291. This section gives OFCOM the power to set conditions for the purpose of regulating the provision, content, promotion and marketing of premium rate services. Such conditions are binding on premium rate service providers and may relate only to compliance with directions given in accordance with the premium rate services code approved by OFCOM under section 121 or, in the absence of a code, the provisions of an order made by OFCOM under section 122. A premium rate

service for this purpose is defined in subsections (7) and (8). Briefly, a service is a premium rate service if:

it consists of the contents of communications transmitted by an electronic communications network (e.g. a product helpline or 'chatline') or if it allows the user of an electronic communications service to make use, by making a transmission by means of that service, of a facility made available to the users of the service (including in particular a facility to make payments for goods and services, to enter a competition or claim a prize or to register a vote or record a preference); and

there is a charge for the service, and that charge is paid to the provider of the electronic communications service by means of which the service in question is provided (e.g. through the customer's telephone bill)

292. Under subsection (9), a person provides a premium rate service if he:–

- provides the contents of the service, or
- exercises editorial control over the contents of the service, or
- packages together the content of the service for the purpose of facilitating its provision, or
- makes available a facility comprised in that service.

293. In addition, under subsection (10), an electronic communications service provider who, by virtue of arrangements made with someone falling within any of the four categories set out at a) to d) who provides a service, is entitled to a share of the charges for the provision of that service or for the use of his electronic communications service for the purpose of that service is also taken to be a premium rate service provider. Likewise, (in accordance with subsection (11)) the provider of an electronic communications network used for the provision of a service who has an agreement relating to the use of that network for the provision of the service with a provider of the service falling within any of the four categories set out at a) to d) is taken to be a premium rate service provider, as is (under subsection 12) an electronic communications network provider whose network is used under an agreement made with a person falling within subsections (10 or (11) or with an intermediary service provider (as defined in subsection (15)). The obligations that may be placed on a person falling within subsection (12) are limited by section 121(3) and section 122(5) (see below).

294. Conditions set under this section may apply generally to each provider of a premium rate service or individually to specified providers or providers of specified services. Sections 47 and 48 apply to the setting, modification and revocation of a condition under this section.

295. In accordance with paragraph 9 of Schedule 18, OFCOM may issue continuation notices in respect of premium rate service conditions in licences issued under section 7 of the Telecommunications Act 1984 for a transitional period before the arrangements provided by sections 120 to 124 take full effect.

Section 121: Approval of code for premium rate services

296. This section enables OFCOM, where appropriate, to approve codes regulating the provision, content, promotion and marketing of premium rate services made by any person. OFCOM may not approve a code unless they are satisfied that the criteria listed in subsection (2) are met. These include the existence of a person whose function is to administer and enforce the code; adequate funding for the activities of that person; objective justification for the provisions in the code; provisions which do not unduly discriminate and are proportionate and transparent. Subsection (3) forbids OFCOM approving a code which places obligations on a communications provider falling

within subsection 120(12), unless they are satisfied that the obligations only arise where the provider concerned is the only person against whom it is practicable to take regulatory action and only after notice has been given by the code enforcer identifying the premium rate service and the manner in which it is alleged to have breached the code, and the only obligation imposed is to secure that the network does not deliver the premium rate service to persons in the UK. OFCOM may (in accordance with subsection (6)) approve modifications made to an approved code or withdraw their approval of a code at any time.

Section 122: Orders by OFCOM in the absence of a code under s.121

297. This section permits OFCOM to make an order imposing requirements with respect to the provision, content, promotion and marketing of premium rate services (including pricing) and for the enforcement of such requirements, where OFCOM consider there is no third-party code which could be approved under section 121. OFCOM's power to make an order includes power to establish a corporate body to determine the jurisdiction of that body and any other person, to confer jurisdiction over any matter on OFCOM, to provide a person upon whom jurisdiction is conferred with the ability to compensate or reimburse expenses and to enforce any awards. Subsection (5) places restrictions comparable to those in section 121(3) on the obligations that an order may place on communications providers falling within subsection 120(12). OFCOM must obtain the consent of the Secretary of State before making an order under this section.

Section 123: Enforcement of s.120 conditions

298. OFCOM may enforce conditions set under section 120 in accordance with sections 94 to 96. In deciding on the amount of a financial penalty under section 96, OFCOM must consider whether the fine is appropriate and proportionate and take into account any representations made by the premium rate service provider concerned as well as any steps taken by him to comply with the notified condition and remedy any consequences of a contravention. The penalty may not exceed £100,000. The Secretary of State may by order amend the maximum penalty.

Section 124: Suspending service provision for contraventions of s.120 conditions

299. Subject to compliance with sections 102 and 103, this section gives OFCOM a power to suspend or restrict the right of a communications provider to provide premium rate services where OFCOM are satisfied that that provider is in serious and repeated breach of any conditions imposed on him under section 120, and that the imposition of penalties and enforcement notifications under sections 95 and 96 have not resulted in compliance with those conditions. The suspension or restriction must be appropriate and proportionate to the seriousness of the breach and necessary for reasons of public policy. OFCOM may similarly direct the suspension or restriction of the right to provide a service where a communications provider has contravened the conditions set under section 120 and the circumstances of that contravention are such that it is appropriate for OFCOM to proceed without the conditions mentioned above being satisfied and there is an urgent need to give the direction for reasons of public policy.

300. A direction by OFCOM under this section may suspend entitlement to provide any or all premium rate services and may take effect indefinitely or for a fixed period. A direction may also include, where appropriate, conditions to protect the interests of the premium rate service provider's customers, including requirements for the payment of compensation. Where appropriate, OFCOM may revoke or modify the suspension or restriction. Provisions for the procedures applying to the giving of directions under this section, equivalent to those applying to directions for breaches of other conditions of entitlement, are included via subsection (8).

Section 125: Dishonestly obtaining electronic communications services

301. Anyone who dishonestly obtains an electronic communications service and intends to avoid paying for that service is guilty of an offence under section 125. A person found guilty of the offence will be liable to a fine or imprisonment, or both. Under subsection (2), it is not an offence under this section to obtain a service mentioned in section 297(1) of the Copyright, Designs and Patents Act 1988. This section replaces section 42 of the Telecommunications Act 1984 which is repealed by Schedule 19.

* Section 297(1) of the Copyright, Designs and Patents Act 1988 mentions programmes included in a broadcasting or cable programme service (as defined in that Act).

Section 126: Possession or supply of apparatus etc. for contravening s.125

302. It is an offence under subsection (1) for a person to have in his possession or under his control anything, including data, which may be used for or in connection with obtaining an electronic communications service with the intent to use the thing or to allow it to be used to obtain, or for a purpose connected with the obtaining of, an electronic communications service dishonestly.

303. It is an offence under subsection (2) for anyone to supply or offer to supply anything that may be used for or in connection with obtaining an electronic communications service when he knows or believes that the recipient of those things intends to use them or to allow them to be used to obtain, or for a purpose connected with the obtaining of, an electronic communications service dishonestly.

304. A person found guilty of either offence will be liable to a fine or imprisonment, or both.

305. This section replaces section 42A of the Telecommunications Act 1984 which is repealed by Schedule 19.

Section 127: Improper use of public electronic communications network

306. Anyone who sends a message or other matter that is grossly offensive or is of an indecent, obscene or menacing character (other than in the course of providing a programme service) by means of a public electronic communications network, or who causes such a message or matter to be sent, is guilty of an offence. It is also an offence under subsection (2) for anyone to send or cause to be sent false messages by means of a public electronic communications network or persistently to make use of a public electronic communications network for the purpose of causing annoyance, inconvenience or needless anxiety.

* A *programme service* has the same meaning as in the Broadcasting Act 1990.

307. This section replaces section 43 of the Telecommunications Act 1984, which is repealed by Schedule 19.

Section 128: Notification of misuse of networks and services

308. This section gives OFCOM powers of enforcement in respect of persistent misuse of an electronic communications network or an electronic communications service. Where OFCOM determine that there are reasonable grounds to believe that a person has persistently misused an electronic communications network or an electronic communications service, OFCOM may notify that person accordingly, and allow him a specified period in which to make representations to OFCOM. The period to be allowed for the making of representations is one month, unless OFCOM

consider that the misuse is continuing and the harm caused makes it necessary for it to be stopped as soon as possible, in which case, the period is 7 days. Under subsection (8), the Secretary of State may by order specify uses of an electronic communications network or an electronic communications service that shall not be treated as a misuse of a network or service where she considers that appropriate alternative means of dealing with those uses exist.

* A person misuses an electronic communications network or an electronic communications service, under subsection (5), if the effect or likely effect of its use causes another person unnecessarily to suffer annoyance, inconvenience or anxiety or if he uses a network or service to engage in conduct the effect or likely effect of which causes another person unnecessarily to suffer annoyance, inconvenience or anxiety.

* A person persistently misuses an electronic communications network or an electronic communications service under subsection (6) where his misuse is repeated on a sufficient number of occasions so that it is clear that the misuse forms part of a pattern of behaviour or constitutes recklessness as to whether persons suffer annoyance, inconvenience or anxiety.

Section 129: Enforcement notifications for stopping persistent misuse

309. If, by the end of the period specified in section 128, OFCOM are satisfied that the person has persistently misused an electronic communications network or an electronic communications service and that he has not taken all appropriate steps to secure that the misuse ceases and is not repeated, and to remedy the consequences of the misuse, they may serve an enforcement notice. Such a notice requires the notified person to take all steps to secure that the misuse ceases and is not repeated, and to remedy the consequences of the misuse.

Section 130: Penalties for persistent misuse

310. OFCOM may impose a penalty if a person notified under section 128 has persistently misused an electronic communications network or an electronic communications service. Where an enforcement notification issued in accordance with section 129 has not been complied with, OFCOM may also impose a penalty.

311. When deciding on the amount of financial penalty, OFCOM are required to consider whether the fine is appropriate and proportionate, and to take account of any representation made by the person concerned and any steps taken to secure that the misuse ceases and is not repeated and to remedy the consequences of the misuse. The penalty may not exceed £5000. However, the Secretary of State may by order amend the maximum penalty.

312. Under subsection (8), people may be liable for an offence under sections 125 to 127 and have a penalty imposed on them by OFCOM under section 130 in respect of the same conduct.

Section 131: Statement of policy on persistent misuse

313. This section places OFCOM under a duty to publish and keep up-to-date a statement of policy on how they will use their powers under sections 128 to 130.

Section 132: Powers to require suspension or restriction of a provider's entitlement

314. This section gives the Secretary of State a power to direct OFCOM to issue a person with a direction to suspend or restrict that person's entitlement to provide an electronic communications network or service or an associated facility where she has reasonable grounds for believing that it

is necessary to do so to protect the public from any threat to public safety or public health, or in the interests of national security. This is permitted by Article 3 of the Authorisation Directive.

315. Subsection (2) places OFCOM under a duty to comply with any such direction by the Secretary of State. Once a suspension or restriction is in place, both the Secretary of State and OFCOM must allow the person in question an opportunity to make representations to them, and to propose steps for remedying the situation. OFCOM may modify the terms of a suspension or restriction imposed under this section. The Secretary of State may direct OFCOM to revoke a suspension or restriction imposed under this section.

316. A direction by OFCOM under this section may suspend entitlement generally or in relation to particular networks, services or facilities, and may take effect indefinitely or for a fixed period. It may also postpone the suspension or restriction (and, if doing so, may also impose additional conditions — such as compensation of their customers for loss suffered — in order to protect the customers of the provider).

Section 133: Enforcement of directions under s. 132

317. It is an offence for any person to provide a network, service or associated facility while he is subject to a direction under section 132 suspending his entitlement to do so, or to provide such a network, service or facility in contravention of a restriction contained in such a direction. A person found guilty will be liable to a fine. A third party who sustains loss or damage as a result of a breach of such a direction or of an act which induces a breach of the duty or interferes with its performance may bring proceedings against the person concerned. In such proceedings, a person may defend himself by demonstrating that he did everything reasonable and exercised all due diligence to avoid breaching the condition in question.

Section 134: Restrictions in leases and licences

318. This section replaces section 96 of the Telecommunications Act 1984, which is repealed by Schedule 19. Subsection (3) amends any provision, in any lease, licence or other premises-related agreement granted or entered into after the commencement of this section, which prohibits or restricts an occupier's choice of electronic communications services providers to a person who has an interest in the relevant premises or a person selected by a person with an interest in the relevant premises. Where a lease, licence or other premise-related agreement contains a provision imposing such prohibitions or restrictions, that provision is to have effect as if it provided for the election of an alternative electronic communications service provider by the occupier, subject to the prior consent of the lessor, licensor or other party to the agreement, such consent not to be unreasonably withheld.

* The meaning of lease is given in subsection (8) and includes a leasehold tenancy (whether in the nature of a head lease, sub-lease or under lease) and an agreement to grant such a tenancy.

319. Subsection (4) amends any provision, in a lease of one year or more granted or entered into after the commencement of this section or more or in a premises-related agreement to which such a lease applies, that imposes any other prohibition or restriction on the lessee relating to an electronic communications matter where such prohibition or restriction relates to anything done inside a building occupied by the lessee or for purposes in connection with the provision of an electronic communications service by a communications provider to the lessee. Where a lease of one year or more or a premises-related agreement to which a lease of one year or more is applied contains a

provision imposing such a prohibition or restriction, the provision is to have effect as if the prohibition or restriction applied only where the lessor had not given his consent, such consent not to be unreasonably withheld.

* For the purposes of this section, an electronic communications matter includes the provision of an electronic communications network, the provision of an electronic communications service, the connection of electronic communications apparatus to an electronic communications network specified in an order for the purposes of this section, the connection of an electronic communications network to another electronic communications network specified in an order for the purposes of this section, and the installation, maintenance, adjustment, repair, alteration or use of electronic communications apparatus for the purposes of providing an electronic communications network or an electronic communications service.

320. Under subsection (6), OFCOM have the power by order to exclude certain provisions in leases, licences or other premises-related agreements from the remit of this section. This section only applies to leases, licences or other premises-related agreements entered into before the commencement of this section to the extent that OFCOM makes an order under subsection (9) providing for it to do so. The provisions of this section apply without prejudice to the application of the electronic communications code.

Section 135: Information required for purposes of Chapter 1 functions

321. This section gives OFCOM information-gathering powers. Subject to the restrictions in section 137, it allows OFCOM to require any person falling within subsection (2), including a communications provider, to provide OFCOM with all such information as OFCOM consider necessary for the purpose of carrying out their functions under Chapter 1 of Part 2 of the Act.

322. This includes information for the following purposes:

- investigating possible breaches of conditions of entitlement, or of the electronic communications code, or of a transitional scheme after the cessation of the application of the code;
- ascertaining or verifying the amount of any administrative charge payable under section 38, or of any financial contribution towards the cost of complying with universal service obligations;
- ascertaining whether a condition set under section 45 continues to be effective;
- designating a universal service provider under section 66;
- carrying out a review under sections 66 or 70;
- identifying markets and carrying out market analyses for the purposes of Chapter 1 Part 2 of the Act;
- assessing whether any network access question gives rise to a duty under section 105 and considering any matter while exercising that duty;
- statistical purposes connected with OFCOM's functions under Chapter 1 of Part 2 of the Act.

This section, section 136 and section 137, implement Article 5 of the Framework Directive, Articles 6(1), 10(1) and 11 of, and condition 10 of Part A to, the Annex to the Authorisation Directive, Article 11(2) of the Access Directive, and Articles 11, 21 and 22 (in so far as those Articles necessitate the provision of information) of the Universal Service Directive.

Section 136: Information required for related purposes

323. Subject to the restrictions in section 137, section 136 allows OFCOM to require communications providers and persons making available associated facilities to provide OFCOM with information required by OFCOM:

- to carry out comparative overviews of the quality and price of services provided by communications providers or of associated facilities;
- for statistical purposes.

Section 137: Restriction on imposing information requirements

324. OFCOM may not use their powers under sections 135 and 136 to request information relating to a potential breach of a general condition unless OFCOM's investigation is in response to a complaint; they have reason to believe that a breach has occurred; they have decided to investigate to see whether the condition is being complied with; or the condition concerns sharing the burden of providing a universal service.

325. Any demands made by OFCOM must be proportionate to the use to which they intend to put the information, and must describe the information required and state the reasons why it is required. This implements Article 11(1) and (2) of the Authorisation Directive. Unless the demand is for the purpose of determining who is liable to a charge under section 38 (in which case other appropriate methods may be used) any demand must be set out in a notice and be served on the person from whom the information is requested.

Section 138: Notification of contravention of information requirements

326. Where OFCOM have reasonable grounds to believe that a person is or has been in breach of any requirement under section 135 or 136, they may notify that person accordingly, and allow him a specified period of time (usually one month) in which to make representations to OFCOM, and to take steps to comply with the notified requirement. This section, and sections 139 to 144 relate to enforcement of the information provisions applicable to communications providers or persons making associated facilities available and together implement Article 10 of the Authorisation Directive.

Section 139: Penalties for contravention of information requirement

327. Where a notified provider has not complied with a requirement notified under section 138, has not remedied the consequences of the notified contravention and no proceedings for an offence under section 144 have been brought, OFCOM may impose a penalty. In deciding on the amount of a financial penalty, OFCOM are required to consider whether the penalty is appropriate and proportionate, and to take account of any representations made by the person concerned and any steps taken by him to comply with the condition or restriction in question. The maximum fine that may be imposed under this section is £50,000. Secretary of State may by order amend this provision so as to substitute a different maximum penalty.

Section 140: Suspending service provision for information contraventions

328. This section gives OFCOM a power to suspend or restrict a person's entitlement to provide networks, services and/or associated facilities where OFCOM are satisfied that that person is in serious and repeated breach of any requirements imposed on him under section 135 or 136, that the requirements are not requirements imposed for purposes connected with the carrying out of OFCOM's functions in relation to SMP apparatus conditions and 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 has failed. The suspension or restriction must be appropriate and proportionate to the seriousness of the repeated contraventions.

329. A direction by OFCOM under this section may suspend entitlement generally or in relation to particular networks, services or facilities and may take effect indefinitely or for a fixed period. Where OFCOM exercise these powers, they must allow the person in question to make representations to them and, if appropriate, OFCOM may revoke the suspension or restriction. A direction may also include, where appropriate, conditions to protect the customers of a provider, including the payment of compensation.

Section 141: Suspending apparatus supply for information contraventions

330. This section gives OFCOM a power to suspend or restrict a person from supplying electronic communications apparatus where OFCOM are satisfied that that the person is in serious and repeated breach of any requirement of OFCOM to provide information for the purpose of section 135, and 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 has failed. The suspension or restriction must be appropriate and proportionate to the seriousness of the repeated contraventions.

331. A direction by OFCOM under this section may require a person to cease supplying electronic communications apparatus generally or in relation to particular electronic communications apparatus. The direction may take effect indefinitely or for a fixed period. A direction may also include, where appropriate, conditions to protect the customers of a supplier, including the payment of compensation. When OFCOM exercise these powers, they must allow the person in question to make representations to them and, if appropriate, OFCOM may revoke the suspension or restriction.

Section 142: Procedure for directions under sections 140 and 141

332. Unless a case is urgent, before exercising their powers under sections 140 and 141, OFCOM must notify a contravening provider or supplier of the proposed direction, allow him at least one month to make representations and consider each representation made by him.

* The meaning of an urgent case is set out in subsections (4) and (5). Such a case arises where there is a serious threat to public safety, public health or national security or a serious economic or operational problem that makes it inappropriate to give a contravening provider or supplier time to make representations.

333. If a case is urgent, OFCOM may give a direction without consulting the contravening provider or supplier. However, as soon as practicable after giving a direction in an urgent case, OFCOM must provide the relevant contravening provider or supplier with an opportunity to make representations and to propose steps to remedy the contravention.

Section 143: Enforcement of directions under ss. 140 and 141

334. It is an offence for any person to provide an electronic communications network, an electronic communications service or an associated facility while he is subject to a direction issued under section 140 suspending his entitlement to do so or where he does so in contravention of any restriction specified in the direction. It is also an offence for any person to supply electronic communications apparatus while he is subject to a direction issued under section 141 suspending his entitlement to do so or where he does so in contravention of any restriction specified in the direction. A person found guilty of either offence will be liable to a fine.

Section 144: Offences in connection with information requirements

335. It is an offence for any person to fail to provide information in response to a demand from OFCOM under section 135 or 136 and any such person shall be liable to a fine. However, subsection (2) makes provision for a defence where it is not possible for the recipient of a notice to provide the information within the period specified by OFCOM but the recipient has taken all reasonable steps to provide the information after that period. However, no proceedings for this offence may be brought in respect of failures for which OFCOM have imposed a financial penalty under section 139.

336. It is also an offence intentionally or recklessly to provide OFCOM with any false information in response to a request under section 135 or 136 and a person guilty of this offence is liable to a fine and/or imprisonment.

Section 145: Statement of policy on information gathering

337. This section places OFCOM under a duty to publish and keep up-to-date a statement of policy on how they will use their information-gathering powers under sections 135 and 136 and how they will use any information obtained in exercise of those powers. When exercising their information-gathering powers under sections 135 to 144, OFCOM must have regard to their published policy statement.

Section 146: Provision of information by OFCOM

338. This section places OFCOM under a duty to respond fully, within one week, (unless they have already conveyed the requested information) to any request made to them for information about any of the following:

- whether or not the person making the request is required under section 33 to notify OFCOM in advance of his intention to provide a network, service or associated facility;
- whether a notification submitted by that person under section 33 is satisfactory;
- that person's rights, in order to allow him to negotiate his right to network access; or
- what is required of that person under section 106 in order to make an application in respect of the electronic communications code.

This section implements Article 9 of the Authorisation Directive.

Section 147: Repeal of provisions of Telecommunications Act 1984

339. This section repeals certain sections of the Telecommunications Act 1984. One of the principal effects of these repeals will be to abolish the current requirement for persons running telecommunications systems to hold individual or class licences.

* Sections 5 to 8 of the Telecommunications Act 1984 make it a criminal offence to run a telecommunications system without a licence and set out the powers of the Secretary of State and the Director General of Telecommunications to grant licences. Section 9 allows the Secretary of State to designate certain telecommunications systems as “public telecommunications systems”. This designation confers additional rights and imposes additional duties on the licensee. Sections 10 and 11 relate to the telecommunications code (see the notes on section 106). Sections 12 to 15 set out the circumstances in which the Director General of Telecommunications may modify the conditions of telecommunications licences. Sections 16 to 19 deal with the powers of the Director General to enforce compliance with licence conditions. Finally, sections 27A to 27L make provision for standards of performance and

service to customers in the telecommunications industry and for procedures for dealing with complaints and billing disputes. These sections also govern the terms upon which deposits may be required from customers, and the circumstances in which operators may disconnect customers.

340. As a result of the abolition of telecommunications licensing it is necessary to make certain savings and transitional provision. These are set out in paragraphs 3, 4, 9, 11–14 and 16–18 of Schedule 18 (transitional provisions).

341. Paragraphs 3 and 4 provide savings for the effects of certain agreements expressed by reference to licences. Paragraphs 9 and 11 deal with the saving of certain licence conditions relating to the regulation of premium rate services, to significant market power or access, and to accounting, respectively. Paragraph 12 makes provision in respect of the payment of licence fees. Paragraph 13 enables OFCOM to enforce the licence conditions saved in paragraphs 9 and 11 and any liabilities saved under paragraph 12 which were previously enforceable by the Director General of Telecommunications under the Telecommunications Act 1984.

342. Paragraph 14 provides that where an agreement entered into for the purposes of a condition of a licence granted under section 7 of the Telecommunications Act 1984 entitles a party to it to terminate the agreement if he or another party ceases to be a Schedule 2 public operator, that right is not to be exercisable by reason of the coming into force of provisions of the Act, providing that corresponding general conditions, access-related conditions or a provision made by an SMP condition are imposed on one or both of the parties to the agreement.

343. Schedule 2 public operator has the same meaning as in Schedule 1 to the Telecommunications (Licence Modifications) (Standard Schedules) Regulations 1999 (S.I. 1999/2450).

344. Paragraphs 16–18 provide savings for allocated telephone numbers, the grant of powers under the telecommunications code, and guarantees of liabilities of code operators.

Section 148: Powers of local authorities in connection with networks

345. This section replaces section 2 of the Telegraph Act 1899 and permits local authorities in England, Wales and Scotland to borrow money to provide public electronic communications networks or services, including where those networks or services extend outside their local authority areas.

Section 149: Grants by Department of Enterprise, Trade and Investment

346. This section confers power on the Northern Ireland Department of Enterprise, Trade and Investment (“DETI”) to fund expenditure on electronic communications infrastructure and to fund expenditure for any other purposes prescribed by regulations made with the approval of the Department of Finance and Personnel. DETI will have discretionary powers to support financially the development of a regional electronic communications infrastructure in Northern Ireland, specifically the provision of electronic networks and services, and the improvement of the extent, quality and reliability of such networks or services.

Section 150: Grants by district councils

347. This section provides that district councils in Northern Ireland may award grants to persons providing a public electronic communications network, a public electronic communications service, or a facility connected with such a network or service where they believe such network or service benefits their area. Such grants must be for the purposes of compensating such persons for losses sustained in the provision of such networks, services or facilities. Any grant would also need to

comply with the European Community rules on state aid. This provision repeals and re-enacts section 97 of the Telecommunications Act, with certain consequential amendments, but only in so far as that provision relates to Northern Ireland.

Section 151: **Interpretation of Chapter 1**

348. This section provides for the interpretation of defined terms used in Chapter 1 of Part 2 of the Act.

Chapter 2: **Spectrum Use**

349. The existing law governing access to and use of radio spectrum is contained in the Wireless Telegraphy Acts 1949, 1967 and 1998, the Marine, etc., Broadcasting (Offences) Act 1967 and Part VI of the Telecommunications Act 1984. Under section 1(1) of the 1949 Act, it is an offence for any person to establish or use any station for wireless telegraphy or to install or use any apparatus for wireless telegraphy, otherwise than under and in accordance with a licence granted by the Secretary of State. Since radio spectrum is a finite resource, users of spectrum will continue to be licensed as at present, although the licensing and enforcement functions under the above legislation will be transferred to OFCOM (in accordance with section 2 of and Schedule 1 to the Act — see the notes for those provisions above).

* The expressions *wireless telegraphy*, *apparatus for wireless telegraphy* and *station for wireless telegraphy* are defined in section 19 of the Wireless Telegraphy Act 1949. *Wireless telegraphy* means the emitting or receiving of electromagnetic energy of a frequency not exceeding three million megacycles a second, which is equivalent to 3000 Giga-Hertz in modern terminology, (essentially radio signals) for the purposes of conveying messages, sounds or visual images or for the determination of position or distance. *Stations and apparatus for wireless telegraphy* are stations and apparatus for the emitting or receiving of radio signals.

350. Chapter 2 of Part 2 of the Act sets out new functions of OFCOM in relation to radio spectrum (which are in addition to the existing wireless telegraphy functions transferred to OFCOM under section 2 and Schedule 1). It introduces a new scheme of recognised spectrum access and continues the market-based approach to spectrum management introduced by the Wireless Telegraphy Act 1998 by allowing trading as a means of gaining access to spectrum. Additionally, Chapter 2 of Part 2 and Schedule 17 contain a large number of amendments to the existing law on wireless telegraphy, mainly for the purpose of implementing the new Directives.

Section 152: **General functions of OFCOM in relation to radio spectrum**

351. This section sets out general functions of OFCOM in relation to radio spectrum. These functions are:

- to give advice in relation to the use of radio spectrum and to provide other services and maintain records with respect to radio spectrum use within and outside of the United Kingdom, as OFCOM consider appropriate for the purposes of spectrum management.
- OFCOM may also be required by the Secretary of State to give other advice and to provide other services or to maintain other records for the purpose of securing United Kingdom compliance with any of its international obligations. The services, records and advice may be in respect of spectrum use outside the United Kingdom.

352. For the purpose of the carrying out of these functions, OFCOM may carry out or commission research and development work on use of radio spectrum, including future developments and any

connected matters. OFCOM may, with the consent of the Treasury, also make a grant to any person in order to encourage efficient spectrum-management or use.

353. Where OFCOM are required to give advice or provide another service, they may charge for doing so (if they are not required to do so, any charge would be under section 25).

Section 153: United Kingdom Plan for Frequency Authorisation

354. This section places OFCOM under a duty to publish a plan (to be known as “the United Kingdom Plan for Frequency Authorisation”) setting out the frequencies allocated for particular radio purposes in the UK that are available for assignment, and the purposes for which they have been allocated. This implements the requirement in Article 5(3) of the Authorisation Directive that there should be a national frequency plan.

Section 154: Duties of OFCOM when carrying out spectrum functions

355. This section sets out the duties of OFCOM when carrying out their functions under the enactments relating to radio spectrum management. OFCOM must have regard in particular to (i) the amount of spectrum available for use; (ii) the present and future demand for spectrum; and (iii) the desirability of promoting efficient management and use of the radio spectrum, the economic and other benefits of radio spectrum use, the development of innovative services and competition in the provision of electronic communications services. In regard to functions other than setting fees for licences or grants of recognised spectrum access under section 2 of the Wireless Telegraphy Act 1998, OFCOM may disregard such of these matters as do not appear relevant to the case in question. OFCOM must resolve any conflict between their duties under this section in the manner they think best in the circumstances. However, OFCOM must give priority to their duties under sections 3 to 6 in the event of any conflict between those duties and their duties under this section. This implements Article 9(1) of the Framework Directive.

Section 155: Advisory service in relation to interference

356. OFCOM may advise and help people complaining of interference with wireless telegraphy — in other words where the fulfilment of the purposes of the wireless telegraphy is prejudiced by any emission or reflection of electro-magnetic energy.

Section 156: Directions with respect to the radio spectrum

357. This section gives the Secretary of State a power, by order, to give general or specific directions to OFCOM about the carrying out of their spectrum functions. They may include a direction (i) to reserve certain frequencies for different classes of use, for example broadcasting, mobile telecommunications, private business systems, air traffic control or radio astronomy, or within a class, for example for the provision of additional digital television services or radio broadcasting multiplexes; or (ii) to exercise their powers under the proviso to section 1(1) of the Wireless Telegraphy Act 1949 and under sections 1, 3 and 3A of the Wireless Telegraphy Act 1998 in accordance with the provisions of the direction. This power is in addition to the power conferred on the Secretary of State by section 5 to give directions for limited purposes in accordance with which OFCOM must exercise their functions.

* The proviso to section 1(1) of the Wireless Telegraphy Act 1949 allows classes or descriptions of wireless telegraphy stations or apparatus to be exempted from licensing requirements by regulations made by the Secretary of State (such regulations will be made by OFCOM when the relevant provisions of the Act come into force). Section 1 of the Wireless Telegraphy Act 1998 (as amended by section

161) allows the Secretary of State to make regulations setting the fees to be paid on the issue and renewal of wireless telegraphy licences and grants of recognised spectrum access, and is subject to section 2 of that Act (which, as substituted by paragraph 147 of Schedule 17 to the Act, allows the Secretary of State to charge licence fees above the cost of exercising wireless telegraphy functions (“administrative incentive pricing”). Section 3 of the 1998 Act allows the Secretary of State to make regulations providing for wireless telegraphy licences to be awarded by means of spectrum auctions. Finally, section 3A of the 1998 Act is introduced by section 161. The regulations provided for in sections 1 to 3A of the 1998 Act will be made by OFCOM when the relevant provisions of the Act come into force.

Section 157: Procedure for directions under s.156

358. An order containing a direction under section 156 must state its purpose, unless the direction requires OFCOM to reserve certain frequencies for specified uses or requires OFCOM to exercise their powers under the proviso to section 1(1) of the Wireless Telegraphy Act 1949 or under section 1, 3 or 3A of the Wireless Telegraphy Act 1998 in a certain way. Before making an order containing a direction under section 156, unless urgency makes it inexpedient to do so, the Secretary of State must consult OFCOM and such other persons as she thinks fit. A draft of the order must be laid before Parliament and approved by each House, except where the Secretary of State considers the urgency of the case requires the order to be made straight away. An order containing a direction given by the Secretary of State in an urgent case ceases to have effect at the end of 40 days (excluding Parliamentary recesses) unless it is approved by a resolution of each House of Parliament.

Section 158: Special duty in relation to television multiplexes

359. If OFCOM reserve frequencies for the broadcasting of television programmes, they are under a duty, so far as practicable, to secure that sufficient multiplex capacity is available for qualifying services on television multiplexes licensed under the Broadcasting Act 1996. This is in accordance with condition 1 of Part B of the Annex to the Authorisation Directive.

** qualifying service* has the same meaning as is given in section 2 of the Broadcasting Act 1996.

Section 159: Grant of recognised spectrum access

360. Sections 159 to 162 introduce a new scheme of grants of “recognised spectrum access”. Grants of recognised spectrum access (“RSA”) will be available, in circumstances to be specified by OFCOM in regulations, to persons who transmit radio signals for reception in the United Kingdom, but who are not, for whatever reason, required to hold a licence under the Wireless Telegraphy Acts. Possible examples include certain satellite services, radio astronomy and Crown users of spectrum.

361. Section 159 sets out the procedures that apply to the making by OFCOM of grants of recognised spectrum access. Subsection (3) allows OFCOM to specify, amongst other things, the frequencies used, reception coverage and strength and type of signal that are the subject of the grant. Subsection (5) allows OFCOM to make a grant of RSA subject to such restrictions and conditions as they think fit, for example as to strength and type of signal, times of use or sharing of frequencies.

362. Schedule 5 makes additional detailed provision about the procedure for the grant, modification and revocation of grants of RSA. OFCOM are to prescribe procedures for applications for a grant of RSA including requirements that must be fulfilled before, and restrictions and conditions subject

to which, a grant will be made. Where an applicant fails to provide all the information reasonably required by OFCOM, their application may be refused. Any proposed refusal of an application must be notified to the applicant, stating the reasons and specifying the period (at least a month) within which the applicant may make representations about the proposed refusal. Similarly, if OFCOM propose to revoke or modify a grant or the restrictions or conditions to which it is subject, they must notify the person to whom the grant was made and give him the opportunity to make representations or, if applicable, to remedy a contravention of the restrictions or conditions of the grant.

Section 160: Effect of grant of recognised spectrum access

363. This section places OFCOM under a duty to take into account any grants of RSA to the same extent as if a licence under section 1 of the Wireless Telegraphy Act 1949 had been granted when (i) granting wireless telegraphy licences; (ii) making grants of RSA; and (iii) carrying out any of their other functions under the enactments relating to radio spectrum management where it is appropriate to have regard to whether wireless telegraphy licences are in force or to their terms.

Section 161: Charges in respect of grants of recognised spectrum access

364. This section amends section 1 of the Wireless Telegraphy Act 1998 to allow OFCOM to set the fees to be paid on the making of a grant of RSA. This section also inserts a new section 3A into the 1998 Act that makes provision for OFCOM to determine applications for the grant of RSA by means of an auction and for the procedures to be followed in such cases.

Section 162: Conversion into and from wireless telegraphy licences

365. Upon application, OFCOM may (in accordance with regulations made by them) convert a wireless telegraphy licence into a grant of RSA and vice versa.

Section 163: Payments for use of radio spectrum by the Crown

366. This section allows the Secretary of State to make payments (out of money provided by Parliament) for the operation by the Crown of stations and apparatus for wireless telegraphy or in respect of any grant of RSA made to the Crown. The Wireless Telegraphy Act 1949 does not bind the Crown, which is therefore exempt from the obligation to obtain a licence for its use of spectrum. However, in order that public sector users should have incentives to use spectrum efficiently, a commitment was given during the passage of the Wireless Telegraphy Act 1998 that the Crown would pay for access to spectrum on a comparable basis to the private sector.

Section 164: Limitations on authorised spectrum use

367. Where OFCOM consider it appropriate to limit the number of wireless telegraphy licences or grants of RSA on certain frequencies, or for certain uses, for the purpose of securing efficient spectrum use, they must make an order imposing the limitations. The purpose of this duty is to ensure fairness between potential users. The order must set out the criteria OFCOM will apply in limiting the number of licences and grants and deciding to whom to issue licences or grants of RSA. The criteria must be objective, non-discriminatory, proportionate and transparent. OFCOM must keep the order under review. This section implements Article 7 of the Authorisation Directive.

Section 165: Terms etc. of wireless telegraphy licences

368. This section adds three new subsections to section 1 of the Wireless Telegraphy Act 1949. Subsection (2A) provides that any terms, provisions and limitations of a licence granted under that Act may include (i) provisions relating to the strength or type of signal, times of use, and frequency

sharing, and (ii) prohibitions on or obligations requiring the transmission or broadcasting of particular content by the licence holder. Subsection (2B) enables licences to be granted in relation to stations or apparatus described by reference to specified factors or in relation to a particular station or apparatus. Subsection (2C) provides that a licence must not duplicate conditions already imposed by general conditions under this Act: this new subsection implements Article 6(4) of the Authorisation Directive.

Section 166: Exemption from need for wireless telegraphy licence

369. This section amends the Wireless Telegraphy Act 1949 to require OFCOM to exempt certain stations or apparatus from the requirement to be licensed under that Act where their use would not cause undue interference (as redefined in section 183). This implements Article 5(1) of the Authorisation Directive.

Section 167: Bidding for wireless telegraphy licences

370. This section makes some procedural amendments to section 3 of the Wireless Telegraphy Act 1998, which governs the conduct of spectrum auctions for wireless telegraphy licences. The principal changes are to combine the separate regulations and notices which at present govern spectrum auctions, to introduce greater flexibility on how bids may be expressed and to add a new provision allowing OFCOM to require payments to be made by a person who successfully bids for a wireless telegraphy licence but subsequently refuses to take the licence applied for.

371. Paragraph 21 of Schedule 18 (transitional provisions) provides that any procedures set out in a notice issued by the Secretary of State under regulations made under section 3 of the Wireless Telegraphy Act 1998 before the commencement of this section shall have effect as if prescribed by OFCOM by regulations under that provision.

Section 168: Spectrum trading

372. This section gives OFCOM a power to make regulations authorising the holder of a wireless telegraphy licence or the holder of a grant of RSA to transfer the rights and obligations under their licence or grant of RSA to another person. This will enable the development of a secondary market in licences and grants of RSA where this is permitted by OFCOM.

373. Subsections (1) and (2) provide that regulations authorising spectrum trading may allow some or all of the rights and obligations attached to a wireless telegraphy licence or grants of RSA to be transferred to another person, or for such rights and obligations to be exercised concurrently by the transferee and the transferor. Sharing of rights could occur, for example, if it were intended that the licence or grants of RSA would revert after a period of time to the original holder, who meanwhile would remain responsible for ensuring compliance with the terms and conditions. Subsection (2) will thus allow secondary spectrum trading to take place in different ways and is designed to allow maximum flexibility.

374. Subsection (3) sets out the range of provisions that may be included in regulations authorising spectrum trading. For example, under subsection 3(c) and (e) regulations may require the approval of OFCOM before a trade can be made, and may make trades subject to compliance with conditions imposed by OFCOM. Under subsection (3)(i), the regulations may require that trades be notified to OFCOM both before and after the trade takes place (and notification before the trade will be made a requirement because Article 9(4) of the Framework Directive requires it).

375. Subsections (4) and (5) provide that a transfer of rights and obligations under a wireless telegraphy licence or grant of RSA will be void unless it is made in accordance with either: (i) regulations authorising spectrum trading made under this section; or (ii) the provisions of an existing wireless telegraphy licence which allows the holder to confer the benefit of the licence on another.

376. This section implements Article 9(3) and (4) of the Framework Directive and condition 5 of Part B of the Annex to the Authorisation Directive.

Section 169: Variation and revocation of wireless telegraphy licences

377. This section substitutes a new section 1E of the Wireless Telegraphy Act 1949. The principal changes are an increase from 28 days to one month as the standard period of notice that OFCOM must give, new provisions about shorter notice in cases of serious and repeated breaches and urgency, and removal of the need for notice when the variation or revocation is at the request of, or with the consent of, the licence-holder. The first two of those changes implement paragraphs 2, 5, 6 and 10 of Article 10 and Article 14(1) of the Authorisation Directive (see also the notes on section 172 below).

378. In addition, paragraph 8 of Schedule 17 amends section 1D of the Wireless Telegraphy Act 1949 to provide that any application for a grant of a wireless telegraphy licence shall be determined in accordance with procedures prescribed in regulations made by OFCOM. Any decision on such an application must, in most cases, be published by OFCOM within six weeks. Paragraph 20 of Schedule 18 (transitional provisions) provides that any procedures set out in a notice under section 1D of the Wireless Telegraphy Act 1949 prior to the commencement of paragraph 8 of Schedule 17 shall be treated as if they are regulations made under the amended section 1D.

Section 170: Wireless telegraphy register

379. OFCOM may, by regulations, set up a public register of information about the holders of wireless telegraphy licences and persons to whom grants of RSA have been made. This may also include details about the licences and frequencies assigned.

Section 171: Information requirements in relation to wireless telegraphy licences

380. This section amends the Wireless Telegraphy Act 1949 by inserting new sections 13A and 13B. Section 13A allows OFCOM to require, by issuing a notice, any user of a wireless telegraphy station or apparatus to provide information relating to their use of the station or apparatus and any related matters to OFCOM for statistical purposes: the limitation on the purpose for which information may be required implements Article 11(1)(e) of the Authorisation Directive. Such a request must be proportionate (which implements the requirement in Article 11(1), and OFCOM must explain why they are demanding that information and the statistical purposes for which the information will be used (which implements Article 11(2)). A person who fails to provide such information is guilty of an offence, although it is a defence to show that it was not reasonably practicable for him to comply within the period allowed, but that he took all reasonable steps to comply after that period had expired. It is also an offence for a person to provide information to OFCOM under this section that is materially false if he knows, or is reckless as to whether, it is materially false.

381. Section 13B imposes a requirement on OFCOM to publish a statement of their policy on the use of their powers under section 13A and the statistical purposes for which they will use any information gathered and to have regard to such statement for the time being in force when exercising the powers under section 13A.

Section 172: Contraventions of conditions for use of wireless telegraphy

382. Where OFCOM have reasonable grounds to believe that a wireless telegraphy licensee is or has been in breach of any term, provision, or limitation of that licence or any person is or has been in breach of any term, provision or limitation of an exemption under the proviso to section 1(1) of the Wireless Telegraphy Act 1949, they may notify that person accordingly, and allow him a specified period of time in which to make representations to OFCOM and to take steps to comply with the notified term, provision or limitation. The specified period of time must usually be one month, except, for example, in cases of repeated contraventions. This section implements Article 10(2) of the Authorisation Directive (see also the notes on sections 169 and 174).

Section 173: Meaning of “repeated contravention” in s. 172

383. This section defines a “repeated contravention” for the purposes of section 172. This section implements Article 10(2) and (5) of the Authorisation Directive.

Section 174: Procedure for prosecutions of wireless telegraphy offences

384. Proceedings for an offence under section 1 of the Wireless Telegraphy Act 1949 cannot be brought unless OFCOM have first notified the potential defendant under section 172 and considered any representations made by him (this implements Article 10(2) and (3) of the Authorisation Directive — see also the notes on section 172 above). However, OFCOM do not have to follow section 172 procedures in urgent cases, i.e. where there is a threat to public safety or health, or to national security, or where a person other than the defendant would suffer serious economic or operational problems (this implements Article 10(6) of the Authorisation Directive).

Section 175: Special procedure for contraventions by multiplex licence holders

385. This section gives OFCOM a power to impose fines for breach of terms, provisions or limitations falling within new section 1(2A)(b) or (c) of the Wireless Telegraphy Act 1949 (terms, provisions and limitations about service content) inserted by section 165. OFCOM may impose a fine under this section where they have notified the general multiplex licensee of their belief that he is in breach of the licence condition in question, provided that criminal proceedings have not already been commenced under the Wireless Telegraphy Act 1949 against that licensee in respect of that alleged breach. Once a fine has been imposed by OFCOM, subsection (4) provides that no criminal proceedings may be brought under the 1949 Act for that breach.

**a general multiplex licence* is defined in subsection (5) as a wireless telegraphy licence issued for the purposes of a multiplex service, when no licence under the Broadcasting Act 1996 is held in respect of that multiplex service.

**multiplex service* is defined in subsection (6) as a service broadcast for general reception which provides, or is capable of providing, two or more digital services.

386. OFCOM must notify a general multiplex licensee on whom they decide to impose a fine, giving the reasons for their decision and allowing a reasonable period within which the fine must be paid.

Section 176: Amount of penalty under s. 175

387. This section provides that the maximum penalty that OFCOM may impose for a contravention of section 175 will be the greater of £250,000 and 5% of the relevant amount of gross revenue (which term is defined in section 177). Subsection (3) provides for the Secretary of State to amend

by order the amount of £250,000. When determining the amount of a penalty to be imposed, OFCOM must have regard to their guidelines for fixing penalties published in accordance with section 392.

Section 177: “Relevant amount of gross revenue” for the purposes of s. 176

388. The relevant amount of gross revenue for the purpose of section 176 is to be calculated in accordance with a statement of principles made by OFCOM. Before making or revising a statement under this section, OFCOM must consult the Treasury and the Secretary of State. OFCOM must publish the statement or revision and send a copy to the Secretary of State, who must lay it before each House of Parliament.

Section 178: Proceedings for an offence relating to apparatus use

389. This section amends sections 11 and 12 of the Wireless Telegraphy Act 1949 in order to bring the mechanism for appeals against decisions of OFCOM about apparatus which causes or may cause undue interference (which are currently taken by the Secretary of State) into line with the new provisions for appeals in Chapter 3 of Part 2 of this Act.

390. The current arrangements for appeal to a tribunal established under section 9 of the 1949 Act, which is repealed by Schedule 19, have very rarely, if ever, been used.

Section 179: Modification of penalties for certain wireless telegraphy offences

391. Subsections (1) and (2) amend section 14 of the Wireless Telegraphy Act 1949. They alter the penalties and mode of trial for offences under sections 1 and 1A of the 1949 Act committed after the commencement of this section consisting of unlicensed transmission other than for broadcasting, or possession of apparatus for such transmission: these offences become triable summarily only, and the maximum penalties are now six months imprisonment and/or a fine not exceeding level 5 on the standard scale (currently £5,000). Subsection (3) amends section 79(1) of the Telecommunications Act 1984 so that, where authorised by warrant, apparatus and other property suspected of being used in connection with an offence under section 1A of the 1949 Act consisting of possessing apparatus for unauthorised transmission (whether broadcasting or not) may be seized and detained.

*As mentioned above, section 1(1) of the 1949 Act makes it an offence for any person to establish or use any station for wireless telegraphy or to install or use any apparatus for wireless telegraphy, otherwise than under and in accordance with a licence granted by the Secretary of State. Section 1A makes it an offence to possess or have control over any equipment with intent to use it in contravention of section 1 or knowing, or having reasonable cause to believe, that another person will so use it. The mode of trial and penalties for broadcasting offences are not affected by the 1949 Act.

Section 180: Fixed penalties for certain wireless telegraphy offences

392. This section gives effect to Schedule 6 to the Act, which introduces a fixed penalty regime for summary offences under the Wireless Telegraphy Act 1949.

393. Schedule 6 allows OFCOM to send a “fixed penalty notice” to any person they believe has committed any summary offence under the 1949 Act. This notice must give particulars about the alleged offence, and will offer the alleged offender the opportunity to discharge any liability to conviction for the offence by payment of a fixed penalty within the specified period, which must be at least one month. The amount of the penalty may be prescribed in relation to that offence by

regulations made by the Secretary of State, but must not be more than 25 per cent of the maximum fine on summary conviction). No proceedings may be brought for the alleged offence during the specified period, unless the alleged offender asks to be tried in accordance with the provisions of the notice. If the penalty is paid within the period specified in the notice, no further proceedings for that offence can be brought against the notified person.

Section 181: Power of arrest

394. This section applies the summary arrest powers contained in Schedule 1A to the Police and Criminal Evidence Act 1984 (which is being inserted by the Police Reform Act 2002) to offences under section 14(1) of the Wireless Telegraphy Act 1949. Section 14(1) provides that certain offences under the 1949 Act are triable either summarily or on indictment (“triable either way”). This section also amends the equivalent provision in the Police and Criminal Evidence (Northern Ireland) Order 1989.

Section 182: Forfeiture etc. of restricted apparatus

395. This section gives effect to Schedule 7, which replaces sections 80 and 81 of the Telecommunications Act 1984.

396. Schedule 7 sets out the procedures which apply to the seizure and forfeiture of apparatus the custody or control of which is restricted under an order made under section 7 of the Wireless Telegraphy Act 1967. OFCOM are to notify each owner of such apparatus about its seizure and the grounds for that seizure. The principal change from the previous regime will be that restricted apparatus that has been seized will be deemed to be forfeited unless any person claiming that the apparatus is not liable to forfeiture gives notice of his claim in writing to OFCOM within one month of the date of the notice of seizure. In such cases OFCOM may take the matter to court. They must decide as soon as reasonably practicable after receipt of the claim either to do so or to return the apparatus to its owners.

*Section 7 of the Wireless Telegraphy Act 1967 provides for the Secretary of State to make orders restricting certain actions in relation to specified apparatus for the purpose of preventing or reducing the risk of interference. Restricted apparatus may be seized either under warrant under section 15 of the Wireless Telegraphy Act 1949 or in accordance with a power in section 79(3) of the Telecommunications Act 1984 to seize any apparatus or thing used in connection with offences specified in section 79(1) of that Act.

Section 183: Modification of definition of “undue interference”

397. This section modifies the definition of “undue interference” in section 19(5) of the Wireless Telegraphy Act 1949 (i) in implementation of condition 3 of Part B of the Annex to the Authorisation Directive, which refers to “harmful interference” as defined in Article 2(2)(b) of that Directive, and also (ii) in implementation of Article 7(2) of Directive 1999/5/EC on radio equipment and telecommunications terminal equipment, which refers to “harmful interference” as defined (in the same terms) in Article 2(i) of that Directive. The new definition provides that interference with wireless telegraphy will not be regarded as “undue interference” unless it is also harmful. “Harmful” interference means that the interference creates dangers or risks of dangers in relation to any radio service used for navigation or for any other purpose connected with safety, or that it degrades, obstructs or repeatedly interrupts lawful radio transmissions.

Section 184: Modification of definition of “wireless telegraphy”

398. This section gives the Secretary of State the power (exercisable by order, subject to the affirmative resolution procedure in both Houses of Parliament) to modify the definition of “wireless telegraphy” in section 19(1) of the Wireless Telegraphy Act 1949 so as to vary the upper frequency limit (currently 3,000 Giga-Hertz) of the electromagnetic spectrum to which the Wireless Telegraphy Acts apply. Although current technology does not permit the use for radiocommunications of frequencies anywhere near that limit, as technology progresses it may be necessary to raise the ceiling.

Chapter 3: Disputes and Appeals

399. The dispute provisions in the Act reflect the requirements of Articles 20 and 21 of the Framework Directive. Article 20 enables disputes under the Framework Directive and the other Communications Directives between persons providing electronic communications networks and electronic communications services in the same jurisdiction to be referred to OFCOM by either party. Article 21 of the Framework Directive stipulates the procedures to be followed when cross-border disputes arise. Sections 185 to 190 implement these provisions of the Directives accordingly.

400. The appeals mechanisms in the Act have been devised to meet the specific requirements of Article 4 of the Framework Directive. Article 4 of the Framework Directive, in effect, requires that any person who is affected by a decision of OFCOM or the Secretary of State which relates to networks or services or rights of use of spectrum must have the right of appeal on the merits against that decision to an appeal body that is independent of the parties involved. The Act therefore sets out a mechanism for appeal on the merits to the Competition Appeal Tribunal (CAT) against any decision (with specified exceptions) taken by OFCOM under Part 2 of the Act or the Wireless Telegraphy Acts 1949 or 1998, against certain specified decisions of the Secretary of State and against directions, approvals and consents pursuant to conditions under section 45. Once the CAT has reached its decision it must remit the decision under appeal to OFCOM, the Secretary of State or the person responsible for the direction, approval or consent as appropriate, with such directions, if any, as it considers necessary.

Section 185: Reference of disputes to OFCOM

401. This section enables parties to certain disputes relating to network access or dealing with obligations under Part 2 of the Act and other legislation relating to radio spectrum management to be referred by a party to OFCOM. The types of disputes that may be referred are: (i) network access disputes between different communications providers, between communications providers and persons making associated facilities available or between different persons making associated facilities available; (ii) disputes concerning the access-related conditions set under section 74(1) between communications providers or persons making associated facilities available and persons to whom that section applies or between different persons to whom that section applies; (iii) disputes between different communications providers dealing with obligations under Part 2 of the Act (other than disputes about obligations imposed by SMP apparatus conditions, the persistent misuse of networks or services, restrictions in leases and licences or offences relating to networks and services) or under other legislation relating to radio spectrum management.

402. Under subsection (4), OFCOM may stipulate the manner in which a reference may be made by a party to the dispute. Any requirements imposed by OFCOM must be published in a notice. This section implements Article 20(1) of the Framework Directive.

403. Paragraph 22 of Schedule 18 (transitional provisions) makes provision for OFCOM to deal with disputes arising under ‘old’ rules (notably, the Telecommunications (Interconnection) Regulations 1997). Such disputes will in effect continue to be resolved under the ‘old’ rules as regards their substance. This means that, for example, only the latter’s (more restricted) range of remedies can be applied; in particular, OFCOM cannot award costs or compensation. However, these disputes will be handled under the new *procedural* arrangements — so that, for example, the decisions will be appealable to the CAT, and must be taken within 4 months (rather than 6 as in the present rules) — (see subparagraph (1)). After the end of the transitional period (specified in section 408), OFCOM will only be able to deal with these disputes if they are satisfied that the circumstances are ‘exceptional’ — e.g. if it was not reasonable or possible for the issue in dispute to have been discovered before (subparagraph (2)(d)). Where they take a decision under these provisions, OFCOM must also take steps as soon as possible to decide whether or not to replace the direction giving effect to such a decision with a condition of entitlement under the new regime, and then to either introduce such a condition or else abandon the old direction.

404. Any direction given under regulation 6 before the Telecommunications (Interconnection) Regulations 1997 are revoked will be enforceable under paragraph 13 of Schedule 18. Paragraph 22 also provides (subparagraphs (5) to (7)) for directions made by Oftel to resolve disputes under the Interconnection Regulations to have continued effect even after the revocation of the Regulations by the Act. However OFCOM’s powers to continue such directions are restricted to obligations which could be replaced by new-style obligations and are subject to the duty to review and either replace or abandon them as described above.

Section 186: Action by OFCOM on dispute reference

405. If a dispute is referred to OFCOM by a party under section 185, OFCOM must handle the dispute unless they believe that there are alternative means, which would promptly and satisfactorily resolve the dispute consistently with the European Community requirements in section 4. Where OFCOM conclude that it is appropriate for the referred dispute to be resolved by alternative means, they must inform the parties to the dispute of their decision as soon as practicable. However, if the dispute is not resolved by the alternative means within 4 months, under subsection (6) either party to the dispute may refer it back to OFCOM. Section 186 implements Article 20(2) of the Framework Directive.

Section 187: Legal proceedings about referred disputes

406. Subject to subsection (8) of section 190 (determinations bind the parties) and the terms of any agreement between the parties to a dispute, a reference of a dispute under section 185 or a reference of a dispute back to OFCOM under subsection (6) of section 186 is without prejudice to the rights of the person referring the dispute, the other parties to the dispute, OFCOM or any other person to bring or continue any legal proceedings dealing with the dispute. Any reference or reference back also does not prevent OFCOM from taking enforcement action in relation to the subject matter of the dispute. OFCOM, however, must comply with any court order requiring OFCOM to stay their handling of a dispute for the period of time specified by the court (which may be indefinite). The period of time specified by the court shall not be counted towards the 4 months that OFCOM have to resolve a dispute under section 185. Section 187 implements Article 20(5) of the Framework Directive.

Section 188: Procedure for resolving disputes

407. This section requires OFCOM to consider and determine any dispute referred under section 185 that they decide to handle or any dispute referred back to them under subsection (6) of section 186. Unless there are exceptional circumstances or it is reasonably practicable for OFCOM to make a determination in a shorter period of time, OFCOM must determine a dispute within 4 months of the date on which OFCOM determines that it is appropriate for them to handle the dispute or on which the dispute is referred back to them. OFCOM must send a copy of their determination and the reasons for their decision to each party to the dispute. Subject to commercial confidentiality, OFCOM must also publish its determination. Section 188 implements Article 20(1) and (4) of the Framework Directive.

Section 189: Disputes involving other member States

408. This section requires OFCOM to consult with the regulatory authorities of other member States prior to handling, considering or making a determination of a dispute referred to them under section 185 or referred back to them under subsection (6) of section 186 if the dispute relates partly to anything done by means of an electronic communications network falling within the jurisdiction of those authorities.

*Under subsection (2), a dispute falls within the jurisdiction of other regulatory authorities when it relates to the activities that are carried out by a party to the dispute in more than one member State or by different parties in different member States and the other regulatory authorities are the authorities for those activities in the other member State or one of the other member States.

409. Where a dispute involves other regulatory authorities, subsection (5) imposes a duty on OFCOM to agree with them, so far as practicable, the steps to be taken in relation to the dispute. Subsection (6) requires OFCOM to resolve the dispute within such period of time as may be agreed with the other regulatory authorities.

410. This section implements Article 21(2) of the Framework Directive.

Section 190: Resolution of referred disputes

411. When determining a dispute under Chapter 3 of Part 2 of the Act, OFCOM may:

- issue a declaration setting out the rights and obligations of each party to the dispute;
- fix terms or conditions of transactions between the parties to a dispute (except where the dispute relates to radio spectrum management legislation);
- impose enforceable obligations requiring the parties to enter into a transactions on terms or conditions set by OFCOM (except where the dispute relates to radio spectrum management legislation);
- direct a party to the dispute to make payments to adjust under — or overpayment (except where the dispute relates to radio spectrum management legislation);
- require a party to make payments in respect of costs and expenses incurred by another party;
- require a party to make payments in respect of costs and expenses incurred by OFCOM, where the dispute relates to radio spectrum management legislation or where it appears to OFCOM that the reference was frivolous or vexatious or that a party otherwise abused his right of reference under Chapter 3;
- take account of any decisions made by others and ratify any such decisions, where a dispute has been referred back under subsection (6) of section 186.

412. These powers to resolve a dispute do not prevent OFCOM from separately exercising their powers to (i) set, modify or revoke general conditions, specific conditions dealing with universal service, access, privileged suppliers or SMP, (ii) to modify or revoke wireless telegraphy licences or grants of recognised spectrum access; or (iii) to make, vary or revoke any regulations under section 1 or 3 of the Wireless Telegraphy Act 1949.

413. Any determination made by OFCOM is binding on the parties to the dispute; however, they may appeal against the determination in accordance with section 192.

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

414. This section gives OFCOM powers to require parties to disputes and other persons to provide them with information that enables OFCOM to:

- decide whether they should handle a dispute;
- determine whether they need to consult the regulatory authorities of other member States; and
- consider and determine a dispute.

415. Information requested by OFCOM must be provided within the period specified by OFCOM. Requests for information under this section may be enforced by OFCOM using the procedure set out in sections 138 to 144. This section implements Article 5 and 21 of the Framework Directive.

Section 192: Appeals against decisions by OFCOM, the Secretary of State etc.

416. This section provides for appeal to the Competition Appeal Tribunal (CAT) against decisions (with specified exceptions) made by OFCOM under Part 2 of the Act and the Wireless Telegraphy Acts 1949 and 1998 and against decisions made further to a condition of entitlement set under section 45. The specified exceptions are set out in Schedule 8 and are either (i) decisions that do not have immediate effect on a person, but are of a legislative or quasi-legislative nature that require a further act or decision to be given effect, or (ii) decisions on matters which fall outside the scope of the Communications Directives. For example, a decision taken by OFCOM relating to the making or revision of a statement of policy on information-gathering under section 145 would not have immediate effect on any person. It would only be where OFCOM exercised their powers under section 135 to require the provision of information, in accordance with that statement, that there would be a decision that would actually have effect on any person. Another example is decisions under section 175 (special procedure for contraventions by multiplex licence holders), which fall outside the scope of the Directives.

* For the purposes of this section and the rest of this Chapter, a decision includes OFCOM's exercise of any power and any failure by them to grant an application or to exercise any power following a request (subsection (7) and (8)).

417. Section 192 also applies to specific decisions of the Secretary of State given under section 5 (directions in respect of Part 2 functions) or section 156 (directions with respect to radio spectrum) (in both cases, excluding decisions specified by Schedule 8), under section 109 (restrictions and conditions subject to which the electronic communications code applies) or under section 132 (suspension or restriction of a communication provider's entitlement).

418. The right of appeal extends to any person affected by a decision to which this section applies. Subsections (3) to (6) provide that an appeal can be made only by sending a notice of appeal to the

CAT, and prescribe the contents of the notice. This section and sections 193 to 195 implement Article 4 and 11(3) of the Framework Directive and Article 10(7) of the Authorisation Directive.

Section 193: Reference of price control matters to the Competition Commission

419. If an appeal under section 192(2) raises a price control matter specified in the rules of the CAT, the matter must be referred to the Competition Commission for determination in accordance with the rules and directions of the CAT and (subject to that) using such procedure as Competition Commission consider appropriate.

* A price control matter as defined in subsection (10) relates to the imposition of any form of price control by an SMP condition set under section 87(9), 92, or 93(3).

420. The Competition Commission must notify the CAT of a determination concerning a price control matter and the CAT must follow the determination of the Competition Commission unless it would be set aside under the principles of judicial review.

Section 194: Composition of Competition Commission for price control references

421. This section requires the Secretary of State to appoint not less than three members of the Competition Commission for the purposes of references of price control matters to them under section 193. In selecting a group to determine a matter referred to the Competition Commission under section 192, the chairman of the Competition Commission must select at least one, but no more than three, of the members appointed by the Secretary of State to be members of the group.

Section 195: Decisions of the Tribunal

422. The CAT is to decide an appeal on the merits, and then decide the appropriate action to be taken by the maker of the decision that is being appealed. Where an appeal is made against a decision under section 109 (restrictions and conditions subject to which the electronic communications code applies), the CAT must decide the appeal in accordance with the principles of good administration. The CAT's decision should be communicated to the original decision-maker along with directions regarding the implementation of the CAT's decision. However, the CAT cannot require the original decision-maker to take any action that he would not otherwise have the power to take.

Section 196: Appeals from the Tribunal

423. A decision of the CAT may be appealed on a point of law, with the permission of the CAT or the appellate court, to the Court of Appeal or, in Scotland, to the Court of Session. Such an appeal may be brought by a party to the original CAT proceedings, or by any third party who has sufficient interest in the decision.

Section 197: Interpretation of Chapter 3

424. This section provides for the interpretation of defined terms used in Chapter 3.

PART 3: TELEVISION AND RADIO SERVICES

Chapter 1: The BBC, C4C, the Welsh Authority and the Gaelic Media Service

Section 198: Functions of OFCOM in relation to the BBC

425. This section provides for OFCOM to have the function of regulating the BBC's services to the extent that there is provision for them to do so in the BBC Charter and Agreement (as defined by section 362(1)), in this Act and in Part 5 of the Broadcasting Act 1996 (that is, in relation to unfairness and unwarranted infringement of privacy). For the purposes of that regulatory function,

OFCOM may, where authorised by the Charter and Agreement, act on behalf of the Secretary of State.

426. The existing Agreement between the Secretary of State and the BBC supplements the Royal Charter in setting out in more detail the provision and content of the BBC's services. It is intended that the Agreement will be amended to give effect to the new regulatory obligations placed on the BBC and to provide for OFCOM to impose financial penalties in the event of the BBC failing to comply with them. Under subsection (3) of this section, the BBC are required to pay to OFCOM any penalties which OFCOM impose for contraventions of provision made by or under Part 3 of the Act or the Charter and Agreement. The maximum penalty that OFCOM may impose under such a power is £250,000, but the Secretary of State will be able to change this figure by order: subsections (5) to (7). The BBC must also pay to OFCOM such sums in respect of the carrying out of OFCOM's functions in relation to the BBC as may be agreed between the BBC and OFCOM (or, in the absence of agreement, set by the Secretary of State): subsection (4).

Section 199: Functions of C4C

427. The Channel Four Television Corporation are able to engage in activities which appear to them to be appropriate to carry on in association with their primary functions and to be connected (other than merely in financial terms) with activities undertaken by them for the carrying out of those functions. Those functions are securing the continued provision of Channel 4 and the fulfilment of the Channel's public service remit set out in section 265(3), as described in the notes to that section below. The Corporation may also do such things and enter into such transactions as appear to them incidental or conducive to the carrying out of their statutory functions.

428. Under subsection (3) the Corporation will cease to have powers to establish or acquire interests in “qualifying companies” under section 24(5)(b) and (6) of the Broadcasting Act 1990.

429. Schedule 9 provides a framework for the approval and enforcement of arrangements about the carrying out of the Corporation's activities.

430. Paragraph 1 requires OFCOM to notify the Corporation that, within a period specified in the notification, the Corporation must submit to OFCOM proposals for arrangements that will apply to the relevant licence period. OFCOM must do this as soon as practicable after the commencement of this Schedule and as soon as practicable in the last twelve months preceding each date on which the Channel 4 licence would expire if not renewed.

431. Where the Corporation have received a notification, they must submit proposals to OFCOM setting out the arrangements under which they are proposing to secure, so far as reasonably practicable, that all significant risks that their other activities will have an adverse effect on the carrying out of their primary functions (i.e. the provision of Channel 4 and the fulfilment of its public service remit) are identified, evaluated and properly managed. The proposals must include the arrangements that the Corporation consider appropriate for securing the transparency objectives set out in paragraph 2(4). They may relate in particular to the list of matters specified in paragraph 2(5), e.g. the management of new ventures, the assessment of risks.

432. OFCOM must consider the proposed arrangements and approve them, approve them with modifications, or require the Corporation to submit revised proposals. OFCOM may review the arrangements once during each licence period, either as a single review of all of the arrangements or two separate reviews, one relating to the arrangements to secure the transparency objectives and one relating to other matters. OFCOM must also publish the arrangements.

433. The Corporation must act in accordance with the approved arrangements. OFCOM have powers to enforce the arrangements and may impose a penalty, which may not exceed 3 per cent. of the Corporation's qualifying revenue, if they are contravened.

* *Qualifying revenue* has the same meaning as in section 19(2) to (6) of and Part 1 of Schedule 7 to the Broadcasting Act 1990 with any necessary modifications.

434. In carrying out their functions under Schedule 9, OFCOM must have regard to the need to secure, so far as reasonably practicable, that all significant risks that the Corporation's other activities will have an adverse effect on the provision of Channel 4 or its public service remit are identified, evaluated and properly managed.

Section 200: Removal of members of C4C

435. This section gives OFCOM the power, after consulting the Secretary of State, to remove members of the Channel Four Television Corporation appointed by them.

Section 201: Deficits and surpluses of C4C

436. This section repeals sections 26 and 27 of the Broadcasting Act 1990 (revenue deficits and excesses of Channel Four Television Corporation to be met or distributed to providers of Channel 3 services) in respect of any year ending after the commencement of this section.

Section 202: Borrowing limit for C4C

437. The Secretary of State may by order limit the amount of money that the Channel Four Television Corporation are permitted to borrow. Before making an order under this section, the Secretary of State must consult the Corporation and obtain the consent of the Treasury. The Corporation must not borrow money in excess of any limit set by the Secretary of State. The effect of this will be only to circumscribe new borrowing — the setting of a limit at a figure below that of the Corporation's actual outstanding borrowing would not require the Corporation to take positive steps to reduce their outstanding borrowing to a level which did not exceed the limit.

Section 203: Function of OFCOM in relation to the Welsh Authority

438. OFCOM are to regulate the services provided by the Welsh Authority to the extent provided by Part 5 of the Broadcasting Act 1996 and the present Act.

Section 204: Welsh Authority's function of providing S4C and S4C Digital

439. The Welsh Authority, as currently constituted, shall continue to exist. However, their functions as described under section 57 of the Broadcasting Act 1990, will be replaced with the function in subsection (2), namely of providing high quality television programmes for reception in Wales. The Welsh Authority must continue to provide S4C and may continue to provide S4C Digital. However, under subsections (8) and (9), the Secretary of State may by order require the Welsh Authority to provide S4C in digital rather than analogue form, to merge S4C and S4C Digital and/or to provide the whole or part of the merged service in both analogue and digital form for a period specified in the order.

440. Subsection (5) imposes a duty on the Welsh Authority to ensure that S4C and S4C Digital are public services used for the dissemination of information, education and entertainment. The Welsh Authority may provide programming subtitles and other ancillary services for their S4C programmes. They may also provide assistance for disabled people and other ancillary services for their S4C Digital services.

Section 205: Powers to provide other services

441. This section confers on the Welsh Authority the power to provide certain services in addition to S4C and S4C Digital. Subsection (1) prohibits the Welsh Authority from providing any television programme service (other than S4C and S4C Digital) unless its provision is approved by an order made by the Secretary of State and it is a public service of high quality used for the dissemination of information, education or entertainment wholly or mainly to the Welsh public. Any television programme services provided under this section must broaden the existing range of public television programme services in Wales.

* The meaning of a television programme service is given in section 362(1).

442. Subsection (2) allows the Welsh Authority to provide services other than television programme services or sound services, provided they are public services of high quality used for the dissemination of information, education or entertainment which will be made available wholly or mainly to the Welsh public, or for use in Wales, and have been approved by the Secretary of State. Examples of the types of service that the Welsh Authority may provide under this subsection include (but are not limited to) an interactive service delivered via the Internet. Paragraph 27(1) of Schedule 18 stipulates that the Welsh Authority are not required to obtain the Secretary of State's approval for the continued provision of any service that they are providing before section 205 comes into effect.

443. In the course of providing a service approved by the Secretary of State under section 205, the Welsh Authority may under subsection (7) also provide: assistance for disabled people in relation to programmes included in the service, services ancillary to programmes included in the service and related to their content, and other types of ancillary services offered in a digital format.

444. Any programme service approved by the Secretary of State under this section must contain a substantial proportion of programmes in the Welsh language.

Section 206: Other activities of Welsh Authority

445. This section enables the Welsh Authority to carry on activities appearing to them to be activities which it is appropriate for them to carry on in association with the function of providing S4C, S4C Digital and any other service approved by the Secretary of State under section 205, or to be connected (other than merely in financial terms) with that function. Prior to carrying out such activities, the Welsh Authority must obtain the approval of the Secretary of State under subsection (2). The types of activities that may be approved by her under subsection (2) include those needed to secure, and those provided in connection with, the provision of licensable services by an S4C company (e.g. a company controlled by the Authority: see section 362(1)), such as the formation of a company to provide a programme service, but do not include the provision of a licensable service. Subsection (6) amends the provisions in the Broadcasting Act 1990 which govern the power of the Welsh Authority to do things incidental or conducive to the carrying out of their functions. Paragraph 27(2) and (3) of Schedule 18 provides that the Secretary of State's approval is not required for the continuation of activities undertaken by the Welsh Authority or an S4C company before this section comes into effect.

* A *licensable service* is defined in subsection (7) as an independent television or independent radio service that would be regulated under section 211 or 245 if provided by an S4C company.

Section 207: Welsh Authority finances

446. It is unlawful under subsection (2) for the Welsh Authority to charge people in Wales for the reception or use of any of their public services, any assistance provided to disabled persons for programmes included in their public services or any of the ancillary services that they provide in a digital format.

* Under subsection (9), the Welsh Authority's public services are S4C, S4C Digital and other services approved by the Secretary of State under section 205.

447. Subsection (3) states that the power of the Welsh Authority to do anything that is conducive or incidental to the carrying out of their functions includes the power to borrow money. However, they may not do so without the approval of the Secretary of State and the consent of the Treasury. The Welsh Authority must also pay such fees towards the carrying out of OFCOM's functions as may be agreed between the Authority and OFCOM (or, in the absence of agreement, as are set by the Secretary of State).

448. Subsection (7) amends section 61 of the Broadcasting Act 1990 so that the Secretary of State may increase the annual grant paid to the Welsh Authority if she is satisfied that additional funding is appropriate in light of the costs they incur in providing their public services and broadcasting or distributing such services.

449. Subsection (8) amends section 61A of the Broadcasting Act 1990 so that the Welsh Authority must use the money in their public service fund only for the provision of television programme services that are "public services" as defined by subsection (9). Subsection (8) also amends section 61A of the Broadcasting Act 1990 so that the first broadcast of any programme funded from the public service fund must be on one of the Authority's public television services.

Section 208: The Gaelic Media Service

450. This section renames the Gaelic Broadcasting Committee (Comataidh Craolaidh G...idhlig), originally the Gaelic Television Committee (Comataidh Telebhisein G...idhlig) established under section 183 of the Broadcasting Act 1990, as the Gaelic Media Service (Seirbheis nam Meadhanan G...idhlig). It also inserts new subsections (3B), (4), (4A) and (4B) into section 183. These set out the functions and powers of the Gaelic Media Service who must secure that a wide and diverse range of high quality programmes in Gaelic are broadcast or otherwise transmitted so as to be available for reception in Scotland.

451. The Gaelic Media Service may apply the Gaelic Broadcasting Fund for the purpose of, or any purpose connected with, the carrying out of their functions: new subsection (4). In carrying out their functions, the Gaelic Media Service may finance, or engage in, the making of television and sound programmes in Gaelic to be broadcast or transmitted so as to be available for reception in Scotland, provide or arrange training in relation to programme-making and carry out research to discover the types of television and sound programmes that the Gaelic-speaking community would like to be broadcast. The Gaelic Media Service may not provide any of the services specified in subsection (4B).

452. Paragraph 28 of Schedule 18 provides for transitional provisions in respect of the membership of the Comataidh Craolaidh G...idhlig. Paragraph 29 of that Schedule provides for the continuation of the Multiplex Licence (Broadcasting of Programmes in Gaelic) Order 1996 (S.I. 1996/2758).

Section 209: Membership of the Service

453. This section inserts a new section 183A into the Broadcasting Act 1990 that deals with the composition of the Gaelic Media Service. The Service must consist of no more than 12 members,

each of whom must be appointed by OFCOM, having regard to the matters listed in subsection (6) of section 183A, and must be approved by the Secretary of State for Scotland. OFCOM must appoint one member as chairman. One member must be nominated, respectively, by the BBC, Highlands and Islands Enterprise and the Bòrd Gàidhlig na h-Alba (Gaelic Development Agency).

454. OFCOM must also secure that the members of the Services are able adequately to represent the interests of (i) providers of regional Channel 3 services for areas wholly in Scotland or such other areas as are determined by OFCOM under section 184(4)(b) of the Broadcasting Act 1990; (ii) the independent radio and television production industries in Scotland; and (iii) other persons and bodies concerned with the promotion and use of the Gaelic language.

455. Schedule 19 to the Broadcasting Act 1990 (Gaelic Broadcasting Committee: supplementary provisions) (as amended by section 210 and paragraph 73 of Schedule 15) also applies to the Gaelic Media Service.

Section 210: Supplementary provisions about the Service

456. This section amends Schedule 19 (supplementary provisions) to the Broadcasting Act 1990.

Chapter 2: Regulatory Structure for Independent Television Services

457. Paragraph 30 of Schedule 18 provides that, subject to any express provision of this Act, any pre-transfer Broadcasting Act licence shall continue to have effect on the same terms and conditions, and for the same period, as it would have done had this Act not been passed.

Section 211: Regulation of independent television services

458. This section specifies the television services that OFCOM are required to regulate. The first group of services comprises television broadcasting services (other than those broadcast only from a satellite), restricted television services and additional television services broadcast or provided from places in the United Kingdom, and television licensable content services and digital television programme services provided by persons under United Kingdom jurisdiction for the purposes of the Television without Frontiers Directive (see below). OFCOM are not under this section to regulate these services where they are provided by the BBC or the Welsh Authority. The second group of services comprises television multiplex services provided from places in the United Kingdom and digital additional television services provided by persons under United Kingdom jurisdiction. OFCOM are not under this section to regulate these services where they are provided by the BBC.

*“television broadcasting service” is defined in section 362 as a service (other than any text service) which consists in a service of television programmes provided with a view to its being broadcast (whether in digital or in analogue form), and which is provided so as to be available for reception by members of the general public. It does not include a restricted television service, a television multiplex service, a service provided under the authority of a licence to provide a television licensable content service, or a service provided under the authority of a licence to provide a digital television programme service.

*“restricted television service” has the same meaning as in section 42A of the Broadcasting Act 1990 (as amended by Schedule 19 to this Act), namely a service which consists in the broadcasting of television programmes for a particular establishment or other defined location, or a particular event, in the United Kingdom. The label in the 1990 Act is simply a “restricted service”: the word “television” has been added here, and also in relation to digital television programme services and

digital additional television services, to distinguish them from radio-related services which, in the 1990 and 1996 Acts are given the same name.

*the meaning of “television licensable content services” is given in section 232 and is described in more detail in the notes to that section below.

* a “digital additional television service” is defined under section 24 of the Broadcasting Act 1996, which is amended by Schedule 15 to this Act, as being any service provided with a view to its being broadcast to the public in digital form by means of a television or general multiplex service, but not including a Channel 3 service, Channel 4, Channel 5, a public television service of the Welsh Authority, the digital public teletext service, a digital television programme service, a digital sound programme service, an ancillary service, or a technical service.

* a “digital television programme service” means any digital programme service within the meaning of section 1(4) of the Broadcasting Act 1996, namely a service consisting in the provision of television programmes (together with any ancillary services as defined by section 24(2) of that Act) with a view to its being broadcast in digital form so as to be available for reception by members of the public (see the amendment in paragraph 74 of Schedule 15). It does not include a teletext service, any service in the case of which the visual images to be broadcast do not consist wholly or mainly of images capable of being seen as moving pictures (except to the extent that either of these services are ancillary to the television programme) or a qualifying service.

* persons under United Kingdom jurisdiction for the purposes of the Television without Frontiers Directive are primarily persons established in the United Kingdom. A provider is deemed to be established in the United Kingdom if its head office is located here and this is where editorial decisions are taken, or if a significant part of the workforce engaged in the television broadcasting activity operates in the United Kingdom, or if this is where the provider first began broadcasting, assuming that the provider still maintains a stable and effective link with the economy of the United Kingdom. If these tests are not met, persons established under UK jurisdiction may also, in descending order, be persons using a frequency granted by the United Kingdom, persons who use a satellite capacity appertaining to the United Kingdom, and persons who use a satellite up-link situated in the United Kingdom. References to the Television without Frontiers Directive are to Council Directive 89/552/EEC, as amended by Directive 97/36/EC.

* “additional television service” is defined in section 48 of the Broadcasting Act 1990 as any service which consists in the sending of electronic signals for transmission by wireless telegraphy by means of the use of spare capacity within the signals carrying any television broadcasting service.

*“qualifying service” has the meaning given in section 2 of the Broadcasting Act 1996.

* an “ancillary service” is defined in section 24 of the Broadcasting Act 1996, as amended by paragraph 93(3) of Schedule 15 to this Act, and refers to assistance for disabled people in relation to some or all of the programmes included in a digital programme service or qualifying service provided by a licence-holder, a service (apart from advertising) that relates to the promotion or listing of programmes included in such a service or in a digital sound programme service so provided or

any other service (apart from advertising) that is ancillary to one or more programmes so included, and relates directly to their contents.

*a “*technical service*” is a service provided for the encryption or decryption of digital programme services, digital sound programme services, or digital additional services and specified in an order made by the Secretary of State (see section 24(3) of the Broadcasting Act 1996, as amended by paragraph 93(4) of Schedule 15 to this Act).

Section 212: Abolition of function of assigning television frequencies

459. The Secretary of State shall no longer have the power to assign television frequencies for independent television services which are licensable under Part 1 of the Broadcasting Act 1990, for S4C, or for television multiplex services which are licensable under Part 1 of the Broadcasting Act 1996. The function of managing radio spectrum (from which the function of assigning frequencies derives) is transferred by the Act to OFCOM.

Section 213: Abolition of licensing for local cable systems

460. From the television transfer date the provision of a local delivery service shall no longer require a licence under Part 2 of the Broadcasting Act 1990.

*a “local delivery service” is defined in section 72 of the 1990 Act to mean (broadly) a service of a kind specified by the Secretary of State consisting in the use of a telecommunication system (whether run by the person providing the local delivery service or not) for the delivery of various television and radio services listed in section 72(2). Licences are awarded on a system of cash bids.

* “television transfer date” means the date on which the ITC's functions under the Broadcasting Acts of 1990 and 1996 are transferred to OFCOM.

Section 214: Digital Channel 3 and Channel 5 licences

461. Any Channel 3 or a Channel 5 licence granted after the television transfer date must provide for the licensed service to be broadcast digitally. Such a licence may also contain such conditions requiring the service also to be provided in analogue form as OFCOM consider appropriate. In such cases the programming (apart from advertisements) should replicate that of the digital service (see subsection (4)).

462. The conditions included in the licence must enable compliance with any directions given from time to time by the Secretary of State about the continuation of analogue services.

463. Any licence taking effect before “the initial expiry date” (which is 31st December 2014 or any later date set by the Secretary of State under section 224) must remain in force until the end of that day. Any licence taking effect thereafter must remain in force from the time when it takes effect until the end of the licensing period beginning or current at that time.

* the meaning of “the initial expiry date” can be found in section 224. Subsection (6) of section 214 provides that a licensing period is the period beginning with the commencement of that section and ending with the initial expiry date, or any subsequent period of 10 years beginning with the end of the previous licensing period.

464. There can be no charge levied for the use of a licensed service or for any related assistance for disabled people or for ancillary services: subsections (8) and (9).

Section 215: Replacement of existing Channel 3 and Channel 5 licences

465. As soon as practicable after the television transfer date OFCOM must offer persons who hold a Channel 3 or Channel 5 licence the opportunity to exchange that licence for a replacement licence, being a licence of the kind described in the notes to section 214 above. The replacement licence must provide for a service that is equivalent in all material respects to the present one, and for it to be provided for substantially the same area and times, although it does not have to be identical in all respects.

466. Any offer made by OFCOM to replace an existing licence must specify the terms of the proposed replacement licence, the conditions on which they propose to grant it, the time frame of their offer, the date on which the licence will be granted if the offer is accepted, the time from which the licence will take effect if the offer is accepted (which must fall within the period of twelve months after the television transfer date) and the time from which the licence will cease to have effect if the offer is rejected.

467. The financial terms of the offer must propose that the licensee will pay the same annual amount and percentage of qualifying revenue as would have been payable under the existing licence had it continued in force until the end of the period for which the replacement is granted.

468. A licence holder refusing this offer will have his existing licence revoked on a date specified by OFCOM in the offer. This date must fall no later than eighteen months after the closing date for agreeing the offer.

Section 216: Renewal of Channel 3 and 5 licences

469. This section permits the holders of a licence to provide a Channel 3 service or a licence to provide Channel 5 to apply to OFCOM for the renewal of his licence for the next licensing period.

470. An application for renewal may only be made in the period beginning four years before the end of the current licensing period and ending three months before the day that OFCOM determine they would have to publish a tender notice if they were proposing to grant a fresh licence to take effect from the end of the current licensing period. Any determination of that date must be made at least one year before the date on which the tender notice would have to be published and must be notified to every person who is, at the time of the determination, a holder of a licence to provide a Channel 3 service or the Channel 5 licence.

471. Unless the Secretary of State makes an order suspending the rights of renewal under section 230 (see subsection (11)), where OFCOM receive an application for the renewal of a licence, they must determine whether or not they will be renewing the licence and, if they will, the financial terms on which the licence will be renewed. They must also notify the applicant accordingly. Subsections (6) and (7) provide that OFCOM may determine that they will not renew a licence if:

- they are not satisfied that the applicant (if his licence were renewed) would provide a service complying with the requirements imposed under Chapter 4 of Part 3 of the Act relating to the public service remit for the licensed service, programming quotas, news and current affairs programmes or regional programming; or
- they propose to grant a fresh licence for a service replacing the licensed service which would differ from the licensed service in the areas where it would be provided or the times of the day, or days of the week, between or on which it would be provided.

472. OFCOM must not grant a renewal under this section more than 18 months before the end of the current licensing period: subsection (9).

473. Where OFCOM determine that a licence should be renewed, they must renew it on the same terms and subject to the same conditions, with such modifications as are required to give effect to the requirements imposed under section 217(4) (subsection (10)).

Section 217: Financial terms of licence renewed under s.216

474. Any offer made by OFCOM to renew an existing licence under section 216 must specify the amount that the licensee is required to pay during the first year of the replacement licence and the percentage of qualifying revenue to be paid for each accounting period of the applicant falling within the relevant licence period.

475. The amount payable for the first year of the renewed licence must approximate to what OFCOM estimate would have been the cash bid of the licensee had the licence been offered by a notice requesting tenders under section 15 of the Broadcasting Act 1990. When determining the percentage of qualifying revenue, OFCOM may set different percentages (including nil percentages) for different accounting periods.

476. OFCOM must include conditions in any replacement licence requiring payment of: the amount for the first calendar year of the licence, that amount increased by an appropriate percentage for each subsequent year and a specified percentage of the qualifying revenue attributable to a licence holder in each accounting period of the licence term. Payments required under these conditions are in addition to the fees required by OFCOM under section 4(1)(b) of the Broadcasting Act 1990.

Section 218: Duty to secure the provision of a public teletext service

477. This section imposes a duty on OFCOM to secure (i) the provision of a single, nationwide, public teletext service in a digital format broadcast by way of a television multiplex service, and (ii) the provision of an analogue teletext service on the spare capacity available on Channels 3 and 4 and S4C until the first of these services ceases to transmit in analogue format. The licence holder will thereafter have the option of continuing to provide an analogue service.

* Subsection (4) specifies that the analogue teletext service is a single additional television service that uses the spare radio spectrum allocated to Channel 3 services, Channel 4 and S4C for the provision of additional television services.

478. OFCOM must ensure that the analogue and digital teletext services are provided by the same person, although the content of the two services may differ and the licence holder may appoint third parties to provide the teletext services in accordance with section 220.

479. OFCOM shall have regard to their duties under this section when making radio spectrum available to providers of Channel 3 services, Channel 4 and S4C and when making determinations of spare capacity under section 48(2)(b) of the Broadcasting Act 1990.

Section 219: Licensing of the public teletext service

480. The public teletext service is to be licensed under Part 1 of the Broadcasting Act 1990, subject to the restrictions and conditions set out in this section. For example, subsection (5) specifies that OFCOM must include in the public teletext service licence a condition prohibiting the imposition of charges for the reception of the licensed service in the United Kingdom.

481. Schedule 10 specifies the procedure with which OFCOM must comply when it seeks to award a licence to provide the public teletext service and the conditions to be included in the licence. It also gives OFCOM powers to enforce the conditions included in the public teletext service licence.

482. When OFCOM propose to award a licence to provide a public teletext service, they must publish (along with general guidance) a notice that sets out the information listed in paragraph 1(2). OFCOM must include the additional information listed in paragraph 1(3) if the teletext service must be provided in analogue form.

483. Any application made in response to a notice published by OFCOM must be accompanied by the appropriate fee and must also include the information listed in paragraph 3(1), e.g. a technical plan indicating the nature of the service proposed to be provided. OFCOM may require the applicant to provide further information once they have received the application. Following the closing date for applications, OFCOM must then publish the name of each applicant along with certain details of each application as described in paragraph 4(1). OFCOM must also invite the public to make representations.

484. Before OFCOM may consider whether to award a public teletext service licence to an applicant, they must find that: (i) the applicant's technical plan and its proposals relating to the fulfilment of the public service remit for the public teletext service, the inclusion and updating of news items and the inclusion of material of interest to different communities in the United Kingdom are acceptable to them; and (ii) the provision of the proposed services can be maintained during the licence term. OFCOM must then award the licence in accordance with sections 17 and 17A of the Broadcasting Act 1990 (as modified by this Schedule).

485. Paragraph 6 permits OFCOM to revoke and re-award a public teletext service licence when the licensee indicates that he does not intend to provide the service or OFCOM have reasonable grounds to believe that the licensee will not provide the service. Before revoking a licence, OFCOM must serve a notice on the licensee and offer him a reasonable opportunity to submit representations.

486. Paragraph 7 requires OFCOM to include in a public teletext service licence conditions requiring payment of the following determined in accordance with Schedule 10, during the licence term: an annual amount, increased by an appropriate percentage, and a specified percentage of the qualifying revenue for each accounting period of the licensee falling within the licence term. Payments required under these conditions are in addition to those required by OFCOM under section 4(1)(b) of the Broadcasting Act 1990.

* Appropriate percentage has the same meaning as in section 19 of the Broadcasting Act 1990 (i.e. it takes account of inflation).

487. OFCOM may also include conditions permitting them to estimate the amount of payments due from the licence holder during an accounting period and requiring him to make monthly interim payments. Conditions permitting OFCOM to revise their estimate and the monthly interim payments made by the licence holder and to make adjustments for any over- or under payment made may also be included.

488. Paragraph 8 provides that section 40 of the Broadcasting Act 1990 (power to direct correction or statement of findings) has effect in relation to the public teletext service.

489. Paragraphs 9 and 10 confer on OFCOM the power to enforce the conditions included in the public teletext service licence. Where OFCOM are satisfied that a licence holder has contravened a condition of the licence or has failed to comply with a direction given by OFCOM under the

Broadcasting Acts 1990 or 1996 or Part 3 of this Act, they may impose a penalty and/or reduce the term of the licence by up to two years. Licences may also be revoked for contraventions of licence conditions or directions. Where OFCOM do not revoke the licence they may fine the offender up to 5 per cent of the qualifying revenue for its last complete accounting period.

490. Before imposing a penalty or reducing the term of the public teletext service licence, OFCOM must notify the licence holder and provide him with a reasonable opportunity to make representations. A licence may be revoked where OFCOM are satisfied that the conduct of the licence holder justifies its revocation.

491. Where OFCOM decide to revoke a public teletext service licence, they must also notify the former licence holder of the penalty that he must pay. A maximum fine (whichever is the greater) of either £500,000 or 7 per cent of either the estimated or actual qualifying revenue may be imposed. The Secretary of State can modify the amount of the maximum fine by order.

* “qualifying revenue” is defined for the purposes of this Schedule in paragraph 15.

Section 220: Delegation of provision of public teletext service

492. A licence for the provision of the public teletext service may enable the licence holder to subcontract the provision of all or part of the service to a third party, subject to and in accordance with the requirements of conditions set by OFCOM. Contravention by the relevant third party of a condition imposed under this section will be treated for the purposes of Chapter 2 of Part 3 and the Broadcasting Act 1990 as a contravention by the licensee.

Section 221: Replacement of existing public teletext provider's licence

493. As soon as practicable after the television transfer date, OFCOM must offer the person who holds the existing licence to provide the public teletext service the opportunity to exchange that licence for a replacement licence. The replacement licence must provide for a service that is equivalent in all material respects both to the existing service and to the digital service that the licensee is required to provide under section 30 of the Broadcasting Act 1996. The replacement licence must be awarded in accordance with section 219 and Part 1 of the Broadcasting Act 1990. However, the procedure in Part 1 of Schedule 10 is not to apply to the replacement licence.

494. The offer of the replacement licence must specify each of the following as determined by OFCOM: the conditions on which they propose to grant the replacement licence, the timeframe of their offer, the date on which the licence will take effect if the offer is accepted (which must fall within the period of twelve months after the television transfer date), and the time from which the licence will cease to have effect if the offer is rejected. The financial terms of the offer must propose that the licensee will pay the same annual amount and percentage of qualifying revenue as would have been payable under the existing licence had it continued in force until the end of the period for which the replacement is granted. A licence holder refusing this offer will have his existing licence revoked on a date specified by OFCOM in the offer. This date must fall no later than eighteen months after the closing date for agreeing the offer.

Section 222: Renewal of public teletext licence

495. This section permits the holder of the licence to provide the public teletext service to apply to OFCOM for the renewal of his licence for the next licensing period.

* Subsection (12) provides that a licensing period is the period beginning with the commencement of this section and ending with the initial expiry date (see section

224); or any subsequent period of 10 years beginning with the end of the previous licensing period.

496. An application for renewal may only be made in the period beginning four years before the end of the current licensing period and ending three months before the day that OFCOM determine they would have to publish a tender notice if they were proposing to grant a fresh licence to take effect from the end of the current licensing period. Any determination of that date must be made at least one year before the date on which the tender notice would have to be published and must be notified to the person who is holding the public teletext licence at the time that the determination is made.

497. Unless the Secretary of State makes an order suspending the rights of renewal under section 230, where OFCOM receive an application for the renewal of a licence they must determine whether or not they will renew the licence and, if they do intend to renew the licence, the financial terms on which they intend to do so. They must also notify the applicant accordingly. Subsections (6) and (7) provide that OFCOM may determine that they will not renew a licence if:

- they are not satisfied that the applicant (if his licence were renewed) would provide a service complying with the requirements imposed under Chapter 4 of Part 3 of the Act relating to the public service remit for the public teletext service, news programmes and regional matters; or
- they propose to grant a fresh licence for a service replacing the licensed service which would differ from the licensed service in any material respect.

498. OFCOM must not grant a renewal under this section more than 18 months before the end of the current licensing period.

499. Where OFCOM determine that a licence should be renewed, they must renew it on the same terms and conditions, subject only to such modifications as are required to give effect to the requirements imposed under paragraph 7 of Schedule 10 (payments to be made to OFCOM by the licence-holder).

Section 223: Financial terms of licence renewed under s. 222

500. Any offer made by OFCOM to renew an existing licence under section 222 must include a determination of the amount that the licensee is required to pay during the first complete calendar year of the renewal period and the percentage of qualifying revenue to be paid for each accounting period of the applicant falling within the relevant renewal period. The amount for the first year of the replacement licence must approximate to what OFCOM estimate would have been the highest cash bid of the licensee had the licence been awarded under Part 1 of Schedule 10. When determining the percentage of qualifying revenue, OFCOM may set different percentages (including nil percentages) for different accounting periods.

Section 224: Meaning of “initial expiry date”

501. The initial expiry date for the purposes of Part 3 of the Act is 31st December 2014, unless it is postponed under this section.

502. The Secretary of State may postpone the initial expiry date on one or more occasions. This is to ensure that the licences will not expire less than eighteen months after the date set for digital switchover. This power can only be exercised where switchover is later than 30th June 2013.

503. Subsections (4) and (5) have the effect that the initial expiry date must always fall at least 18 months after digital switchover (so that the licences will continue for at least that long after switchover).

504. The extended licence will be deemed to be granted on the same terms as the original one.

505. “The date for digital switchover” is defined by subsection (8) as the date that appears to the Secretary of State to be the date after which Channel 3 and Channel 5 services are no longer to be broadcast to any significant extent in analogue form.

Section 225: Application for review of financial terms of replacement licences

506. The holder of a licence granted under section 215 (Channel 3 or 5) or 221 (the public teletext service) may apply for a review of the financial terms of this licence, on one or more different occasions. The first one may happen at any time during the first review period, i.e. the period starting four years before the first notional expiry date (see below) and ending on a date fixed by OFCOM. The subsequent reviews may happen at any point during any subsequent review period, which begins four years before the relevant subsequent notional expiry date and ends on a date fixed by OFCOM.

507. No such application may be made when an application for a review under section 226 is pending or less than twelve months after a determination of new financial terms has been made by OFCOM under that section.

508. Subsection (7) defines the “first notional expiry date” as the date on which the existing licence would have expired if not renewed and “subsequent notional expiry date”, in relation to a replacement licence, as either the tenth anniversary of the last notional expiry date, or, if the licensee has previously applied for a review under this section, the tenth anniversary of the date on which OFCOM's determination of that review was notified to the licensee.

Section 226: Application for review of financial terms in consequence of new obligations

509. This section applies where a commencement order brings into force any of sections 272, 273 or 274 (must-offer in relation to networks and satellite services and must-provide). In that event a Channel 3 service provider or the provider of Channel 5 or of the public teletext service may apply for a review of the financial terms of his licence. Any application for a review must be made during the review period, namely the period running from the day on which the order is made until the coming in to force of the relevant section (or sections). Sections 272(10), 273(8) and 274(11) have the effect of ensuring that this period is at least six months long.

Section 227: Reviews under ss. 225 and 226

510. A determination made by OFCOM under this section following an application for a review must include the amount to be paid for the first calendar year of the period under review (which must be what OFCOM think would have been the amount that the licensee would have bid if the licence were awarded in response to a notice under section 15 of the Broadcasting Act 1990) and the percentage of qualifying revenue to be used for each accounting period.

511. When determining these new financial terms, OFCOM must have regard to any additional costs that are likely to be incurred by the licence holder as a consequence of the new conditions imposed following the commencement of sections 272, 273 and/or 274.

Section 228: Giving effect to reviews under ss. 225 and 226

512. This section provides that, as soon as reasonably practicable after making a determination under section 227, OFCOM must send to the applicant a notification setting out this determination, the modifications required in the applicant's licence, a response date by which the applicant has to notify his acceptance to OFCOM, and an end date by which the licence will cease to have effect if he does not.

513. Subsection (5) provides that the new licence conditions are to have effect when the applicant notifies OFCOM that he accepts the determination. If the applicant does not notify his acceptance before the response date set by OFCOM, his licence will cease to have effect on the end date set by OFCOM.

Section 229: Report in anticipation of new licensing round

514. This section gives a duty to OFCOM, no later than 30 months before the end of each licensing period, to report to the Secretary of State on the effects of the conditions which would be included in the renewed licences on the capacity of the holders of Channel 3, 5 and public teletext service licences to contribute to the fulfilment of the public service remit at a cost that is commercially sustainable for them.

515. Under subsection (4), OFCOM will also include any recommendations that they consider appropriate to make as to the use by the Secretary of State of her powers under section 230 or under Chapter 4 of Part 3 of this Act.

516. When the Secretary of State has made an order extending the licences under section 224, after the report was submitted, she has, under subsection (5), the power to require a supplementary report.

Section 230: Orders suspending rights of renewal

517. This section applies when the Secretary of State receives a report made by OFCOM under section 229. If the report contains a recommendation to make an order under this section, or (in the absence of a recommendation) where the Secretary of State believes it is appropriate to do so, she may by order provide that specified licences are not to be renewed under section 216 or 222 from the end of the current licensing period.

518. Subsection (3) provides that such an order must be made at least eighteen months before the end of the current licensing period.

519. Under subsection (4), the power to prevent the renewal of the licences from the end of the initial licensing period can be exercised only if a date for switchover has been fixed which falls before the end of that period. Subsection (5) provides that if the Secretary of State postpones the date for switchover after she has made an order preventing the renewal of licences, this order will not have effect if the new date for switchover falls after the end of that initial licensing period. However, in such a case, the Secretary of State will be able to make another order preventing the renewal of licences. But this power will be subject to the requirement, set by subsection 224(5), that she must postpone the initial expiry date of the licences when this date falls within the period of eighteen months after switchover.

520. Under subsection (7), an order with respect to Channel 3 licences must apply to all licences to provide a Channel 3 service, or to all licences to provide a national Channel 3 service, or to all licences to provide a regional Channel 3 service. Any order made by the Secretary of State will be subject to the affirmative resolution procedure.

Section 231: Replacement of Channel 4 licence

521. When subsection (1) comes into force, Channel 4 shall be granted a new licence under this section. Its licence granted under section 24(3) of the Broadcasting Act 1990 shall no longer apply. In advance of this, OFCOM must prepare a draft replacement licence and consult the Channel Four Television Corporation on its contents. The replacement licence must provide for the service to be broadcast digitally and may provide that the service is also to be provided in analogue form until such time as is determined according to conditions in the licence giving effect to the Secretary of State's directions as to how long the service must continue to be provided in analogue form. The programming of the analogue service should replicate that of the digital service, or such part of it as is specified by the licence conditions included under subsection (3)(b). There can be no charge levied for the use of such a service or for any assistance for disabled people or for other ancillary services included in the service.

522. Subsection (6) provides that such a replacement licence must continue in force until the end of 2014. The licence may be renewed as OFCOM think fit.

Section 232: Meaning of “television licensable content service”

523. A “television licensable content service” is defined in this section as any service (i) which is provided (whether in digital or analogue form) as a service to be made available for reception by members of the public (as defined in section 361) by being broadcast from a satellite, or distributed by an electronic communications network, and (ii) which consists of television programmes or electronic programme guides (or both). The service covered by a single licence will comprise not only what subsection (3) calls a “main service” (which could consist either of television programmes or of an electronic programme guide, or both) but also such of the ancillary services and facilities provided with it as are “relevant ancillary services” and are not “two-way services”. “Two way services” are defined in subsection (5) and encompass services such as video conferencing. The term “relevant ancillary services” encompasses both services that are actually provided by the provider of the “main service” and those facilities which are no more than links to services provided by others. It is not intended to encompass any apparatus (such as a television set, a PC, or a set-top box).

524. A licensee is not held to be providing services which may be accessed from the “main service”, unless he has general control over them (subsection (4)).

525. Ancillary services that are not “relevant” ones are not to be covered by the licence for the main service (although some might be licensable in their own right, e.g. if they constitute a television licensable content service provided by someone other than the provider of the main service). To give some examples, say you are watching a wildlife programme on the “main service” i.e. a television channel in the conventional sense, albeit that it includes all the enhanced features to be expected from digital services. A menu might offer access to different camera angles: these would constitute “relevant ancillary services” which would be part of the licensed service. The menu might also give you access to additional factual information (provided within the broadcast stream) about the animals you are watching. That is expected to be within the scope of the licence too. But there might be a link (a “facility”) which might take you to a website. The fact that the link is provided would be within the licence (and so OFCOM might require it to be removed if it led directly to unsuitable material), but the website at the end of the link would neither be regulated nor within the licence of the “main service” as it would not be a service made “available for reception

by members of the public”. Also outside the scope of the licence would be content that could be accessed from the “main service” but which is not under the general control of the provider of the “main service”, such as a television service provided by someone else showing similar wildlife programmes. Other services, such as being able to order takeaway food, or engage in on-line banking, or participate in an on-line chatroom, would not be within the licence either. These are just examples, and the question of whether particular services fall within the scope of a person's television licensable content service licence would depend on the exact nature of the services and facilities offered and the circumstances in which they were offered.

*an *electronic programme guide* is defined in subsection (6) as a service which lists and/or promotes television programmes, including programmes of providers other than the provider of the guide. The service must also allow the user to access programmes contained in the guide.

Section 233: Services that are not television licensable content services

526. This section sets out the services that are excluded from the definition of a television licensable content service in section 232. A service is not a television content service licence if it is broadcast by means of a multiplex service or to the extent that it consists of a service which is authorised by a licence to provide a television broadcasting service, the licence to provide the public teletext service or a licence to provide additional television services. Nor does it meet the description of a television licensable content service if it forms part only of a service provided by means of an electronic communications service or is one of a number of services that may be accessed through such a service where the purpose of the service provided by these means is not wholly or mainly to make available television and/or radio programmes for reception by members of the public. A service is also excluded if it is a two-way service (as defined in the previous section). The aim of these provisions is, broadly, to maintain licensing obligations in respect of services which are or equate to broadcasting while excluding Internet services, such as web sites or web-casting, from OFCOM's regulatory powers. The effect of subsection (3) is to exclude not only any website material provided as part of another service (for example, a website which is accessed via an ISP which also provides its own in-house content) but also material provided from a stand alone site, whether it be text, web-cast or video images. Subsection (6) also excludes a service that is distributed to a single set of premises by an electronic communications network that is contained within the premises and is not connected to any external network. Subsections (7) and (8) exclude a service that is provided for the purpose only of being received by persons who have an interest in receiving the service for use in their business or employment, such as stockbrokers or bookmakers.

Section 234: Modification of ss. 232 and 233

527. The Secretary of State may modify sections 232 or 233 by order, if she considers it appropriate. In making any modification, she must have regard to the level of protection expected by the public as regards the content of television programmes and text services, taking into account the means of reception; the ability of the public — having been made aware of the contents of a forthcoming programme — to control what they watch; technical innovation; the financial consequences of modification; and the relative ease or difficulty of setting different levels of regulation for different services.

Section 235: Licensing of television licensable content services

528. A television licensable content service is required for the purposes of section 13 of the Broadcasting Act 1990 to have a licence under Part 1 of that Act awarded according to an application

procedure that is set by OFCOM. OFCOM must approve the application unless they are not satisfied that the applicant is a fit and proper person to hold the licence, or if the person is disqualified from holding the licence by virtue of Part 2 of Schedule 2 of the Broadcasting Act 1990 or if there would be a contravention of Schedule 14 of this Act if he held the licence. OFCOM are entitled to refuse an application if satisfied that the service would be unlikely to comply with OFCOM's standards code or the code on fairness issued under Part 5 of the Broadcasting Act 1996.

529. Subsection (4) requires that a provider must seek a separate licence for every television licensable content service he proposes to offer. In other words, if a provider is intending to offer three television licensable content services he must have three licences, one for each service. Subsection (5) provides that a single licence may authorise different programmes to be broadcast simultaneously, or virtually so, for example where a service provides a choice of programmes that may be viewed at any one time.

530. Each licence for a television licensable content service will be valid until surrendered or revoked.

Section 236: Direction to licensee to take remedial action

531. If the licence holder has breached a condition of his television licensable content service licence then, if this will sufficiently remedy the breach, OFCOM may, after giving him a chance to comment, require the licence holder to include a correction in the licensed service or broadcast a finding by OFCOM against the licence holder. The licence holder may announce that he is making a correction or a statement of findings because OFCOM have directed him to do so. OFCOM must send a copy of any direction given to a BBC company requiring the broadcasting of a correction and/or statement of findings and any representations received from that BBC company to the Secretary of State.

532. OFCOM may direct a television licensable content service licence holder not to include a programme in the service on a future occasion if satisfied that the previous inclusion of that programme in the service involved a contravention of a licence condition.

Section 237: Penalties for contravention of licence condition or direction

533. If OFCOM are satisfied that a television licensable content service licence holder has breached a condition of that licence, or has not complied with a direction given by OFCOM, they may serve a notice on that person imposing a fine. The maximum fine is the greater of £250,000 or 5 per cent of qualifying revenue within the relevant period. OFCOM may not impose a fine unless they have first given the licence holder the chance to comment. If OFCOM serve a notice on a BBC company, they must send a copy of that notice, and of any representations received from the company, to the Secretary of State. The Secretary of State may vary the amount of the maximum fine by order.

* “*qualifying revenue*” is calculated in accordance with section 19(2) to (6) of the Broadcasting Act 1990 and Part 1 of Schedule 7 to that Act, with any necessary modifications.

Section 238: Revocation of television licensable content service licence

534. If satisfied that a television licensable content service licence holder is in contravention of the terms of his licence, or is failing to comply with a direction, and that such a contravention or failure would, if not remedied, warrant revocation of the licence, OFCOM must serve a notice on the licence holder. The notice must specify the nature of the contravention or failure and state that the licence will be revoked unless the licence holder takes specified steps within a specified period. If

the licence holder does not comply within the specified period then OFCOM may, if satisfied that this is necessary in the public interest, revoke the licence. At each stage in the process, OFCOM shall first give the licence holder the chance to comment. The provisions in this section do not apply to the revocation of a licence under section 239 (see below).

535. Subsections (4) and (5) provide that OFCOM may revoke a television licensable content service licence if satisfied that the licence holder is no longer providing the service, or that the licence holder provided false or misleading information in support of his licence application.

536. If OFCOM serve a notice on a BBC company under this section, they must send a copy of that notice, and of any representations received from the company, to the Secretary of State.

Section 239: Action against licence holders who incite crime or disorder

537. OFCOM must serve a notice under subsection (2) on a television licensable content service licence holder if satisfied that the service has included one or more programmes which contain material likely to encourage or to incite crime or disorder, that this has contravened a licence condition, and that the contravention warrants the revocation of that licence. A notice under subsection (2) must specify the nature of the contravention, state that the licence may be revoked at the end of 21 days beginning with the date of service of the notice, and inform the licence holder of his right to make representations. The effect of the notice is to suspend the licence until revocation, or until OFCOM decide not to revoke the licence. At the end of 21 days, and having considered any representations, OFCOM may, if satisfied that this is necessary in the public interest, serve on the licence holder a notice of revocation. This may not take effect less than 28 days after being served.

Section 240: Abolition of separate licences for certain television services

538. This section abolishes the two forms of licence which the television licensable content services licence replaces, that is satellite television service and licensable programme service licences. It puts in place transitional provisions so that after the television transfer date, any person holding one of the abolished licence types is to be regulated by OFCOM as if he held a television licensable content services licence, unless the service is of a kind that falls outside the new definition and so no longer requires a licence at all. To the extent that any existing licence takes effect as a licence to provide a television licensable content service, OFCOM must use their power under section 3 of the Broadcasting Act 1990 to modify that licence if they feel that it is necessary to do so in order to comply with their duty under section 263 (see below).

Section 241: Television multiplex services

539. References in Part 1 of the Broadcasting Act 1996 to a television multiplex service are references to a service (i) which is broadcast for general reception, otherwise than by satellite, so as to be available to members of the public and (ii) which provides, or is capable of providing, two or more services which include at least one “relevant television service” (as defined in subsection (9)) for simultaneous broadcast on the same frequency.

540. Subsection (3) provides that it is not an offence to provide a television multiplex service that is not licensed under the Broadcasting Act 1996. Only where a wireless telegraphy licence provides that any television multiplex service being broadcast using the station or apparatus to which that licence relates must itself be licensed, shall that multiplex service require a licence. This will be assumed to be the case where the multiplex service is already licensed under the Broadcasting Act 1996 and the service is broadcast using a station or apparatus that is authorised by a wireless

telegraphy licence. Where this assumption applies, and a person affected by it either ceases to be licensed under Part 1 of the Broadcasting Act 1996 or ceases to exist, OFCOM may revoke the wireless telegraphy licence relating to the provision by that person of the television multiplex service in question.

Section 242: Composition of services in television multiplexes

541. This section amends section 12 of the Broadcasting Act 1996. OFCOM will now be able to include conditions in any multiplex licence granted under that Act to secure that: (i) all digital programme services and digital additional services provided by the BBC may be carried on that multiplex, (ii) the digital sound programme services broadcast under the licence are either provided by the BBC or licensed under section 60 of that Act and (iii) a licensee does not show undue discrimination either against or in favour of a digital sound programme service provider, or restrict that provider's ability to share any of his spare capacity (unless it is reasonable to do so in order to ensure the technical quality of the multiplex service).

542. Currently, section 12(1)(h) requires that at least 90 per cent. of digital capacity on the frequency of the service to which the licence relates be available for broadcasting digital programmes and related services. Subsection (1)(f) amends the 90 per cent. threshold to 'the required percentage'. This figure, to be set by OFCOM as they think appropriate, must be 90 per cent or higher. The Secretary of State retains the power to amend the minimum percentage, by order. Subsection (2) adds digital programme services and digital sound programme services provided by the BBC to the services currently listed in section 12(1)(h). Digital sound programme services provided otherwise than by the BBC must be accommodated within the remaining capacity. Subsection (3) of this section makes a consequential change to the test that the Independent Television Commission currently apply where a multiplex licence holder applies for a variation of any condition imposed relating to the implementation of any proposals as to the characteristics of the digital programme services to be broadcast.

Section 243: Powers where frequencies reserved for qualifying services

543. OFCOM, in fulfilling their spectrum management role, may require providers of television multiplex services to reserve digital capacity on their frequencies for the provision of certain types of service. The Secretary of State may by order provide that OFCOM must ensure that the holders of licences for multiplex services on these reserved frequencies enter into agreements with relevant public service broadcasters for the broadcasting of services provided by those broadcasters on the reserved digital capacity. An order under this section may also require OFCOM to include in the licence conditions requiring any such broadcaster to pay the licence holder for use of the reserved digital capacity. The amount paid is to be agreed between the broadcaster and the television multiplex licensee or (in the absence of any agreement) determined by OFCOM.

*a "relevant public service broadcaster" is defined in subsection (7) as a holder of a Channel 3 service licence, the C4 Corporation, the holder of a Channel 5 licence, the Welsh Authority or the public teletext provider. This definition excludes the BBC.

* "public teletext provider" is defined in section 362 as the person who holds the licence to provide that service awarded under section 217 (or, in relation to a time before such a licence is awarded, the holder of the additional services licence under the 1990 Act which relates to the public teletext service).

Section 244: Local digital television services

544. The Secretary of State may, by order, apply (with modifications) the provisions of Part 3 of the Act (except for this section and any provisions relating exclusively to sound services), or any part of Part 1 of the Broadcasting Act 1990, or of Part 1 of the Broadcasting Act 1996, to make special provision for local digital television services of the type further described in subsections (3) to (5). Such services should be provided with a view to including them in a television multiplex service. Such an order can be made only where the Secretary of State is satisfied that this will enhance the provision of such services. In turn, this should benefit the locality where the services are to be received, not least by broadening the range of programmes that can be received in that locality. The order may restrict advertising and programme sponsorship in the service.

Chapter 3: Regulatory Structure for Independent Radio Services

Section 245: Regulation of independent radio services

545. This section sets out those independent radio services whose regulation is a function of OFCOM, as specified in subsections (1) and (2). These are national, local or restricted sound broadcasting services (so long as not broadcast solely by satellite); radio licensable content services; additional radio services; radio multiplex services; digital sound programme services; and digital additional sound services. All of these must be broadcast from the United Kingdom and are not to be regulated under this section if they are broadcast by the BBC. OFCOM's regulatory function also extends to the types of service set out above provided from somewhere outside the United Kingdom by a person (other than the BBC) whose principal place of business is in the United Kingdom.

* “additional radio service” has the meaning given to it by section 114(1) of the Broadcasting Act 1990, namely any radio service which consists in the sending of signals for transmission by wireless telegraphy using the spare capacity within signals carrying any sound broadcasting service.

* “digital additional sound service” means a digital additional service as defined by section 63 of the Broadcasting Act 1996, being any service which is provided for broadcast in digital form by means of a multiplex service, for reception by members of the public, but which is not a digital sound programme service, a simulcast radio service, an ancillary service or a technical service.

* an “ancillary service” refers to services that are ancillary to programmes and directly related to their contents, or which relate to the promotion or listing of such programmes. Such a service is provided by the holder of a digital sound programme licence or by an independent national (analogue radio) broadcaster.

* a “technical service” is a service provided for the encryption or decryption of digital programme services or digital additional services and specified in an order made by the Secretary of State (see section 63 of the 1996 Act).

* “digital sound programme service”, defined in section 40(5) of the Broadcasting Act 1996 (as amended by paragraph 101 of Schedule 15), means a service consisting in the provision of programmes consisting wholly of sound (together with any ancillary services), with a view to their being broadcast in digital form so as to be available for reception by members of the public (as defined in section 361 of this Act), but does not include a simulcast radio service or a service where the sounds are to be received through the use of coded reference to pre-defined phonetic elements of sounds.

* “radio multiplex service” is defined in section 40(1) of the Broadcasting Act 1996 (and see also section 258 of this Act, and paragraph 101(2) of Schedule 15) as a

service provided by any person which consists in broadcasting, for general reception, two or more digital sound programme services, simulcast radio services or digital additional sound services, by combining the relevant information in digital form.

* “radio licensable content service” has the meaning given in section 247.

* “simulcast radio service” is defined in section 41(2) of the Broadcasting Act 1996 (as amended by section 256 of this Act) as a service which is provided by an independent national broadcaster for broadcasting in digital form, which corresponds to a national service provided in analogue form.

546. Subsections (5) and (6) specify when services will be treated as if they are provided from the United Kingdom. Satellite radio services transmitted to the satellite from the UK are to be so treated, unless they are licensed or otherwise authorised under the laws of another EEA state.

Section 246: Abolition of function of assigning radio frequencies

547. This section removes the Secretary of State's power to assign frequency for the purpose of the regulation of radio services, or the provision of any radio multiplex services.

Section 247: Meaning of “radio licensable content services”

548. Broadly, subject to the following provisions of the Act, this term includes all sound programmes broadcast for reception by members of the public from a satellite, or through an electronic communications network, whether in analogue or digital form.

Section 248: Services that are not radio licensable content services

549. Services that are not radio licensable content services include services comprised in television licensable content services, sound broadcasting services of the type regulated by OFCOM pursuant to section 245(3), and services provided with a view to their being broadcast by means of radio multiplex services. Nor does a service meet the description of a radio licensable content service if it is a two-way service (as defined in subsection (4)); or if it forms part only of a service provided by means of an electronic communications service or is one of a number of services that may be accessed through such a service where the purpose of the service provided by these means is not wholly or mainly to make available television and/or radio programmes for reception by members of the public; or if it is received only by people who have an interest in receiving the services for use in their business or employment. Finally, a service is not a radio licensable content service where it is distributed to a single set of premises by an electronic network which is contained within the premises and is not connected to any external network. These exclusions serve similar purposes to those in section 233 (television licensable content services).

Section 249: Modification of ss. 247 and 248

550. The Secretary of State may modify sections 247 or 248 by order, if she considers it appropriate, taking into account the level of content protection expected by the public; technical innovation; the financial consequences of modification; and the relative ease or difficulty of setting different levels of regulation for different services. The Secretary of State may also provide that a particular service should not be treated as a radio licensable content service for such provisions of this Act as she specifies.

Section 250: Licensing of radio licensable content services

551. An application for this type of licence under Part 3 of the Broadcasting Act 1990 must follow a procedure to be set by OFCOM. Subsection (3) applies sections 109 to 111A of the Broadcasting Act 1990 (powers to require broadcast of corrections, to impose penalties or shorten licence periods

and to revoke licences) for the purposes of the enforcement of radio licensable content service licences.

Section 251: Abolition of separate licences for certain sound services

552. This section abolishes the two forms of licence which the radio licensable content service licence replaces. It puts in place transitional provisions so that after the radio transfer date any persons holding one of the abolished licence types is to be regulated by OFCOM as if he held a radio licensable content service licence, unless the service is of a kind that falls outside the definition and so no longer requires a licence at all. To the extent that any existing licence takes effect as a licence to provide a radio licensable content service, OFCOM must use their power under section 86 of the Broadcasting Act 1990 to modify that licence if they feel that it is necessary to do so in order to comply with their duty under section 263 (see below).

Section 252: Extension of licence periods

553. Subsection (1) amends section 86 of the Broadcasting Act 1990 by stating that licences shall continue in force until the earlier of their being surrendered or revoked, or the licences coming to the end of their terms. The exception is for radio licensable content services — they shall continue in force until the relevant licences are surrendered or revoked. Any licence to provide local, national or additional services must specify a maximum licence period of twelve years (subsection (2)).

Section 253: Extension and modification of existing licences

554. Previously, a newly granted licence to provide a local, national or additional service could not continue in force for more than eight years. This has now been extended to twelve years. To ensure that holders of pre-transfer national or local licences are not disadvantaged, holders of such licences can make an application for a four-year extension to that licence, and OFCOM shall grant the extension if satisfied as to the ability of the licence holder to maintain the service and the likelihood of a contravention by that licence holder of any condition imposed as to the character of the service by virtue of section 106 of the Broadcasting Act 1990, or the making of payments to OFCOM (see subsection (8)). On extending the licence, OFCOM may modify the licence as they think fit, by extending the period for which the licence is to be in force and making any other modifications necessary to make the licence correspond with licences granted after the radio transfer date. In the case of national licence, OFCOM must also modify the sums to be paid to OFCOM under the licence.

555. The period within which an application may be made begins no sooner than three years before the date the licence would otherwise expire and ends three months before the day that OFCOM would need to publish a notice inviting applications if they were proposing to grant a fresh licence.

*a “pre-transfer licence” is defined in subsection (13) as a licence granted under the Broadcasting Act 1990 prior to the radio transfer date that has not been modified under section 253 or renewed any time on or after that date.

Section 254: Renewal of local licences

556. This section amends section 104A(5) of the Broadcasting Act 1990 (conditions of renewal of local licences). When a renewal application has been made, OFCOM will be required to grant the licence provided the following criteria are met: (i) they are satisfied that the applicant would, if the licence were renewed, provide a local service complying with any conditions imposed to secure

the character of the licensed service (ii) the nominated local digital sound programme service the applicant provides is being broadcast by means of a nominated local radio multiplex services; and (iii) they are satisfied that the period and times at which the nominated local digital sound programme service will be available under the renewed licence will not be significantly different, week by week, from those for and at which the licensed local service will be broadcast. This third criterion is added by this section.

Section 255: Extension of special application procedure for local licences

557. This section extends to all local licences the special “fast-track” application procedure for local licences under section 104B of the Broadcasting Act 1990. This allows the expedited award of a new licence to the existing licence holder if no declarations of intent to apply for the new licence are received from a person other than the licence-holder.

Section 256: Definition of simulcast radio services

558. This section amends the definition of simulcast radio services found in section 41 of the Broadcasting Act 1996. Broadly, they are services provided for broadcasting in digital form and which correspond to national services, as defined by section 245(4)(a) of this Act.

Section 257: Promotion of simulcast radio services

559. This section amends Chapter 2 of Part 3 of the Broadcasting Act 1990 (sound broadcasting services) so that OFCOM promotes the provision of simulcast radio services. When OFCOM propose to award a national service licence, they must indicate the amount of digital capacity that national radio multiplex licensees will have available for the broadcasting of simulcast radio services.

* A “national radio multiplex licence” has the same meaning as in Part 2 of the Broadcasting Act 1996 (digital terrestrial sound broadcasting).

560. An application for a national service licence must contain the applicant's proposals (if any) for providing a digital simulcast of their national analogue radio services. When determining the recipient of a national service licence, OFCOM may disregard the requirement under section 100 of the Broadcasting Act 1990 to award the licence to the absolute highest bidder and award the licence instead to the highest bidder amongst those applicants who propose to provide simulcast radio services. In the event of a tie between the highest bidders, OFCOM shall also have the power to exclude applicants who do not propose to provide simulcast radio services.

561. Subsection (6) confers on OFCOM the duty to impose conditions in a national service licence requiring a licensee to provide simulcast radio services where his application included proposals to provide such services.

Section 258: Radio multiplex services

562. Where a radio multiplex service is referred to in Part 2 of the Broadcasting Act 1996, it means a service (i) which is broadcast otherwise than by satellite so as to be available to members of the public and (ii) which provides, or is capable of providing, two or more digital sound services for simultaneous broadcast on the same frequency.

563. Subsection (3) provides that it will not be an offence to provide a radio multiplex service that is not licensed under the Broadcasting Act 1996. Only where a wireless telegraphy licence provides that any radio multiplex service being broadcast using the station or apparatus to which that licence relates must itself be licensed, shall that radio multiplex service require a licence. This will be assumed to be the case where the multiplex service is provided under a licence under the

Broadcasting Act 1996 that was in force immediately before this section comes into force and the service is broadcast using a station or apparatus that is authorised by a wireless telegraphy licence.

Section 259: Composition of services in radio multiplexes

564. This section makes changes to section 54 of the 1996 Act (conditions attached to radio multiplex licences) to allow OFCOM, rather than the Secretary of State, to increase (on a licence-by-licence basis) the minimum percentage of radio multiplex capacity that must be devoted to broadcasting services.

565. The Secretary of State retains the power to vary the lowest percentage that could be specified by OFCOM in a licence (currently 80%) (see subsections (5) and (6)).

Section 260: Digital sound services for inclusion in non-radio multiplexes

566. This section amends the definition of national digital sound programme services in section 60 of the Broadcasting Act 1996. Such services may now be carried by a national radio multiplex service, a television multiplex service, or even a general multiplex service.

567. Subsection (2) amends the definition of digital additional sound services, in section 63 of the same Act, to encompass such services whether provided by means of a radio multiplex service or a general multiplex service.

568. Subsection (4) amends section 72 of that Act to define a general multiplex service by reference to Part 3 of this Act. A general multiplex service is a multiplex service that is neither a television multiplex service nor a radio multiplex service: see section 362 of this Act.

Section 261: Renewal of radio multiplex licences

569. This section amends section 58 of the 1996 Act. Under that section, radio multiplex licences granted within 6 years of commencement of that section may be renewed for 12 years. This section extends the period during which an extension can be made from 6 to 10 years, and reduces the length of an extension made more than 6 years after commencement from 12 to 8 years.

Section 262: Community radio

570. The Secretary of State may by order modify the Act and the Broadcasting Acts to make special provision for radio services broadcast mainly for the benefit of the public (or members of a particular community) rather than for commercial reasons. The services should confer significant benefits on the public for which they are provided. The order may restrict advertising and programme sponsorship in the service.

Chapter 4: Regulatory Provisions

Section 263: Application of regulatory regimes

571. OFCOM must use their Broadcasting Act powers, and their powers under this Act, to implement and enforce the regulatory regime for each licensed service. The Secretary of State has the power to remove any condition from the regulatory regime.

Section 264: OFCOM reports on the fulfilment of the public service remit

572. OFCOM are to prepare — twelve months after commencement of this section, and thereafter no less frequently than every five years — a report on the current state of public service television broadcasting, documenting the extent to which broadcasters have together satisfied the requirements of the public service television broadcasting remit set out in this section. In essence, the remit

involves the provision of a balanced diversity of high-quality programming, which meets the needs and interests of different audiences (subsection (4)).

573. OFCOM are also to have regard to the more detailed obligations listed in subsection (6) These include obligations relating to culture, news and current affairs, sport, education, entertainment, religion and other beliefs, science, social issues, matters of international significance, programming for children, and local programming. OFCOM are also required to have regard to the number of programmes within the services which are made outside the M25 area. In addition, OFCOM must consider the costs to the broadcasters of fulfilling their public service television remit and their available resources.

* the *public service broadcasters* listed in subsection (12) are the BBC, the Welsh Authority, the public teletext provider and the providers of licensed public service channels, namely the providers of Channel 3 services, Channel 4 or Channel 5 (see section 362).

Section 265: Public service remits of licensed providers

574. A public service remit applies to each licensed public service channel. For Channel 3 services, and Channel 5, the remit is to provide a range of high quality and diverse programming. For Channel 4, the remit specifically includes the need for programming to be innovative, creative and distinctive, for it to take account of cultural diversity and to make a significant contribution to meeting the need for licensed public service channels to include educational programmes. For the public teletext service (transmitted in both analogue and digital form) the remit is to provide a range of high quality and diverse text material. Licences relating to each of these must include a condition requiring that the public service remit be satisfied.

Section 266: Statements of programme policy

575. The provider of a licensed public service channel must publish an annual statement of programme policy, and must review its performance against this statement. The statement must demonstrate how, in the coming year, the broadcaster will satisfy its public service remit, as well as those more specific programming obligations under sections 277 to 296 of the Act, and report on how successful it was in doing so in the previous year.

576. Subsection (4) provides that the statement should take account of OFCOM's guidance on its preparation, and should have regard to the reports of OFCOM as described in the notes to section 264 above and section 358 below. Particular regard should be had to the latest such report. Subsection (7) states that licences for public service channels may include conditions relating to the treatment of any "previous statement of policy" made by the licensee. However, subsection (9) provides that such conditions may not postpone the time at which the licensee is required to make his first statement of programme policy under this section.

577. The first statement should be published as soon as possible after this section comes into force. The term "previous statement of policy" is defined in subsection (8).

Section 267: Changes of programme policy

578. The statement described in the notes to section 266 above must not contain proposals for what is to be regarded (taking account of OFCOM's guidance) as a material change in the character of the channel, unless OFCOM have been consulted and the provider of the channel has taken account of OFCOM's views. If this process has not been followed, OFCOM may insist that the provider publish a revised statement that has been approved by OFCOM. In determining what constitutes a

material change, regard is to be had to OFCOM's guidance and to the time over which the change (and any related change) will take effect. OFCOM are obliged to review their guidance from time to time and amend it as appropriate.

Section 268: Statements of service policy by the public teletext provider

579. This section sets out similar requirements to section 266. The provider of the public teletext service must publish an annual statement of policy, and must review its performance against this statement. The statement must demonstrate how, in the coming year, the provider will satisfy its public service remit and report on how successful it was in doing so in the previous year. The statement must also address, where relevant, both analogue and digital teletext services.

580. Subsection (5) provides that the statement should take account of OFCOM's guidance on its preparation, and should have regard to the reports of OFCOM as described in the notes to section 264 above and section 358 below. Particular regard should be had to the latest such report. states that licences for the public teletext provider may include conditions relating to the treatment of any "previous statement of policy" made by the licensee. However, subsection (10) provides that such conditions may not postpone the time at which the licensee is required to make his first statement of programme policy under this section.

581. The first statement should be published as soon as possible after this section comes into force. The term "previous statement of policy" is defined in subsection (9).

Section 269: Changes of service policy

582. This section mirrors section 267. The statement described in the notes on section 268 above must not contain proposals for what is to be regarded (taking account of OFCOM's guidance) as a material change in the character of the service unless OFCOM have been consulted and the service provider has taken account of OFCOM's views. If this process has not been followed, OFCOM may insist that the provider publish a revised statement that has been approved by OFCOM.

Section 270: Enforcement of public service remits

583. This section provides for the case where OFCOM conclude that a provider of a licensed public service channel or the public teletext provider has failed to fulfil its public service remit, or has not contributed adequately to the general requirements for public service broadcasting. If OFCOM are of the opinion that this failure is serious, and cannot be excused by reference to economic or market conditions, OFCOM may exercise their powers under this section. Before doing so, OFCOM must also consider the factors set out in subsection (3) regarding the provider's remit and more general performance.

584. OFCOM may have recourse to a number of powers. Subsection (4) provides that OFCOM may direct that the provider amend his policy statement as directed, and may direct that the provider remedy its failure to fulfil satisfactorily its public service obligations. Such directions are to be accompanied by a reasonable timetable for compliance and guidance as to how OFCOM will decide whether the failure has been remedied and whether they will exercise their powers under subsection (6).

585. If OFCOM are satisfied that their directions have not been complied with, that the provider is still failing its public service remit, and that this reasonably merits variation of the provider's licence, they may replace the self-regulatory regime described in the notes above with more detailed regulation (subsection (6)). In other words, the conditions set under sections 265 to 269 would be

replaced by specific conditions set by OFCOM in order to ensure that the provider fulfils its public service remit.

586. One of the general objectives of the Act is that OFCOM be required to review continually the need for regulation in the sector, ensuring that unnecessary regulatory burdens are neither imposed nor maintained. In accordance with this de-regulatory approach, subsection (8) gives OFCOM the power, having previously exercised their powers in accordance with subsection (6), to vary again a provider's licence in order to reinstate the conditions imposed under sections 265 to 269, and to remove or amend any specific conditions that were inserted in their place.

587. Before giving any direction, or exercising any of their powers, under this section, OFCOM shall consult the provider affected.

Section 271: Power to amend public service remits

588. This section provides the Secretary of State with the power to make an order amending the public service remits under section 261 for any licensed public service channel or the public teletext service, the list of public service television broadcasting purposes set out at section 264(4), and the list of more detailed matters set out at subsections (5) and (6) of section 264. No such order may be made unless OFCOM have recommended it in a report under section 229 or 264, unless subsection (3) applies. Before recommending the making of an order under this provision OFCOM will be under an obligation to consult members of the public, such public service broadcasters (including the public teletext service provider if appropriate) as are likely to be affected by the proposed change and other providers of television and radio services as appropriate. Before making an order the Secretary of State must consult OFCOM, the public service broadcasters likely to be affected and other relevant providers. Any order made by the Secretary of State will be subject to the affirmative resolution procedure.

Section 272: Must-offer obligations in relation to networks

589. This section requires OFCOM to include in the licences for every licensed public service channel, the public teletext service and every licensed television service added to the list of must-carry services under section 64 conditions which they consider appropriate for securing the three following objectives:

- that digital channels or services on the list of must-carry services under section 64 are offered for broadcasting and distribution over every appropriate network;
- that each provider of those channels or services enters into arrangements which ensure that their digital channels or services and any ancillary services are broadcast or distributed on appropriate networks so that those channels and services are made available for reception by as many members of the intended audience (as defined in subsection (7)) for a given service as possible; and
- that such arrangements prohibit the provider of the network from charging for reception of the channels or services.

An “appropriate network” is defined in subsection (7) as a network used to provide public electronic communications services to a significant number of end-users as their principal means of receiving television programmes.

Section 273: Must-offer obligations in relation to satellite services

590. This section requires OFCOM to include in the licences for every licensed public service channel, the public teletext service and every other licensed television service specified by the

Secretary of State conditions which they consider appropriate for securing the following three objectives:

- that digital channels or services to which this section applies are offered as available for broadcast by means of every satellite television service available for reception in the whole or a part of the United Kingdom;
- that each provider of those channels or services enters into arrangements which ensure that its digital channels or services and any related ancillary services are broadcast by means of satellite television services, such that they are available for reception by as many members of the intended audience (as defined in subsection (7)) for a given service as possible; and
- that such arrangements prohibit a charge being imposed for the reception of the channel or service.

* A “satellite television service” is defined in subsection (7) as a service which consists of broadcasting television programme services from a satellite and is used by a significant number of persons as their principal means of receiving television programmes.

591. These objectives apply to a service or channel only whilst its digital form is included in the list of “must-provide” services for the purpose of section 274 (see below).

Section 274: Securing reception of must-provide services in certain areas

592. This section requires OFCOM to include in the licences for every licensed public service channel, the public teletext service and every licensed television service added to the list of must-provide services under section 275 conditions which secure the reception of those services. Such conditions may provide that where persons required to provide must-provide services fail to enter into or maintain arrangements that meet the requirements of subsection (3), OFCOM may impose such arrangements. Before doing so, OFCOM must consult all persons who provide must-provide services. The arrangements that may be entered into by, or imposed upon, providers of must-provide services must secure that, where necessary, any member of the intended audience (as defined in subsection (10)) for a given service, who has bought the relevant equipment (for instance a dish and a digital satellite decoder), has available to them a facility for receiving the must-provide services (including any that are broadcast by satellite) and that this is made available free of charge. This applies only where that person could not otherwise (e.g. by digital terrestrial broadcasting) receive the service to an acceptable technical standard. The effect of the arrangements currently, for example, would be to require the relevant broadcasters to supply “smart” cards for the operation of receiving equipment that will permit reception of the free-to-view services (“solus cards”). The broadcasters must share the costs involved. They must also establish complaints procedures and ensure that these procedures are publicised in accordance with OFCOM's guidance. Any such arrangements will only take effect if approved by OFCOM.

593. Subsections (6) and (7) clarify when reception of a service is to be regarded as being free of charge. Subsection (8) provides that OFCOM shall determine the quality of reception required before someone can be treated for the purpose of this section as receiving a service in an intelligible form.

Section 275: Must-provide services for the purposes of s.274

594. This section provides that the list of must-provide services for the purposes of section 274 includes the following: every service of digital television programmes provided by the BBC and in relation to which OFCOM have functions; the Channel 3 services, Channel 4 and Channel 5

services, so far as any of them are provided in digital form; S4C Digital; and the digital public teletext service. The Secretary of State may by order amend the list of must-provide services. In exercising this power, she must have regard to the public benefit to be secured by the modification, the likely financial effects of the proposed modification on the affected parties and the proportionality of these effects when set against the public benefit secured.

Section 276: Co-operation with the public teletext provider

595. OFCOM are to include, in each licence to provide a Channel 3 service or Channel 4, conditions that secure that the public teletext provider and any person authorised by him under section 220 have access to such of the facilities of the relevant provider as are needed in order to provide the public teletext service. A provider of a Channel 3 service or Channel 4 may require the public teletext provider and authorised persons to pay a reasonable charge for such access. Similar provisions apply to the Welsh Authority: see paragraph 11 of Schedule 12

Section 277: Programming quotas for independent productions

596. OFCOM are to include conditions in the licences of all licensed public service channels in order to secure that at least 25 per cent (or such other figure as is substituted by the Secretary of State by order) of the time allocated to the broadcasting of qualifying programmes on that channel is allocated to the broadcasting of a range and diversity (judged both in terms of the types of programmes involved and of the cost of their acquisition) of independent productions.

* “qualifying programmes” are defined in subsection (2)(a) as programmes of such a description as the Secretary of State may by order specify as qualifying programmes. Paragraph 34 of Schedule 18 provides that any order under the Broadcasting Act 1990 as to the definition of qualifying programmes shall continue to be effective after the commencement of sections 277 and 309 of the Act and paragraphs 1 and 7 of Schedule 12 to the Act.

* “independent productions” are defined in subsection (2)(b) as programmes of such a description as the Secretary of State may by order specify as independent productions. Paragraph 34 of Schedule 18 provides that any order under the Broadcasting Act 1990 as to the definition of independent productions shall continue to be effective after the commencement of the Act as specified above.

* “licensed public service channels” are defined in section 362 as meaning any of the following services (whether provided for broadcasting in digital or in analogue form): any Channel 3 service, Channel 4 and Channel 5.

597. OFCOM may give directions to the providers of the licensed public service channels for the purpose of carrying over to one or more subsequent years any shortfall for any year in meeting the independent productions quota.

598. The Secretary of State may also provide, by order, that OFCOM include conditions in the licences of the licensed public service channels in order to secure that, in each year, not less than a specified percentage of the programming budget for that channel is applied in the acquisition of independent productions. These conditions may apply as well as, or instead of, the requirement to allocate 25% of airtime to independent productions.

* “programming budget” is defined in subsection (13) as the budget for the production and acquisition of qualifying programmes.

Section 278: Programming quotas for original productions

599. OFCOM are to include conditions in the licences of all licensed public service channels in order to secure that an appropriate amount of airtime is allocated to original productions and that the time allocated is divided as may be appropriate between peak viewing times and other times. OFCOM may also include conditions excluding specified descriptions of programmes from the calculation of the necessary proportion of original productions. Before including such a condition, OFCOM must consult the licence holder on whom it is to be imposed.

* References to original productions in section 278 are to programmes of such description as the Secretary of State may by order specify as original productions. The Secretary of State may confer such discretions on OFCOM as she sees fit for the purposes of the order. The Secretary of State must consult OFCOM, the BBC and the Welsh Authority before making any order under this section.

* “Peak viewing time” is defined in subsection (10) as such time as appears to OFCOM to be — actually or potentially — a peak viewing time for any given public service channel.

Section 279: News and current affairs programmes

600. OFCOM are to include conditions in the licences of all public service channels in order to secure that the programmes included on those channels include news and current affairs programmes and that the time allocated to the broadcasting of news and current affairs programmes is an appropriate proportion of the total time allocated to the broadcasting of all other programmes. Such programmes are to be of a high standard, and are to cover both national and international matters. News programmes should be broadcast at intervals throughout the day, and the times at which both news and current affairs programmes are to be broadcast should include an appropriate amount of peak viewing times. OFCOM must consult with the channel provider before determining the proportion of broadcasting time to be allocated to news and current affairs programmes and what constitutes a peak viewing time.

* “peak viewing time” is defined in subsection (5) as such time as appears to OFCOM to be — actually or potentially — a peak viewing time for that channel.

Section 280: Appointed news providers for Channel 3

601. OFCOM are to include in every regional Channel 3 licence conditions to secure nationwide broadcasting of news programmes that are able to compete with other television news programmes broadcast nationwide in the United Kingdom. Such conditions must require that all holders of regional Channel 3 licences maintain arrangements for the appointment of a single body corporate as the appointed news provider and that at all times when a licensee is providing a regional Channel 3 service there is a news provider appointed under those arrangements.

602. Subsection (3) provides that OFCOM must approve the terms of appointment, to ensure that the finances of the appointed person are adequate to meet news obligations throughout the period of appointment. Holders of the regional Channel 3 licences and the body which is the appointed news provider are required to provide OFCOM with all such information as they may need to ensure that the necessary arrangements are in place and working effectively.

603. Subsection (5) provides that news programmes must always be provided by the person who is the appointed news provider, and must be broadcast simultaneously with the broadcasting of news programmes included in other regional Channel 3 services.

Section 281: Disqualification from appointment as news provider

604. OFCOM may impose conditions to ensure that a body does not become or remain the appointed news provider (i) if it is a disqualified person under Part 2 of Schedule 2 to the 1990 Act in relation to a Channel 3 licence (such as a local authority, a political body, the BBC, the Welsh Authority or a Channel 4 company) or (ii) if there would be a contravention of Part 1 of Schedule 14 to this Act if that body held a licence to provide a Channel 3 service, (e.g. because the body has interests in national or local newspapers).

Section 282: Power to repeal or modify Channel 3 news provider provisions

605. This section allows the Secretary of State, by an affirmative procedure order, to repeal or modify the provisions of section 280 or 281. Unless simply giving effect to recommendations made by OFCOM, the Secretary of State must consult OFCOM before making an order under this section.

Section 283: News providers for Channel 5

606. The Secretary of State may by order impose requirements for the provision of Channel 5 news programmes that correspond to the news provider provisions for Channel 3 services, with such modifications as the Secretary of State sees fit. An order may only be made on OFCOM's recommendation or after consulting OFCOM. Before the Channel 5 licence is varied, the licence-holder must be given an opportunity to make representations to OFCOM.

607. The Secretary of State is prohibited from imposing new obligations in relation to Channel 5 unless she is satisfied that Channel 5's share of the audience is broadly equivalent to that for the services comprising Channel 3.

Section 284: News provision on the public teletext service

608. OFCOM are to include in the licence of the public teletext provider conditions that secure that news items are included in public teletext services, and that they are up-to-date and regularly revised.

Section 285: Code relating to programme commissioning

609. OFCOM are to include conditions in the licences of every licensed public service channel in order to secure that the channel provider draws up, from time to time revises and complies with a code of practice setting out the principles he will apply when agreeing terms for the commissioning of independent productions. The code must be submitted to OFCOM for approval and will have effect only if approved by OFCOM.

610. OFCOM must issue general guidance setting out the procedure for drawing up and revising the code and the matters to be covered. OFCOM's guidance may not however specify particular terms to be included in agreements to which the guidance relates. OFCOM must ensure that there is always published guidance for the purposes of this section in force and must consult the providers of the licensed public service channels, persons who make independent productions (or persons appearing to OFCOM to represent them), the BBC and the Welsh Authority before issuing or revising the guidance.

* an "independent production" has the same meaning as in section 277.

Section 286: Regional programme-making for Channels 3 and 5

611. OFCOM may include in every licence for a Channel 3 service conditions to secure that, where Channel 3 programmes are broadcast in more than one Channel 3 area, a suitable proportion of those programmes that are made in the United Kingdom are made outside the area enclosed by the

M25. Such programmes should make up a suitable range of programmes. An associated requirement is that Channel 3 providers invest sufficiently in programme production at a suitable range of production centres in different parts of the United Kingdom outside the area enclosed by the M25. None of these requirements need be included as a licence condition for a national Channel 3 service, unless OFCOM consider this to be appropriate having regard to the nature of the service. OFCOM must consult the licence holder on whom conditions under this section are to be imposed before imposing the conditions.

* a “national Channel 3 service” is defined in section 362 as a Channel 3 service provided between particular times of the day for more than one area for which regional Channel 3 services are provided.

612. OFCOM are also to include conditions in the licence for Channel 5 in order to ensure that a suitable proportion of Channel 5 programmes that are made in the United Kingdom are made outside the area enclosed by the M25. Such programmes should comprise a suitable range of programmes. The Channel 5 provider must also invest sufficiently in programme production at a suitable range of production centres in different parts of the United Kingdom outside the area enclosed by the M25.

Section 287: Regional programmes on Channel 3

613. OFCOM are to include in national, regional and local Channel 3 licences conditions to secure that the areas served by the licensee are provided with programmes appropriate to the area concerned. In relation to regional and national services, the objectives to be secured are set out in subsections (1) and (4), respectively, and include ensuring that a sufficient amount of time is given in the service to regional programmes, including news programmes, which are of high quality, that a suitable proportion of regional programmes included in the service consists of programmes made in the relevant regional area and that a sufficient proportion of such programmes are broadcast at or around peak time.

* “regional programme” is defined in subsection (8) as — in relation to a regional Channel 3 service — a programme included in that service as being of particular interest to persons within the area covered by the service or — in relation to a national Channel 3 service — as being of particular interest to persons within a particular area of the United Kingdom.

614. In this section, a Channel 3 service is a local service if it is required to provide programmes for specific areas or specific communities within that region (subsection (7)). In the case of a local service, OFCOM may include conditions requiring that a sufficient amount of time is given in the service to an appropriate range of local programmes, including news programmes, which are of high quality; that a sufficient proportion of such programmes are broadcast at or around peak time; and that an adequate proportion of such programmes have been produced in the relevant locality.

* “local programme” is defined in subsection (7) as a programme included in a regional Channel 3 service for part of an area, or for a particular community.

615. Before including a licence condition in this respect OFCOM must consult the licence holder on whom it is to be imposed.

Section 288: Regional programme-making for Channel 4

616. OFCOM are to include in the Channel 4 licence conditions providing that a suitable proportion of the programmes to be broadcast on Channel 4 that are made in the United Kingdom are made outside the area enclosed by the M25. Such programmes should comprise a suitable range of programmes. The Channel Four Television Corporation must also invest sufficiently in programme production at a suitable range of production centres in different parts of the United Kingdom outside the area enclosed by the M25. Before imposing a condition under this section, OFCOM must consult the Corporation.

Section 289: Regional matters in the public teletext service

617. OFCOM must include, in the public teletext service licence, conditions which ensure that an appropriate proportion of material reflecting the interests of the different regions of the United Kingdom is included in the analogue and digital teletext services.

Section 290: Proposals for arrangements

618. Any application for a regional Channel 3 licence must include the applicant's proposals for participating in networking arrangements. OFCOM may publish guidance for applicants on the kinds of proposals which they are likely to consider satisfactory.

* For the purposes of Part 3, arrangements are networking arrangements if they: (1) apply to all holders of regional Channel 3 licences; (2) allow programmes made, commissioned or acquired by a Channel 3 licensee to be made available to all other regional Channel 3 licensees for broadcasting; and (3) enable regional Channel 3 services (taken as a whole) to compete effectively with other television programme services provided in the United Kingdom.

Section 291: Obligation as to making and continuance of approved arrangements

619. OFCOM are to include in every regional Channel 3 licence conditions to secure that, where no arrangements imposed by OFCOM under section 292 are in force, the licensee has entered into and given effect to networking arrangements (including any modification thereto) that are approved by OFCOM in accordance with Schedule 11. The Chapter I prohibition of the Competition Act 1998 does not apply to any networking arrangements that have been approved by OFCOM in accordance with any licence condition imposed by them under this section or that have been considered and approved under Schedule 4 to the Broadcasting Act 1990 (subsection (3)).

620. Under paragraph 36 of Schedule 18, networking arrangements that are in force immediately before the commencement of this section and have been approved under section 39 of the Broadcasting Act 1990 will be treated as if approved by OFCOM under this section.

Section 292: OFCOM's power to impose arrangements

621. Any notice published by OFCOM stating that they propose to award one or more regional Channel 3 licences must specify a date by which networking arrangements must be entered into if they are to be effective before the new Channel 3 licensees start to provide their licensed services. If suitable networking arrangements do not exist by that date or subsequently cease to apply, OFCOM may impose appropriate networking arrangements on all regional Channel 3 providers, including the new licensee. Subsection (7) allows OFCOM to set licence conditions appropriate for securing that regional Channel 3 providers comply with networking arrangements imposed under this section. The imposed networking arrangements will cease to have effect if the licence holders bound by those arrangements enter into alternative networking arrangements which are approved by OFCOM.

Section 293: Review of approved networking arrangements etc.

622. This section imposes a duty on OFCOM to carry out general reviews of the networking arrangements approved under section 291 or imposed under section 292. The first review must be carried out no more than six months after the last closure date for an offer of a replacement regional Channel 3 licence, made under section 215. Reviews must be undertaken yearly thereafter. OFCOM may also, at any other time, carry out a review of whether the networking arrangements continue to satisfy one of the two competition tests set out in paragraph 6 of Schedule 11 (approval, imposition and modification of networking arrangements).

* The first competition test is that the networking arrangements do not have the object or effect of preventing, restricting or distorting competition within the United Kingdom. The second competition test is that the networking arrangements do have such an object or effect but would satisfy the criteria set out in section 9 of the Competition Act 1998 (agreements contributing to improving the production or distribution of goods or to promoting technical or economic progress).

623. Where, following a review, OFCOM are satisfied that modifications to the networking arrangements are required, they may require regional Channel 3 licensees to give effect to those modifications or, in the case of arrangements imposed under section 292, make those modifications themselves. OFCOM may not require modifications to be made to approved networking arrangements already in force without conducting a review under section 293 unless they have the consent of the Channel 3 licensees affected by the modification.

624. Subsection (7) allows OFCOM to set licence conditions that secure that Channel 3 licensees give effect to any modifications of the networking arrangements proposed by OFCOM.

Section 294: Supplemental provision about networking arrangements

625. Schedule 11 sets out the procedures to be followed by OFCOM when approving, imposing or modifying networking arrangements under sections 291 to 293.

626. Where networking arrangements (and modifications thereto) are submitted to OFCOM for their approval, OFCOM must publish a description of those arrangements and allow third parties a reasonable period of time to comment on them. OFCOM may then approve, or conditionally approve, or reject the arrangements (or modifications to them). Before deciding to give a conditional approval requiring changes to the arrangements, OFCOM must consult each holder of a regional Channel 3 licence about the changes. OFCOM must then, subject to confidentiality, publish their decision and their reasons for it. Once arrangements have been approved by OFCOM they are not to be modified without OFCOM's approval.

627. Paragraph 5 requires OFCOM to publish, subject to confidentiality, reports explaining any networking arrangements that they impose under section 292 and the outcome of any reviews carried out under section 293.

628. Under paragraphs 6 and 7, OFCOM must not approve, impose or modify any networking arrangements under sections 291 to 293 unless:

- they are satisfied that the arrangements satisfy the first or second competition tests (as described in the note to section 293 above); and
- they consider that the networking arrangements represent a satisfactory means of achieving the purpose of enabling regional Channel 3 services (taken as a whole) to compete effectively with other television programme services provided in the United Kingdom. OFCOM must

also take into consideration the likely effect of the arrangements on the ability of regional Channel 3 licensees to maintain the quality and range of their regional programmes and the regional character of their services.

629. Under paragraph 8, OFCOM may not approve, impose or modify any networking arrangements where it appears to them that they are likely to prejudice the ability of regional Channel 3 licensees to comply with their public service remits or conditions imposed under sections 286, 287 or 352.

630. Paragraph 9 confers a right of appeal against OFCOM's decisions concerning the competition aspects of networking arrangements. The right of appeal extends to any holder of a regional Channel 3 licence. An appeal may be brought only by sending a notice of appeal to the Competition Appeal Tribunal (CAT) and on the grounds listed in sub-paragraph (4). A Channel 3 licensee is not required to comply with OFCOM's decision, pending the outcome of the appeal.

631. The CAT is to decide the appeal on the merits. The CAT is to decide whether OFCOM's decision was appropriate and may confirm OFCOM's decision or issue any directions it considers are necessary to give effect to its decision. OFCOM must comply with any such directions. A decision of the CAT may be appealed under paragraph 11 on a point of law to the Court of Appeal or, in Scotland, to the Court of Session. Such an appeal may, with the permission of the CAT or the appellate court, be brought by a party to the original CAT proceedings.

632. Paragraph 12 allows OFCOM to require any person to provide them with information necessary to enable OFCOM to carry out their functions under section 293 or Schedule 11. Sub-paragraph (4) limits the types of document that OFCOM may demand. The High Court, the Court of Session or, in Northern Ireland, the High Court or a judge of the High Court may, on an application made by OFCOM, enquire into whether a person has refused or otherwise failed (without reasonable excuse) to comply with a request from OFCOM. If the court is satisfied that that is the case, the person concerned may be punished as if he had been held in contempt of court (paragraph 13).

633. A person is guilty of an offence under paragraph 13 if he:

- intentionally alters, suppresses or destroys a document requested by OFCOM; or
- knowingly or recklessly provides OFCOM with false or misleading information himself or knowingly or recklessly provides false or misleading information to a third person which he knows will be provided to OFCOM.

634. The penalties to which any person found guilty of committing an offence will be liable are set out in sub-paragraph (11).

Section 295: Involvement of C4 Corporation in programme-making

635. OFCOM are to include in the Channel 4 licence a condition prohibiting the Channel Four Television Corporation from being involved in making programmes to be aired on Channel 4, except as permitted by OFCOM.

Section 296: Schools programmes on Channel 4

636. OFCOM are to include in the Channel 4 licence any conditions necessary to ensure that Channel 4 broadcasts a sufficient proportion of schools programmes. This may be achieved by setting a minimum number of hours (in term time or within normal school hours) that must be dedicated to schools programming. The Corporation may also be required to finance the production of schools programmes, to acquire such programmes from others and/or to produce any materials that may be necessary to ensure the effective use of such programmes. The programming should be of a high standard and, in producing their schools programmes, the Corporation should consult such persons

concerned with schools or schools programmes as OFCOM direct. OFCOM must consult the Corporation before imposing any conditions under this section.

* *schools programmes* are defined in subsection (12) as programmes which are intended for use in schools.

637. Subsection (11) provides that the requirement in section 34 of the Broadcasting Act 1990, that a suitable proportion of the programmes which are included in Channel 3 services and Channel 4 and 5 (taken as a whole) are schools programmes, shall no longer apply.

Section 297: Channel 4 contribution towards national television archive

638. This section amends section 185 of the Broadcasting Act 1990 to allow OFCOM to determine the amount of money that the holder of the Channel 4 licence must contribute after the television transfer date towards the expenses of maintaining a television archive for the United Kingdom.

639. Section 185 already requires such contributions from holders of Channel 3 and 5 licences and similar arrangements apply to the BBC under the BBC Agreement.

Section 298: Conditions prohibiting interference with other services

640. OFCOM must include in the licence for the public teletext service conditions that prohibit the public teletext service provider from causing interference with any television broadcasting service on whose frequency it is provided or any other wireless telegraphy transmissions.

Section 299: Categorisation of listed events

641. This section amends section 97 of the Broadcasting Act 1996 to provide for the existing concept of 'listed events' to be divided into two categories, called 'group A' and 'group B'. Listed events are sporting or other events of national interest, which the Secretary of State has listed for the purpose of attracting the legal consequences provided for by Part 4 of the 1996 Act. The amendment requires all listed events to be allocated to one of these groups. When an event is listed, the Secretary of State will allocate it to a group, and she may decide to move a listed event from one group to another, subject to the same consultation requirements that already apply to a decision to list an event. The existing requirement to consult the ITC is replaced by one to consult OFCOM.

Section 300: Effects of categorisation of listed events

642. Subsection (1) amends section 99(1) of the Broadcasting Act 1996 so that it applies only to Group A listed events. Section 99(1) makes a contract void if it purports to grant exclusive rights to televise a listed event live for reception in the UK. It will, therefore, become possible for valid contracts to be made granting such exclusive rights in relation to group B events.

643. Subsection (2) amends section 101 of the Broadcasting Act 1996. That section currently prohibits a television service provider who provides, for reception in the UK, a service falling within either of the categories set out in section 98(1) of the 1996 Act from including in that service live coverage of the whole or any part of a listed event unless either the live rights have also been acquired by another person providing a service in the other of those two categories, or the ITC has given its consent. As well as replacing references to the ITC with references to OFCOM, the amendment introduces a new ground on which live coverage can be included without satisfying either of those existing grounds. The new ground applies only to group B events, and requires that rights to provide adequate alternative coverage have been acquired by one or more persons, other than the person proposing to include the live coverage in his service, who satisfy the requirements

of regulations made under section 104ZA of the 1996 Act (which is inserted by section 302 of this Act). The amendments also make minor drafting improvements.

Section 301: Code relating to listed events

644. This section amends section 104 of the Broadcasting Act 1996, which makes provision for an ITC Code for various purposes of Part 4 of that Act. The amendment transfers responsibility to OFCOM and repeals one of the Code's existing functions, that of specifying the circumstances in which the televising of listed events is, or is not, to be treated as live for various purposes of Part 4 (which becomes instead a function of regulations under section 104A, which is inserted by section 302 of this Act).

645. Paragraph 51 of Schedule 18 provides that until OFCOM draw up a code under this clause, the code drawn up by the ITC under section 104 of the Broadcasting Act 1996 shall have effect.

Section 302: Regulations about coverage of listed events

646. This section inserts a new section 104ZA into the Broadcasting Act 1996 enabling OFCOM to make regulations for determining, for the purposes of Part IV of that Act, first, the circumstances in which the televising of listed events is, or is not, to be treated as live and, secondly, what is to be taken to represent the provision of adequate alternative coverage (the first function was formerly one of the Code drawn up under section 104, and the second is relevant to the amendment of section 101 made by section 300 of this Act).

Section 303: Code relating to provision for deaf and visually impaired

647. This section provides that OFCOM are to draw up, publish and maintain a code giving guidance as to the extent to which the services to which the section applies should promote their understanding and enjoyment by persons who are deaf or hard of hearing, persons who are blind or partially-sighted and persons with a dual sensory impairment. Subsections (4) and (5) set out obligations on the services set out at subsection (12) that must, from the fifth and tenth anniversaries respectively of the 'relevant date' (which is defined in section 305), be fulfilled. Subsection (4) sets out targets in respect of subtitling, and subsection (5) sets out targets in respect of subtitling, audio-description and sign language. The total of programmes from which that proportion is set shall exclude such programmes as OFCOM consider should be excluded under subsection (7) having regard to the factors set out in subsection (8). OFCOM may also set interim targets and exclude different descriptions of programmes in relation to different services. Where OFCOM are satisfied that a service is a special case they may exclude all the programmes in that service.

Section 304: Procedure for issuing and revising code under s. 303

648. Before drawing up the code described in the notes to section 303 above, OFCOM shall, as they see fit, consult with representatives of the deaf or hard of hearing, blind or partially-sighted, and dual sensory impaired, as well as with those providing the relevant services. When the code is published it shall be in a form easily accessed by those who are deaf or hard of hearing, those who are blind or partially-sighted, and those with a dual sensory impairment.

Section 305: Meaning of "relevant date" in s. 303

649. This section defines "relevant date" for the purposes of section 303. The definition varies according to the service in question, and when provision of that service commenced.

Section 306: Power to modify targets in s. 303

650. The Secretary of State, following consultation with OFCOM, may by order increase the target percentages set out in subsection (4) of section 303, or substitute a different anniversary, where it appears that the obligation set out in that subsection has been or is likely to be fulfilled before the specified anniversary. She may also substitute a later anniversary for the one specified in subsection (5) or substitute a higher percentage.

Section 307: Observance of code under s. 303

651. OFCOM are to include in the licence for every service to which this section applies (namely, any of the services listed in section 303(12)) conditions requiring that the code provided for in section 303 is observed.

Section 308: Assistance for the visually impaired with the public teletext service

652. OFCOM are to include in the licence for the public teletext service conditions to secure, so far as is reasonable and practicable, that the service includes features enabling persons with disabilities affecting their sight to use the service.

Section 309: Quotas for independent programmes

653. OFCOM are to include in every licence for a digital television programme service that is not comprised in a licensed public service channel conditions to secure that at least 10 per cent of the time allocated to the broadcasting of qualifying programmes in the service is allocated to the broadcasting of a range and diversity (judged both in terms of the types of programmes involved and of the cost of their acquisition) of independent productions. The Secretary of State may, by order, and having consulted OFCOM, vary this percentage and determine what are to be considered “qualifying programmes” and “independent productions”.

Section 310: Code of practice for electronic programme guides

654. OFCOM must draft and maintain a code of practice for the provision of electronic programme guides (EPGs). This must ensure that EPG providers give the listing and/or promotion of the programmes on public service channels an appropriate degree of prominence, as determined by OFCOM. This obligation also applies to the means of selecting and accessing the programmes on these channels from an EPG.

655. These obligations are expressed by reference to “intended audience” (defined in subsection (7)). This has the effect that, where the provider of a public service channel provides the channel in regional versions, in any given region the channel's most prominent EPG listing will be occupied by the programmes provided for that region. Programmes on the other regional versions of that channel will usually be found listed further down the EPG.

* an “electronic programme guide” is defined, for the purposes of this section, in subsection (8) as a service which comprises (i) the listing and/or promotion of some or all of the programmes included in any one or more programme services the providers of which are, or include, persons other than the provider of the guide and (ii) a facility for obtaining access, in whole or in part, to the programme service so far as it is promoted or listed in the guide. As at the date of Royal Assent, the only EPGs available are principally visual services. However, the Act has been drafted to provide for EPGs whether their features are wholly visual, or a combination of sound and vision, or even (if they are developed) EPGs that operate wholly in sound.

656. The code must also ensure that providers of guides comply with any decision of OFCOM that specified features should be incorporated in the guides in order to (i) help people who have disabilities affecting their sight and/or hearing to use the guides for the same purposes as they are used by those without such disabilities and (ii) ensure that such people are informed about and are able to use any assistance provided for them in relation to the programmes listed and/or promoted.

657. For the purposes of these provisions the public service channels are the BBC's television services in digital form, any Channel 3 service in digital form, Channel 4 in digital form, Channel 5 in digital form, S4C Digital, and the digital public teletext service. Subsection (5) provides the Secretary of State with a power to amend this list by order, though she must not do so without consulting OFCOM (subsection (6)).

Section 311: Conditions to comply with code under s. 310

658. OFCOM are to include in every licence for a service which comprises or includes the provision of an electronic programme guide conditions to secure the observation of the code provided for in section 310.

Section 312: Character and coverage of sound broadcasting services

659. This section amends section 106 of the Broadcasting Act 1990 dealing with the character and coverage of radio services. Broadly, OFCOM are to set such conditions as are necessary for maintaining the character of the service. The character of the service includes the music and spoken material selected for inclusion in that service. The conditions may provide that OFCOM may only consent to a departure from the original character if such a departure would not substantially change that character, if the departure would not narrow the range of relevant independent radio services available in the area covered by the service, if, in the case of local licences, there is user demand for the changes that the departure would effect or if the departure would be in the interests of competition.

* "*Relevant independent radio services*" consist of sound broadcasting services, radio licensable content services and additional radio services that fall within the scope of OFCOM's regulatory functions under section 245.

660. OFCOM may allow a local licence holder to extend the area to which he broadcasts, but only if such an extension is not significant and is justified by exceptional circumstances.

Section 313: Consultation about change of character of local service

661. This section adds a new section 106A to the Broadcasting Act 1990. It requires OFCOM, before agreeing to a substantial departure from the character of a local or national analogue service, to publish a notice specifying the proposed departure and the period within which representations may be made to OFCOM (normally not less than 28 days). The notice must be published in a manner in which appears to OFCOM appropriate for bringing it to the attention of those likely to be affected by such a departure. OFCOM do not have to consult if they are satisfied that the departure would not substantially alter the character of the service.

662. OFCOM also do not have to consult, or can shorten the consultation period, if they consider that to do so would result in a delay which would be likely prejudicially to affect the licence holder (for example, where they might go out of business). OFCOM are not required to publish confidential material.

Section 314: Local content and character of local sound broadcasting services

663. Subsection (1) imposes a duty on OFCOM to ensure that local sound broadcasting services contain local material, to the extent (if any) that OFCOM consider appropriate in that case, and include locally-made programmes. OFCOM are required to draft, publish and maintain guidance setting out when local sound broadcasting services satisfy the requirements of subsection (1) and to have regard to that guidance when carrying out their functions in relation to local sound broadcasting services. OFCOM's guidance may extend to such issues as providing descriptions of local material and locally-made programmes. Subsection (5) requires OFCOM to consult with persons having an interest in local sound broadcasting services before drafting or revising the guidance. OFCOM's duties under this section do not extend to local advertising.

Section 315: Variations of radio multiplex licences affecting service characteristics

664. This section replaces subsection (6) of section 54 of the Broadcasting Act 1996 with subsections (6) to (6B). Upon the request of a radio multiplex licensee to vary a licence condition implementing a proposal submitted in his original application under section 46(4) or 50(4) of the Broadcasting Act 1996 relating to the number of digital sound programme services and the characteristics of each service to be broadcast, the timetable for the launch for those services, the broadcasting of digital additional services or the promotion of the acquisition of digital receivers by the listening public, OFCOM must vary the licence as requested, subject to the tests set out in subsections (6A) and (6B).

665. Section 54(6A) provides that OFCOM may not vary a national radio multiplex licence where it appears that, if the requested amendment were made, the capacity of the digital sound programme services broadcast under the licence to appeal to a variety of tastes and interests would be unacceptably diminished.

666. Section 54(6B) stipulates that OFCOM may vary a local radio multiplex licence only where they are satisfied that:

- the variation would not unacceptably narrow the range of programmes available to people living in the areas where the multiplex service is provided;
- the variation is in the interests of competition; or
- there is user demand for the changes to the services.

Section 316: Conditions relating to competition matters

667. Section 316 makes specific provision for OFCOM to have powers, in addition to concurrent powers under the Competition Act, to use licence conditions to ensure fair and effective competition in the provision of licensed services and connected services. This gives OFCOM competition powers specific to the broadcasting sector. Subsection (3) provides that, in order to ensure fair and effective competition between licence holders, OFCOM can require licence holders to comply with a code approved by OFCOM on the specifics of how they should comply with the licence conditions and that they can also issue directions to individual licensees for that purpose.

* licensed service means a service licensed by a Broadcasting Act licence.

Section 317: Exercise of Broadcasting Act powers for a competition purpose

668. This section applies to OFCOM's Broadcasting Act powers, as defined in subsection (1). The effect of subsections (2) and (3) is that OFCOM are not to use Broadcasting Act powers for a competition purpose (as defined in subsection (9)), where they consider that a more appropriate way of proceeding would be through the use of their general competition powers under the Competition Act 1998.

* OFCOM's *Broadcasting Act powers* are their powers under Part 3 of this Act and under the Broadcasting Acts to impose or vary licence conditions, their powers to give approvals or directions for the purposes of such conditions and their powers to enforce such conditions.

669. Subsections (4) and (5) require that where OFCOM decide to exercise their Broadcasting Act powers for a competition purpose, they must notify that decision to persons likely to be affected by it, and the notification must include a description of the rights of appeal that apply. Subsection (6) provides that where OFCOM have considered that the exercise of their Broadcasting Act powers for a competition purpose is the more appropriate way to proceed, the route of appeal for any person affected by any decisions under these powers shall be to the Competition Appeal Tribunal. Subsection (8) limits the jurisdiction of the Tribunal in any such appeal, so as to exclude questions as to whether OFCOM have complied with subsections (2) and (3): those questions can, though, be challenged by way of judicial review. Subsection (10) provides that this section does not apply to the exercise by OFCOM of their powers in relation to Channel 3 networking arrangements under sections 290 to 294 and Schedule 11.

Section 318: Review of powers exercised for competition purposes

670. This section provides for OFCOM periodically to review any guidance or codes or directions that they issue in respect of their Broadcasting Act powers and which has effect for a competition purpose. OFCOM must consult on any changes they propose to make.

Section 319: OFCOM's standards code

671. Subsection (1) places OFCOM under a duty to set standards for the content of television and radio services, which shall be contained in a code or codes.

672. These codes must secure the objectives set out in subsection (2). Those objectives relate to the protection of minors; the prohibition of material likely to encourage crime or disorder; the impartiality of television and radio services; the accuracy of the news; the content of religious programmes; the protection of the public from offensive and harmful material; the exclusion of advertising which contravenes the ban on political advertising set out in section 321(2); the prevention of misleading, harmful or offensive advertising and unsuitable sponsorship; compliance with the United Kingdom's international obligations with respect to advertising; the prevention of undue discrimination between advertisers; and the prohibition of broadcasts of subliminal material.

673. A particular standards objective relates to responsible religious broadcasting. Subsection (6) expands upon this to safeguard against the improper exploitation of any susceptibilities of the audience or the abusive treatment of the religious views and beliefs of those belonging to a particular religion or denomination.

674. Subsection (5) makes clear that, while minimum standards will be of general application, OFCOM are also under a duty to set standards for particular types of programme or service (for example, children's programmes) where OFCOM consider that such standards are appropriate to achieve the objectives contained in subsection (2).

675. In setting the standards, OFCOM are under a duty to have regard to the factors set out in subsection (4) so far as they are relevant. These concern the degree of harm or offence likely to be caused by the content of programmes; the probable size and composition of the audience; the expectation of the audience as to the nature of a programme's content and the extent to which it can be brought to their attention; the danger of accidental exposure of a person to content, the nature

of which they were unaware; the desirability of indicating when there is a change affecting the nature of the service being watched or listened to; and the desirability of maintaining independent editorial control over the content of a programme.

676. Paragraph 43 of Schedule 18 provides that any code drawn up under section 6, 7, 9, 90, 91 or 93 of the Broadcasting Act 1990 or section 108 of the Broadcasting Act 1996 shall have effect as if it were a code issued by OFCOM for the purpose of this section. However, codes drawn up under the Broadcasting Act 1990 shall only apply to services authorised by licences under that Act and, in the case of codes under section 6, 7 and 9 of that Act, S4C. As regards codes drawn up under section 108 of the Broadcasting Act 1996, these will only have effect for services provided by the BBC or the Welsh Authority and then only to the extent that the codes contain provisions applying to those services and, in the case of the Welsh Authority, which relate to matters other than advertising and impartiality.

Section 320: Special impartiality requirements

677. The standards objectives referred to in section 319 include the objective that the impartiality requirements set out in this section are observed. This section specifies particular requirements, some of which are to be further expanded upon by rules in OFCOM's standards code, placed upon service providers to ensure that programme services are free from undue bias. The matters to which the requirements apply are matters of political or industrial controversy, and matters relating to current public policy. The requirements are:

- the service provider must not air its own views on such matters (unless they concern the provision of television or radio programme services); as in the 1990 Act, this restriction does not apply to providers of radio restricted services.
- as regards every television programme service, teletext service, national radio service and national digital sound programme service, the service provider must preserve due impartiality about such matters. The relevant rules in OFCOM's standards code must particularly take account of the need to preserve impartiality for major matters of political or industrial controversy or relating to current public policy. Fulfilment of this requirement need not necessarily be measured programme by programme, but on balance over all programmes included in the relevant service; and
- as regards local radio services, local digital sound programme services, and radio licensable content services, the service provider must ensure that undue prominence is not given to any particular viewpoint about such matters. This need be satisfied only by considering the entire service, rather than programme by programme, or even series by series.

Section 321: Objectives for advertisements and sponsorship

678. This section specifies standards objectives which must include general provisions about the required standards in advertising and sponsorship and permits OFCOM to prohibit advertisements and methods of advertising and sponsorship.

679. Subsection (2) imposes on OFCOM a duty to secure in the broadcast media a general prohibition on political advertising and advertising related to industrial disputes. This reproduces the duty imposed under the Broadcasting Act 1990 on the ITC and the Radio Authority to secure a similar prohibition. Subsection (7) specifies that an advertisement of a public service nature which is inserted by or on behalf of a government department, and a party political or referendum campaign broadcast required by a condition imposed under section 333 or by paragraph 18 of Schedule 12, may nonetheless be broadcast. The Act sets out in subsection (3) the matters which are included in the reference in subsection (2) to “objects of a political nature” and “political ends”, so as to

make clear the scope of the prohibition. These include each of the following: influencing the outcome of elections or referendums in the UK or elsewhere; bringing about changes in the law or otherwise influencing the legislative process in the UK or elsewhere; influencing the policies or decisions of local, regional or national governments in the UK or elsewhere; influencing the policies or decisions of persons on whom public functions are conferred by or under the law of the UK or of a country or territory outside the UK; influencing the policy or decisions of persons on whom functions are conferred by or under international agreements; influencing public opinion on a matter which in the UK is a matter of public controversy; and promoting the interests of a party or other group of persons organised in the UK or elsewhere for political ends.

680. It is because of the ban that this section (in conjunction with section 319(2)(g)) would impose on political advertising that, in the light of the decision of the European Court of Human Rights in the case of Vgt Verein gegen Tierfabriken v Switzerland, the Minister in charge of the Bill was unable to make a statement of compatibility under section 19(1)(a) of the Human Rights Act 1998. The fact that the Minister made a statement under section 19(1)(b) of that Act does not, however, mean that the Government believes the ban would necessarily be found to be incompatible if the ban were to be challenged in the United Kingdom courts or to be considered by the European Court of Human Rights.

681. More generally, subsections (5) and (6) provide for consultation by OFCOM with the Secretary of State regarding the descriptions of advertisements that should not be included in programme services; and the forms and methods of advertising and sponsorship that should not be used. In addition, the Secretary of State has a power to issue directions (with which OFCOM must comply) on any of those matters.

Section 322: Supplementary powers relating to advertising

682. This section requires all licences related to the provision of programme services, the public teletext service and other teletext services (either additional television services or digital additional television services) to include a condition that the licence holder must comply with OFCOM's directions on the maximum time to be given to advertisements in any given time period, the minimum interval that must elapse between two periods of advertisements, the number of advertisement slots that are allowed in any programme or hour or day, and the exclusion of any advertisement from a specified part of a service.

Section 323: Modification of matters to be taken into account under s. 319

683. This section provides that the Secretary of State, following consultation with OFCOM, may by order modify the factors set out in section 319(4) to be considered by OFCOM when setting or amending standards codes.

Section 324: Setting and publication of standards

684. This section concerns the procedures for setting the codes containing the standards for the content of television, radio and teletext services. Subsections (1) to (5) deal with the consultation process that OFCOM must enter into prior to setting or revising these standards. Different provision is made regarding the persons to be consulted depending on the relevance of the code to their interests.

685. Following this process, OFCOM may modify their proposed standards code as they see fit in light of the consultation, and must then publish the code. If new standards are being set, or old standards being revised, OFCOM must bring them to the attention of those whom the standards

are likely to affect and send a copy to the Secretary of State, the BBC (unless it is a code containing only standards for advertising or sponsorship) and, if the code relates to television programme services, the Welsh Authority.

Section 325: Observance of standards code

686. OFCOM are to include in every Broadcasting Act licence for a programme service such conditions as they deem to be suitable in order to safeguard the standards listed in section 319. OFCOM must also implement procedures for hearing complaints in connection with the non-observance of such standards. OFCOM may report to the Secretary of State periodically regarding issues relating to OFCOM's standards code that appear to raise questions of general broadcasting policy.

687. Regarding advertising and sponsorship, OFCOM must include a further licence condition obliging the licence holder for a programme service to comply with any direction from OFCOM on the matters set out in subsection (5), all of which relate to the exclusion of certain advertisements or sponsorship.

Section 326: Duty to observe fairness code

688. This section requires OFCOM to include in each Broadcasting Act licence for a programme service such conditions as they consider appropriate for securing observance, in connection with the provision of that service and in relation to programmes included in that service, of the fairness code for the time being in force under section 107 of the Broadcasting Act 1996.

Section 327: Standards with respect to fairness

689. This section relates to the exercise by OFCOM of functions relating to the consideration of complaints regarding fairness and privacy which were formerly exercised by the Broadcasting Standards Commission under Part 5 of the Broadcasting Act 1996.

690. A standards complaint under Part 5 of that Act may not be made after the commencement of this section. This section amends the provisions in sections 115, 119 and 120 of the 1996 Act relating to the consideration of fairness complaints.

**a standards complaint* is defined in section 110(4) of the Broadcasting Act 1996 as a complaint made to the Broadcasting Standards Commission which relates to the portrayal of violence or sexual conduct or to standards of taste and decency.

Section 328: Duty to publicise OFCOM's functions in relation to complaints

691. OFCOM are to include in a licence for every service to which this section applies conditions to ensure that procedures for handling and resolving complaints about observance of standards, including OFCOM's functions under Part 5 of the Broadcasting Act 1996, are publicised. This section applies to every programme service licensed by a Broadcasting Act licence

Section 329: Proscription orders

692. Where OFCOM have notified the Secretary of State that a foreign television or sound service repeatedly contains programmes with content that offends taste or decency, is likely to incite crime or disorder or is likely to be offensive to public feeling, she may issue a proscription order where she is satisfied that to do so is in the public interest and compatible with the international obligations of the United Kingdom. Subsection (6) sets out the services to which this section applies.

*The meaning of a foreign service is given in subsection (7) and broadly encompasses those services which do not need to be licensed under the Broadcasting Acts 1990 and 1996 but would be if they were provided in the United Kingdom or the provider fell within the jurisdiction of the United Kingdom for the purposes of the Television without Frontiers Directive.

Section 330: Effect of proscription order

693. No service proscribed by the Secretary of State in an order made under section 329 can be included in any multiplex service or any cable package service (as defined in subsections (3) and (4) respectively). The effect of subsection (5) is that the provision of radio and/or television (or similar) services via the Internet will not constitute the provision of a cable package service.

Section 331: Notification for enforcing proscription

694. Where OFCOM have reasonable grounds to believe that a service proscribed by an order made under section 329 is included in a multiplex service or cable package, they may notify the multiplex service provider or cable packager accordingly and require that person to cease including the proscribed service. OFCOM must give the notified provider 7 days to comply with their request, although he must cease to include the service in less than 7 days if reasonably practicable. A notified provider has a statutory duty to comply with OFCOM's request, failure to comply with which is enforceable in civil proceedings by OFCOM.

Section 332: Penalties for contravention of notification under s.331

695. OFCOM may impose a penalty on any multiplex service provider or cable packager who contravenes a requirement notified by OFCOM under section 331. Before imposing a penalty, OFCOM must give a multiplex service provider or cable packager a reasonable opportunity to make representations. Any penalty imposed must be appropriate and proportionate to the contravention, and in any case may not exceed £5,000 per day for each day (or part thereof) that a multiplex service provider or cable packager includes a proscribed service in contravention of a notification made under section 331. The Secretary of State may, by order, amend the maximum penalty set out in subsection (3).

Section 333: Party political broadcasts

696. OFCOM must include in the licence for every licensed public service channel and every national radio service conditions requiring the licensee to broadcast party political broadcasts and referendum campaign broadcasts and to observe associated rules set by OFCOM. These rules may include provision for determining which political parties and designated organisations may make broadcasts, and how long and frequent these broadcasts may be. OFCOM are subject in this respect to the Political Parties, Elections and Referendums Act 2000 (c.41) and shall have regard to the views of the Electoral Commission. Paragraph 38 of Schedule 18 provides that any rules made by the ITC under section 38 of the Broadcasting Act 1990 or by the Radio Authority under section 107 of that Act, which are in force immediately before the commencement of this section, shall have effect as rules made by OFCOM under this section.

Section 334: Retention and production of recordings

697. OFCOM are to include in the licence for every programme service licensed under the Broadcasting Acts conditions requiring the licensee to record every programme that they broadcast, and to keep each recording for a specified period (which for radio programmes shall be no longer than 42 days and for television programmes shall be no longer than 90 days) and, at OFCOM's

request, to provide them with any such recording as well as any script or transcript of the relevant programme that the licensee is able to produce. Under subsection (3), OFCOM may themselves make and use recordings of programmes for the purposes of supervision. However, subsection (4) makes it clear that they are not required to vet programmes in advance of their being broadcast.

Section 335: Conditions securing compliance with international obligations

698. OFCOM are to include in the licence for every service of the types listed in subsection (3) conditions to secure compliance with such of the United Kingdom's international obligations as have been notified to OFCOM by the Secretary of State.

Section 336: Government requirements for licensed services

699. The Secretary of State, or any other Minister of the Crown, has the power by notice to require OFCOM to issue a direction to licence holders to include a particular announcement in their service at specified times. The Secretary of State alone may require OFCOM to direct licence holders to refrain from including any particular matter in their services.

*Subsection (9) makes clear that *Minister of the Crown* includes the Treasury.

700. Where a licence holder is obliged to make a particular announcement, they may make clear in their service that this is being carried out further to a direction given by OFCOM. Similarly, where a licence holder has been obliged to refrain from including a particular matter in their service, the licence holder may announce in the service that this is the case, and may also announce when that obligation has come to an end.

701. The purpose of these provisions is principally to allow Ministers to address matters of national security or major public interest, and to do so in such a way that the affected broadcasters are not required to take editorial responsibility for the content of the announcements.

Section 337: Promotion of equal opportunities and training

702. OFCOM are to include in the licence for every service to which this section applies (as defined in subsections (6) to (8)) conditions to promote equality of opportunity in relation to employment with the licence holder. The conditions must promote equality between men and women and between different races. Licensees must also be required to promote the equalisation of opportunities for disabled persons.

703. OFCOM must also impose on licensees any conditions necessary to ensure that licensees make such arrangements for the training and retraining of their employees (employed both in the provision of the service and in the making of programmes to be included in the service) as OFCOM consider appropriate.

704. The conditions imposed by OFCOM must require licensees to ensure that the arrangements put in place by the licensees to meet equal opportunities and training requirements are notified to those affected by them. Also the licensee must review the arrangements from time to time and publish annually his observations on their operation.

705. Those licensees that employ no more than 20 people, or broadcast for no more than 31 days per year, are not covered by these provisions, though OFCOM are able to aggregate the numbers of staff employed across a group of companies or a range of services under the provisions in subsections (7) and (10) and the definition of "licensed service" in subsection (9).

Section 338: Corresponding rules for the BBC and the Welsh Authority

706. This section provides that Schedule 12 shall have effect. Schedule 12 provides for the imposition on the BBC and the Welsh Authority of obligations that correspond to those described above in the regulatory regime for licensed providers and it is explained in more detail below.

Section 339: Review of fulfilment by Welsh Authority of public service remits

707. The Welsh Authority is under a duty to ensure that S4C, S4C Digital and services approved by the Secretary of State under section 205 fulfil their public service remits. The Secretary of State may review the Welsh Authority's performance in this regard, but not within five years of the passage of the Act. Any subsequent review must not be undertaken within a further five-year period. The Secretary of State must consult the National Assembly for Wales and the Welsh Authority on the matters under review, must have regard to their opinions when reaching her conclusions and must publish a report of those conclusions after each review.

Section 340: Directions to Welsh Authority to take remedial action

708. If the review described in the notes to section 339 above reveals that, without reasonable excuse, the Welsh Authority have not properly performed their duty to fulfil their public service remits, the Secretary of State may, having consulted the Welsh Authority, direct the Welsh Authority to take remedial action. Any such direction must first be approved, in draft, by both Houses of Parliament.

Section 341: Imposition of penalties on the Welsh Authority

709. This section gives OFCOM the power to fine the Welsh Authority where they are satisfied that a contravention of any requirement listed in subsection (1) has occurred. Broadly, these include obligations relating to programme quotas, news and current affairs, programming standards, advertising or sponsorship, complaints procedure publicity, international obligations, assistance for disabled people and fairness. The maximum fine is £250,000. Under subsection (6), the Secretary of State may vary the maximum penalty by order. Subsection (4) states that OFCOM may not fine the Welsh Authority without giving them a chance to make representations in its defence. Subsection (5) makes clear that the imposition of a fine would not prevent OFCOM from issuing a direction to the Welsh Authority, under paragraph 15 of Schedule 12, to broadcast a correction or a finding by OFCOM of a breach of the standards code issued under section 319.

Section 342: Contraventions recorded in Welsh Authority's annual report

710. This section amends Schedule 6 to the Broadcasting Act 1990 to ensure that any notifications given to the Welsh Authority by OFCOM about contraventions by the Authority of either the Broadcasting Acts or Part 3 of this Act are recorded in the Welsh Authority's annual report.

Section 343: Provision of information by Welsh Authority

711. This section imposes a duty on the Welsh Authority to provide such information as OFCOM reasonably request in order that OFCOM may fulfil their functions, under this Act and the Broadcasting Acts, as regards the Welsh Authority.

Section 344: Transmission of statement of findings

712. This section amends sections 40 and 109 of the Broadcasting Act 1990 (power to direct licensee to broadcast correction or apology). As amended, these sections provide that OFCOM may direct the broadcast of a correction or a statement of OFCOM's findings in relation to a contravention of licence conditions, for example a failure to comply with OFCOM's standards code. This change arises from a recommendation of the Joint Committee on Human Rights.

Section 345: Financial penalties imposable on licence holders

713. Schedule 13, which modifies the maximum penalties that may be imposed on the holders of Broadcasting Act licences, shall have effect. Further detail on this Schedule is set out below.

Section 346: Recovery of fees and penalties

714. Where a payment of a kind listed in is payable to OFCOM, it is recoverable by them as a debt due from the person who must pay it. Those payments include amounts paid under licences granted under the Broadcasting Acts 1990 and 1996 and penalties imposed by OFCOM under those Acts.

Section 347: Statement of charging principles

715. This section provides that OFCOM must not fix a tariff under section 4(3) or 87(3) of the Broadcasting Act 1990 or under section 4(3) or 43(3) of the Broadcasting Act 1996 unless at the time they do so there is in force a statement of the principles they propose to apply in fixing that tariff. Any tariff must be fixed in accordance with those principles.

716. The principles set out in any statement must be likely to secure, on the basis of such estimates of the likely costs as it is practicable for OFCOM to make, that the aggregate amount of the Broadcasting Act licence fees required to be paid to OFCOM during a financial year is sufficient to enable them to meet, but does not exceed, the annual costs of the carrying out during that year of their functions relating to the regulation of broadcasting; that tariffs are justifiable and proportionate to the matters in respect of which they are imposed; and that the relationship between meeting the cost of carrying out those functions and the tariffs applied to such fees is transparent.

* “Broadcasting Act licence fee” means a fee required to be paid to OFCOM in pursuance of conditions included in a Broadcasting Act licence under any of the following provisions—

- (a) section 4(1)(b) or 87(1)(c) of the Broadcasting Act 1990; or
- (b) section 4(1)(b) or 43(1)(c) of the Broadcasting Act 1996.

Financial year means a period of 12 months ending with 31st March.

717. Subsection (3) requires that, before making or revising a statement of principles, OFCOM must consult such persons as they consider likely to be affected by those principles as they think fit. Under subsection (4), the making or revision of a statement of principles is by the publication of the statement, or revised statement, in such manner as OFCOM consider appropriate to bring it to the attention of those likely, in OFCOM's opinion, to be affected by it.

718. Under subsections (5) and (6), OFCOM must publish a statement as soon as practicable after the end of each financial year, setting out the aggregate amount of Broadcasting Act licence fees received by them which were required to be paid during that year; the aggregate amount of Broadcasting Act licence fees remaining outstanding and likely to be paid or recovered; and, the costs to OFCOM of carrying out their functions in relation to the regulation of broadcasting during that year. Any deficit or surplus must be carried forward by OFCOM and taken into account in determining the amount required in relation to the following year.

719. References to OFCOM's functions in relation to the regulation of broadcasting do not include any of their functions in relation to the BBC or Welsh Authority.

Chapter 5: Media Ownership and Control**Section 348: Modification of disqualification provisions**

720. This section amends Part 2 of Schedule 2 to the Broadcasting Act 1990. Under subsection (1) persons not resident or established in the EEA are no longer disqualified from holding Broadcasting Act licences. Subsections (2) and (3) amend paragraph 2 of that Part, disqualifying religious bodies from holding the following licences granted under the Broadcasting Acts 1990 and 1996:

- A Channel 3 licence;
- A Channel 5 licence;
- A national sound broadcasting licence;
- A public teletext licence;
- An additional television service licence;
- A television multiplex licence; and
- A radio multiplex licence.

This needs to be read with paragraph 15 in Part 4 of Schedule 14 to the Act. In the case of licences that are not in this list, a religious body may apply for a licence and OFCOM may grant the licence if they make a determination in the case of that organisation; and they may make such a determination if (and only if) they consider it appropriate for that body to hold a licence of that description. This applies to—

- restricted service licences;
- digital television programme licences;
- digital additional television services licences;
- licences to provide television licensable content services;
- licences under Part 3 of the 1990 Act (other than a national licence) — meaning local analogue radio licences, licences to provide radio licensable content services, and licences to provide (analogue) additional services;
- national and local digital sound programme licences;
- digital additional sound services licences.

721. OFCOM are required to publish guidance for persons wishing to make such applications.

722. Subsections (5), (6) and (7) allow the Secretary of State, following consultation with OFCOM and with Parliament's approval, to make an order amending or repealing the provisions of paragraph 2 of Part 2 of Schedule 2 to the 1990 Act. Paragraph 16 of Schedule 14 gives a similar power to repeal or otherwise modify the restrictions set out in Part 4 of that Schedule.

Section 349: Licence holding by local authorities

723. This section inserts a new provision into Part 2 of Schedule 2 to the Broadcasting Act 1990, the effect of which is that local authorities will no longer be disqualified from holding a licence where the service in question is provided solely in pursuance of the functions of local authorities under section 142 of the Local Government Act 1972.

724. Section 142 relates to the provision by a local authority of information concerning their functions and the services available within their area. Subsection (2) of section 349 inserts into section 142 provisions allowing a local authority to provide an electronic communications network or electronic communications service for the purpose of broadcasting or distributing information generally relating to the functions of the authority or about services available within their area that are provided by them or by another local authority or by an authority, board or committee with similar functions, or to arrange for the broadcasting or distribution of such information by means of an electronic communications network or electronic communications service provided by someone else.

* “electronic communications network” and “electronic communications service” are defined in section 32.

725. Subsection (3) amends section 2(1) of the Local Government Act 1986 in order to widen the prohibition on a local authority from publishing any material which appears to be designed to affect public support for a political party, to a local authority arranging for such a publication.

Section 350: Relaxation of licence-holding restrictions

726. Subsection (1) repeals the rules in Parts 3, 4 and 5 of Schedule 2 to the Broadcasting Act 1990 relating to restrictions on accumulations of interests and on licence holding by newspapers and telecommunications providers, some of which are replaced by Schedule 14 to this Act. Rules relating to licences for local sound broadcasting and local digital sound programme service licences are to be replaced by provision made by order under paragraphs 11 and 12 of Schedule 14. Subsections (4), (5) and (6) ensure that these rules will not lapse before the relevant orders come into force.

727. Part 1 of Schedule 14 establishes the new rules relating to the ownership of television services, replacing the rules repealed by section 350. These apply only to Channel 3 services and not, as before, to Channel 5.

728. Paragraph 1 sets out the circumstances in which a person may not hold a licence for a Channel 3 service. A person may not hold any such licence if he runs national newspapers with more than 20 per cent of the total national market. No one may own a regional Channel 3 licence if he runs local newspapers which together have more than 20 per cent of the local market in the coverage area of the service. For these purposes, a licence to provide a Channel 3 service is to be treated as held by the actual licence holder and every person connected with him.

**the expression “connected person” is defined for these purposes by paragraph 3 of Part 1 of Schedule 2 to the 1990 Act. For example, a company (“A”) is connected with any person that controls A (e.g. a holding company), with any company controlled by A, and with another company (“B”) if someone else controls both A and B. Separate rules apply for determining who is “connected with” an individual. For example, an individual is connected with certain of his relations, with business partners and with companies of which he is a director.*

729. Paragraph 2 establishes further restrictions on participation in companies holding Channel 3 licences. No one may hold more than a 20 per cent share in such a company if he is the proprietor of national newspapers with more than a 20 per cent share of the total national market. No licence-holder may own more than a 20 per cent share of any such national newspaper proprietor. A company in which such a newspaper proprietor holds more than a 20 per cent share cannot be a participant with more than a 20 per cent share of a company that holds a licence. These rules apply as much to participation in a company that controls the holder of a Channel 3 licence as they do to participation in the actual holder of the licence, and restrictions applicable to a proprietor or licence holder apply as if he and every person connected with him were one person.

** “control” is defined in paragraph 1(3) of Part 1 of Schedule 2 to the 1990 Act, as amended by section 357 of this Act.*

730. Paragraph 3 explains how ‘national newspaper’, ‘local newspaper’ and ‘market share’ are to be defined for the purposes of the above rules. References to national or local newspapers are references to newspapers that circulate wholly or mainly in the United Kingdom (national) or in a part of the United Kingdom (local). Where there is any difficulty with this definition (for example

if a newspaper is published in different regional editions) OFCOM have the power to define whether the newspaper in question is national, local or both. Market share is defined as the percentage of total newspaper sales in the relevant area (either the UK or a Channel 3 licence region) represented by sales of the newspaper in question over the previous six months. If a newspaper is distributed free of charge, 'sales' are taken to include the number of copies distributed.

731. Paragraph 4 identifies a person as running a newspaper if he is either the proprietor of the newspaper or controls a body which is the proprietor. The definition of 'control' is that in the Broadcasting Act 1990, Schedule 2, Part 1, paragraph 1(3).

732. Paragraph 6 gives the Secretary of State power to repeal or modify any of the rules in Part 1 by order. Before making any such order (unless it is confined to giving effect to recommendations made by OFCOM under section 391), the Secretary of State must consult OFCOM; and no such order may be made unless it has been approved in draft by both Houses of Parliament: see paragraph 17.

733. Part 2 of Schedule 14 establishes the rules relating to the ownership of radio multiplex licences, again replacing the rules repealed by section 350. Paragraph 7 prevents one person from owning more than one national radio multiplex licence at the same time.

734. Paragraph 8 deals with the ownership of local radio multiplex licences. It establishes a limit of one multiplex licence per owner in areas where there is overlap of services so that the potential audience of one service includes at least half the potential audience of another. OFCOM are to lay down the technical standards by which 'coverage area' can be determined. If a person is in contravention of this rule when it is enacted, but is not in contravention of the existing rules on multiplex ownership, the contravention will be ignored and no divestment will be required until another person becomes the holder of the licences in question.

735. Paragraph 9 provides that a radio multiplex licence is to be treated for the purposes of this Part of this Schedule as if it were held by the actual licence holder and any person connected with him.

736. Under paragraph 10, the Secretary of State is given power to repeal or modify any of the rules in Part 2 by order.

737. Part 3 of Schedule 14 contains a power for the Secretary of State to impose by order new rules on the holding of local sound broadcasting licences and the provision of local digital sound programme services. Such rules would replace those repealed by section 350.

738. That Part allows the Secretary of State to impose limits on the number of licences that any person owns, or to prevent a person owning any licences at all in certain circumstances. The circumstances that could be specified in establishing rules of this sort include:

- the degree of overlap of the different services involved;
- the size of the potential audience for those services and the times when they would be made available;
- the extent to which there would be other persons with licences to broadcast to the same potential audience, the number of those persons and the audience size and coverage area of their stations;
- whether the person who holds (or wants to hold) the licence runs national newspapers, and the national market share of those newspapers;
- whether that person runs local newspapers that serve any part of the coverage area for which they would hold a radio licence, and the newspapers' local market share;

- whether and to what extent the coverage area of the licence in question overlaps with the coverage area of a regional Channel 3 service for which he also owns the licence.

739. Paragraph 12 gives the Secretary of State similar powers to impose limits on the provision of local digital sound programme services, with the exception that the newspaper and Channel 3 assets held by a person are not included in the list of factors that may be considered when establishing rules.

740. Paragraph 13 explains that definitions of the different forms of licence-holding, and of national and local newspapers and their market share, may be made under the order-making powers in paragraphs 11 and 12, and makes other supplemental provision. Paragraph 14 contains transitional provisions for orders made under paragraphs 11 and 12. If a person is in contravention of any rule established by such an order when it is enacted, but is not in contravention of the rules that preceded it, then the contravention will be ignored and no divestment will be required until there is a relevant change of circumstances in the licence-holding arrangements.

741. Part 4 of this Schedule is concerned with the ownership of broadcasting licences by religious bodies, and the details are covered under section 348 above.

742. Part 5 of Schedule 14 contains supplementary provisions relating to its implementation and interpretation. There is a requirement for the Secretary of State to consult OFCOM before making an order under any provision in the Schedule. There is also a stipulation that Part 1 of Schedule 2 to the 1990 Act should apply to Schedule 14 in the same way as it does to Part 2 of that Schedule. An overlapping area is defined as including any area that is the same as, or lies wholly inside, another area.

Section 351: Changes of control of Channel 3 services

743. OFCOM are to include in the licence for every Channel 3 service conditions to ensure that any body corporate holding such a licence notifies OFCOM in advance of any proposals that may result in a change of control of the licensee, or of a person connected with the licensee who is, actually or potentially, involved to a substantial extent in providing programmes for inclusion in the licensed service.

744. Where such a change of control may result, or has resulted, over a body corporate holding a Channel 3 licence, OFCOM must review and publish a report on the effects or likely effects, and their proposed response. OFCOM must review the impact of the change of control on the quality and range of regional programmes and the effect on the regional character of the service (subsection (6)), as well as the amount of time given in the service to regional programmes, the proportion of regional programmes made in the relevant region and the extent to which persons are employed in and decisions are made in the relevant region in connection with the service (subsection (7)). They must also review the effect on the time allocated in the service to original productions and news and current affairs programmes (subsection (4)); and the extent to which Channel 3 programmes in the service are made in the UK outside the M25 area, the range of such programmes, the extent to which expenditure by the Channel 3 provider on Channel 3 programmes is referable to programme production at different production centres outside the M25, and the range of such production centres to which the expenditure is referable (subsection (5)).

745. In the case of a national Channel 3 service, OFCOM will only review the effect on programme production and production expenditure outside the M25 area where a national Channel 3 service

is subject to relevant conditions under section 286 (programme production) or OFCOM otherwise consider it would be appropriate.

Section 352: Action following review under s. 351

746. If, following a review under section 351, OFCOM consider that the effect of the change of control is prejudicial to any of the matters they have reviewed, then under section 352 they must vary the licence, the only exception being where the matter in issue relates to subsection (7) of section 351, in which case they have a discretion whether to vary the licence. Any such variation may lead to the inclusion in the licence of conditions that are more burdensome than those included prior to the variation. However, they must be conditions that would have been fulfilled throughout the twelve months immediately before the relevant change of control.

747. The licensee must be given a reasonable opportunity to comment on the report before OFCOM vary the licence. The variation shall not be effective until the change of control actually occurs.

Section 353: Changes of control of Channel 5

748. OFCOM are to include in the licence for Channel 5 conditions to ensure that any body corporate holding such a licence notifies OFCOM in advance of any proposals that may result in a change of control of the licensee, or of a person connected with the licensee who is, actually or potentially, involved to a substantial extent in providing programmes for inclusion in the licensed service.

749. Where such a change of control may result, or has resulted, over a body corporate holding the Channel 5 licence, OFCOM shall review and publish a report on the effects or likely effects, and their proposed response. OFCOM must review the effect of the change of control on the time allocated in the service to original productions and news and current affairs programmes; and the extent to which Channel 5 programmes in the service are made in the UK outside the M25 area, the range of such programmes, the extent to which expenditure by the Channel 5 provider on Channel 5 programmes is referable to programme production at different production centres outside the M25, and the range of such production centres to which the expenditure is referable.

Section 354: Action following review under s. 353

750. If, following a review under section 353, OFCOM consider that the effect of the change of control is prejudicial to any of the matters they have reviewed, then under section 354 they must vary the licence. Any such variation may lead to the inclusion in the licence of conditions that are more burdensome than those included prior to the variation. However, they must be conditions that would have been fulfilled throughout the twelve months immediately before the relevant change of control.

751. The licensee must be given a reasonable opportunity to comment on the report before OFCOM vary the licence. The variation shall not be effective until the change of control actually occurs.

Section 355: Variation of local licence following change of control

752. OFCOM are to include in the licence for every local sound broadcasting service conditions to ensure that any body corporate holding such a licence notifies OFCOM in advance of any proposals that may result in a change of control of the licensee, or of a person connected with the licensee who is, actually or potentially, involved to a substantial extent in providing programmes for inclusion in the licensed service. Where such a change of control may result, or has resulted, over a body corporate holding a relevant licence, OFCOM shall review the effects, or likely effects, of the change. The review will consider the possible impact of such a change on: the quality and range of programmes; the character of the service; OFCOM's duty in respect of the local content

and character of services (set out in section 314). The character of the service includes the music and spoken material selected for inclusion on that service. OFCOM must publish a report of their review setting out its conclusions and any proposed action.

Section 356: Action following review under section 353

753. If, following a review under section 353, OFCOM consider that the effect of the relevant change of control is prejudicial to the matters set out in section 353(4), they must vary the relevant licence. Any such variation may lead to the inclusion in the licence of conditions that are more burdensome than those included prior to the variation. However, they must be conditions that would have been fulfilled during the three months prior to the change of control or, if those three months were atypical of the licensee's performance during the previous year, another three-month period during the preceding year. The licensee must always be given the opportunity to comment on the report before OFCOM vary the licence. The variation shall not be effective until the change of control actually occurs.

Section 357: Meaning of “control”

754. This section amends the provisions relating to the control of a body corporate set out in paragraph 1 of Schedule 2 to the Broadcasting Act 1990 (circumstances where there is deemed to be control even though the person in question does not have a 50 per cent, or greater, interest in a company):

- It provides that a person will be treated as having de facto control of such a body if he would (if he chose to) be able in most cases or in significant respects to ensure that affairs of the company are conducted in accordance with his wishes.
- OFCOM will be required to publish and update guidance on some, but not necessarily all, of the factors they will take into account when determining whether a person has “control” of a body, within the meaning of paragraph 1(3)(b) of Part 1 of Schedule 2 to the 1990 Act.

Chapter 6: Other provisions about television and radio services

Section 358: Annual factual and statistical report

755. OFCOM are under a duty to carry out a review of the provision of the television and radio programmes in the United Kingdom and to prepare and publish a factual and statistical report setting out their findings twelve months after the commencement of this section and annually thereafter. In carrying out the review, OFCOM must consider each of the matters listed in subsection (3). These include: the extent to which television and radio programmes are representative of the principal genres of such programmes; the extent to which OFCOM's codes relating to, for example, provision for the deaf and visually impaired, listed events and fairness have been complied with; trends in audience behaviour; the financial condition of the television and radio programme market(s); the operation of the independent productions quota in section 277 and paragraphs 1 and 7 of Schedule 12; relevant intellectual property matters that have been significant during the period; technological developments; the availability of people with skills used to provide television and radio services and programmes; and the availability of facilities for the provision of and training in such skills. OFCOM's duty under this section is in addition to their duty to prepare a report on the current state of public service television broadcasting under section 264.

Section 359: Grants to providers

756. OFCOM may make such grants as they consider appropriate to the providers of community radio (see the notes to section 262 above). Under subsection (2), the Secretary of State may by order

provide that OFCOM may also give grants to providers of local digital television services (see the notes to section 244 above). The terms and conditions of such grants are at the discretion of OFCOM, but neither the bestowing of a grant upon any person, nor the terms on which this is done, shall make that person a disqualified person under Schedule 2 to the Broadcasting Act 1990 in relation to a community radio or local digital television licence.

Section 360: Amendments of 1990 and 1996 Acts

757. This section amends the definition of programme services in the 1990 Act so as to correspond to the language of the Act. The 1990 Act definition will continue to include a broader range of services than is licensable under the Communications Act, including on-demand and Internet services. Separate definitions are needed for this Act and the 1990 Act because various outlying statutory provisions will continue to rely on the broader 1990 Act definition to control activities that go beyond what is licensable. For example, provisions in the Children Act 1989 seek to protect the privacy of children involved in certain legal proceedings, and the effectiveness of that restriction would be lessened if it did not extend beyond broadcast material. This section also introduces Schedule 15, which makes amendments to the 1990 and 1996 Acts. Most of these amendments are consequential on the Act. They are described in more detail in the notes for Schedule 15.

Section 361: Meaning of “available for reception by members of the public”

758. This section defines “available for reception by members of the public” in such a way as to exclude ‘one to one’ services made available on cable, satellite or by means of a multiplex service. Examples of such services include internet and video-on-demand services where an individual viewer requests an individual library item such as a film. However, any television service that is designed to be broadcast or distributed simultaneously, or virtually simultaneously, to its audience will be held to be “available for reception by members of the public”, even where the technical means of distribution is on a one to one basis.

759. The Secretary of State may by order modify section 361 having regard to: the public's expectations of protection as regards the contents of television programmes; the extent to which members of the public are able to make use of facilities for exercising control over the programmes accessed; the practicability of applying different levels of regulation for different services; the financial impact of any proposed modifications on service providers; and technological developments.

Section 362: Interpretation of Part 3

760. This section provides for the interpretation of defined terms used in Part 3.

PART 4: LICENSING OF TV RECEPTION

761. The requirement to hold a licence for the use of a television receiver is currently contained in the Wireless Telegraphy Act 1949, as amended by the Broadcasting Act 1990. The 1990 Act made the BBC (rather than the Secretary of State) responsible for TV licence administration. Part 4 of the Act consolidates the existing provisions relating to the administration and enforcement of TV licences, with amendments, and separates them from provisions relating to other wireless telegraphy licences.

Section 363: Licence required for use of TV receiver

762. This section prohibits the installation or use of a television receiver without a TV licence issued by the BBC, and makes it an offence, punishable by a fine, for any person to:

- install or use a television receiver without a TV licence; or

- have a television receiver in his possession or under his control, intending to install or use it without a TV licence, or knowing (or having reasonable grounds for believing) that another person intends to install or use it without a TV licence.

763. Subsection (5) exempts from the requirement to hold a TV licence any person who, in the course of business as a dealer, delivers, installs on delivery, demonstrates, tests or repairs television receivers. Subsection (6) gives the Secretary of State the power to make regulations creating further categories of exemptions from the requirement to hold a TV licence for prescribed equipment, persons, circumstances or purposes.

764. Paragraph 55 of Schedule 18 provides that any television licence granted under the Wireless Telegraphy Act 1949 before the coming into effect of this section shall have effect after its coming into force as a licence for the purposes of this section.

Section 364: TV licences

765. This section provides for the issuing by the BBC of TV licences. The BBC may include in TV licences such conditions and restrictions as they think fit. They must attach such conditions and restrictions as the Secretary of State directs, and may not attach any conditions expressly prohibited by a direction issued by the Secretary of State. They are also precluded from including any provision conferring a power of entry to any premises.

766. Subsection (2) gives a non-exhaustive list of the type of conditions that might be included in a TV licence, including provisions relating to the type of television receiver covered by the licence, the persons authorised to install or use a television receiver under the licence, and the purpose for which the receiver may be installed or used.

767. Subsection (5) gives the BBC the power to revoke or modify a TV licence either by notice to the licensee or by a general notice published in a manner as specified in the licence. The BBC must modify the conditions or restrictions in a TV licence if directed by the Secretary of State to do so. Otherwise the licence continues for the period specified in the licence.

Section 365: TV licence fees

768. This section allows the Secretary of State — subject to obtaining the consent of the Treasury — to make regulations setting the fees payable by licensees to the BBC (i) on the issue or renewal of a TV licence; and (ii) in such other circumstances as the Secretary of State provides for in the regulations. Regulations may also allow for concessions, and provide for payment of the licence fee by instalments.

Section 366: Powers to enforce TV licensing

769. This section sets out procedures for the issue and use of search warrants for the purpose of investigating offences under section 363. Subsections (1) and (2) provide that a justice of the peace in England or Wales, a sheriff in Scotland, or a lay magistrate in Northern Ireland, may grant a search warrant to one or more persons authorised by the BBC or OFCOM where he is satisfied by information provided under oath that there are reasonable grounds for suspecting (i) that an offence under section 363 has been or is being committed; (ii) that evidence related to such an offence is likely to be on premises or in any vehicle specified in the warrant; and (iii) that one or more of the conditions set out in subsection (3) are satisfied. Those conditions are: that it is impracticable to communicate with any person who may grant entry to the relevant premises or vehicle; that there is no one with whom it is practicable to communicate who is entitled to grant access to the evidence; that entry will not be granted unless a warrant is produced; or that the purpose of the search may

be frustrated or seriously prejudiced unless carried out immediately on arrival at the relevant premises or vehicle.

**vehicle* is defined in subsection (10) as including any vessel, aircraft or hovercraft.

770. A warrant granted under this section will be valid for one month after the day of grant. It may grant powers to enter and search specified premises or vehicles and to examine and test any television receiver found there. A warrant issued to a person authorised by OFCOM may only be used to investigate breaches of TV licence conditions relating to radio interference. Persons acting under a warrant may use reasonable force in the exercise of these powers.

771. Subsection (7) imposes a duty on any person who is on the premises specified in the warrant, or who is in, in charge of, or present at the vehicle specified in the warrant, to provide any assistance necessary to enable any person acting under the warrant to examine or test any television receiver found there.

772. Subsection (8) makes it an offence intentionally to obstruct the exercise of any powers granted under a warrant under this section or to fail (without reasonable excuse) to provide any assistance required under subsection (7). A person guilty of such an offence is liable to a fine.

Section 367: Interpretation of provisions about dealer notification

773. This section replaces the definitions of “television dealer”, “television programme” and “television set” in section 6 of the Wireless Telegraphy Act 1967, enabling the Secretary of State, by regulations, to define a television dealer and a television set for the purposes of the dealer notification requirements of the Wireless Telegraphy Act 1967. The apparatus specified in regulations defining television sets may include software used in association with it.

Section 368: Meaning of “television receiver” and “use”

774. This section defines a television receiver as apparatus of a description defined by the Secretary of State, by order, as a television receiver. The apparatus specified in an order may include software used in association with it.

PART 5: COMPETITION IN COMMUNICATIONS MARKETS

Chapter 1: Functions of OFCOM under Competition Legislation

775. Chapter 1 of Part 5 of the Act allows OFCOM to exercise concurrent powers with the Office of Fair Trading (OFT) under Part 1 of the Competition Act 1998 and Part 4 of the Enterprise Act 2002. Currently, the Director General of Telecommunications has concurrent jurisdiction with the OFT to exercise functions under these Acts in so far as they relate to “commercial activities connected with telecommunications” (see section 50 of the Telecommunications Act 1984, as amended by Part 2 of Schedule 9 to the Enterprise Act 2002). Chapter 1 of Part 5 will give OFCOM concurrent powers in relation to a wider range of activities including broadcasting and related matters.

Section 369: Matters in relation to which OFCOM have competition functions

776. This section explains the expression “communications matters” as it is used throughout this Chapter. “Communications matters” include any one or more of the following:

- the provision of electronic communications networks;
- the provision of electronic communications services;

- the making available of services or facilities in association with an electronic communications network or service or for facilitating the use of a network or service;
- apparatus used for any of the above; and
- broadcasting and related matters.

777. Subsection (2) gives the Secretary of State a power by order to amend this definition. No such order is, however, to be made unless a draft of it has been laid before Parliament and approved by a resolution of each House.

Section 370: OFCOM's functions under Part 4 of the Enterprise Act 2002

778. This section gives OFCOM current jurisdiction with the OFT to apply and enforce the provisions of Part 4 of the Enterprise Act 2002 (market investigations), with certain limited exceptions, in relation to commercial activities connected with communications matters.

- * Under subsection (4), the expression *activities connected with communications matters* includes the supply and export of apparatus used for providing or making available electronic communications networks or services and the production or acquisition of any such apparatus for supply or export.

779. Part 4 of the Enterprise Act 2002 will replace the monopoly provisions of the Fair Trading Act 1973 with a new regime of “market investigations”. These are designed to complement the Competition Act 1998 by providing a means of addressing problems in markets where competition does not appear to be working well, but where there is no apparent breach of existing competition law. An example of the sort of circumstances in which a market investigation might take place would be a situation where a few large firms supplied almost the whole of the market and, without there being any agreement between them, they all tended to follow parallel courses of conduct, while new competitors faced significant barriers to entry into the market, and there was little or no evidence of vigorous competition between the existing players (i.e. a non-collusive, uncompetitive oligopoly). The OFT is able to make a reference to the Competition Commission where it has reasonable grounds to suspect that the structure of a market in or including the UK, or the conduct of persons supplying or acquiring goods, or of their customers, prevents, restricts or distorts competition in connection with the supply or acquisition of goods or services in the UK. Where the Competition Commission finds that such an adverse effect on competition exists, it is under a duty to take such remedial action within its powers as it considers reasonable and practicable. A number of sectoral regulators have concurrent powers with the OFT to make market investigation references in respect of markets which fall within their areas of responsibility. The Communications Act will give concurrent powers to OFCOM to exercise the OFT's functions under Part 4 of the Enterprise Act 2002 in relation to commercial activities connected with communications, except that, unlike the OFT, OFCOM will neither be obliged to keep a register of undertakings accepted and orders made under Part 4 (under section 166 of the Enterprise Act 2002) nor will they be obliged to issue guidance on the making of market references (under section 177 of that Act).

780. Subsections (5) and (6) are designed to prevent the simultaneous exercise by both OFCOM and the OFT of their powers under Part 4 of the Enterprise Act 2002 in relation to the same matter. These subsections place those bodies under a duty to consult with each other before exercising any of the concurrent powers under this section and prohibit them from exercising these powers in a case where the other has already done so.

781. Subsection (7) places OFCOM under a duty, where they have referred a matter to the Competition Commission under the provisions of Part 4 of the Enterprise Act 2002, to provide the

Competition Commission with any relevant information relevant to the investigation in their possession and with any other assistance that is within their power to give.

782. Subsection (8) gives the Secretary of State the power to conclusively determine any question that arises as to whether OFCOM may carry out any particular function under this section. However, subsection (9) also makes clear that no action taken by OFCOM under Part 4 of the Enterprise Act 2002 is open to challenge on the grounds that such action should have been taken by the OFT.

783. Subsection (10) applies section 117 of the Enterprise Act 2002 to the carrying out by OFCOM of functions under this section. Section 117 makes it an offence for a person knowingly or recklessly to supply materially false or misleading information to the Secretary of State, the OFT, the Competition Commission or to another person who he knows will use the information for the purpose of providing information to the Secretary of State, the OFT or the Competition Commission.

Section 371: OFCOM's functions under the Competition Act 1998

784. This section is analogous to the existing provisions of the Competition Act 1998 giving concurrent jurisdiction to other sectoral regulators such as the Director General of Telecommunications. This section gives OFCOM concurrent jurisdiction with the OFT to apply and enforce Part 1 of the Competition Act 1998, with the exception of section 38 (1) to (6) and section 51. This means that OFCOM will be able to exercise almost all of the functions of the OFT under Part 1 of the 1998 Act in so far as they relate to activities connected with communications matters. Subsection (8) gives OFCOM concurrent jurisdiction with the OFT with respect to certain transitional provisions of the 1998 Act.

*Section 38 of the Competition Act 1998 requires the OFT to prepare and publish guidance as to the appropriate amount of any penalty under Part 1 of the Act. Section 51 allows the OFT to make rules (currently in the form of the Competition Act 1998 (Director's Rules) Order 2000, SI 2000 No. 293) setting out the procedures to be followed by the OFT, the sectoral regulators and third parties under Part 1 of the Act.

*Under subsection (4), the expression *activities connected with communications matters* includes the supply and export of apparatus used for providing or making available electronic communications networks or services and the production or acquisition of any such apparatus for supply or export.

785. The 1998 Act is based on Articles 81 and 82 of the EC Treaty. It contains two prohibitions: first, of agreements which prevent, restrict or distort competition and which may affect trade within the United Kingdom ('the Chapter I prohibition'); secondly, of conduct which amounts to an abuse of a dominant position in a market which may affect trade within the United Kingdom ('the Chapter II prohibition'). The 1998 Act is generally applied and enforced by the OFT. However, in a number of regulated industries such as telecommunications, gas, electricity, water and sewerage and railway services, functions under the Act are carried out by the sectoral regulator concurrently with the OFT. Examples of the functions in respect of which OFCOM will have concurrent jurisdiction include:

- to investigate possible infringements of the Chapter I or Chapter II prohibitions, either on their own initiative or in response to complaints;
- to impose financial penalties and/or to give directions to bring an infringement of either of the prohibitions to an end; and

- to issue general advice and information on how the Act applies to the communications sector.

786. OFCOM and the OFT will consult with each other before a decision is made as to who will deal with a case in respect of which there is concurrent jurisdiction. Formal arrangements for consultation are set out in regulations made under the Competition Act 1998. In general, anti-competitive agreements or abusive conduct that relate to activities connected with communications matters will be dealt with by OFCOM (unless the OFT is better placed to do so). Where it is unclear which regulator has jurisdiction, the matter will be referred to, and determined by, the Secretary of State. However, no objection may be made against anything done by OFCOM on the grounds that it should have been done by the OFT.

*Further provision for the co-ordination of the performance by the OFT and sectoral regulators of concurrent functions is contained in the Competition Act 1998 (Concurrency) Regulations 2000 (SI 2000 No. 260). The OFT and each regulator are also represented on the Concurrency Working Party which was formed in 1997 to ensure full co-ordination between regulators and the OFT and to ensure consistency of approach to casework.

787. Section 44 of the Competition Act 1998 makes it an offence, directly or indirectly, to provide false or misleading information to the OFT. As subsection (3) of this section provides that references to the OFT in Chapter 1 of the Competition Act 1998 are generally to be read as including OFCOM, section 44 of the Competition Act 1998 will also apply in relation to information provided to OFCOM in connection with their exercise of concurrent jurisdiction under that Act.

Section 372: Application of the Competition Act 1998 to news provision

788. This section amends section 194A of the Broadcasting Act 1990. Under that section, the Secretary of State may declare that any provisions in agreements between regional Channel 3 licence holders for the appointment of the Channel 3 news provider are either not anti-competitive or, if anti-competitive, are proportionate to the objectives being achieved. The effect of such a declaration is that the Chapter I prohibition in the Competition Act 1998 (referred to above) does not apply to those provisions and the OFT cannot use its powers under Chapter 3 of Part 1 of that Act to investigate the agreement. The Secretary of State is obliged to consult the OFT before making such declarations and to notify the OFT after making such declarations.

789. This section amends the references in section 194A of the Broadcasting Act 1990 to the OFT to refer to both the OFT and to OFCOM. This reflects the concurrent jurisdiction of the OFT and OFCOM under Part 1 of the Competition Act 1998 in relation to communications matters.

790. Paragraphs 56 and 57 of Schedule 18 (transitional provisions) provide that from the date on which sections 370 and 371 come into force, anything done by the Director General of Telecommunications under the Enterprise Act 2002 or the Competition Act 1998 which OFCOM would, under those provisions, have the power to do in the future, will be taken to have been done by OFCOM. Anything else will, from the date of entry into force, be taken to have been done by the OFT.

Chapter 2: Media mergers

791. The Enterprise Act 2002 (EA 2002) repealed the majority of the merger provisions of the Fair Trading Act 1973 (FTA 1973) and created a new merger control regime. However, the special

newspaper merger regime contained in sections 57 to 62FTA 1973 remained intact. Under the special newspaper regime, a transfer of a newspaper or newspaper assets to a newspaper proprietor requires the prior written consent of the Secretary of State where the newspapers of the proprietor to whom the transfer is made (including the titles being acquired) have an average paid for circulation of 500,000 copies or more per day. Subject to certain statutory exceptions, the Secretary of State cannot give this consent until the Competition Commission have reported on the matter. If consent is not obtained when required, the transaction will be unlawful and void.

792. Consideration of reform of this aspect of the merger control system was deferred so that it could be considered as part of the overall reform of media ownership rules in this Act. Chapter 2 of Part 5 of this Act makes provision for the repeal of the existing newspaper merger regime provisions and the integration of newspaper mergers into the overall structure of the EA 2002 merger regime. Newspaper mergers will no longer be subject to mandatory pre-notification requirements and the criminal sanctions, which underpin the current regime, will not be continued.

793. The EA 2002 provides for decisions on the majority of non-newspaper mergers to be taken by the independent competition authorities (the OFT and the Competition Commission) against a new competition-based test of whether they result in a substantial lessening of competition. This replaces the broader public interest test used in the FTA 1973. However, the EA 2002 also provides a mechanism whereby the Secretary of State can intervene and decide on particular mergers that raise specified public interest considerations, by the serving of an intervention notice. National security is the only public interest consideration currently specified in section 58EA 2002, although there is a mechanism in the EA 2002 that enables the Secretary of State to add a new public interest consideration or remove or amend an existing public interest consideration. The Secretary of State can serve an intervention notice in relation to any transaction that qualifies for consideration by the competition authorities because it is a “relevant merger situation” (see section 23EA 2002). She can also serve a “special intervention notice” in relation to mergers involving government defence contractors where the standard qualifying thresholds (i.e. 25% share of supply or UK turnover of company being acquired exceeds £70 million) are not satisfied (i.e. where there is a “special merger situation” — see section 59EA 2002), allowing these to be examined by reference to the specified public interest consideration(s), but not on competition grounds.

794. Chapter 2 of Part 5 of the Act integrates treatment of newspaper mergers with the merger regime of the EA 2002. However, as newspaper mergers can potentially raise public interest concerns beyond the substantial lessening of competition test, provision is also made for public interest considerations relating to newspapers (the need for accurate presentation of news and free expression of opinion in newspapers, and the need for, to the extent that is reasonable and practicable, a sufficient plurality of views in newspapers) to be specified in section 58EA 2002 so that the Secretary of State can specify these in an intervention notice or special intervention notice under the EA 2002. Similarly, as media mergers can potentially raise public interest concerns beyond the substantial lessening of competition test, provision is also made for public interest considerations relating to media mergers and cross-media mergers (the need for plurality of persons with control of media enterprises, the need for the availability of a wide range of broadcasting and the need for persons carrying on such enterprises to have a genuine commitment to the broadcasting standards objectives) to be specified in section 58EA 2002, allowing the Secretary of State to intervene on these grounds. Together, these are referred to as the “media public interest considerations”. Provision is also made for OFCOM to have an additional advisory role where the Secretary of State intervenes in a case on media public interest grounds.

Section 373: Repeal of existing newspaper merger regime

795. This section repeals sections 57 to 62FTA 1973, which give effect to the existing special newspaper merger regime.

Section 374: Repeal of exclusion for newspaper mergers from general merger controls

796. This section repeals section 69EA 2002, which prevents a case from being referred to the Competition Commission under both the special newspaper merger regime in the FTA 1973 and the general merger regime in the EA 2002. With the repeal of sections 57 to 62FTA 1973 (see section 373) this provision is no longer necessary.

Section 375: Media public interest considerations

797. Under the EA 2002, the Secretary of State can only intervene in mergers which satisfy the jurisdictional criteria (i.e. where there is a “relevant merger situation” pursuant to section 23EA 2002 or a “special merger situation” pursuant to section 59EA 2002) if she believes that a public interest consideration specified in section 58EA 2002 is relevant.

798. Currently, only national security is a specified consideration in section 58EA 2002. This section inserts new sections 58(2A) to (2C) into the EA 2002, which provide for media public interest considerations to be specified in section 58 of that Act, thus giving the Secretary of State the power to intervene in a merger which satisfies the jurisdictional criteria where any of these media public interest considerations are relevant. It also inserts a new section 58A into the EA 2002 for the purposes of construing new section 58(2C).

799. New subsection (2A) specifies the need for accurate presentation of news and free expression of opinion in newspapers. This carries forward (albeit in a slightly different context) the specific reference to these two factors in the public interest test that is currently applied by the Competition Commission when considering newspaper transfers under the special newspaper merger regime of the FTA 1973 (see section 59(3)FTA 1973).

800. New subsection (2B) specifies the need for a sufficient plurality of views in newspapers. This is intended to enable a number of plurality issues going beyond free expression or accurate presentation of news to be taken into account, in particular the structural impact of a transaction on the overall range of views and distribution of voice within the market. The test of a sufficient plurality of views is intended to enable regard to be had not only to the need for a sufficient number of views to be expressed, but also to the need for variety in those views, and for there to be a variety of outlets and publications in which they can be expressed. There is a qualitative element to the plurality assessment that requires account to be taken of the context in which titles circulate and the nature of those titles — for example, one title in a particular area may be of greater significance for plurality purposes than another.

801. The newspaper plurality consideration in subsection (2B) is qualified by the reference to reasonableness and practicability of securing a sufficient plurality of views. This reflects the fact that although plurality in each and every market (which may be different to the economic market used for competition assessment) is the ideal goal of the regime, it may not be reasonable to seek to achieve this in relation to a particular part of the market — for example, because of the associated costs. Moreover, the level of plurality that may be considered reasonable in a large urban area may be different to that which is practicable in a small rural community. In making this assessment the Competition Commission will be able to take into account all relevant circumstances. It will be

able to consider, for example, the size and location of the relevant area, and the extent to which other newspapers in the same area contribute to the level of plurality.

802. New subsection (2C) has three elements: (a) the need in relation to every different audience in the UK or in a particular area or locality of the UK, for there to be a sufficient plurality of persons with control of the media enterprises serving that audience; (b) the need for the availability throughout the UK of a wide range of broadcasting which (taken as a whole) is both of high quality and calculated to appeal to a wide variety of tastes and interests; and (c) the need for persons carrying on media enterprises, and for those with control of such enterprises, to have a genuine commitment to the attainment in relation to broadcasting of the standards objectives set out in the Communications Act 2003. The first limb of this subsection is concerned primarily with ensuring that ownership of media enterprises is not overly concentrated in the hands of a limited number of persons. The second and third limbs of the test look at the content of the media enterprises involved and the extent to which media owners demonstrate a genuine commitment to complying with the standards objectives — i.e. complying with the spirit and not just the letter of the objectives.

803. Section 375 also inserts a new section 58A into the EA 2002. New section 58A contains provisions relating to the operation of the public interest considerations set out in new section 58(2C). Section 58A(1) states that for the purposes of section 58, a media enterprise is one that consists in or involves broadcasting. Section 58A(2) provides that a newspaper enterprise may also be a media enterprise for the purposes of section 58 if it is involved in a merger with a broadcast media enterprise. This enables cross media mergers involving newspaper enterprises to be assessed against the public interest considerations specified in subsection (2C). Section 58A(3) clarifies that a newspaper enterprise is one consisting in or involving the supply of newspapers.

804. New section 58A(4) makes clear that where a merger situation (i.e. a relevant merger situation or a special merger situation) involves two media enterprises serving the same audience, then there is deemed to be a reduction in the number of such media enterprises for the purposes of the plurality assessment in subsection (2C)(a). This means that all such mergers, including those involving an increase in levels of control of such media enterprises, may be scrutinised for the purposes of subsection (2C)(a), even though the number of enterprises may in fact be unchanged.

805. New section 58A(5) ensures that the authorities can look at the substance of who controls media enterprises when carrying out a plurality assessment.

806. New section 58A(5)(a) provides that, for the purposes of section 58, where a number of media enterprises would fall to be treated as under common ownership or common control for the purposes of section 26 of the EA 2002, they are treated as being controlled by one person. This is because, in assessing the effect of a merger on the sufficiency of plurality of persons with control of media enterprises, the decision-making authorities need to assess the total number of persons with control of media enterprises and what effect the merger will have on the plurality of media as a whole. Apart from the merging media enterprises, in order to get an accurate picture of who has control of the remaining media enterprises, it is important to be able to look not just at the owners of those entities, but at the persons with ultimate control of those entities.

807. New section 58A(5)(b) provides that where a number of media enterprises are otherwise under the same ownership or control, they are treated as being controlled by one person. This is intended to cover any situation where the other media players may have never been “brought” under common ownership or control at any point in the section 26EA 2002 sense.

808. New section 58A(6) gives the decision-making authorities discretion to determine what is meant by the “audience” of a media enterprise for the purposes of subsection (2C) and section 58A in whichever of the ways specified in subsection (6) they considers appropriate. This enables the decision-making authority to treat different audiences as separate or to group them, or any of them, together. This is modelled on the discretion given to the decision-making authorities in assessing whether the share of supply threshold under the standard merger regime is satisfied. Subsection (7) builds on this by making clear that the criteria for deciding the composition of an audience shall be such as the decision-making authority considers appropriate and may include potential members of that audience.

809. New section 58A(8) clarifies that audience includes readership. This will be relevant in the context of cross media mergers involving a newspaper enterprise.

810. New section 58A(9) extends the power in section 58(3) to modify the public interest considerations specified in section 58 so that modifications can also be made to the provisions of section 58A which construe section 58(2C). Any order made pursuant to section 58(3) to add, remove or amend a public interest consideration in that section is subject to the affirmative resolution procedure (see section 124EA 2002).

811. Section 375(3) amends section 127(1) of the EA 2002 so that, when determining whether enterprises are under common control for the purposes of new section 58(2C), associated persons are treated as one person. This provision enables interests held by family members, business partners etc to be aggregated.

Section 376: Adaptation of role of OFT in initial investigations and reports

812. Under the public interest regime of the EA 2002, where the Secretary of State has intervened in a merger, the OFT is obliged to prepare a report for the Secretary of State under section 44EA 2002. This section amends section 44EA 2002 to adapt the role of the OFT in relation to mergers where a media public interest consideration has been specified in an intervention notice.

813. Subsection (1) makes amendments to section 44(3)(b)EA 2002 to provide that the OFT's duty to provide the Secretary of State with a summary of relevant representations received in relation to public interest considerations mentioned in the intervention notice does not extend to representations received in relation to media public interest considerations. This is to avoid duplication, as OFCOM will have this duty where a media public interest consideration has been specified in the intervention notice (see section 377).

814. Subsection (2) adds a new section 44(5A)EA 2002 that ensures that the OFT nonetheless has the power to include such a summary of representations. Such a power might be used, for example, if the OFT received representations after OFCOM had delivered its report, in order to ensure that representations were drawn to the Secretary of State's attention. It also clarifies that the OFT is not required to artificially separate out plurality and competition issues where this is unhelpful to the overall purpose of advising the Secretary of State.

815. Subsection (3) inserts new sections 44(8) to (10) into the EA 2002. Sections 44(8), (9) and (10) contain the definitions of “media public interest consideration”, “broadcasting” and “newspaper”. The definition of “media public interest consideration” encompasses the considerations in new section 58(2A) to (2C)EA 2002 that are inserted by section 375 of this Act or any other public interest consideration concerning broadcasting or newspapers that the Secretary of State thinks should be specified in section 58EA 2002. This latter aspect could encompass, for example, any changes to the existing media public interest considerations that the Secretary of State thinks

ought to be made. The definition of “broadcasting” covers the provision of services, the provision of which is required to be licensed under Part 1 or 3 of the Broadcasting Act 1990 or Part 1 or 2 of the Broadcasting Act 1996, or which would be required to be so licensed if provided by a person subject to licensing under the Part in question. The latter part of the definition is intended to capture services provided by the BBC or the Welsh Authority, or by broadcasters established abroad and broadcasting into the UK under EC licences. Although neither the BBC nor the Welsh Authority could be involved in a merger situation, this broad definition allows the Secretary of State to take account of the existence of their services when carrying out an assessment of the sufficiency of plurality of controllers of media enterprises for the purposes of new section 58(2C)(a). The definition of “newspaper” is the same as that currently used for the purposes of the special newspaper regime in the FTA 1973. This covers daily and Sunday newspapers (whether national or local) and local periodical newspapers.

816. New section 44(11)EA 2002 sets out a power for the Secretary of State to amend the definition of “newspaper” or of “broadcasting” by statutory instrument. This power is designed to deal with future developments in the nature of the newspaper or broadcasting markets that might mean that the scope of the media public interest consideration should be redefined (for example, in relation to newspapers, if it became more common for newspaper titles to circulate across national boundaries such that important UK titles did not necessarily circulate “wholly or mainly” in the UK). An order under new section 44(11) can only be made after a draft has been laid before, and approved by a resolution of, each House of Parliament (see paragraph 24 of Schedule 16, which amends section 124EA 2002).

Section 377: Additional investigation and report by OFCOM

817. This section inserts a new section 44A in the EA 2002, which sets out OFCOM's reporting and related investigatory duties where an intervention notice has been served specifying any media public interest consideration.

818. New section 44A(2) provides that OFCOM are obliged to report to the Secretary of State within a deadline specified by the Secretary of State. There is nothing to prevent the Secretary of State from altering the deadline if the circumstances so require. New section 44A(3) ensures that the Secretary of State will receive information in the report on at least two areas:

- OFCOM's advice and recommendations on any media public interest consideration mentioned in the intervention notice; and
- OFCOM's summary of the relevant representations that it has received in relation to any such media public interest consideration.

Section 378: Extension of special public interest regime for certain media mergers

819. This section amends section 59EA 2002, which currently makes provision for the Secretary of State to intervene and serve a “special intervention notice” in relation to an exceptional category of mergers involving government defence contractors. These may be referred for investigation, on specified public interest grounds only, even though they do not meet the normal qualifying thresholds (i.e. 25% share of supply or UK turnover of the company being acquired exceeds £70 million, as set out in section 23EA 2002).

820. Subsection (1) replaces sections 59(3) and (4)EA 2002 with new sections 59(3) to (3D). These incorporate the existing criteria set out in section 59EA 2002 for establishing a “special merger situation” in cases involving government defence contractors, together with new provisions providing that a special merger situation also arises where:

- all of the criteria for a relevant merger situation within section 23EA 2002 have been met except for the share of supply or turnover thresholds in sections 23(1)(b) and (2)(b)EA 2002 — that is, where two or more enterprises have ceased to be distinct within the relevant time limits (see sections 24–27EA 2002); and
- at least 25% of the supply of newspapers of any description in the UK, or in a substantial part of the UK, was supplied by persons carrying on one of the enterprises concerned in the merger (unlike the general jurisdiction test in section 23(2)–(4)EA 2002, there is no requirement that the share of supply is created or enhanced by the merger); or
- at least 25% of the provision of broadcasting of any description, provided in the UK or a substantial part of the UK was provided by the person who carried on one of the enterprises involved in the merger. (As in the case of extended jurisdiction for newspapers, there is no requirement that this 25% share is created or enhanced).

821. Intervention in relation to cases that fall within the special public interest regime is limited to the public interest grounds specified in section 58EA 2002. They cannot be scrutinised on competition grounds.

822. Subsection (2) inserts new subsection (6A) in section 59EA 2002. Subsection (6A) gives the Secretary of State a power to amend the share of supply conditions relating to the broadcasting and newspaper extended jurisdiction. In particular, this will ensure that in the event that the Secretary of State exercises her powers in section 123EA 2002 in order to amend the share of supply test in section 23EA 2002, the changes can be carried across to section 59EA 2002, such that the share of supply test remains consistent throughout Part 3EA 2002.

823. Subsection (3) inserts new section 59A into the EA 2002. This replicates for the new newspaper and broadcasting share of supply provisions in the special public interest regime the provisions on the calculation of share of supply already included for the standard regime in section 23EA 2002. New section 59A(1) makes it clear that, for the purposes of applying the newspaper share of supply test in new section 59(3C) or the broadcasting share of supply test in section 59(3D) the authorities can apply such criteria (such as value, cost, quantity etc.) as they consider appropriate to determine whether the 25% threshold is satisfied. New section 59A(2) allows the authorities to consider whether goods or services taken on their own, or with others or in groups, make up this proportion. Sections 59A(3), 59A(4) and 59A(5) give the competition authorities the discretion to decide when goods or services are the subject of different forms of supply.

Section 379: Adaptation of role of OFT in special public interest regime

824. Under the special public interest regime of the EA 2002, where the Secretary of State has intervened in a merger under this regime, the OFT is obliged to prepare a report for the Secretary of State under section 61 of that Act. This section amends section 61EA 2002 to adapt the role of the OFT in relation to mergers under the special public interest regime where a media public interest consideration has been specified in a special intervention notice.

825. Subsection (2) makes amendments to section 61(3)(b)EA 2002 to provide that the OFT's duty to provide the Secretary of State with a summary of relevant representations received in relation to public interest considerations mentioned in the special intervention notice does not extend to representations about media public interest considerations. This is to avoid duplication, as OFCOM will have this duty (see section 380) where a media public interest consideration, which is specified in section 58 at the time, has been mentioned in the special intervention notice. The amendments made by this section refer only to considerations specified in sections 58(2A), (2B) and (2C) at the time of the notice, because the special public interest regime has no equivalent to the provisions in

the standard public interest regime by which the Secretary of State can intervene on the basis of a new public interest consideration which has not been specified in section 58 (see section 42(3)EA 2002).

826. Subsection (4) adds a new section 61(4A)EA 2002 to ensure that the OFT nonetheless has the power to include such a summary of representations. Such a power might be used, for example, if the OFT received representations after OFCOM had delivered its report, in order to ensure that representations were drawn to the Secretary of State's attention.

Section 380: Additional investigation and report by OFCOM: special public interest cases

827. This section inserts a new section 61A in the EA 2002, which sets out OFCOM's reporting and related investigatory duties where a special intervention notice has been served mentioning any of the media public interest considerations that are specified in section 58(2A), (2B) or (2C)EA 2002. The new section refers only to considerations specified in section 58(2A), (2B) or (2C) at the time of the giving of the special intervention notice because the special public interest regime has no equivalent to the provisions in the standard public interest regime by which the Secretary of State can intervene on the basis of a new public interest consideration which has not been specified in section 58 (see section 42(3)EA 2002).

828. New section 61A(2) provides that OFCOM is obliged to report to the Secretary of State within a deadline specified by the Secretary of State. There is nothing to prevent the Secretary of State from altering the deadline if the circumstances so require. New section 61A(3) ensures that the Secretary of State will receive information in the report on at least two areas:

- OFCOM's advice and recommendations on any media public interest considerations specified in section 58(2A), (2B) or (2C) and mentioned in the special intervention notice; and
- OFCOM's summary of the relevant representations that it has received in relation to any such media public interest consideration.

Section 381: Public consultation in relation to media mergers

829. This section introduces a new section 104AEA 2002, which applies only to references to the Competition Commission that specify a media public interest consideration. In conducting its inquiry into such cases the Competition Commission is specifically required, so far as it is practicable, to have regard to the need to consult the sections of the public that may be affected by the merger. The duty can be discharged by consulting such representative sample of the public as the Commission considers to be appropriate for this purpose. This duty applies in addition to the Commission's normal duties of investigation in relation to merger references in public interest cases (see sections 50(3) and 65(4)EA 2002).

Section 382: General information duties in relation to media mergers

830. This section amends section 105EA 2002 to ensure that, where a media public interest consideration is invoked, OFCOM, as well as the OFT and the Competition Commission, will have general information duties vis-...-vis those that might be affected by the merger, each other and the Secretary of State.

831. Subsection (2) inserts a new section 105(1A)EA 2002 to ensure that where OFCOM are required to produce a report on any media public interest consideration, they will act, if practicable, to bring cases that they are investigating to the attention of those that might be affected by the

transaction. The effect of the amendment to section 105(2) in subsection (3) is that this duty does not apply to merger notice cases, which carry their own publicity requirements (see section 99EA 2002).

832. Subsections (4) and (6) amend section 105(3) and 105(4)EA 2002 to ensure that OFT has the same obligations to give relevant information to OFCOM as it already has for the Competition Commission.

833. Subsections (5) and (7) insert new sections 105(3A) and (4A)EA 2002 to provide that OFCOM will give relevant information to the OFT and the Competition Commission.

834. Subsections (8) and (9) amend sections 105(5) and (6)EA 2002 to ensure that OFCOM have the same obligations as the OFT and the Competition Commission to give information and assistance to the Secretary of State in order to enable her to carry out her functions in relation to cases that raise public interest considerations.

835. Subsection (10) amends section 105(7)EA 2002 to extend the duties of the Competition Commission and the Secretary of State to have regard to information given to them under sections 105(3) to (6) so as to encompass information supplied to them under those sections by OFCOM.

836. Subsection (11) inserts a new section 105(7A)EA 2002, which provides that OFCOM must have regard to any information given to it by the OFT under sections 105(3) or (4)EA 2002 and that the OFT must have regard to any information given to it by OFCOM under new sections 105(3A) or 105(4A).

Section 383: Advice and information in relation to media mergers

837. This section inserts a new section 106AEA 2002, which provides that the Secretary of State may publish advice and information to explain the media public interest considerations specified in sections 58(2A), (2B) and (2C)EA 2002 and to indicate how the Secretary of State expects the merger provisions of the EA 2002 to operate in relation to them. If the Secretary of State chooses to publish such advice she will be required, in preparing the advice, to consult the OFT, OFCOM, the Commission and such other persons as she considers appropriate.

Section 384: General advisory functions of OFCOM in relation to media mergers

838. This section inserts a new section 106BEA 2002 setting out the general advisory functions of OFCOM. In any case where a media public interest consideration has been invoked, OFCOM may give advice to the Secretary of State on any report by the Competition Commission on the case and the taking of enforcement action by the Secretary of State.

839. There is also a general power for OFCOM to give advice where the Secretary of State has requested this in connection with any case on which they are required to report. This could be used, for example, in the event that the Secretary of State required supplementary advice on a particular aspect of a case. Except for the specific cases mentioned in new section 106B(1), this section does not empower OFCOM to give advice unless the Secretary of State has requested it.

840. Any advice that is given will be published (subject to compliance with the provisions of Part 9EA 2002 relating to disclosure of information, in particular section 244EA 2002), but not before the publication of the Competition Commission's report on the case.

Section 385: Other general functions of OFCOM in relation to media mergers

841. This section inserts a new section 119AEA 2002 that gives OFCOM the function of obtaining and reviewing information relating to any of its functions in relation to the media public interest

considerations. This information-gathering role, which may involve research, is with a view to OFCOM having the information it needs to make decisions and carry out its functions under Part 3EA 2002.

842. Subsection (4) of new section 119AEA 2002 provides that the general duties of OFCOM under section 3 of this Act do not apply when OFCOM are exercising their functions under the media merger provisions of the EA 2002 (see also section 3(7) of this Act). In practice the media merger provisions will operate as part of the EA 2002, and this Act has its own provisions setting out the functions and responsibilities of the different authorities.

Section 386: Monitoring role for OFT in relation to media mergers

843. This section inserts a new section 119BEA 2002, which gives the OFT the function of obtaining and reviewing information that may be relevant to the Secretary of State's decision on whether or not to intervene on the basis of the media public interest considerations set out in section 58(2A), (2B) or (2C)EA 2002. In particular, the OFT in carrying out this function will ensure that the Secretary of State is made aware of cases where (in the OFT's opinion) she may wish to consider issuing a special intervention notice. The OFT will not be under any obligation to carry out a detailed analysis of any media public interest consideration that may be relevant.

844. This section only applies to such cases where they may fall within the special public interest consideration regime in relation to a media public interest consideration. The OFT's duties in relation to public interest cases falling within the standard regime are already fully set out in the EA 2002 (see section 5 and Chapter 2 of Part 3EA 2002).

Section 387: Enforcement powers in relation to newspaper and other media mergers

845. This section inserts a new paragraph 20A in Schedule 8EA 2002, which contains the list of matters that can be included in final orders for the purpose of remedying, mitigating or preventing any adverse public interest effects which have resulted, or may be expected to result, from a merger involving a newspaper enterprise. Remedies to an adverse finding on the basis of the media public interest consideration may be different in character to the remedies directed at competition detriments with which Schedule 8 is principally concerned. Accordingly, paragraph 20A allows the Secretary of State to make such provision, in relation to these cases, as she considers appropriate in all the circumstances. Sub-paragraph (4) sets out a non-exhaustive list of the type of steps that might be taken in exercise of this power. These are remedies that experience in dealing with newspaper transfers under the FTA 1973 has shown it would be useful to be able to call upon.

846. This provision applies only to orders made in cases where (i) any of the newspaper public interest considerations were specified in the intervention/special intervention notice and remain relevant at the point of a decision on remedies, or (ii) where a consideration in section 58(2C) has been specified, provided that the relevant merger situation or special merger situation in question is one where one of the enterprises ceasing to be distinct is a newspaper enterprise.

847. New sub-paragraph (5) sets out the definition of a “newspaper public interest consideration”. This is defined as a media public interest consideration other than one which is set out in section 58(2C) or which is a consideration concerned with broadcasting which the Secretary of State thought ought to have been specified in section 58.

Section 388: Alterations to newspaper panel of Competition Commission

848. This section amends the definition of “newspaper merger reference” in paragraph 1 of Schedule 7 to the Competition Act 1998. Schedule 7 to that Act makes provision about the Competition

Commission and includes provisions on the appointment of newspaper panel members to the group selected to carry out an inquiry following a reference. The effect of this amendment is that the provisions on the appointment of newspaper panel members to any constituted group will only apply where a merger reference is made specifying a newspaper public interest consideration.

Section 389: Further provision in connection with media mergers

849. Subsection (1) of this section gives effect to Schedule 16, which contains further amendments in connection with media mergers.

850. Subsection (2) extends to the provisions of this Chapter of the Act and its related repeals the provisions of sections 276(2) and (3) and 277EA 2002, which gives the Secretary of State the power to make by order supplementary, incidental or consequential provisions for the purposes of, or in consequence of, or for giving full effect to, the EA 2002. Subsection (3) clarifies, for the avoidance of doubt, that this includes the power to modify the EA 2002.

PART 6: MISCELLANEOUS AND SUPPLEMENTAL

Section 390: Annual report on the Secretary of State's functions

851. This section requires the Secretary of State to prepare and lay before Parliament annual reports about the performance of her functions under the following legislation: this Act, the enactments relating to the management of the radio spectrum which are not part of this Act, the Office of Communications Act 2002 and the Broadcasting Acts 1990 and 1996. The first report must be prepared as soon as reasonably practicable after the first anniversary of the first order under section 2 transferring functions to OFCOM. The enactments relating to the management of the radio spectrum, in addition to Chapter 2 of Part 2 of the Act, are the Wireless Telegraphy Acts 1949, 1967 and 1998, the Marine, &c., Broadcasting (Offences) Act 1967 and Part 6 of the Telecommunications Act 1984 (see section 405).

Section 391: Review of media ownership

852. OFCOM are required to carry out regular reviews of the operation of all media ownership and news provider provisions. OFCOM will provide a report on every review to the Secretary of State, including recommendations on whether the Secretary of State should exercise the powers available to modify, repeal or revoke rules contained in enactments and secondary legislation. OFCOM must publish every report in such a manner that it is brought to the attention of those persons whom OFCOM feel are likely to be affected by it. The first review must be carried out no more than 3 years after the commencement of this section, and subsequent reviews must be carried out at least every 3 years.

Section 392: Penalties imposed by OFCOM

853. This section requires OFCOM to prepare, publish and keep up-to-date guidelines for determining the penalties to be imposed by them under the Act (including any that the BBC may be liable to pay) or under any other enactment, except the Competition Act 1998. Before publishing any guidelines, OFCOM must consult the Secretary of State and other appropriate persons. When determining the amount of any penalty to be imposed OFCOM must have regard to their published guidelines.

Section 393: General restrictions on disclosure of information

854. With the exception of information obtained in accordance with section 196 of the Broadcasting Act 1990 (powers of entry and search, under which stricter rules apply), this section imposes limits

on the disclosure of information relating to the affairs of any particular business obtained under this Act, the other enactments relating to the management of the radio spectrum and the Broadcasting Acts 1990 and 1996. Subsection (1) prohibits the disclosure of such information while the business in question is still being carried on, unless consent has been obtained from the person carrying on that business.

855. Subsections (2) to (5) provide for a limited number of exemptions from this prohibition where the disclosure satisfies certain criteria. Examples of exempt disclosures include those required to facilitate the carrying out by OFCOM of their duties; disclosures necessary for the carrying out by Ministers, the OFT, the Competition Commission, the Consumer Panel or the Welsh Authority of duties under this Act or other specified enactments; and disclosures made in connection with civil proceedings brought under this Act or other specified enactments.

856. In addition, subsection (6) provides that this section will not (i) limit information that may be published by OFCOM under sections 15 and 26 as results of research or as information or advice, in the Secretary of state's annual report under section 390 or in reports by OFCOM under any other provision of this Act or the Office of Communications Act 2002; (ii) prevent the disclosure of information for the purposes of a report of legal proceedings or (iii) apply to any information that has already been published or made public under (i) or (ii).

857. Subsection (10) makes it an offence for any person to disclose information in contravention of this section.

Section 394: Service of notifications and other documents

858. When any person is authorised or required to send a notification and/or document to another person under this Act, the Office of Communications Act 2002, the enactments relating to radio spectrum management not contained in this Act, Schedule 2 to the Telecommunications Act 1984 or the Broadcasting Acts 1990 and 1996, it may be delivered, left at the proper address or sent by post.

* The meaning of proper address is given in subsection (7) and (8).

859. When the recipient is a company, a partnership or unincorporated association, the notification and/or document may be addressed to the person(s) specified, respectively, in subsections (4), (5) and (6).

Section 395: Notifications and documents in electronic form

860. This section applies where a person is authorised under section 394 to give or send a notification or other document by delivering it to another person and does so either by transmitting it electronically by means of an electronic communications network or transmitting it by other means but in a form that means that other apparatus must be used to make it intelligible (e.g. sending a computer disk by post). If the intended recipient is not OFCOM, he must have agreed with the sender to that the notification and/or document may be delivered in that way and form (and not have withdrawn his agreement), and must have provided the sender with his address and other information needed to send them.

861. If the intended recipient is OFCOM, OFCOM must have indicated their agreement to receive the notification and/or document in the form in question and the thing transmitted and the means of transmission must comply with any conditions and procedures determined and published by OFCOM. When transmitting a notification and/or document, OFCOM may determine the means of transmission used and the form in which they may be transmitted (subject to subsection (5)).

862. Subsection (5) provides that, if the intended recipient is not OFCOM, he must have agreed with the sender that the notification and/or document may be delivered in that way and in that form (and not have withdrawn his agreement), and must have provided the sender with his address and other information needed to send the notification or document.

Section 396: Timing and location of things done electronically

863. The Secretary of State may by order make provision for determining the times and places at which things are done electronically under this Act, the Office of Communications Act 2002, the enactments relating to radio spectrum management not contained in this Act, Schedule 2 to the Telecommunications Act 1984 and the Broadcasting Acts 1990 and 1996. The Secretary of State may also specify how anything carried out electronically for the purposes of those Acts, including any requirements relating to time and place, may be proved in legal proceedings.

Section 397: Purchase of Duchy of Lancaster land

864. This section gives the Duchy of Lancaster a general power to sell land to persons who provide public electronic communications networks.

Section 398: Repeal of certain provisions of the Telecommunications Act 1984

865. This section will repeal the spent provisions dealing with the privatisation of British Telecommunications set out in sections 60, 61(1) to (6), 62, 63(1) to (4), 64 to 67, 69 to 71, 72(2), (4) and (5) and 73 of the Telecommunications Act 1984. This section also amends section 68(2) of the 1984 Act to reflect the fact that the only outstanding liability of British Telecommunications plc for which the Secretary of State might be responsible is the payment of pensions, and repeals sections 93 and 97 of the Telecommunications Act 1984.

* Section 93 of the 1984 Act allows the Secretary of State (with the consent of the Treasury) to make grants towards fees or expenses incurred in the development or use of apparatus that is designed or adapted for disabled persons. Section 97 allows local authorities to contribute towards the cost of the provision by public telecommunications operators of telecommunications facilities that they consider to be of benefit to their area.

Section 399: Expenses

866. Any expenditure by the Secretary of State in carrying out her functions under the Act, and any increase caused by this Act in sums payable under other Acts, shall be met from money provided by Parliament.

Section 400: Destination of licence fees and penalties

867. Where OFCOM receive money in any of the circumstances listed in subsection (1), they must pay it into the Consolidated Fund of the United Kingdom or Northern Ireland in accordance with subsection (2). The circumstances in subsection (1) include the imposition by OFCOM of a fine under Chapter 1 of Part 2, section 175 or Part 3 of this Act (including any imposed on the BBC), Part 1 or 3 of the 1990 Act or Part 1 or 2 of the 1996 Act and the receipt of fees for auctioned telephone numbers, of spectrum fees under the Wireless Telegraphy Act 1998 (c. 6) and of amounts paid to OFCOM under a Broadcasting Act licence by way of additional payments during the period for which the licence is in force and for subsequent years.

868. OFCOM must prepare an annual account that shows the amounts received by them, the sums paid into the Consolidated Funds of the United Kingdom and Northern Ireland, the amount retained

by them in accordance with any statement of principles they may make under section 401 and the cost to OFCOM of carrying out the functions to be covered by that retained amount. The report must be sent to the Comptroller and Auditor General, who must certify and report on the account. He must also lay a copy of OFCOM's annual account and his report before each House of Parliament.

Section 401: Power of OFCOM to retain costs of carrying out spectrum functions

869. This section allows OFCOM, subject to the approval of the Treasury, to introduce a new system for meeting the cost carrying out their spectrum functions. Section 400(1)(c) provides for sums received by OFCOM under the Wireless Telegraphy Act 1998 to be paid to the Consolidated Fund. Under this section, OFCOM would be able to retain out of those sums sufficient amounts to cover the cost of carrying out most of their spectrum functions.

870. Subsections (1) and (2) would enable OFCOM to make a statement of principles under which they could retain amounts received by them under the Wireless Telegraphy Act 1998. Under subsections (3) and (4), the principles contained in any statement must secure, on the basis of such estimates of the likely costs as it is practicable to make, that on a year by year basis, the aggregate amount retained by OFCOM does not exceed the amount required to meet the annual cost to OFCOM of carrying out their functions in relation to the management of the radio spectrum. The amounts retained by OFCOM must be objectively justifiable and proportionate to the costs and the relationship between the costs and the amounts retained must be transparent. Subsection (5) excludes functions under sections 22(2), 28, 152(1), (2), (5) and (8), 155, 158, 168 and 175 to 177 of this Act and section 5 of the Wireless Telegraphy Act 1949 (since inclusion of those functions would be contrary to the EC Electronic Communications Authorisation Directive).

871. As charges for licences covering several years are sometimes paid as a lump sum in one year, subsection (6) allows for amounts received in one year to be treated as referable to costs incurred in that year and in one or more subsequent years and to be brought into account in each of those years in accordance with an apportionment made in the statement of principles. Subsection (7) allows any deficit or surplus to be carried forward and taken into account in determining what is required by OFCOM in the following year to meet the costs of carrying out their spectrum functions.

872. Where a statement of principles has effect for a limited period or is withdrawn, subsection (8) provides that it does not apply to any amounts paid to OFCOM after the end of the period or after the withdrawal takes effect. Subsection (9) enables OFCOM to revise a statement of principles. Subsection (10) requires the consent of HM Treasury to be given for the making, revision or withdrawal of any statement of principles. Subsection (11) requires publication of so much of a statement of principles as demonstrates compliance with the requirements of subsection (3).

Section 402: Power of Secretary of State to make orders and regulations

873. This section sets out how the Secretary of State is to exercise her powers to make orders or regulations under the Act (other than those conferred by Schedule 4), and makes additional provisions in respect of these powers.

Section 403: Regulations and orders made by OFCOM

874. This section sets out how OFCOM are to exercise their powers to make orders or regulations under the provisions in the Act and provisions inserted in other Acts which apply this section, and makes additional provision in respect of these powers. The orders and regulations concerned must be made by statutory instrument; and where the provision in the Act and provisions inserted in other Acts under which the instrument is made provides for it to be laid before Parliament, OFCOM

must send it to the Secretary of State for that to be done. Subsections (4) to (6) provide that OFCOM must give notice before making orders or regulations to which this section applies and must allow a period of at least one month for representations to be made on any proposal by them to make such orders or regulations. The procedural requirements in this section implement Articles 14(1) and 33 of the Universal Service Directive and Article 6 of the Framework Directive.

Section 404: Criminal liability of company directors etc.

875. This section provides that, where an offence under this Act, the Wireless Telegraphy Act 1949, the Marine, &c., Broadcasting (Offences) Act 1967, or the Telecommunications Act 1984 is committed by a body corporate, then a director, manager, secretary or other officer of that body corporate (including a member of a body corporate which is managed by its members) will also be liable for prosecution if it is proved that he had given their consent to the offence or had connived in its commission or if the commission is attributable to neglect on the part of the person in question.

Section 405: General interpretation

876. This section provides for interpretation of defined terms in the Act.

Section 406: Minor and consequential amendments, transitionals and repeals

877. Schedule 17, which provides for minor and consequential amendments to other legislation, and Schedule 18, which contains transitional provisions in connection with other legislation, have effect. Furthermore, the provisions set out in Schedule 19 are repealed or revoked as specified in that Schedule. These Schedules are described in more detail below. Subsections (2), (3) and (5) also give the Secretary of State a limited power and, in the case of some local legislation, a duty to make consequential amendments of other legislation by order. Subsection (4) confers a further power by order to make consequential modifications to enactments extending only to Scotland, enactments extending only to Northern Ireland, local enactments and subordinate legislation.

Section 407: Pre-consolidation amendments

878. The Secretary of State may by order modify enactments relating to the management of the radio spectrum (as defined in section 405), the enactments relating to broadcasting (the Broadcasting Acts 1990 and 1996, Part 3 of the Act and other provisions of the Act dealing with them) and other enactments referring to these enactments in order to facilitate consolidation. An order may not be made unless an Act for repealing and re-enacting the enactments has been presented to Parliament.

Section 408: Transitional provision for anticipatory carrying out of functions

879. This section applies where an order made under section 411 bringing into force any of the following provisions of the Act: (i) a provision of Part 2 of the Act, (ii) a provision of Chapter 1 of Part 5; or (iii) a provision of Part 1 or 6 relating to a provision of Part 2 or of Chapter 1 of Part 5 or any enactment relating to the management of the radio spectrum, states that such a provision is brought into force for the purposes of enabling specified networks and services functions, or specified spectrum functions, to be carried out during the transitional period by the Director General of Telecommunications or the Secretary of State.

880. Any provision brought into force during the transitional period has effect as if references in that provision to OFCOM and references to OFCOM inserted by that provision in any other enactment were references to either the Director General of Telecommunications or the Secretary of State, as the case may be.

* Subsection (6) defines *the transitional period*. Subsections (7) and (8), respectively, define *networks and services functions* and *spectrum functions*.

881. This section should be read with paragraph 2 of Schedule 18, which provides that steps taken by the Secretary of State or OFCOM before a power or duty is conferred or imposed on either of them or transferred to OFCOM are to be treated as satisfying any requirement for steps to be taken prior to the exercise of the power or duty. This provision also applies to steps taken by the Director General of Telecommunications or the Secretary of State when section 408 applies.

882. The provisions of the Act which implement the four EC Communications Directives will be brought into force very quickly between Royal Assent and the date on which those Directives must be implemented: 25 July 2003. The necessary steps under the Act for OFCOM to be able to exercise its functions under these provisions have not yet been completed. As a result, these functions will initially be exercised by the Director General of Telecommunications and the Secretary of State under section 408; and they have taken preparatory steps in advance under paragraph 2 of Schedule 18.

Section 409: Modifications consequential on regulations implementing Directives

883. This section permits the Secretary of State (by order, subject to approval of a draft by Parliament) to amend the Act if regulations have been made under the European Communities Act 1972 to implement the four Directives cited in subsection (4) prior to the passing of the Act. These Directives have to be implemented in the European Community on 25 July 2003. Subsection (2) permits the Secretary of State to repeal provisions of the Act which have become redundant, modify the Act as necessary in consequence of the regulations, revoke the regulations and make transitory or transitional provisions. In the event, regulations of the type described in subsection (1) were not made before the Act was passed, the condition in that subsection can never be satisfied and, accordingly, it is not intended that this section will be brought into force.

Section 410: Application of enactments to territorial sea and other waters

884. This section permits Her Majesty by an Order in Council to apply the provisions of Part 2 of the Act, the enactments relating to the management of the radio spectrum not contained in Part 2 of the Act and any related provision in Chapter 1 of Part 5 of the Act to the territorial sea and other waters of the United Kingdom.

Section 411: Short title, commencement and extent

885. This section gives the Secretary of State a power to bring the provisions of this Act into force by order on appointed days and different days may be appointed for different purposes. This section and sections 31(1) to (4) and (6) and 405 came into force upon Royal Assent. This section also provides that the Act extends to Northern Ireland and that it may, by Order in Council, be extended to the Channel Islands and the Isle of Man.

SCHEDULES

Schedule 1: Functions transferred to OFCOM

886. This is described in the notes to section 2.

Schedule 2: Transfer schemes

887. This is described in more detail in the notes to section 30. The property, rights and liabilities capable of being transferred under paragraph 1 of the Schedule is intended to include the rights and liabilities of the ITC as the Principal Employer of ITC Pension Plan.

Schedule 3: Amendments of Schedule 2 to the Telecommunications Act 1984

888. This Schedule (together with sections 106 to 119) amends the telecommunications code (set out in Schedule 2 to the Telecommunications Act 1984) in order to translate it into a code applicable to apparatus used in electronic communications networks and services. It will become known as the 'electronic communications code'. The electronic communications code is designed to facilitate the installation and maintenance of electronic communications networks. It confers rights on operators to install and maintain apparatus in, over or under land and results in considerably simplified planning procedures, similar to those given to other utilities. The only substantive changes are to enable the application of the electronic communications code to persons who provide systems of conduits that are to be used for the provision of an electronic communications network, but who do not actually provide an electronic communications network themselves; and to allow apparatus to be shared without either of the sharers being in breach of their obligations under the code because of what the other is allowed to do. The other change is the addition of paragraph 29 to the code, which encourages the sharing of apparatus.

Schedule 4: Compulsory purchase and entry for exploratory purposes

889. This is described in the notes to section 118.

Schedule 5: Procedure for grants of recognised spectrum access

890. This is described in the notes to section 159.

Schedule 6: Fixed penalties for wireless telegraphy offences

891. This is described in the notes to section 180.

Schedule 7: Seizure and forfeiture of apparatus

892. This is described in the notes to section 182.

Schedule 8: Decisions not subject to appeal

893. This Schedule lists the types of decision taken by OFCOM and the Secretary of State that cannot be appealed under Chapter 3 of Part 2 of the Act (see also the notes to section 192). These include certain decisions taken under the Act and also decisions under the Wireless Telegraphy Acts of 1949 and 1998. They also include decisions to institute, bring or carry on any criminal or civil proceedings, or to carry out any preliminary steps towards this.

Schedule 9: Arrangements about carrying on of C4C's activities

894. This is described in the notes on section 199.

Schedule 10: Licensing the public teletext service.

895. This schedule is described in the notes on section 219.

Schedule 11: Approval, imposition and modification of networking arrangements

896. This is described in the notes on section 294.

Schedule 12: Corresponding obligations of the BBC and Welsh Authority

897. This Schedule sets out obligations that correspond to those in the regulatory regime for licensed providers and apply to the BBC and the Welsh Authority. Paragraph 2 provides that the BBC is under a duty to publicise OFCOM's functions under Part 5 of the 1996 Act (fairness and privacy) and any procedures established by OFCOM or the BBC for the handling and resolution of complaints

about the observance by the BBC of standards set under section 319. The BBC is also under a duty to comply with the quota on independent productions detailed in paragraph 1 of Schedule 12, which mirrors the requirements applying to licensed providers. This quota applies across the whole of the television broadcasting services provided by the BBC, subject to sub-paragraphs (8) and (9), which allow the BBC Charter and Agreement to provide for the quota to apply to particular services or groups of services collectively.

898. This Schedule also sets out a number of obligations of the Welsh Authority. Paragraph 3 sets out the duty of the Authority to secure that each of their public service remits for S4C, S4C Digital and other services authorised by the Secretary of State under section 205 is fulfilled. The public service remits of the Welsh Authority may be amended by order of the Secretary of State. However, before making any such amendment the Secretary of State must consult the Welsh Authority and, if the order relates to programmes that are not in Welsh, the Channel Four Television Corporation. Any order amending the public service remits of S4C or S4C Digital must be consistent with the requirement that those services should further the dissemination of information, education and entertainment and should include programmes a substantial proportion of which are in Welsh. Paragraph 4 requires the Authority to prepare an annual statement of programme policy, and to monitor their performance against the proposals contained therein. Such proposals must include the means by which the Authority intend to secure that the public service remits for their services are to be fulfilled. Each statement must also contain a report on the Authority's performance in carrying out the proposals they set themselves in the previous such statement. When preparing any statement the Authority must consider any guidance by OFCOM that is in force for the purposes of section 266 and any reports previously published by OFCOM under section 264 or 358.

899. Paragraph 5 imposes must-offer obligations on the Welsh Authority in relation to their public digital services, requiring them to make such services available for broadcast or distribution by every appropriate network and for broadcast by means of every satellite service available for reception in Wales. The Authority must do their best to ensure that there are arrangements for the broadcast or distribution of their public digital services that result in their being available free of charge to as many of the intended audience for any given service as is practicable. "Appropriate network", "intended audience" and "satellite television service" are defined in sub-paragraph (8). Paragraph 6 places a duty on the Authority to join with the providers of other must-provide services to meet the requirements of section 274 to secure the reception of such services free of charge in areas where they would otherwise not be available.

900. Paragraphs 7 and 8 detail the programming quotas for independent and for original productions that are to be secured by the Welsh Authority in relation to their designated public services (which, for these purposes, are to be taken together). The proportion of programming to be made up of original productions is to be agreed between OFCOM and the Welsh Authority, with a power of direction for OFCOM in the absence of an agreement.

901. Paragraph 9 provides that the Welsh Authority are under a duty to ensure that their designated public services broadcast high quality news and current affairs programmes, at intervals throughout the period for which the service is provided and at times that include peak viewing times. Peak viewing times, for the purposes of paragraphs 8 and 9, will be determined by agreement between OFCOM and the Authority, with a power of direction for OFCOM in the absence of an agreement.

902. Paragraph 10 requires the Welsh Authority to draw up, to revise from time to time and to comply with a code of practice setting out the principles they will apply when agreeing terms for

the commissioning of independent productions. The code must be submitted to OFCOM for approval and will have effect only if approved by OFCOM.

903. Paragraph 11 requires the Welsh Authority to grant to the public teletext provider, on payment of a reasonable charge, access to the facilities reasonably required for the provision of the public teletext service. In the event of a dispute about charges, the amount is to be determined by OFCOM.

904. Paragraph 12 provides that the Welsh Authority are under a duty to ensure that S4C and S4C Digital observe the programme standards set under section 319. Paragraph 13 requires the Authority to comply with a direction by OFCOM with respect to the establishment of complaints procedures relating to programme standards under section 319.

905. Paragraph 14 requires the Authority to comply with directions by OFCOM in relation to the exclusion of advertisements or types of sponsorship from their public television services. The Authority are also required, under paragraph 16, to comply with directions by OFCOM as to the amount of advertisements, the interval between them and the frequency of advertising breaks.

906. Paragraph 15 gives OFCOM the power to direct the Authority to broadcast a correction or statement of findings for a breach of programme or advertising standards. Paragraph 21 gives OFCOM the power, after consulting the Authority, to issue directions to the Authority to ensure compliance with all relevant international obligations. The Authority are required to comply with such directions.

907. Paragraph 17 requires the Welsh Authority to secure the observance of the fairness code for the time being in force under section 107 of the Broadcasting Act 1996. Paragraph 18 requires the Welsh Authority to include party political broadcasts and referendum campaign broadcasts in their designated public services. They must also draft and publish a document setting out their policy with regard to such broadcasts and review and revise this policy periodically.

908. Paragraph 19 sets out the duty of the Welsh Authority to publicise OFCOM's functions under Part 5 of the Broadcasting Act 1996 in relation to the Authority and any procedures established for the handling of complaints about the observance by the Authority of standards set under section 319. Paragraph 20 requires the Authority to retain recordings of programmes and, on request, to supply such recordings or scripts or transcripts to OFCOM.

909. Finally, paragraphs 22 and 23 set out the duty of the Welsh Authority to observe the code under section 303 of the Act when providing services for the deaf and visually impaired, and to promote equality of opportunity.

Schedule 13: Financial penalties under the Broadcasting Acts

910. Part 1 of this Schedule amends the provisions in the Broadcasting Act 1990 as regards financial penalties.

911. Penalties may be imposed on the revocation of a Channel 3 or the Channel 5 licence, or a licence to provide the public teletext service. At the moment, under section 18 of the Broadcasting Act 1990, the maximum penalty which can be imposed on a Channel 3 licensee is 7 per cent of the qualifying revenue for the licensee's last complete accounting period falling within the licence period, or where the licence is revoked before the licensee has begun to provide the relevant service or before the end of the licensee's first complete accounting period falling within the licence period, 7 per cent of what the Independent Television Commission estimate would have been the qualifying revenue of the licensee for his first complete accounting period falling within the period for which the licence would have been in force. Paragraph 2 amends section 18 of the 1990 Act by keeping

in place the arrangements for calculating penalties on the basis of qualifying revenue (by OFCOM) but providing that the maximum penalty will now be whichever is the greater of £500,000 or the amount calculated by reference to qualifying revenue.

912. Under section 41 of the Broadcasting Act 1990, penalties may be imposed on the holder of a Channel 3 licence or the Channel 4 or Channel 5 licences, if he fails to comply with licence conditions or the regulator's directions. Paragraph 3 amends section 41 so that the distinction between a first and a subsequent offence is removed and the maximum penalty is now fixed at 5 per cent of the licensee's qualifying revenue for his last complete accounting period falling within the licence period (instead of 3 per cent for a first offence and 5 per cent for any subsequent breaches). In cases where a penalty is imposed before the first such accounting period has ended, the penalty is to be 5 per cent of what OFCOM estimate would have been the licensee's qualifying revenue for that period.

913. Paragraph 5 makes similar amendments to section 55 of the Broadcasting Act 1990, which deals with penalties which may be imposed on the holder of an additional services licence if he fails to comply with licence conditions or the regulator's directions.

914. Under section 42B (for restricted services) of the Broadcasting Act 1990, penalties may be imposed on a restricted services licensee if he fails to comply with licence conditions or the regulator's directions. Paragraph 4 amends this section. The new penalties are whichever is the greater of £250,000 (instead of £50,000) or 5 per cent of the licensee's qualifying revenue for his last complete accounting period falling within the licence period or, where a penalty is imposed before the end of the first such accounting period, 5 per cent of what OFCOM estimate would have been the licensee's qualifying revenue for that period. Also, the distinction between a first and a subsequent offence is removed for both restricted and additional service.

915. Under section 101 of the Broadcasting Act 1990, penalties may be imposed on the revocation of a national sound broadcasting licence. These provisions are amended by paragraph 6 to provide that the maximum penalty is whichever is the greater of £250,000 or 7 per cent of the qualifying revenue for the licensee's last complete accounting period falling within the licence period, or of what OFCOM estimate would have been the qualifying revenue of the licensee for his first complete accounting period falling within the period for which the licence would have been in force, where the penalty is imposed before the first such accounting period has ended. The basis for calculating qualifying revenue substantively duplicates the existing provision in section 101.

916. Under section 110 of the Broadcasting Act 1990, penalties may be imposed on analogue sound broadcasting licensees, and under section 120, on additional service licensees, if they fail to comply with licence conditions or directions given under Part 3 of that Act. The existing provisions are amended, in the case of a national sound broadcasting licensee, to provide that the maximum penalty is whichever is the greater of £250,000 or 5 per cent of the qualifying revenue for the licensee's last complete accounting period falling within the licence period, or of what OFCOM estimates would have been the qualifying revenue of the licensee for his first complete accounting period falling within the period for which the licence would have been in force, where the penalty is imposed before the first such accounting period has ended. In other cases (e.g. local licences or radio licensable content service licences, by virtue of section 250(3) of this Act) the maximum penalty is increased from £50,000 to £ 250,000. In the case of an additional services licensee, the maximum penalty is 5 per cent of qualifying revenue, calculated on the same basis as for a national sound broadcasting licensee. There is no distinction between a first and a subsequent offence for penalties under either section 110 or 120.

917. Part 2 of this Schedule amends the provisions of the Broadcasting Act 1996 as regards financial penalties.

918. Under section 11 of the Broadcasting Act 1996, penalties may be imposed on the revocation of a television multiplex licence and, under section 53(5) penalties may be imposed on the revocation of a radio multiplex licence. In the case of a television multiplex licence, the existing provisions are amended to provide that, where the licence is revoked before the licensee has begun to provide the service or before the end of the first accounting period, the maximum penalty payable is whichever is the greater of £500,000 (instead of £50,000) and 7 per cent of what OFCOM estimates would have been the multiplex revenue of the licensee falling within his first accounting period for which the licence would have been in force. In any other case, the maximum penalty is £500,000 or 7 per cent of the multiplex revenue for his last complete accounting period falling within the licence period. For a radio multiplex licence, the maximum penalty is £250,000 in the case of a local multiplex licence (increased from £50,000); and in the case of a national multiplex licence it is whichever is the greater of £250,000 (also increased from £50,000) or a prescribed amount. The prescribed amount is 7 per cent of multiplex revenue, calculated on the same basis as for a television multiplex service (see section 53(6) of the 1996 Act).

919. Penalties may be imposed under section 17, on a television multiplex licensee; under section 23, on a digital television programme licensee; under section 27, on a digital additional services licensee; under section 59, on a radio multiplex licensee; under section 62, on a digital sound programme licensee and, under section 66, on a digital additional sound services licensee, if he fails to comply with licence conditions or OFCOM's directions. In the case of sections 17, 23 and 27, the maximum penalties are raised to the greater of £250,000 (from £50,000) or 5 per cent of the licensee's multiplex revenue for his last complete accounting period falling within the licence period. In cases where a penalty is imposed before the end of the first such accounting period, the second figure is to be 5 per cent of what OFCOM estimate would have been the licensee's multiplex revenue for that period. For sections 59, 62 and 66, where the licensee holds a local licence the maximum penalty payable is £250,000. In the case of national licences the maximum penalty payable is whichever is the greater of £250,000 and 5 per cent of the licensee's multiplex revenue for his last complete accounting period falling within the licence period. In cases where a penalty is imposed on a national licensee before the end of the first such accounting period, the second figure is to be 5 per cent of what OFCOM estimate would have been the licensee's multiplex revenue for that period. Again, the distinction between a first offence (where a figure of 3 per cent of revenue had effect, instead of 5 per cent) and subsequent offences has been eliminated.

920. Paragraph 9 gives the Secretary of State the power to amend, by order, the size of any of the penalties that may be imposed under the provisions of the Broadcasting Act 1990 that are set out in sub-paragraph (2). Paragraphs 16 and 22 amend existing powers to alter penalties in the 1996 Act. In particular, orders made under those powers will in future be subject to approval by resolution of each House of Parliament (as is the power in paragraph 9).

921. These new provisions will only apply in relation to failures taking place after the commencement of this paragraph.

Schedule 14: Media ownership rules

922. This Schedule establishes new rules on the ownership of television services and radio multiplex services, and outlines the scope for the Secretary of State to impose new rules by order on the ownership of analogue and digital radio services. These provisions are described in more detail in the notes to section 350.

Schedule 15: Amendments of Broadcasting Acts

923. This Schedule amends the 1990 and 1996 Acts. Many of the amendments are simply to update those Acts in line with this Act, for example to change references to the Independent Television Commission and the Radio Authority into references to OFCOM or to add references to the Act where relevant to the application or interpretation of those Acts. Other amendments include—

- (a) additional powers for OFCOM to obtain information under sections 5(2) and 88(2) of the 1990 Act (see paragraphs 3 and 35) and sections 5(2) and 44(2) of the 1996 Act (see paragraphs 78 and 104) in connection with ownership restrictions in relation to television and radio broadcasting licences;
- (b) changes to make sections 15 to 17A of the 1990 Act (which concern the award of Channel 3 and Channel 5 licences) reflect, in particular, the self-regulation of the delivery of public service remits by those channels (see paragraphs 7 to 10);
- (c) amendments in section 89 (see paragraph 36), which disqualifies a person from holding certain radio licences if he or she has been convicted of certain broadcasting offences in the previous five years, and also provides that a licence holder must do all that he or she can to ensure that a person convicted of any such offence is not concerned in the operation of a wireless telegraphy station broadcasting the service. The list of offences is amended, and subsection (3) is amended to provide that a licence holder must also do all he or she can to ensure that a disqualified person is not concerned in the provision of the service or of programmes for inclusion in the service (and section 60 of the 1996 Act is amended to extend most of section 89 to digital sound programme licences — see paragraph 119). These amendments do not apply to offences committed before the amendments come in to effect;
- (d) to provide that no more than one member of the Welsh Authority may be a person who is a member or an employee of OFCOM (see paragraph 71);
- (e) amendments to provisions in the 1996 Act relating to “multiplex revenue” to take account of amendments elsewhere in this Act (see section 242 in particular) for the carriage of digital sound programme services on television multiplexes, and because broadcasting services (e.g. digital sound and digital television programme services) might in future be carried on general multiplex services (within the meaning given in section 362(1));
- (f) to bring the definition of “digital additional services” (section 24 of the 1996 Act) into line with concepts in this Act (e.g. “available for reception by members of the public”) and to allow for such services to be carried on general multiplex services (see paragraph 93);
- (g) to bring Part 5 of the 1996 Act, which concerns the Broadcasting Standards Commission, into line with this Act (see paragraphs 132 to 137), in consequence of the repeal of provisions about standards complaints and the transfer of the Commission's functions as respects fairness and privacy to OFCOM (see also section 327).

Schedule 16: Further amendments in connection with media mergers

924. This Schedule sets out further amendments in connection with media mergers.

Schedule 17: Minor and Consequential Amendments

925. Schedule 17 sets out minor amendments to other legislation and amendments to other legislation that are consequential upon the Act. Paragraph 1 of the Schedule sets out the definitions that apply for the purposes of any Act or instrument amended by the Schedule.

926. The majority of these amendments involve changes to terms contained in other legislation that is used in relation to the current telecommunications licensing regime and that is to be replaced by the Communications Act, to ensure, as far as possible, that the current term is replaced with an equivalent term for the purposes of the new regulatory regime. A number of these amendments are of a similar nature and include, for example, amendments to legislation such as the Opencast Coal Act 1958 and the Regional Development Agencies Act 1998 to replace references to the telecommunications code and telecommunications apparatus with references to the electronic communications code and electronic communications apparatus. The amendments also include amendments to disclosure of information provisions in various legislation (for example, the Greater London Authority Act 1999 and the Water Industry Act 1991), to provide an exemption from the general restriction on the disclosure of information in respect of OFCOM and the Communications Act.

927. In addition, this Schedule sets out a number of minor and consequential amendments to the enactments relating to radio spectrum management. These include the amendment of section 1D of the Wireless Telegraphy Act 1949 which is dealt with in more detail in the notes to section 169 and amendments requiring the Secretary of State's approval for orders and regulations made by OFCOM. For example, paragraphs 9(3) and 11(4) amend those sections of the Wireless Telegraphy Act 1949 which provide for regulations as to wireless telegraphy and regulations as to radiation of electro-magnetic energy, in order to require the Secretary of State's approval of any such regulations that are made by OFCOM. Similarly, paragraph 37(5) requires the approval of the Secretary of State for the making by OFCOM of any order under section 7 of the Wireless Telegraphy Act 1967, which places restrictions on dealing in, and custody of, certain apparatus. Paragraph 73 requires the approval of the Secretary of State for the making by OFCOM of any order under section 85 or 86 of the Telecommunications Act 1984 about information to be marked on or to accompany wireless telegraphy apparatus or to be given in advertisements for such apparatus.

928. Schedule 17 also contains minor and consequential amendments with respect to broadcasting. These mainly reflect the changes to the regulatory structure so as to replace references to the existing regulators with references to OFCOM.

929. The Welsh Development Agency Act 1975, section 19(1), which relates to the Agency and the media, is amended (by paragraph 50) so that references to “the appropriate authority” are replaced by a reference to OFCOM, and at subsection (11), the references to the Independent Television Commission and the Radio Authority are replaced by a reference to OFCOM. Similarly, references to the Independent Television Commission and the Radio Authority in section 92 and 93 of the Representation of the People Act 1983, which relate to broadcasting from outside the United Kingdom and broadcasting of local items during election periods are replaced by references to OFCOM (see paragraph 63).

930. The Cinemas Act 1985 contains provisions, including a licensing regime, concerning premises which are used for “film exhibitions”. The definition of “film exhibition” at section 21(1) is amended so that a film exhibition means any exhibition of moving pictures other than an exhibition of items included in a programme service within the meaning of Part 3 of the Communications Act that is being simultaneously received (or virtually so) by the exhibitor (see paragraph 76). The effect of the amendment is to ensure that cinemas which exhibit films transmitted to them via cable or satellite from a central source will not require licensing under the Communications Act; however films exhibited in such a way will continue to be covered by the licensing provisions of the 1985 Act.

931. Various amendments have been made to the Copyright, Designs and Patents Act 1988 so as to bring these in line with the regulatory changes made under the Communications Act (see paragraph 91). In particular, these ensure that copyright is not infringed by the use by OFCOM in connection with the performance of their functions of material provided to them; or of any existing material which is transferred to them by a scheme made under section 30 of the Communications Act.

932. In section 33 of the Value Added Tax Act 1994, which relates to refunds of VAT in certain cases, the reference to the Channel 3 nominated news provider is replaced by a reference to the Channel 3 appointed news provider, to reflect changes made by the Act (see paragraph 129).

933. Schedule 9 to the Transport Act 2000, which contains disclosure of information provisions, has been amended so as to substitute OFCOM for the Independent Television Commission and so as to add the Broadcasting Act 1996 and the Communications Act to the list of specified enactments covered by those disclosure provisions (see paragraph 166).

934. The provisions relating to party political broadcasts and referendum campaign broadcasts contained in section 11 of and paragraph 4(6) of Schedule 12 to the Political Parties, Election and Referendums Act 2000 have been amended so as to remove the references in that section to Sianel Pedwar Cymru (paragraph 167). The effect is now that those provisions provide that the BBC shall have regard to the Electoral Commission's views when determining its policy with respect to party political broadcasts and referendum campaign broadcasts. The corresponding duty with respect to the Welsh Authority is now contained in Schedule 12 to the Communications Act.

935. The Schedule also includes minor amendments to the Office of Communications Act 2002 (paragraphs 171 and 172). Paragraph 8(1) of the Schedule to the OFCOM Act is amended to require OFCOM to conduct their affairs so as to secure that revenues from fees and charges which do not fall to be paid to the Consolidated Fund are at least sufficient to enable OFCOM to meet the cost of carrying out the functions to which they relate.

Schedule 18: Transitional Provisions

936. The principal paragraphs of this Schedule have been described in connection with the applicable sections.

937. Paragraphs 59 to 62 of this Schedule set out the transitional arrangements that will apply on commencement of the provisions of Chapter 2 of Part 5 of this Act.

938. Paragraph 59 provides that the new provisions introduced in this Chapter will not apply to any transfer of a newspaper or of newspaper assets that has already taken place as at the commencement date of these provisions. In addition, any transfer for which an application for consent has been made, but not determined, at the date of commencement will continue to be considered under the special newspaper merger provisions in the FTA 1973.

939. If, however, an application is made that falls within section 59(2) FTA 1973 because it is “expressed to depend” on the Secretary of State exercising a discretion in that Act not to refer the transaction to the Competition Commission, then the effect of paragraph 59(2) of this Schedule is that only that “expressed to depend” application will fall within the transitional saving of the FTA 1973 provisions. If the Secretary of State's consent is not given without a reference, but the parties then decide to pursue the merger after the provisions of Chapter 2 of Part 5 of the Act take effect, it will then be treated as a merger under the EA 2002, as amended by these provisions.

940. Paragraph 62 sets out provisions applying to conditional consents that have been given under the FTA 1973. On implementation of the provisions of Chapter 2 of Part 5 of this Act existing

consents will be unaffected and will continue in effect as consents given under the FTA 1973. However, where these consents have conditions attached to them, such that the party concerned is subject to ongoing obligations, paragraph 62 provides that the Secretary of State may accept undertakings in lieu of the conditions on the consent. Acceptance of an undertaking will be at the Secretary of State's discretion but, if accepted, any such undertaking would then be treated as equivalent to an undertaking given to the Secretary of State in a public interest case under the EA 2002 (see paragraph 9 of Schedule 7 to the EA 2002). Such undertakings could relate to competition and/or to general public interest obligations and so in deciding whether to accept such undertakings the Secretary of State can, in particular, consult with the OFT and/or OFCOM.

Schedule 19: Repeals

941. This Schedule sets out those provisions in other enactments that will be repealed as a consequence of the Act.

COMMENCEMENT

942. The provisions of the Act will be brought into force on a day or days appointed by commencement order of the Secretary of State, save for sections 31(1) to (4) and (6), 405 and 411, which came into force upon Royal Assent.

DETAILS OF BILL'S PASSAGE THROUGH PARLIAMENT

Parliamentary Stage	Date	Hansard Reference
Introduction (Commons)	19th November 2002	Hansard Reference
Second Reading	3rd December 2002	Vol 394; Col 520
Committee	From 10th December 2002–6th February 2003 (26 Sittings)	Vol 395; Cols 782–865
Report	Day 1 — 25th February 2003 Day 2 — 4th March 2003	Hansard Standing Committee E; Cols 1–1072
Third Reading	4th March 2003	Vol 400; Cols 144–232 Vol 400; Cols 682–775
Introduction (Lords)	5th March 2003	Vol 400; Cols 775–787
Second Reading	25th March 2003	Vol 646; Col 873
Committee	Day 1 — 29th April 2003	Vol 647; Cols 655–790
	Day 2 — 6th May 2003	Vol 647; Cols 582–647 and 661–688
	Day 3 — 15th May 2003	Vol 647; Cols 972–1026 and 1042–1071
	Day 4 — 20th May 2003	Vol 648; Cols 317–361 and 382–436
	Day 5 — 22nd May 2003	Vol 648; Cols 703–768 and 784–820
	Day 6 — 3rd June 2003	Vol 648; Cols 940–1038
	Day 7 — 5th June 2003	Vol 648; Cols 1168–1233 and 1246–1312
Report	Day 1 — 23rd June 2003	Vol 648; Cols 1431–1480 and 1489–1563

Parliamentary Stage	Date	Hansard Reference
	Day 2 — 26th June 2003	Vol 650; Cols 11–24 and 40–83 and 101–124
	Day 3 — 1st July 2003	Vol 650; Cols 383–426 and 454–511
	Day 4 — 2nd July 2003	Vol 650; Cols 737–803 and 819–870
Third Reading	8th July 2003	Vol 650; Cols 886–982
Commons Consideration of Lords Amendments	14th July 2003	Vol 651; Cols 138–209 and 220–261
Lords Consideration of Commons Amendments	16th July 2003	Vol 409; Cols 44–118

Royal Assent — 17th July 2003 — House of Lords Hansard Vol 651 Col 965

17th July 2003 — House of Commons Hansard Vol 409 Col 439

APPENDIX 1

The following is a list of expressions defined in the Act, and the sections and Schedules in which those definitions are to be found.

Defined Term:	Section/Schedule:	Applies to:
“the 1984 Act”	Paragraph 64, Schedule 18	Schedule 18
“the 1990 Act”	405(1)	the Act
“the 1996 Act”	405(1)	the Act
“the abolition of licensing”	Paragraph 64, Schedule 18	Schedule 18
“access”	405(1) & (4)	the Act
“access contract”	87(12)	Section 87
“the Access Directive”	151(1)	Part 2, Chapter 1
	Paragraph 9(16), Schedule 18	Paragraph 9, Schedule 18
“access radio licence”	359(5)	Section 359
“access-related condition”	151(1)	Part 2, Chapter 1
“accounting period”	177(11)	Section 177
“acquisition”	277(13)	Section 277
	Paragraph 1(14), Schedule 12	Paragraph 1, Schedule 12
	Paragraph 7(13), Schedule 12	Paragraph 7, Schedule 12
“additional radio service”	362(1)	Part 3
“additional television service”	362(1)	Part 3
“adoption”	151(1)	Part 2, Chapter 1
“the alleged offender”	Paragraph 7(1), Schedule 6	Paragraph 7, Schedule 6
“allocation”	151(1)	Part 2, Chapter 1

Defined Term:	Section/Schedule:	Applies to:
“alteration”	134(8)	Section 134
“analogue teletext service”	362(1)	Part 3
“ancillary service”	362(1)	Part 3
“apparatus”	405(1)	the Act
“apparatus market”	46(9)	Section 46
	151(1)	Part 2, Chapter 1
“apparatus for wireless telegraphy”	174(8)	Section 174
	Paragraph 8, Schedule 5	Schedule 5
“the application date”	227(8)	Section 227
“application programme interface”	74(3) & (4)	Section 74
“appropriate network”	271(7)	Section 271
	Paragraph 5(8), Schedule 12	Paragraph 5, Schedule 12
“the appropriate percentage”	217(7)	Section 217
	228(8)	Section 228
	253(13)	Section 253
	400(8)	Section 400
	Paragraph 7(7), Schedule 10	Paragraph 7, Schedule 10
“approval”	53(6)	Section 53
	54(8)	Section 54
“approve”	53(6)	Section 53
	54(8)	Section 54
“approved”	53(6)	Section 53
	54(8)	Section 54
“approved code”	120(15)	Section 120
“approved networking arrangements”	292(9)	Section 292
	293(8)	Section 293
“arrangements”	Paragraph 10, Schedule 9	Schedule 9
“arrangements proposed by OFCOM”	Paragraph 9(5), Schedule 11	Paragraph 9(5), Schedule 11
“assistance for disabled people”	362(1)	Part 3
“associated facility”	32(3)	the Act
	405(1)	the Act
“the Authorisation Directive”	Paragraph 13(8), Schedule 18	Paragraph 13(7), Schedule 18
“authorised person”	Paragraph 3(4), Schedule 6	Paragraph 3 of Schedule 6
“available for reception by members of the public”	361	the Act
	362(1)	Part 3
“the BBC”	405(1)	the Act
“the BBC Charter and Agreement”	362(1)	Part 3

Defined Term:	Section/Schedule:	Applies to:
“BBC company”	362(1)	Part 3
“the BBC’s services”	198(9)	Section 198
“belief”	264(13)	Section 264
“body”	405(1)	the Act
“broadcast”	405(1)	the Act
“Broadcasting Act licence”	405(1)	the Act
“Broadcasting Act licence fee”	347(8)	Section 347
“Broadcasting Act powers”	317(1)	Section 317
“broadcasting provision”	318(5)	Section 318
“business”	405(1)	the Act
“business premises”	233(9)	Section 233
	248(9)	Section 249
“C4C”	405(1)	the Act
“C4 company”	362(1)	Part 3
“cable package”	330(6)	Section 330
	331(6)	Section 331
	332(10)	Section 332
“cash bid amount”	400(8)	Section 400
“Channel 3”	362(1)	Part 3
“a Channel 3 licence”	362(1)	Part 3
“Channel 3 programmes”	286(7)	Section 286
	351(10)	Section 351
“a Channel 3 service”	362(1)	Part 3
“Channel 4”	362(1)	Part 3
“Channel 4 licence”	297(3)	Section 297
“Channel 5”	362(1)	Part 3
“charging year”	38(12)	Sections 38 and 39
“citizens”	3(14)	Section 3
“code operator”	Paragraph 1, Schedule 4	Schedule 4
“code-related liabilities”	Paragraph 18(8), Schedule 18	Paragraph 18, Schedule 18
“the commencement day”	350(6)	Section 350
“Communications Directives”	409(4)	Section 409
“communications functions”	22(5)	Section 22
“communications matters”	3(14)	Section 3
	20(7)	Section 20
	21(7)	Section 21
“communications provider”	405(1)	the Act
“communications service”	Paragraph 1(1), Schedule 17	Schedule 17

Defined Term:	Section/Schedule:	Applies to:
“competition test”	Paragraph 15, Schedule 11	Schedule 11
“conditional access system”	75(3)	Sections 75 and 76
“conduit”	106(7)	Section 106
“conduit system”	Paragraph 1(2), Schedule 17	Paragraph 1, Schedule 17
“connected person”	Paragraph 15(5), Schedule 10	Paragraph 15, Schedule 10
“connected services”	316(4)	Section 316
“the Consumer Panel”	16(2)	the Act
	405(1)	the Act
“consumers”	405(1) & (5)	the Act
“Content Board”	12(1)	the Act
	405(1)	the Act
“a content service”	32(7)	Section 32(2)
“the continued provision”	Paragraph 9(3), Schedule 18	Paragraph 9, Schedule 18
“the contracting party”	Paragraph 4(1), Schedule 18	Paragraph 4, Schedule 18
“contravening provider”	102(6)	Section 102
	142(6)	Section 142
“the contravening provider”	42(1)	Section 42
	98(1)	Section 98
	100(1)	Section 100
	124(1)	Section 124
	124(2)	Section 124
	140(1)	Section 140
“contravening supplier”	102(6)	Section 101 and 102
	142(6)	Section 141 and 142
“the contravening supplier”	101(1)	Section 101
“contravention”	405(1)	the Act
“controlled”	362(6)	Section 362
“the court”	Paragraph 13(12), Schedule 11	Paragraph 13, Schedule 11
	Paragraph 3(8), Schedule 18	Paragraph 3, Schedule 18
	Paragraph 4(8), Schedule 18	Paragraph 4, Schedule 18
“customers”	405(1)	the Act
“the decision-maker”	195(9)	Section 195
“the defaulter”	Paragraph 13(1), Schedule 11	Paragraph 13, Schedule 11
“defendant”	174(1)	Section 174

Defined Term:	Section/Schedule:	Applies to:
“designated organisation”	333(6)	Section 333
	Paragraph 18(7), Schedule 12	Paragraph 18, Schedule 12
“designated universal service provider”	151(1)	Part 2, Chapter 1
“digital additional sound service”	362(1)	Part 3
“digital additional television service”	362(1)	Part 3
“the digital public teletext service”	362(1)	Part 3
“digital sound programme service”	362(1)	Part 3
“digital television programme service”	362(1)	Part 3
“the Directives”	Paragraph 13(7), Schedule 18	Paragraph 13, Schedule 18
“the Director”	Paragraph 64, Schedule 18	Schedule 18
“director”	404(3)	Section 404
“disabled”	27(5)	Section 27
	337(9)	Section 337
	Paragraph 23(6), Schedule 12	Paragraph 23, Schedule 12
“disaster”	51(7)	Section 51
“dispute procedures”	54(8)	Section 54
“distribute”	405(1)	Section 405
“document”	394(9)	Section 394
“domestic and small business customer”	16(13)	Section 16
	52(6)	Section 52
	53(6)	Section 53
	54(8)	Section 54
“the dominant provider”	87(1) 89(1) 90(1) 91(1) 92(1)	Sections 87 and 88 Section 89 Section 90 Section 91 Section 92
“the dominant supplier”	93(1)	Section 93
“drama”	264(13)	Section 264
“EEA State”	362(1)	Part 3
“electro-magnetic interference”	51(6)	Section 51
“electronic communication”	56(10)	Section 56
	57(3)	Section 57
“electronic communications apparatus”	151(1)	Part 2, Chapter 1
	Paragraph 1(1), Schedule 17	Schedule 17
	Paragraph 9(16), Schedule 18	Paragraph 9, Schedule 18

Defined Term:	Section/Schedule:	Applies to:
“the electronic communications code”	106(1)	Part 2, Chapter 1
	151(1)	Part 2, Chapter 1
	Paragraph 17(7), Schedule 18	Paragraph 17, Schedule 18
	Paragraph 18(9), Schedule 18	Paragraph 18, Schedule 18
“electronic communications code”	Paragraph 1(1), Schedule 17	Schedule 17
	Paragraph 17(7), Schedule 18	Paragraph 17, Schedule 18
“electronic communications code network”	Paragraph 1(1), Schedule 17	Schedule 17
“electronic communications code operator”	Paragraph 1(1), Schedule 17	Schedule 17
“electronic communications network”	32(1)	the Act
	405(1)	the Act
	Paragraph 1(1), Schedule 17	Schedule 17
“electronic communications service”	32(2)	the Act
	405(1)	the Act
	Paragraph 1(1), Schedule 17	Schedule 17
“electronic programme guide”	16(13)	Section 16
	74(3)	Section 74
	232(6)	Section 232
	303(13)	Section 303
	310(8)	Section 310
	311(2)	Section 311
“eligible person”	220(4)	Section 220
“enactment”	405(1)	the Act
“the enactments relating to broadcasting”	23(5)	Section 23
	407(5)	Section 407
“enactments relating to the management of the radio spectrum”	405(1)	the Act
“end-to-end connectivity”	74(3)	Section 74
“end-user”	151(1)	Part 2, Chapter 1
	272(9)	Section 272
	Paragraph 5(10), Schedule 12	Paragraph 5(8), Schedule 12
“enforcement authority”	120 (15)	Section 120
“enforcement powers”	Paragraph 13(6), Schedule 18	Paragraph 13, Schedule 18
“European Court”	Paragraph 6(9), Schedule 11	Paragraph 6, Schedule 11

Defined Term:	Section/Schedule:	Applies to:
“existing licence”	215(1)	Section 215
“the existing licence”	225(8)	Section 225
	221(1)	Section 221
“the existing service”	221(11)	Section 221
“expenditure”	286(7)	Section 286
	288(5)	Section 288
	353(7)	Section 353
“fairness complaint”	Paragraph 49(3), Schedule 18	Paragraph 49, Schedule 18
“financial year”	347(8)	Section 347
	400(8)	Section 400
“the first notional expiry date”	225(7)	Section 225
“the Framework Directive”	4(12)	Section 4
	151(1)	Part 2, Chapter 1
	197(3)	Section 197
	Paragraph 10(7), Schedule 18	Paragraph 10, Schedule 18
“former PTO”	Paragraph 1(1), Schedule 17	Schedule 17
“the former operator”	117(1)	Section 117
“formerly regulated radio service”	251(5)	Section 251
“formerly regulated television service”	240(5)	Section 240
“frequency”	405(1)	the Act
“general condition”	151(1)	Part 2, Chapter 1
“general duties”	3(14)	Section 3
“general multiplex service”	362(1)	Section 362
“gross revenue”	177(11)	Section 177
“guarantor”	Paragraph 18(2), Schedule 18	Paragraph 18, Schedule 18
“hardwired”	93(5)	Section 93
“holder”	405(1)	the Act
“information”	405(1)	the Act
“initial expiry date”	224	Section 224
“initial licensing period”	230(11)	Section 230
“installation”	410(7)	Section 410
“intelligible”	405(1)	the Act
“intended audience”	272(7)	Section 272
	273(7)	Section 273
	274(10)	Section 274
	310(7)	Section 310
	Paragraph 5(8), Schedule 12	Schedule 12

Defined Term:	Section/Schedule:	Applies to:
“interconnection”	151(1) and (2)	Part 2, Chapter 1
“interference”	155(2)	Section 155
	366(10)	Section 366
“intermediary service provider”	120(15)	Section 120
“international meetings about communications”	22(5)	Section 22
“international obligation of the United Kingdom”	405(1)	the Act
“the ITC”	Paragraph 64, Schedule 18	Schedule 18
“land”	Paragraph 5(8), Schedule 4	Paragraph 5, Schedule 4
“lease”	134(8)	Section 134
“leased line”	92(4)	Section 92
“legal proceedings”	187(5)	Section 187
	393(12)	Section 393
“licence period”	228(8)	Section 228
	Paragraph 10, Schedule 9	Schedule 9
	Paragraph 14, Schedule 10	Schedule 10
“licensable service”	206(7)	Section 206
“licensed public service channel”	362(1)	Part 3
“licensed service”	316(4)	Section 316
	337(9)	Section 337
“licensed television service”	272(7)	Section 272
	273(7)	Section 273
	274(10)	Section 274
“licensing period”	228(8)	Section 228
	229(6)	Section 229
	230(11)	Section 230
“listed provision”	406(9)	Section 406
“LLU notification”	Paragraph 8(4), Schedule 18	Paragraph 8, Schedule 18
“local authority”	148(3)	Section 148
“local Channel 3 service”	287(8)	Section 287
“local digital sound programme licence”	362(1)	Part 3
“local digital sound programme service”	362(1)	Part 3
“local enactment”	406(8)	Section 406
“locally-made”	314(7)	Section 314
“local material”	314(7)	Section 314
“local programme”	287(8)	Section 287
“local radio multiplex licence”	362(1)	Part 3
“local radio multiplex service”	362(1)	Part 3
“local radio service”	320(7)	Section 320

Defined Term:	Section/Schedule:	Applies to:
“local sound broadcasting licence”	362(1)	Section 362
“local sound broadcasting service”	362(1)	Part 3
“the M25 area”	362(1)	Part 3
“the main service”	263(3)	Section 263
“market area”	83(6)	Section 83
“market power determination”	151(1)	Part 2, Chapter 1
“Minister of the Crown”	336(9)	Section 336
“misuse”	151(1)	Part 2, Chapter 1
“modification”	405(1)	the Act
“multiplex service”	175(6)	Section 175
	233(9)	Section 233
	248(9)	Section 248
	330(3)	Section 330
	331(6)	Section 331
	332(10)	Section 332
	360(9)	Section 360
“must-provide service”	274(10)	Section 274
“national Channel 3 service”	362(1)	Part 3
“national digital sound programme service”	362(1)	Part 3
“national radio multiplex licence”	362(1)	Section 362
“national radio multiplex service”	362(1)	Part 3
“national radio service”	320(7)	Section 320
	333(6)	Section 333
“national sound broadcasting licence”	253(13)	Section 253
“the National Telephone Numbering Plan”	56(1)	the Act
“network access”	4(12)	Section 4
	151(1) and (3)	Part 2, Chapter 1
	197(1)	Part 2, Chapter 3
“network access question”	105(6)	Section 105
“networking arrangements”	362(1)	Section 362
“networks and services functions”	408(7)	Section 408
“news”	318(8)	Section 318
“non-communications services”	77(9)	Section 77
“non-representational images”	362(7)	Section 362
“notification”	394(9)	Section 394
“the notified misuser”	129(1)	Section 129
	130(1)	Section 130
“the notified person”	139(1)	Section 139
“the notified charge payer”	41(1)	Section 41
“the notified provider”	36(1)	Section 36
	37(1)	Section 37

Defined Term:	Section/Schedule:	Applies to:
	95(1)	Section 95
	96(1)	Section 96
	111(1)	Section 111
	112(1)	Section 112
“number”	56(10)	Sections 56 and 63
“numbering conditions”	60(7)	Section 60
	61(9)	Section 61
“OFCOM”	1(1)	the Act
	405(1)	the Act
“OFCOM's standards code”	362(1)	Part 3
“operator”	Paragraph 1(1), Schedule 17	Schedule 17
“the operator”	114(1)	Section 114
	Paragraph 18(1), Schedule 18	Paragraph 18, Schedule 18
“the operator's network”	Paragraph 1, Schedule 4	Schedule 4
“the operator's system”	Paragraph 18(1), Schedule 18	Paragraph 18, Schedule 18
“original production”	351(10)	Section 351
	353(7)	Section 353
“other member State”	405(1)	the Act
“participant”	362(6)	Section 362(1)
“peak viewing time”	278(10)	Section 278
	279(5)	Section 279
	287(8)	Section 287
	351(10)	Section 351
	353(7)	Section 353
	Paragraph 8(11), Schedule 12	Paragraph 8, Schedule 12
	Paragraph 9(8), Schedule 12	Paragraph 9, Schedule 12
“the period under review”	227(8)	Section 227
“persistent” and “persistently”	151(1)	Part 2, Chapter 1
“pre-commencement licence”	Paragraph 8(5), Schedule 14	Paragraph 8(5), Schedule 14
“the person in contravention”	Paragraph 14(1), Schedule 14	Paragraph 14, Schedule 14
“pre-commencement regulator”	405(1)	the Act
“pre-transfer licence”	253(13)	Section 253
“pre-transfer local licence”	253(13)	Section 253
	Paragraph 44(4), Schedule 18	Paragraph 44, Schedule 18
“pre-transfer national licence”	253(13)	Section 253

Defined Term:	Section/Schedule:	Applies to:
	Paragraph 44(4), Schedule 18	Paragraph 44, Schedule 18
“premises”	233(9)	Section 233
	248(9)	Section 248
“premium rate service”	151(1)	Part 2, Chapter 1
“price control matter”	193(10)	Section 193
“primary functions”	Paragraph 10, Schedule 9	Schedule 9
“privileged supplier condition”	151(1)	Part 2, Chapter 1
“programme”	204(10)	Section 204
	277(13)	Section 277
	278(10)	Section 278
	286(7)	Section 286
	287(8)	Section 287
	288(5)	Section 288
	303(13)	Section 303
	309(6)	Section 309
	405(1)	the Act
	Paragraph 7(13), Schedule 12	Paragraph 7, Schedule 12
	Paragraph 8(11), Schedule 12	Paragraph 8, Schedule 12
“programme service”	321(8)	Section 321
	405(1)	the Act
“programming budget”	277(13)	Section 277
	Paragraph 1(14), Schedule 12	Paragraph 1, Schedule 12
	Paragraph 7(13), Schedule 12	Paragraph 7, Schedule 12
“promptness standards”	9(7)	Section 9
“protected programme service”	75(3)	Section 75
“provide”	405(1)	the Act
“provider”	151(1)	Part 2, Chapter 1
“provision”	362(1)	Part 3
“the provision of premium rate services”	Paragraph 9(16), Schedule 18	Paragraph 9, Schedule 18
“public communications provider”	151(1)	Part 2, Chapter 1
“public digital service”	Paragraph 5(8), Schedule 12	Paragraph 5, Schedule 12
“public electronic communications network”	151(1)	Part 2, Chapter 1
	397(2)	Section 397
	Paragraph 1(1), Schedule 17	Schedule 17
“public electronic communications service”	151(1)	Part 2, Chapter 1

Defined Term:	Section/Schedule:	Applies to:
	272(9)	Section 272
	Paragraph 5(10), Schedule 12	Paragraph 5, Schedule 12
	Paragraph 1(1), Schedule 17	Schedule 17
“public service broadcaster”	271(8)	Section 271
“public services”	207(9)	Section 207
“the public teletext provider”	362(1)	Part 3
“the public teletext service”	362(1)	Part 3
“purposes of public service television broadcasting in the United Kingdom”	405(1)	The Act
“qualified auditor”	67(9)	Section 67
	77(9)	Section 77
	91(8)	Section 91
“qualifying revenue”	215(12)	Section 215
	217(7)	Section 217
	221(12)	Section 21
“qualifying service”	362(1)	Part 3
“racial group”	27(5)	Section 27
	337(9)	Section 337
	Paragraph 23(6), Schedule 12	Paragraph 23, Schedule 12
“radio licensable content service”	362(1)	Part 3
“radio multiplex service”	362(1)	Part 3
“radio programme service”	362(1)	Part 3
“the radio transfer date”	405(1)	the Act
“the recipient”	395(1)	Section 395
“referendum campaign broadcast”	333(6)	Section 333
	Paragraph 18(7), Schedule 12	Paragraph 18, Schedule 12
“regional Channel 3 licence”	362(1)	Part 3
“regional Channel 3 providers”	292(9)	Section 292
“regional Channel 3 service”	362(1)	Part 3
“regional programme”	286(7)	Section 286
	287(8)	Section 287
	351(10)	Section 351
	Paragraph 7(5), Schedule 11	Paragraph 7, Schedule 11
“regional news programme”	287(7)	Section 287
“regulatory authorities”	151(1) and (5)	Part 2, Chapter 1
	197(1)	Part 2, Chapter 3
“regulatory international standards”	151(1)	Part 2, Chapter 1

Defined Term:	Section/Schedule:	Applies to:
“relevant amount of gross revenue”	177(1)	Section 177
“relevant ancillary service”	232(6)	Section 232
“relevant business”	97(5)	Section 97
“relevant change of control”	351(10)	Section 351
	353(7)	Section 353
“relevant connection facility”	90(6)	Section 90
“relevant date”	305	Section 305
“the relevant date”	356(6)	Section 356
“relevant electronic communications network”	134(8)	Section 134
“relevant existing licence”	240(5)	Section 240
	251(5)	Section 251
“the relevant facilities”	87(12)	Section 87
“relevant independent radio services”	312(5)	Section 312
“relevant international obligations”	Paragraph 21(4), Schedule 12	Paragraph 21, Schedule 12
“relevant international obligations of the United Kingdom”	335(2)	Section 335
“relevant licence”	229(6)	Section 229
	324(12)	Section 324
“relevant licence period”	Paragraph 10, Schedule 9	Schedule 9
“the relevant market”	91(1)	Section 91
“relevant markets”	3(14)	Section 3(15)
“the relevant multiplex”	Paragraph 12(4), Schedule 14	Paragraph 12, Schedule 14
“a relevant national newspaper proprietor”	Paragraph 13(2), Schedule 14	Paragraph 13, Schedule 14
“the relevant network”	87(12)	Section 87
“relevant offence”	Paragraph 1(2), Schedule 6	Schedule 6
“relevant officer”	Paragraph 13, Schedule 6	Schedule 6
“relevant period”	97(5)	Section 97
	237(3)	Section 237
“the relevant person”	50(8)	Section 50
“the relevant provider”	121(3)	Section 121
	122(5)	Section 122
	132(1)	Section 132
“relevant provision of this Act”	409(4)	Section 409
“relevant provisions”	60(7)	Section 60
“relevant public broadcasting service”	224(9)	Section 224
“relevant public service broadcaster”	243(7)	Section 243
“relevant regulatory authorities”	83(6)	Section 83
“relevant revenue”	400(8)	Section 400

Defined Term:	Section/Schedule:	Applies to:
“the relevant service”	120(9)	Part 2, Chapter 1
“the relevant six months”	Paragraph 3(6), Schedule 14	Sub-paragraphs (4) and (5), Paragraph 3, Schedule 14
“relevant sound service”	258(9)	Section 258(2)
“relevant television service”	241(9)	Section 241
“the relevant transfer date”	Paragraph 51(5), Schedule 18	Paragraph 51, Schedule 18
“the relevant year”	41(9)	Section 41
“renewal period”	217(7)	Section 217
	223(4)	Section 223
“request to be tried”	Paragraph 7(5), Schedule 6	Schedule 6
“repeated contravention”	173(1)	Section 173
“representation”	405(1)	the Act
“the representations period”	82(4)	Section 82
“restricted television service”	362(1)	Part 3
“S4C”	362(1)	Part 3
“S4C company”	362(1)	Part 3
“S4C Digital”	362(1)	Part 3
“satellite television service”	273(7)	Section 273
	Paragraph 5(8), Schedule 12	Schedule 12
“Schedule 2 public operator”	Paragraph 14(4), Schedule 18	Paragraph 14, Schedule 18
“schools programmes”	296(12)	Section 296
“the second notional expiry date”	225(7)	Section 225
“service interoperability”	4(12)	Section 4
	151(1)	Part 2, Chapter 1
“services market”	151(1)	Part 2, Chapter 1
“signal”	10(6)	Section 10
	32(10)	Section 32
“significant market power”	151(1)	Part 2, Chapter 1
“simulcast radio service”	362(1)	Part 3
“SMP apparatus condition”	Paragraph 9(16), Schedule 18	Paragraph 9 Schedule 18
“SMP condition”	151(1)	Part 2, Chapter 1
	Paragraph 9(16), Schedule 18	Paragraph 9, Schedule 18
“sound broadcasting service”	362(1)	Part 3
“sound service”	205(9)	Section 205
“special or exclusive rights”	77(9)	Section 77
“spectrum functions”	408(8)	Section 408

Defined Term:	Section/Schedule:	Applies to:
“standards objectives”	362(1)	Part 3
“stations for wireless telegraphy”	174(8)	Section 174
	Paragraph 8, Schedule 5	Schedule 5
“subordinate legislation”	405(1)	the Act
“subsequent notional expiry date”	225(7)	Section 225
“subtitling”	362(1)	Part 3
“tariff”	68(8)	Section 68
“the telecommunications code”	Paragraph 18(9), Schedule 18	Paragraph 18, Schedule 18
“telephone number”	151(1)	Part 2, Chapter 1
“telephone numbers”	1(8)	Section 1
“television and radio services”	405(1)	the Act
“television broadcasting service”	362(1)	Part 3
“television licensable content service”	232(1)	Part 3
	362(1)	Part 3
“television multiplex service”	362(1)	Part 3
“television or radio broadcasting”	22(7)	Section 22
“television programme”	405(1)	the Act
“television programme service”	362(1)	Part 3
“television receiver”	368(1)	Part 4
“the television transfer date”	405(1)	the Act
“the Television without Frontiers Directive”	362(1)	Part 3
“tender notice”	216(13)	Section 216
	222(13)	Section 222
	225(7)	Section 224
“the territorial sea”	410(7)	Section 410
“text service”	362(1)	Part 3
“the threshold number”	337(9)	Section 337
“the transfer date”	Paragraph 51(6), Schedule 18	Paragraph 51, Schedule 18
“the transitional period”	408(6)	Section 408
“transfer scheme”	Paragraph 6, Schedule 2	Schedule 2
“transparency objectives”	Paragraph 10, Schedule 9	Schedule 9
“the Tribunal”	197(1)	Part 2, Chapter 3
	Paragraph 15, Schedule 11	Schedule 11
“Tribunal rules”	197(1)	Part 2, Chapter 3
	Paragraph 15, Schedule 11	Schedule 11
“TV licence”	364(1)	Section 363
	405(1)	the Act

Defined Term:	Section/Schedule:	Applies to:
“the United Kingdom Plan for Frequency Authorisation”	153(1)	the Act
“universal service condition”	151(1)	Part 2, Chapter 1
“the Universal Service Directive”	151(1)	Part 2, Chapter 1
	Paragraph 9(16), Schedule 18	Paragraph 9, Schedule 18
“the universal service order”	65(1)	Sections 65 and 67
	151(1)	Part 2, Chapter 1
“vehicle”	233(9)	Section 233
	248(9)	Section 248
	366(10)	Section 366
“the Welsh Authority”	405(1)	the Act
“wireless telegraphy”	405(1)	the Act
“wireless telegraphy licence”	405(1)	the Act

APPENDIX 2

This table identifies which sections of the Communications Act implement which Articles of the four Directives set out below.

References in this table to:–

FD = Framework Directive;

AuD = Authorisation Directive;

AcD = Access Directive; and

USD = Universal Service Directive.

Section	Article(s) implemented
943. Part 1 — Functions of OFCOM	
Section 4 — Duties for the purpose of fulfilling Community obligations	Article 7(1) and (2) of FD Article 8 of FD Articles 17(2) & 18 of FD Article 20(3) of FD Article 5(1) of AcD Article 7(3) of AuD
Section 16 — Consumer consultation	Article 33(1) of USD
Section 24 — Provision of information to the Secretary of State	Article 25 of FD Article 16 of AuD Articles 15(2) and 17 of AcD Article 36(3) of USD
Section 25 — Community requirement to provide information	Article 5(2) of FD Article 15 of AcD
Section 26 — Publication of information and advice for consumers etc.	Article 5(4) and (5) of FD Article 15(1) of AuD

Section	Article(s) implemented
	Articles 11(2) & 15(1) of AcD Article 21(2) of USD
Part 2 — Networks, Services and the Radio Spectrum	
Chapter 1 — Electronic communications networks and services	
Section 32 — Meaning of electronic communications networks and services	
ss.(1)	Article 2(a) of FD
ss.(2)	Article 2(c) of FD
ss.(3)	Article 2(e) of FD
ss.(4)(a)	Article 2(m) of FD
ss.(7)	Article 2(c) of FD
Section 33 — Advance notification to OFCOM	Articles 3(2) and (3) and 6(1) of AuD Condition 10 of Part A of Annex to AuD
Section 34 — Designations and requirements for the purposes of s.33	Article 6(1) of AuD
Section 35 — Notification of contraventions of s. 33	Article 10(2) of AuD
Section 36 — Enforcement notification for contravention of s. 33	Article 10(2) & (3) of AuD
Section 37 — Penalties for contravention of s. 33	Article 10(2) & (3) of AuD
Sections 38 & 39 — Fixing of charges	Articles 6(1), 12 and 13 of AuD Condition 2 of Part A of Annex to AuD
Section 40 — Notification of non-payment of charges	Article 10(2) of AuD
Section 41 — Penalties for non-payment of charges	Article 10(2) & (3) of AuD
Sections 42 & 43 — Suspending service provision for non-payment and enforcement of directions	Article 10(2) & (5) of AuD
Section 44 — Duty of OFCOM to keep publicly accessible register	Article 3(3) of AuD
Section 45 — Power of OFCOM to set conditions	
ss. (3)	Article 6(1) and Part A of the Annex to the AuD Article 4(1) and 4(3) of AcD
ss.(4)	Article 6(2) of AuD and Articles 3 to 7 and 9 to 11 of, and Part A of Annex I to, USD
ss.(5)	Article 6(2) of AuD and Articles 5(1) and (2) and 6 of AcD
ss.(6)	Article 13 of FD
ss. (7) and (8)	Article 6(2) of AuD and Articles 8 to 13 of AcD and Articles 17 to 19 of USD and Article 16(2) of FD

Section	Article(s) implemented
Section 46 — Persons to whom conditions may apply	
ss.(2)	Articles 2(a) and 6(1) of the AuD
ss.(3)	Article 6(2) of AuD Article 13 of FD
ss.(4)	Article 13 of FD
ss.(5)	Article 8 of USD and Article 6(2) of AuD
ss.(6)	Article 5(1)(a) of AcD and 6(2) of AuD
ss.(7)	Article 16(4) of FD, Article 8(2) of AcD, Article 6(2) of AuD and Articles 17 to 19 of USD
ss. (8)	Article 8(2) of AcD, Article 16(4) of FD and Articles 17 to 19 of USD
Section 47 — Test for setting or modifying conditions	Articles 6(1) and 14(1) of AuD Articles 5(3) and 8(4) of AcD Articles 3(2), 9(5) and 17(2) of USD
Section 48 — Procedure for setting, modifying and revoking conditions	Article 6 of FD Article 14(1) of AuD, Article 33 of USD and Articles 5(3), (6) and 8(4) of AcD
ss. (1) & (6)	Article 15(1) AcD
ss.(3)	Article 6(3) of AcD
ss.(5)	Article 7(5) of FD
Section 49 — Directions and approvals for the purposes of a s.45 condition	Article 6 and 7 of FD
Section 50 — Delivery of copies of notifications etc.	Article 15(2) of AcD
ss. (2) to (6)	Articles 8(5) and 16(2) of AcD and 36(2) of USD
ss.(2)	
ss.(3)	Article 7(3) of FD
Section 51 — Matters to which general conditions may relate	Article 6(1) of, and Part A of the Annex to, AuD
ss. (1)(a)	Condition 8 of Part A of the Annex to the AuD and Articles 20–22, 25, 26 & 29, Part B of Annex I, Annex II and Annex III of the USD
ss. (1)(b) and ss.(4)	Article 4(2) of, and conditions 3 and 14 of Part A of the Annex to, the AuD and Articles 4(1) and 4(3) of AcD
ss. (1)(c) and ss.(5)	Condition 15 of Part A of the Annex to the AuD and Article 23 of USD
ss. (1)(d)	Condition 1 of Part A of the Annex to the AuD and Article 13(4) of USD
ss. (1)(e)	Condition 12 of Part A of the Annex to the AuD and Article 23 of USD
ss. (1)(f)	Condition 13 of Part A of the Annex to the AuD
ss. (1)(g)	Condition 18 of Part A of the Annex to the AuD and Article 17(2) of FD
ss.(2)	Article 2 of USD — definition of “publicly available telephone service”
ss.(3)	Article 2(a) of AuD
Sections 52 to 55 — General conditions: customer interests	Article 34 of USD and Part A of Annex to AuD Article 6(1) of, and condition 8 of Part A of the Annex to, the AuD

Section	Article(s) implemented
Section 56 — The National Telephone Numbering Plan.	Article 10(3) of FD and Article 27 of USD
Section 57 — Conditions to secure access to telephone numbers	Article 6(1) of, and condition 4 of Part A of the Annex to, the AuD, Article 27 & 28 of USD and Article 10(1) of FD
Section 58 — Conditions about allocation and adoption of numbers	Article 10(1) of the FD, Articles 5(2) and 6(1) of the AuD
ss. (1) and (2)	Article 13 of and, conditions 1, 2, 3, 6, 7, 8 & 9 of Part C of the Annex to, the AuD and Article 30 of USD
ss. (1) and (3)	Condition 4 of Part C of the Annex to AuD
ss. (3)	Article 25(2) of USD
ss. (4)	Articles 5(3) and (4) of AuD
ss. (5) and (6)	Article 13 of AuD
Section 60 — Modification of documents referred to in numbering conditions	Article 14(1) of the AuD
Section 61(3) — Withdrawal of telephone number allocations	Article 10(2) and 10(5) of the AuD
Section 63 — General duty as to telephone numbering functions	Article 10(2) of FD and condition 2 of Part C of the Annex to the AuD
Section 64 — Must-carry obligations	Article 6(1) of, and condition 6 of Part A of the Annex to, the AuD and Article 31 of the USD
Section 65 — Obligations to be secured by universal service conditions	Articles 3 to 7 and 9 to 11 of and Part A of Annex I to USD, and Article 2(j) of FD
Section 66 — Designation of universal service providers	Article 8 of USD and Article 4(2) of AuD
ss. (8)	Article 36(1) of USD
Section 67 — Subject-matter of universal service conditions	Article 6(2) of AuD and Part A of Annex I to USD
ss. (1)	Articles 3 to 7 and 9 to 11 of USD
ss. (3) to (9)	Article 11 and Annex III of USD
Section 68 — Tariffs etc. for universal services	
ss. (1) and (2)	Article 9 of USD
ss. (3) and (4)	Article 10 of USD
Section 69 — Directories and directory enquiry facilities	Article 5(3) of USD
Section 70 — Review of compliance costs	Article 12 of USD and Annex IV of USD
Section 71 — Sharing of burden of universal service obligations	Article 13 of USD
Section 72 — Report on sharing mechanism	Article 14(2) of USD
Section 73 — Permitted subject-matter of access-related conditions	Article 6(2) of AuD
ss. (2)	Article 5(1) of and Part II of Annex I to AcD
ss. (3)	Article 12(2) of FD
ss. (4)	Article 5(2) of AcD
ss. (5)	Article 6 of and Part I of Annex I to AcD

Section	Article(s) implemented
Section 74 — Specific types of access-related conditions	
ss. (1)	Article 5(1)(a) of AcD
ss. (2)	Article 5(1)(b) of, and Part II of Annex I to, AcD and Article 18 of FD
ss. (3) and (4) — Definition of application programme interface	Article 2(p) of FD
Section 75 — Conditional access systems and access to digital services	
ss. (1)	Article 5(2) of AcD and Articles 17(2) of FD
ss. (2)	Article 6 of and Part 1 of Annex I to AcD
ss. (3)	
Definition of conditional access system	Article 2(f) of FD
Section 76 — Modification and revocation of conditions imposed under s.75	Article 6(3) of AcD
Section 77 — Imposition of privileged supplier conditions	Article 13 of FD
Section 78 — Circumstances required for the setting of SMP conditions	Article 14 of and Annex II to FD
Section 79 — Market power determinations	Articles 15 and 16 of FD
Section 80 — Proposals for identifying markets and for market power determinations	Articles 6, 7 and 16(1) of FD
Section 81 — Delivery of copies of notifications under ss. 79 and 80	Article 16(2) of AcD and Article 36(2) of USD and Article 7(5) of FD
ss.(2)	Article 7(3) of FD
ss.(3)	
Section 82 — European Commission's powers in respect of proposals	Article 7(4) of FD
Section 83 — Special rules for transnational markets	Articles 2(b), 15(4) and 16(5) of FD
Section 84 — Review of services market identifications and determinations	
ss. (2) and (3)	Article 16(1) of FD, 7(3) of AcD and 16(3) of USD
ss. (4)	Article 16(3) of FD and Article 18(2) of USD
Section 87 — Conditions about network access etc.	Article 16(4) of FD Article 6(2) of AuD
ss.(1) and (2)	Article 8 of AcD
ss (3) and (5)	Article 12(1) of AcD
ss. (4)	Article 12(2) of AcD
ss. (6)(a)	Article 10 of AcD
ss.(6)(b)	Article 9(1) and 9(4) and Annex II of AcD
ss.(6)(c), (d) and (e)	Article 9(2) and 9(4) and Annex II of AcD
ss. (7) and (8)	Article 11 of AcD
ss. (9), (10) and (11)	Article 13 of AcD

Section	Article(s) implemented
Section 88 — Conditions about network access pricing etc.	Articles 8 and 13 of AcD, Article 6(2) of AuD and Article 16(4) of FD
Section 89 — Conditions about network access in exceptional circumstances	Article 8 of AcD, Article 6(2) of AuD and Article 16(4) of FD
Section 90 — Conditions about carrier selection and pre-selection	Article 19 of USD, Article 6(2) of AuD and Article 16(4) of FD
Section 91 — Conditions about regulation of services etc. for end-users	Article 17 of USD, Article 6(2) of AuD and Article 16(4) of FD
Section 92 — Conditions about leased lines	Article 18 of and Annex VII to USD, Article 6(2) of AuD and Article 16(4) of FD
Section 94 — Notification of contravention of condition	Article 10(2) of AuD and Article 11(6) of USD
Section 95 — Enforcement notification for contravention of conditions	Article 10(3) of AuD and Article 11(6) of USD
Section 96 — Penalties for contravention of conditions	Article 10(3) of AuD and Article 11(6) of USD
Section 98 — Power to deal with urgent cases	Article 10(6) of AuD and Article 11(6) of USD
Section 100 — Suspending service provision for contraventions of conditions	Article 10(5) of AuD and Article 11(6) of USD
Section 102 and 103 — Procedure and enforcement of Directions	Article 10(2) & (5) of AuD and Article 11(6) of USD
Section 105 — Consideration and determination of network access questions	Article 5(4) of AcD
Sections 106 to 109 and Schedule 3 — Electronic communications code	Articles 11 and 12(1) of FD and Articles 4(1) and 6(1) of, and condition 5 of Part A of the Annex to, the AuD
Sections 106, 107, 109 and 115 — Application, modification and revocation of electronic communications code	Article 6 of FD and Article 14(1) of AuD
Section 110 — Enforcement of restrictions and conditions	Article 10(2) of AuD
Section 111 — Enforcement notification for contravention of code restrictions	Article 10(2) & (3) of AuD
Section 112 — Penalties for contravention of code restrictions	Article 10(2) & (3) of AuD
Section 113 — Suspension of application of code	Articles 10(2), (5) and 14(2) of AuD
Section 114 — Procedure for directions under s. 113	Article 10(2) of AuD
Sections 132 & 133 — Powers to deal with emergencies	These provisions are permitted by Article 3AuD
Sections — 135 to 137 — Information provisions	Article 5 of FD, Articles 6(1), 10(1) and 11 of, and condition 10 of Part A of the Annex to, the AuD, Article 11(2) of AcD and Articles 11, 21 and 22 of (in so far as those articles necessitate the provision of information) USD
Section 138 — Notification of contravention of information requirements	Article 10(2) of AuD

Section	Article(s) implemented
Section 139 — Penalties for contravention of information requirements	Article 10(2), (3) and (4) of AuD
Section 140 — Suspending service provision for information contraventions	Article 10(2) & (5) of AuD
Sections 142 & 143 — Procedure for and enforcement of directions under ss. 140 and 141	Article 10(2) & (5) of AuD
Section 144 — Offences in connection with information requirements	Article 10(2) & (3) of AuD
Section 146 — Provision of information by OFCOM	Article 9 of AuD
Section 151 — Interpretation of Chapter 1	
ss.(1)Def of public electronic communications network	Article 2(d) of FD
Defs of FD, AcD and USD	Article 2(1) of FD
Def of end-user	Article 2(n) of FD
ss.(2) — interconnection	Article 2(b) of AcD
ss.(3) & (4) — network access	Article 2(a) of AcD
ss.(5) — regulatory authorities	Article 2(g) of FD
Chapter 2 — Spectrum Use	
Section 153 — United Kingdom Plan for Frequency Authorisation	Article 5(3) of AuD
Section 154 — Duties of OFCOM when carrying out spectrum functions	Article 9(1) of FD
Section 158 — Special duty in relation to television multiplexes	Condition 1 of Part B of the Annex to the AuD
Section 164 — Limitations on authorised spectrum use	Article 7 of AuD
Section 165 — Terms etc. of wireless telegraphy licences (new subsection (2C) inserted into WTA 1949s. 1 only)	Article 6(4) of AuD
Section 166 — Exemption from need for wireless telegraphy licence	Article 5(1) of AuD
Section 168 — Spectrum trading	Article 9(3) and (4) of FD and Condition 5 of Part B of the Annex to AuD
Section 169 — Variation and revocation of wireless telegraphy licences	Article 10(2), (5) and (6) and 14(1) of AuD
Section 171 — Information requirements in relation to wireless telegraphy licences	Article 11(1)(e) and (2) of the AuD
Section 172 — Contraventions of conditions for use of wireless telegraphy	Article 10(2) of AuD
Section 173 — Meaning of “repeated contravention” in s. 172	Article 10(2) & (5) of AuD
Section 174 — Procedure for prosecutions of wireless telegraphy offences	Articles 10(2), (3) and (6) of AuD

Section	Article(s) implemented
Section 183 — Modification of definition of “undue interference”	Article 2(2)(b) of, and condition 3 of Part B of the Annex to the AuD
Chapter 3 — Disputes and Appeals	
Section 185 — Reference of disputes to OFCOM	Article 20(1) of FD
Section 186 — Action by OFCOM on dispute reference	Article 20(2) of FD
Section 187 — Legal proceedings about referred disputes	Article 20(5) of FD
Section 188 — Procedure for resolving disputes	Article 20(1) and (4) of FD
Section 189 — Disputes involving other member States	Article 21 of FD
Section 191 — OFCOM's power to require information in connection with dispute	Articles 5 & 20(1) of FD
Sections 192 to 196 and Schedule 8 — Appeals	Articles 4 and 11(3) of FD and 10(7) of AuD
Sections 310 & 311 — Regulation of electronic programme guides	Permitted by Article 6(4) of AcD
Section 393 — General restrictions on disclosure of information	Article 3(5) of FD
Section 403 — Regulations and orders made by OFCOM	Articles 14(1) and Article 33 of USD and Article 6 of FD
Schedule 17 — Minor and consequential amendments	
Paragraph 8(6)	Article 5(3) & 7(4) of AuD
Paragraph 8(10)	Article 6(1) of AuD
Schedule 18 — Transitional Provisions	
Paragraph 7	Article 8 of USD
944. Paragraphs 8 & 9	Article 27 of FD
945. Paragraph 9	Article 27 of FD, Article 7(1) of AcD and Article 16(1) of USD
946. Paragraph 10	Article 16(2) of FD, Article 7(3) of AcD and Article 16(3) of USD
947. Paragraph 13	Article 2(1) of FD

APPENDIX 3

The four transposition tables set out below identify how the requirements of each of the four Communications Directives have been dealt with in the Communications Act.

DIRECTIVE 2002/21/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON A COMMON REGULATORY FRAMEWORK FOR ELECTRONIC COMMUNICATIONS NETWORKS AND SERVICES

THE FRAMEWORK DIRECTIVE

Article Number	Section Number (s)
CHAPTER I	SCOPE, AIM AND DEFINITIONS
Article 1	Scope and aim
(1) to (3)	No implementation required. Identifies aim and scope of the Directive
(4)	Directive 1999/5/EC implemented separately by S.I. 2000/730.
Article 2	Definitions
(a)	s. 32(1)
(b)	s. 83
(c)	s. 32(2) & (7)
(d)	s. 151(1)
(e)	s. 32(3)
(f)	s. 75(3)
(g)	s. 151(1) & (5)
(h)	Not used in Act
(i)	This meaning not used in Act
(j)	s. 65
(k)	Not used in Act
(l)	s. 151(1) & paragraph 13(8) of Sch. 18
(m)	s. 32(4)(a)
(n)	s. 151(1)
(o)	948. Not used in Act
(p)	s. 74(3) & (4)
CHAPTER II	NATIONAL REGULATORY AUTHORITIES
Article 3	National regulatory authorities
(1)	949. OFCOM Act 2002
(2)	OFCOM Act 2002section 1 and paragraphs 1 and 17 of the Schedule
(3)	As above
(4)	All task set out in various enactments, which are all published
(5)	s. 393 andPart 9 of the Enterprise Act 2002
(6)	To be done administratively
Article 4	Right of appeal
(1)	s. 192 to 196 and Schedule 8
(2)	Does not apply: appeal body in Act is judicial
Article 5	Provision of information
(1)	s. 135 to 137 & 191
(2)	s. 25
(3)	Nothing additional required, covered by common law breach of confidence
(4)	s. 26
(5)	s. 26(6)
Article 6	Consultation and transparency mechanism

Article Number	Section Number (s)
	There are a number of provisions in the Act which require consultation including, sections 48, 49, 80, 106, 107, 109, 115 and 403
Article 7	Consolidating the internal market for electronic communications
(1)	s. 4
(2)	s. 4(4)
(3)	s. 50(3) & (4) and 81(3)
(4)	s. 82
(5)	s. 48(5), 49(9), 50(2), 50(6), 80(6) and 81(2)
(6)	Paragraph 9 of Schedule 18
CHAPTER III	TASKS OF NATIONAL REGULATORY AUTHORITIES
Article 8	Policy objectives and regulatory principles
(1)	s. 4 Technological neutrality — s. 4(6)
(2)	s. 4(3)
(3)	s. 4(4)
(4)	s. 4(5)
Article 9	Management of radio frequencies for electronic communications services
(1)	s. 154
(3)	s. 168
(4)	s. 168
Article 10	Numbering, naming and addressing
(1)	Will be implemented in the conditions set under s. 57 & 58
(2)	s. 63(2)
(3)	950. s. 56
Article 11	Rights of way
(1)	s. 106 to 109 and Schedule 3, plus Schedule 2 to TA 1984 (electronic communications code).
(2)	s. 106 (OFCOM apply code)
(3)	s. 192
Article 12	Co-location and facility sharing
(1)	s. 107(4)(c), 109(2)(d) & paragraph 29 of Sch. 2 to the TA 1984
(2)	s. 73(3)
Article 13	Accounting separation and financial reports
(1)	s. 45(6), 46(3) & (4) and 77
(2)	s. 77(3)(b) & (c)
CHAPTER IV	GENERAL PROVISIONS
Article 14	Undertakings with significant market power
	s. 78
Article 15	Market definition procedure
(1)	Action for European Commission
(2)	Action for European Commission
(3)	s. 79(2), (3) & (7)

Article Number	Section Number (s)
(4)	s. 83
Article 16	Market analysis procedure
(1)	s. 79, 80 and 84(2) & (3), the Electronic Communications (Market Analysis) Regulations 2003 (S.I. 2003/330) and paragraph 10 of Schedule 18
(2)	s. 46(7) & (8), the Electronic Communications (Market Analysis) Regulations 2003 and paragraph 10 of Schedule 18
(3)	s. 84(4)
(4)	s. 46(7) & (8) and 87 to 92
(5)	s. 83
(6)	As above
Article 17	Standardisation
(1)	Action for European Commission
(2)	s. 4(9) & (10), 51(1)(g) and 75(1)
(3)	No immediate action for Member States
(4)	Action for European Commission
(5)	Action for European Commission
(6)	Action for European Commission
(7)	Directive 1999/5/EC implemented separately by S.I. 2000/730.
951. Article 18	Interoperability of digital interactive television services
	s. 4(7), (8), (9) & (10) & 74(2)
Article 19	Harmonisation procedures
	No immediate action for Member States. If action eventually required will be done by issuing of direction under s. 5
Article 20	Dispute resolution between undertakings
(1)	s. 185, 188 & 191
(2)	s. 186
(3)	s. 4
(4)	s. 188
(5)	s. 187
Article 21	Resolution of cross-border disputes
	s. 189
Article 22	Committee
	No requirement on Member States
Article 23	Exchange of information
	No requirement on Member States — action for Commission
Article 24	Publication of information
	This is to be dealt with administratively
Article 25	Review procedures
	s. 24
CHAPTER V	FINAL PROVISIONS
Article 26	Repeal

Article Number	Section Number (s)
	No requirement on Member States
Article 27	Transitional measures
	Schedule 18 paragraph 8 & 9
Article 28	Transposition
Article 29	Entry into force
	No requirement on Member States
Article 30	Addressees
	No requirement on Member States
Annex I	No requirement on Member States
Annex II	s. 78(5)

DIRECTIVE 2002/20/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE AUTHORISATION OF ELECTRONIC COMMUNICATIONS NETWORKS AND SERVICES

THE AUTHORISATION DIRECTIVE

Article Number	Section Number (s)
Article 1	Objective and scope
	No implementation required. Identifies aim of Directive
Article 2	Definitions
(2)(a)	s. 46(2) & 51(3)
(2)(b)	s. 183 & s. 19(5A) of the Wireless Telegraphy Act 1949
Article 3	General authorisation of electronic communications networks and services
(1)	Chapter 1 of Part 2 and s. 132 & 133
(2)	s. 33
(3)	s. 33(5), (6), (7) & (8) and s. 44
Article 4	Minimum list of rights derived from the general authorisation
(1)	s. 106 & 107
(2)	s. 51(1)(b), (4) & 66
Article 5	Rights of use for radio frequencies and numbers
(1)	s. 166 & section 1AA of the Wireless Telegraphy Act 1949
(2)	Will be implemented in the conditions set under section 58
(3)	s. 58(4), 153, Sch. 17 para. 8(6) and section 1D(4A) of the Wireless Telegraphy Act 1949
(4)	Ditto
Article 6	Conditions attached to the general authorisation and to the rights of use for radio frequencies and for numbers and specific obligations
(1)	s. 33 & 34 (notification) s. 38 & 39 (administrative charge) s. 45(3), 46(2), 47, 51, 52, 57, 58 & 64 (general conditions) s. 106 to 107 & 109 (Electronic communications code) s. 135 to 137 (Information provisions)

Article Number	Section Number (s)
	Sch. 17 para 8(10) and section 1D(9) of the Wireless Telegraphy Act 1949 (spectrum)
(2)	s. 45(4), (5), (7) & (8). 46(3), (5), (6) & (7) and s. 67 (universal service conditions) s. 73 (access-related conditions) s. 87 to 92 (SMP services conditions)
(3)	See entry for Part A of Annex
(4)	s. 165 and section 1(2C) of the Wireless Telegraphy Act 1949
Article 7	Procedure for limiting the number of rights of use to be granted for radio frequencies
(1)	s. 164
(2)	s. 164
(3)	s. 4 & 164
(4)	Sch. 17 para 8(6) and section 1D(4B) of the Wireless Telegraphy Act 1949
Article 8	Harmonised assignment of radio frequencies
	Shall be secured if necessary by a direction given under s. 5
Article 9	Declarations to facilitate the exercise of rights to install facilities and rights of interconnection
	s. 146
Article 10	Compliance with the conditions of the general authorisation or of rights of use and with specific obligations
(1)	s. 135 to 137
(2)	s. 35 to 37 (enforcement of advance notification provisions) s. 40 to 43 (enforcement of administrative charge provisions) s. 61(3) (withdrawal of telephone number allocations) s. 94 to 100 & 102 to 103 (enforcement of conditions) s. 110 to 114 (enforcement of restrictions and conditions for which application of electronic communications code subject), s. 138 to 144 (enforcement of information provisions) s. 169 & section 1E of the Wireless Telegraphy Act 1949 and s. 172 to 174 (spectrum enforcement)
(3)	s. 36 & 37, 41, 95 & 96, 111 & 112, 139, 144 & 174
(4)	s. 139
(5)	s. 42 & 43 (administrative charge) s. 61(3) (withdrawal of telephone number allocations) s. 100, 102 & 103 (conditions of entitlement) s. 140, 142 & 143 (information provision) s. 113 (electronic communications code) s. 169 and section 1E of the Wireless Telegraphy Act 1949 and s. 173 (spectrum enforcement)
(6)	s. 98 s. 169 and section 1E of the Wireless Telegraphy Act 1949 and s. 174 (spectrum enforcement)
(7)	s. 192
Article 11	Information required under the general authorisation, for rights of use and for the specific obligations
(1)	s. 135 & s. 171 and section 13A of the Wireless Telegraphy Act 1949

Article Number	Section Number (s)
(2)	s. 135(4) & 171 and section 13A of the Wireless Telegraphy Act 1949
Article 12	Administrative charges
(1)	s. 38 & 39
(2)	s. 38(9) & (10)
Article 13	Fees for rights of use and rights to install facilities
	s. 38(6)(g) s. 58(1)(b), (5) & (6)
Article 14	Amendment of rights and obligations
(1)	s. 47, 48 & 60 s. 106, 107, 109 & 115 s. 169 and section 1E of the Wireless Telegraphy Act 1949
(2)	s. 113
Article 15	Publication of information
	s. 26
Article 16	Review procedures
	s. 24
Article 17	Existing authorisations
	952. Abolishing current regulatory regime and replacing with a new regulatory regime. As such not necessary to bring old regime into line with Directives
Article 18	Transposition
Article 19	Entry into force
	No requirement on Member States
Article 20	Addressees
	No requirement on Member States
Annex	
Part A	Conditions which may be attached to a general authorisation
	s. 45(3), 51 & 52
(1)	s. 51(1)(d)
(2)	s. 38 & 39
(3)	s. 51(1)(b) & (4)
(4)	953. s. 57
(5)	s. 106 to 109, schedule 3 and Schedule 2 to the Telecommunications Act 1984
(6)	s. 64
(7)	This is currently addressed through the UK's implementation of the Telecommunications Data Protection Directive (Directive 97/66/EC) and from the 31 October 2003 will be dealt with by the UK's implementation of the Directive on Privacy and Electronic Communications (Directive 2002/58/EC).
(8)	s. 51(1)(a) & 52
(9)	Not taking up this option to set conditions for this purpose
(10)	s. 33(5) & 135 to 137
(11)	This is enabled through the Regulation of Investigatory Powers Act 2000, in accordance with Directive 97/66/EC and Directive 95/46/EC.

Article Number	Section Number (s)
(12)	s. 51(1)(e) & (7)
(13)	s. 51(1)(f)
(14)	s. 51(1)(b) & (4)
(15)	s. 51(1)(c) & (5)
(16)	This is currently addressed through the UK's implementation of the Telecommunications Data Protection Directive (Directive 97/66/EC) and from the 31 October 2003 will be dealt with by the UK's implementation of the Directive on Privacy and Electronic Communications (Directive 2002/58/EC).
(17)	Exemption Regulations under proviso to section 1(1) of WTA 1949
(18)	s. 51(1)(g)
Part B	Conditions which may be attached to rights of use for radio frequencies
(1)	s. 158
(2)	Wireless Telegraphy Act 1949section 1
(3)	s. 183 & section 19(5) & (5A) of the Wireless Telegraphy Act 1949
(4)	Wireless Telegraphy Act 1949section 1
(5)	s. 168
(6)	Wireless Telegraphy Act 1998sections 1 and 3
(7)	Wireless Telegraphy Act 1949section 1
(8)	Wireless Telegraphy Act 1949section 1
Part C	Conditions which may be attached to rights of use for numbers
(1)	s. 58(1) & (2)
(2)	s. 58(1) & (2) and 63(1)
(3)	s. 58(1) & (2)
(4)	s. 58(1)(d) & (3)
(5)	Option in Directive for maximum duration not taken up in Act
(6)	s. 58(1) & (2)
(7)	s. 58(1) & (2)
(8)	s. 58(1) & (2)
(9)	s. 58(1) & (2)

DIRECTIVE 2002/19/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON ACCESS TO, AND INTERCONNECTION OF, ELECTRONIC COMMUNICATIONS NETWORKS AND ASSOCIATED FACILITIES

THE ACCESS DIRECTIVE

Article Number	Section Number (s)
CHAPTER I	SCOPE, AIM AND DEFINITIONS
Article 1	Scope and aim
	No implementation required. Identifies aim of Directive
Article 2	Definitions
(a)	s. 151(3) & (4)
(b)	s. 151(2)

A r t i c l e Number	Section Number (s)
(d)	Regulation 3 of Advanced Television Services Regulations 2003 (S.I. 2003/1901)
(c) & (e)	Not used in Act
CHAPTER II	GENERAL PROVISIONS
Article 3	General framework for access and interconnection
	Nothing is required to ensure persons not restricted from negotiating access and interconnection
Article 4	Rights and obligations for undertakings
(1)	s. 45(3) & 51(1)(b) & (4)
(2)	Regulation 4 of Advanced Television Service Regulations 2003 (S.I. 2003/1901)
(3)	s. 45(3) & 51(1)(b) & (4)
Article 5	Powers and responsibilities of the national regulatory authorities with regard to access and interconnection
(1)	s. 4(7) & (8) s. 45(5) & 73(2)
(a)	s. 46(6)(a), 73(2) & 74(1)
(b)	s. 73(2) & 74(2)
(2)	s. 45(5), 73(4) & 75(1)
(3)	954. s. 47 to 50
(4)	s. 105
CHAPTER III	OBLIGATIONS ON OPERATORS AND MARKET REVIEW PROCEDURES
Article 6	Conditional access system and other facilities
(1)	s. 45(4), 73(5) & 75(2)
(2)	No action for Member States
(3)	s. 47 to 50 & 76
(4)	s. 310 to 311
Article 7	Review of former obligations for access and interconnection
(1)	Schedule 18, paragraph 9
(2)	No requirement for Member States — action for European Commission
(3)	s. 84(2) & (3) & paragraph 10 of Schedule 18 and the Electronic Communications (Market Analysis) Regulations 2003 (S.I. 2003/330)
Article 8	Imposition, amendment or withdrawal of obligations
(1)	s. 45(7) & (8), 87 to 89
(2)	s. 45(7) & (8), 46(7) & (8)(a) & 87(2)
(3)	s. 46(7) & (8)(b) & 89
(4)	955. s. 47 to 50
(5)	s. 50(2)
Article 9	Obligation of transparency
	s. 45(7) & (8)
(1)	s. 87(6)(b)
(2)	s. 87(6)(c), (d) & (e)
(3)	As above

A r t i c l e Number	Section Number (s)
(4)	956. s. 87(6)(b), (c), (d) & (e)
(5)	Action for Communications Committee
Article 10	Obligation of non-discrimination
	s. 45(7) & (8)
(1)	s. 87(6)(a)
(2)	s. 87(6)(a)
Article 11	Obligation of accounting separation
	s. 45(7) & (8)
(1)	s. 87(7) & (8)
(2)	s. 26 & 135
Article 12	Obligations of access to, and use of, specific network facilities
	s. 45(7) & (8)
(1)	s. 87(3) & (5)
(2)	s. 87(4)
Article 13	Price control and cost accounting obligations
	s. 45(7) & (8)
(1)	87(9) & (10) & 88
(2)	957. s. 88(1)(b) & (4)(a)
(3)	958. s. 87(9)(d), (10) & 88(4)(b)
(4)	959. s. 87(11)
CHAPTER 4	PROCEDURAL PROVISIONS
Article 14	Committee
	No requirement on Member States
Article 15	Publication of, and access to, information
(1)	960. s. 24 to 26 & 48(1) & (6)
(2)	961. s. 24 to 26 & 50(2) to (6)
Article 16	Notification
(1)	This will be dealt with administratively
(2)	962. s. 50(2) & 81(2)
Article 17	Review procedures
	s. 24
Article 18	Transposition
Article 19	Entry into force
	No requirement on Member States
Article 20	Addressees
	No requirement on Member States
Annex I	
Part I	s. 73(5) & 75(2)
Part II	s. 73(2) & 74(2)
Annex II	963. s. 87(6)(b), (c), (d) & (e)

**DIRECTIVE 2002/22/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
ON UNIVERSAL SERVICE AND USERS' RIGHTS RELATING TO ELECTRONIC
COMMUNICATIONS NETWORKS AND SERVICES**

THE UNIVERSAL SERVICE DIRECTIVE

A r t i c l e Number	Section Number (s)
CHAPTER I	SCOPE, AIMS AND DEFINITIONS
Article 1	Scope and aims
	No implementation required. Identifies aim of Directive
Article 2	Definitions
(c)	s. 51(2) The Act does not refer specifically to any of the other terms defined in this Article
CHAPTER 2	UNIVERSAL SERVICE OBLIGATIONS INCLUDING SOCIAL OBLIGATIONS
Article 3	Availability of universal service
(1)	s. 45(4), 65 & 67
(2)	s. 47
Article 4	Provision of access at a fixed location
	s. 45(4), 65 & 67
Article 5	Directory enquiry services and directories
	s. 45(4), 65 & 67
(3)	s. 69
Article 6	Public pay telephones
	s. 45(4), 65 & 67
Article 7	Special measures for disabled users
	s. 45(4), 65 & 67
Article 8	Designation of undertakings
	s. 46(5), 66 and paragraph 7 of Schedule 18 and the Electronic Communications (Universal Service) Regulations 2003 (S.I. 2003/33)
Article 9	Affordability of tariffs
	s. 45(4), 65 & 67
(1)	s. 68(1)
(2)	s. 68(2)
(3)	s. 68(2)
(4)	s. 68(2)
(5)	s. 47
Article 10	Control of expenditure
	s. 45(4), 65 & 67
(1)	s. 68(3) & (4)
Article 11	Quality of service of designated undertakings
	s. 45(4), 65, 67 & 135 to 137

Article Number	Section Number (s)
(1)–(3)	s. 67(3) to (6)
(4)	s. 48(2), 49(4), 67(7)
(6)	s. 67(8) & (9) & 94 to 100 & 102 and 103
Article 12	Costing of universal service obligations
(1)	s. 70
(2)	s. 70(4), (5), (6) & (7)
Article 13	Financing of universal service obligations
(1)	s. 71
(2)	s. 71(5)
(3)	s. 71(6)
(4)	s. 51(1)(d) & 71
Article 14	Transparency
(1)	s. 403
(2)	s. 72
Article 15	Review of the scope of universal service
	No requirement on Member States — action for European Commission
CHAPTER 3	REGULATORY CONTROLS ON UNDERTAKINGS WITH SIGNIFICANT MARKET POWER IN SPECIFIC MARKETS
Article 16	Review of obligations
(1)	Schedule 18 paragraph 9
(2)	No requirement on Member State — action for European Commission
(3)	s. 84(2) & (3) & paragraph 10 of Schedule 18 and the Electronic Communications (Market Analysis) Regulations 2003 (S.I. 2003/330)
Article 17	Regulatory controls on retail services
	s. 45(7) & (8) and 46(7) & (8)
(1)	s. 91
(2)	s. 47
(3)	s. 91(7)
(4)	s. 91(6)
(5)	s. 46(7) & (8)
Article 18	Regulatory controls on the minimum set of leased lines
	s. 45(7) & (8) and 46(7) & (8)
(1)	s. 92
(2)	s. 84(4)
(3)	s. 92(1)(b)
Article 19	Carrier selection and carrier pre-selection
	s. 45(7) & (8) and 46(7) & (8)
(1)	s. 90
(2)	s. 90
(3)	s. 90(4)

A r t i c l e Number	Section Number (s)
CHAPTER 4	END-USER INTERESTS AND RIGHTS
Article 20	Contracts
	s. 51(1)(a)
Article 21	Transparency and publication of information
(1)	s. 51(1)(a) and 135 to 137
(2)	s. 26
Article 22	Quality of service
	s. 51(1)(a) & 135 to 137
Article 23	Integrity of the network
	s. 51(1)(c), (e) & (5)
Article 24	Interoperability of consumer digital television equipment
	Regulations 5 to 8 of and the Schedule to the Advanced Television Services Regulations 2003 (S.I. 2003/1901)
Article 25	Operator assistance and directory enquiry services
	964. s. 51(1)(a) & 58(3)
Article 26	Single European emergency call number
(1)	s. 51(1)(a)
Article 27	European telephone access codes
(1)	s. 56
(2)	s. 57
Article 28	Non-geographic numbers
	s. 57
Article 29	Provision of additional facilities
	s. 51(1)(a) & (b)
Article 30	Number portability
	s. 58(1)(e) & 58(2)(f)
Article 31	“Must carry” obligations
	s. 64
CHAPTER 5	GENERAL AND FINAL PROVISIONS
Article 32	Additional mandatory services
	Option. No current plans to take.
Article 33	Consultation with interested parties
	s. 16, 48, 49 & 403
Article 34	Out-of-court dispute resolution
	s. 52 to 55
Article 35	Technical adjustment
	No requirement on Member States
Article 36	Notification, monitoring and review procedures
(1)	s. 66(8)
(2)	s. 50(2) & 81(2)

A r t i c l e Number	Section Number (s)
(3)	965. s. 24 & 25
Article 37	Committee
	No requirement on Member States
Article 38	Transposition
Article 39	Entry into force
	No requirement on Member States
Article 40	Addressees
	No requirement on Member States
Annex I	
Part A	s. 45(4), 65 & 67
Part B	s. 51(1)(a)
Annex II	s. 51(1)(a)
Annex III	s. 51(1)(a) & 67(3)(c)
Annex IV	s. 70
Annex V	No requirement on Member States
Annex VI	Regulations 5 to 8 of and the Schedule to the Advanced Television Services Regulations 2003 (S.I. 2003/1901)
Annex VII	s. 92

Modifications

Provision	Modification	Notes	Further Information
Pt 1 s. 1	Communications (Isle of Man) Order 2003/3198, art. 6(1)	Modified in relation to the Isle of Man	
	Communications (Isle of Man) Order 2003/3198, Sch. 2 para. 1	Modified in relation to the Isle of Man	
Pt 1 s. 1(4)	Communications (Bailiwick of Guernsey) Order 2003/3195, Sch. 2 para. 3	Modified in relation to the Bailiwick of Guernsey	art. 6
	Communications (Jersey) Order 2003/3197, Sch. 2 para. 2	Modified in relation to the Bailiwick of Jersey	art. 6
Pt 1 s. 1(5)	Communications (Bailiwick of Guernsey) Order 2003/3195, Sch. 2 para. 3	Modified in relation to the Bailiwick of Guernsey	art. 6
	Communications (Jersey) Order 2003/3197, Sch. 2 para. 2	Modified in relation to the Bailiwick of Jersey	art. 6
Pt 1 s. 1(6)	Communications (Bailiwick of Guernsey) Order 2003/3195, Sch. 2 para. 3	Modified in relation to the Bailiwick of Guernsey	art. 6
	Communications (Jersey) Order 2003/3197, Sch. 2 para. 2	Modified in relation to the Bailiwick of Jersey	art. 6
Pt 1 s. 1(7)	Communications (Bailiwick of Guernsey) Order 2003/3195, Sch. 2 para. 3	Modified in relation to the Bailiwick of Guernsey	art. 6
	Communications (Jersey) Order 2003/3197, Sch. 2 para. 2	Modified in relation to the Bailiwick of Jersey	art. 6
Pt 1 s. 2	Communications (Isle of Man) Order 2003/3198, art. 6(1)	Modified in relation to the Isle of Man	
Pt 1 s. 2A	Communications (Isle of Man) Order 2003/3198, art. 6(1)	Modified in relation to the Isle of Man	
Pt 1 s. 2B	Communications (Isle of Man) Order 2003/3198, art. 6(1)	Modified in relation to the Isle of Man	
Pt 1 s. 2C	Communications (Isle of Man) Order 2003/3198, art. 6(1)	Modified in relation to the Isle of Man	
Pt 1 s. 3	Communications (Bailiwick of Guernsey) Order 2003/3195, Sch. 2 para. 5	Modified in relation to the Bailiwick of Guernsey	art. 6
	Communications (Isle of Man) Order 2003/3198, art. 6(1)	Modified in relation to the Isle of Man	
	Communications (Isle of Man) Order 2003/3198, Sch. 2 para. 3	Modified in relation to the Isle of Man	
	Communications (Jersey) Order 2003/3197, Sch. 2 para. 4	Modified in relation to the Bailiwick of Jersey	art. 6
Pt 1 s. 5	Communications (Bailiwick of Guernsey) Order 2003/3195, Sch. 2 para. 6	Modified in relation to the Bailiwick of Guernsey	art. 6
	Communications (Isle of Man) Order 2003/3198, art. 6(1)	Modified in relation to the Isle of Man	

	Communications (Isle of Man) Order 2003/3198, Sch. 2 para. 4	Modified in relation to the Isle of Man	
	Communications (Jersey) Order 2003/3197, Sch. 2 para. 5	Modified in relation to the Bailiwick of Jersey	art. 6
Pt 1 s. 6	Communications (Isle of Man) Order 2003/3198, art. 6(1)	Modified in relation to the Isle of Man	
Pt 1 s. 7	Communications (Isle of Man) Order 2003/3198, art. 6(1)	Modified in relation to the Isle of Man	
Pt 1 s. 7(2)(c)	Communications (Bailiwick of Guernsey) Order 2003/3195, Sch. 2 para. 7	Modified in relation to the Bailiwick of Guernsey	art. 6
	Communications (Isle of Man) Order 2003/3198, Sch. 2 para. 5	Modified in relation to the Isle of Man	
	Communications (Jersey) Order 2003/3197, Sch. 2 para. 6	Modified in relation to the Bailiwick of Jersey	art. 6
Pt 1 s. 8	Communications (Isle of Man) Order 2003/3198, art. 6(1)	Modified in relation to the Isle of Man	
Pt 1 s. 9	Communications (Isle of Man) Order 2003/3198, art. 6(1)	Modified in relation to the Isle of Man	
Pt 1 s. 12	Communications (Isle of Man) Order 2003/3198, art. 6(1)	Modified in relation to the Isle of Man	
Pt 1 s. 12(5)	Communications (Bailiwick of Guernsey) Order 2003/3195, Sch. 2 para. 8	Modified in relation to the Bailiwick of Guernsey	art. 6
	Communications (Jersey) Order 2003/3197, Sch. 2 para. 7	Modified in relation to the Bailiwick of Jersey	art. 6
Pt 1 s. 13	Communications (Isle of Man) Order 2003/3198, art. 6(1)	Modified in relation to the Isle of Man	
	Communications (Isle of Man) Order 2003/3198, Sch. 2 para. 6	Modified in relation to the Isle of Man	
Pt 1 s. 13(3)(b)	Communications (Bailiwick of Guernsey) Order 2003/3195, Sch. 2 para. 9	Modified in relation to the Bailiwick of Guernsey	art. 6
	Communications (Jersey) Order 2003/3197, Sch. 2 para. 8	Modified in relation to the Bailiwick of Jersey	art. 6
Pt 1 s. 14	Communications (Isle of Man) Order 2003/3198, art. 6(1)	Modified in relation to the Isle of Man	
	Communications (Isle of Man) Order 2003/3198, Sch. 2 para. 7	Modified in relation to the Isle of Man	
Pt 1 s. 15	Communications (Isle of Man) Order 2003/3198, art. 6(1)	Modified in relation to the Isle of Man	
Pt 1 s. 15(2)(a)	Communications (Isle of Man) Order 2003/3198, Sch. 2 para. 8	Modified in relation to the Isle of Man	
Pt 1 s. 22	Communications (Isle of Man) Order 2003/3198, art. 6(1)	Modified in relation to the Isle of Man	
Pt 1 s. 23(3)	Communications (Bailiwick of Guernsey) Order 2003/3195, Sch. 2 para. 10	Modified in relation to the Bailiwick of Guernsey	art. 6

	Communications (Jersey) Order 2003/3197, Sch. 2 para. 9	Modified in relation to the Bailiwick of Jersey	art. 6
Pt 1 s. 24	Communications (Isle of Man) Order 2003/3198, art. 6(1)	Modified in relation to the Isle of Man	
Pt 1 s. 24(2)	Communications (Bailiwick of Guernsey) Order 2003/3195, Sch. 2 para. 11	Modified in relation to the Bailiwick of Guernsey	art. 6
	Communications (Jersey) Order 2003/3197, Sch. 2 para. 10	Modified in relation to the Bailiwick of Jersey	art. 6
Pt 1 s. 24A	Communications (Isle of Man) Order 2003/3198, art. 6(1)	Modified in relation to the Isle of Man	
Pt 1 s. 24B	Communications (Isle of Man) Order 2003/3198, art. 6(1)	Modified in relation to the Isle of Man	
Pt 1 s. 25	Communications (Isle of Man) Order 2003/3198, art. 6(1)	Modified in relation to the Isle of Man	
Pt 1 s. 26	Communications (Isle of Man) Order 2003/3198, art. 6(1)	Modified in relation to the Isle of Man	
Pt 1 s. 28	Communications (Isle of Man) Order 2003/3198, art. 6(1)	Modified in relation to the Isle of Man	
Pt 1 s. 29(3)	Communications (Bailiwick of Guernsey) Order 2003/3195, Sch. 2 para. 2	Modified in relation to the Bailiwick of Guernsey	art. 6
	Communications (Bailiwick of Guernsey) Order 2003/3195, Sch. 2 para. 2		art. 6
	Communications (Jersey) Order 2003/3197, Sch. 2 para. 1	Modified in relation to the Bailiwick of Jersey	art. 6
Pt 1 s. 30	Communications (Isle of Man) Order 2003/3198, art. 6(1)	Modified in relation to the Isle of Man	
	Postal Services Act 2011 c. 5, Pt 3 s. 64(2)	Modified in relation to the Postal Services Commission	
Pt 1 s. 31	Communications (Bailiwick of Guernsey) Order 2003/3195, Sch. 2 para. 12	Modified in relation to the Bailiwick of Guernsey	art. 6
	Communications (Isle of Man) Order 2003/3198, art. 6(1)	Modified in relation to the Isle of Man	
	Communications (Isle of Man) Order 2003/3198, Sch. 2 para. 9	Modified in relation to the Isle of Man	
	Communications (Jersey) Order 2003/3197, Sch. 2 para. 11	Modified in relation to Jersey	art. 6
Pt 2 c. 1 s. 32	Communications (Isle of Man) Order 2003/3198, art. 6(1)	Modified in relation to the Isle of Man	
Pt 2 c. 1 s. 42(9)(b)	Electronic Communications and Wireless Telegraphy Regulations 2011/1210, Sch. 3 para. 5	Modified in relation to a determination made before May 26, 2011	
Pt 2 c. 1 s. 61(8)	Electronic Communications and Wireless Telegraphy Regulations 2011/1210, Sch. 3 para. 10	Modified in relation to a contravention of a numbering condition (within the meaning	

		given by 2003 c.21 s.61(9)) occurring on or after May 26, 2011	
Pt 2 c. 1 s. 80	Communications Act 2003 c. 21, Pt 2 c. 1 s. 80B(7)	Modified where the proposal is amended under 2003 c.21 s.80B(6)	
Pt 2 c. 1 s. 80B(2)	Communications Act 2003 c. 21, Pt 2 c. 1 s. 80	Modified where OFCOM propose to extend or make permanent any such temporary identification or determination	
Pt 2 c. 1 s. 94	Radio Equipment and Telecommunications Terminal Equipment Regulations 2000/730, Pt IV reg. 18	Modified for the purposes of the enforcement of SI 2000/730 regs 7 and 13	
Pt 2 c. 1 s. 95	Radio Equipment and Telecommunications Terminal Equipment Regulations 2000/730, Pt IV reg. 18	Modified for the purposes of the enforcement of SI 2000/730 regs 7 and 13	
Pt 2 c. 1 s. 96	Radio Equipment and Telecommunications Terminal Equipment Regulations 2000/730, Pt IV reg. 18	Modified for the purposes of the enforcement of SI 2000/730 regs 7 and 13	
Pt 2 c. 1 s. 96A	Radio Equipment and Telecommunications Terminal Equipment Regulations 2000/730, Pt IV reg. 18	Modified for the purposes of the enforcement of SI 2000/730 regs 7 and 13	
Pt 2 c. 1 s. 96B	Radio Equipment and Telecommunications Terminal Equipment Regulations 2000/730, Pt IV reg. 18	Modified for the purposes of the enforcement of SI 2000/730 regs 7 and 13	
Pt 2 c. 1 s. 96C	Radio Equipment and Telecommunications Terminal Equipment Regulations 2000/730, Pt IV reg. 18	Modified for the purposes of the enforcement of SI 2000/730 regs 7 and 13	
Pt 2 c. 1 s. 97	Radio Equipment and Telecommunications Terminal Equipment Regulations 2000/730, Pt IV reg. 18	Modified for the purposes of the enforcement of SI 2000/730 regs 7 and 13	
Pt 2 c. 1 s. 98(1)	Radio Equipment and Telecommunications Terminal Equipment Regulations 2000/730, Pt IV reg. 18	Modified for the purposes of the enforcement of SI 2000/730 regs 7 and 13	
Pt 2 c. 1 s. 98(2)	Radio Equipment and Telecommunications Terminal Equipment Regulations 2000/730, Pt IV reg. 18	Modified for the purposes of the enforcement of SI 2000/730 regs 7 and 13	
Pt 2 c. 1 s. 98(3)	Radio Equipment and Telecommunications Terminal Equipment Regulations 2000/730, Pt IV reg. 18	Modified for the purposes of the enforcement of SI 2000/730 regs 7 and 13	

Pt 2 c. 1 s. 98(4)	Radio Equipment and Telecommunications Terminal Equipment Regulations 2000/730, Pt IV reg. 18	Modified for the purposes of the enforcement of SI 2000/730 regs 7 and 13	
Pt 2 c. 1 s. 100	Electronic Communications and Wireless Telegraphy Regulations 2011/1210, Sch. 3 para. 14	Modified in relation to a contravention of a condition set under 2003 c.21 s.45 occurring on or after May 26, 2011	
Pt 2 c. 1 s. 110(1)	Communications Act 2003 (Commencement No. 1) Order 2003/1900, art. 3(2)(a)		
Pt 2 c. 1 s. 113(4)(b)	Communications Act 2003 (Commencement No. 1) Order 2003/1900, art. 3(2)(a)		
Pt 2 c. 1 s. 117	Enterprise Act 2002 c. 40, Pt 4 c. 4 s. 180	Modified for the purposes of 2002 c.40 Pt 4	
Pt 2 c. 1 s. 117(5)	Communications Act 2003 (Commencement No. 1) Order 2003/1900, art. 3(2)(a)		
Pt 2 c. 1 s. 120	Communications Act (e-Commerce) (EU Exit) Regulations 2020/1420, reg. 2	Modified as specified in SI 2020/1420 reg.2	
Pt 2 c. 1 s. 120A	Communications Act (e-Commerce) (EU Exit) Regulations 2020/1420, reg. 2	Modified as specified in SI 2020/1420 reg.2	
Pt 2 c. 1 s. 121	Communications Act (e-Commerce) (EU Exit) Regulations 2020/1420, reg. 2	Modified as specified in SI 2020/1420 reg.2	
Pt 2 c. 1 s. 122	Communications Act (e-Commerce) (EU Exit) Regulations 2020/1420, reg. 2	Modified as specified in SI 2020/1420 reg.2	
Pt 2 c. 1 s. 123	Communications Act (e-Commerce) (EU Exit) Regulations 2020/1420, reg. 2	Modified as specified in SI 2020/1420 reg.2	
Pt 2 c. 1 s. 124	Communications Act (e-Commerce) (EU Exit) Regulations 2020/1420, reg. 2	Modified as specified in SI 2020/1420 reg.2	
Pt 2 c. 1 s. 128	Communications Act (e-Commerce) (EU Exit) Regulations 2020/1420, reg. 2	Modified as specified in SI 2020/1420 reg.2	
Pt 2 c. 1 s. 129	Communications Act (e-Commerce) (EU Exit) Regulations 2020/1420, reg. 2	Modified as specified in SI 2020/1420 reg.2	
Pt 2 c. 1 s. 130	Communications Act (e-Commerce) (EU Exit) Regulations 2020/1420, reg. 2	Modified as specified in SI 2020/1420 reg.2	
Pt 2 c. 1 s. 131	Communications Act (e-Commerce) (EU Exit) Regulations 2020/1420, reg. 2	Modified as specified in SI 2020/1420 reg.2	

Pt 2 c. 1 s. 138	Communications (Isle of Man) Order 2003/3198, art. 6(1)	Modified in relation to the Isle of Man	
Pt 2 c. 1 s. 139	Communications (Isle of Man) Order 2003/3198, art. 6(1)	Modified in relation to the Isle of Man	
Pt 2 c. 1 s. 139(5)	Communications (Bailiwick of Guernsey) Order 2003/3195, Sch. 2 para. 2	Modified in relation to the Bailiwick of Guernsey	art. 6
	Communications (Bailiwick of Guernsey) Order 2003/3195, Sch. 2 para. 2	Modified in relation to the Bailiwick of Guernsey	art. 6
	Communications (Jersey) Order 2003/3197, Sch. 2 para. 1	Modified in relation to the Bailiwick of Jersey	art. 6
Pt 2 c. 1 s. 139(9)	Communications (Bailiwick of Guernsey) Order 2003/3195, Sch. 2 para. 13	Modified in relation to the Bailiwick of Guernsey	art. 6
Pt 2 c. 1 s. 139(10)	Communications (Bailiwick of Guernsey) Order 2003/3195, Sch. 2 para. 13	Modified in relation to the Bailiwick of Guernsey	art. 6
	Communications (Jersey) Order 2003/3197, Sch. 2 para. 12	Modified in relation to the Bailiwick of Jersey	art. 6
Pt 2 c. 1 s. 139A	Communications (Isle of Man) Order 2003/3198, art. 6(1)	Modified in relation to the Isle of Man	
Pt 2 c. 1 s. 139B	Communications (Isle of Man) Order 2003/3198, art. 6(1)	Modified in relation to the Isle of Man	
Pt 2 c. 1 s. 139C	Communications (Isle of Man) Order 2003/3198, art. 6(1)	Modified in relation to the Isle of Man	
Pt 2 c. 1 s. 140	Communications (Isle of Man) Order 2003/3198, art. 6(1)	Modified in relation to the Isle of Man	
	Electronic Communications and Wireless Telegraphy Regulations 2011/1210, Sch. 3 para. 19	Modified in relation to a contravention of a requirement imposed under 2003 c.21 ss 135 or 136 occurring on or after May 26, 2011	
Pt 2 c. 1 s. 141	Communications (Isle of Man) Order 2003/3198, art. 6(1)	Modified in relation to the Isle of Man	
Pt 2 c. 1 s. 142	Communications (Isle of Man) Order 2003/3198, art. 6(1)	Modified in relation to the Isle of Man	
Pt 2 c. 1 s. 143	Communications (Isle of Man) Order 2003/3198, art. 6(1)	Modified in relation to the Isle of Man	
Pt 2 c. 1 s. 143(3)	Communications (Bailiwick of Guernsey) Order 2003/3195, Sch. 2 para. 14	Modified in relation to the Bailiwick of Guernsey	art. 6
Pt 2 c. 1 s. 143(3)(a)	Communications (Jersey) Order 2003/3197, Sch. 2 para. 13	Modified in relation to the Bailiwick of Jersey	art. 6
Pt 2 c. 1 s. 144	Communications (Isle of Man) Order 2003/3198, art. 6(1)	Modified in relation to the Isle of Man	
	Communications (Jersey) Order 2003/3197, Sch. 2 para. 14	Modified in relation to the Bailiwick of Jersey	art. 6

Pt 2 c. 1 s. 144(1)(a)	Communications (Bailiwick of Guernsey) Order 2003/3195, Sch. 2 para. 15	Modified in relation to the Bailiwick of Guernsey	art. 6
Pt 2 c. 1 s. 144(4)(a)	Communications (Bailiwick of Guernsey) Order 2003/3195, Sch. 2 para. 15	Modified in relation to the Bailiwick of Guernsey	art. 6
Pt 2 c. 2 s. 152	Communications (Bailiwick of Guernsey) Order 2003/3195, Sch. 2 para. 16	Modified in relation to the Bailiwick of Guernsey	art. 6
	Communications (Isle of Man) Order 2003/3198, art. 6(1)	Modified in relation to the Isle of Man	
	Communications (Jersey) Order 2003/3197, Sch. 2 para. 15	Modified in relation to the Bailiwick of Jersey	art. 6
Pt 2 c. 2 s. 152(3)	Communications (Isle of Man) Order 2003/3198, Sch. 2 para. 10	Modified in relation to the Isle of Man	
Pt 2 c. 2 s. 152(4)	Communications (Isle of Man) Order 2003/3198, Sch. 2 para. 10	Modified in relation to the Isle of Man	
Pt 2 c. 2 s. 152(5)	Communications (Isle of Man) Order 2003/3198, Sch. 2 para. 10	Modified in relation to the Isle of Man	
Pt 2 c. 2 s. 153	Communications (Isle of Man) Order 2003/3198, art. 6(1)	Modified in relation to the Isle of Man	
Pt 2 c. 2 s. 153(2)	Communications (Isle of Man) Order 2003/3198, Sch. 2 para. 11	Modified in relation to the Isle of Man	
Pt 2 c. 2 s. 154	Communications (Isle of Man) Order 2003/3198, art. 6(1)	Modified in relation to the Isle of Man	
Pt 2 c. 2 s. 155	Communications (Isle of Man) Order 2003/3198, art. 6(1)	Modified in relation to the Isle of Man	
Pt 2 c. 2 s. 156	Communications (Isle of Man) Order 2003/3198, art. 6(1)	Modified in relation to the Isle of Man	
	Communications (Jersey) Order 2003/3197, Sch. 2 para. 16	Modified in relation to the Bailiwick of Jersey	art. 6
Pt 2 c. 2 s. 156(6)	Communications (Bailiwick of Guernsey) Order 2003/3195, Sch. 2 para. 17	Deemed to be inserted in relation to the Bailiwick of Guernsey	art. 6
	Communications (Isle of Man) Order 2003/3198, Sch. 2 para. 12	Deemed to be inserted in relation to the Isle of Man	
Pt 2 c. 2 s. 157	Communications (Isle of Man) Order 2003/3198, art. 6(1)	Modified in relation to the Isle of Man	
Pt 2 c. 2 s. 157(4)	Communications (Bailiwick of Guernsey) Order 2003/3195, Sch. 2 para. 18	Modified in relation to the Bailiwick of Guernsey	art. 6
	Communications (Isle of Man) Order 2003/3198, Sch. 2 para. 13	Modified in relation to the Isle of Man	
	Communications (Jersey) Order 2003/3197, Sch. 2 para. 17	Modified in relation to the Bailiwick of Jersey	art. 6
Pt 2 c. 2 s. 157(5)	Communications (Bailiwick of Guernsey) Order 2003/3195, Sch. 2 para. 18	Modified in relation to the Bailiwick of Guernsey	art. 6

	Communications (Jersey) Order 2003/3197, Sch. 2 para. 17	Modified in relation to the Bailiwick of Jersey	art. 6
Pt 2 c. 2 s. 157(6)	Communications (Bailiwick of Guernsey) Order 2003/3195, Sch. 2 para. 18	Modified in relation to the Bailiwick of Guernsey	art. 6
	Communications (Jersey) Order 2003/3197, Sch. 2 para. 17	Modified in relation to the Bailiwick of Jersey	art. 6
Pt 2 c. 2 s. 157(7)	Communications (Bailiwick of Guernsey) Order 2003/3195, Sch. 2 para. 18	Modified in relation to the Bailiwick of Guernsey	art. 6
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Pt 3 c. 4 s. 338	Communications (Bailiwick of Guernsey) Order 2003/3195, Sch. 2 para. 82	Modified in relation to the Bailiwick of Guernsey	art. 6
	Communications (Jersey) Order 2003/3197, Sch. 2 para. 79	Modified in relation to the Bailiwick of Jersey	art. 6
Pt 3 c. 4 s. 343	Contracting Out (Functions relating to Broadcast Advertising) and Specification of Relevant Functions Order 2004/1975, art. 10(1)(b)	Modified where OFCOM have authorised any person to exercise any function relating to advertising by virtue of SI 2004/1975 art.3	
Pt 3 c. 4 s. 344	Communications (Isle of Man) Order 2003/3198, art. 6(1)	Modified in relation to the Isle of Man	
Pt 3 c. 4 s. 345	Communications (Isle of Man) Order 2003/3198, art. 6(1)	Modified in relation to the Isle of Man	
Pt 3 c. 4 s. 346	Communications (Isle of Man) Order 2003/3198, art. 6(1)	Modified in relation to the Isle of Man	
Pt 3 c. 4 s. 347	Communications (Isle of Man) Order 2003/3198, art. 6(1)	Modified in relation to the Isle of Man	
Pt 3 c. 4 s. 347(7)	Communications (Bailiwick of Guernsey) Order 2003/3195, Sch. 2 para. 83	Modified in relation to the Bailiwick of Guernsey	art. 6

	Communications (Jersey) Order 2003/3197, Sch. 2 para. 80	Modified in relation to the Bailiwick of Jersey	art. 6
Pt 3 c. 4A s. 347A	Communications (Isle of Man) Order 2003/3198, art. 6(1)	Modified in relation to the Isle of Man	
Pt 3 c. 4A s. 347B	Communications (Isle of Man) Order 2003/3198, art. 6(1)	Modified in relation to the Isle of Man	
Pt 3 c. 4A s. 347C	Communications (Isle of Man) Order 2003/3198, art. 6(1)	Modified in relation to the Isle of Man	
Pt 3 c. 4A s. 347D	Communications (Isle of Man) Order 2003/3198, art. 6(1)	Modified in relation to the Isle of Man	
Pt 3 c. 4A s. 347E	Communications (Isle of Man) Order 2003/3198, art. 6(1)	Modified in relation to the Isle of Man	
Pt 3 c. 4A s. 347F	Communications (Isle of Man) Order 2003/3198, art. 6(1)	Modified in relation to the Isle of Man	
Pt 3 c. 5 s. 348	Communications (Isle of Man) Order 2003/3198, art. 6(1)	Modified in relation to the Isle of Man	
Pt 3 c. 5 s. 348(5)	Communications (Bailiwick of Guernsey) Order 2003/3195, Sch. 2 para. 2	Modified in relation to the Bailiwick of Guernsey	art. 6
	Communications (Jersey) Order 2003/3197, Sch. 2 para. 1	Modified in relation to the Bailiwick of Jersey	art. 6
Pt 3 c. 5 s. 348(6)	Communications (Jersey) Order 2003/3197, Sch. 2 para. 81	Modified in relation to the Bailiwick of Jersey	art. 6
Pt 3 c. 5 s. 348(7)	Communications (Bailiwick of Guernsey) Order 2003/3195, Sch. 2 para. 84	Modified in relation to the Bailiwick of Guernsey	art. 6
	Communications (Jersey) Order 2003/3197, Sch. 2 para. 81	Modified in relation to the Bailiwick of Jersey	art. 6
Pt 3 c. 5 s. 350	Communications (Isle of Man) Order 2003/3198, art. 6(1)	Modified in relation to the Isle of Man	
Pt 3 c. 5 s. 351	Communications (Bailiwick of Guernsey) Order 2003/3195, Sch. 2 para. 85	Modified in relation to the Bailiwick of Guernsey	art. 6
	Communications (Isle of Man) Order 2003/3198, art. 6(1)	Modified in relation to the Isle of Man	
	Communications (Isle of Man) Order 2003/3198, Sch. 2 para. 50	Modified in relation to the Isle of Man	
	Communications (Jersey) Order 2003/3197, Sch. 2 para. 82	Modified in relation to the Bailiwick of Jersey	art. 6
Pt 3 c. 5 s. 352	Communications (Isle of Man) Order 2003/3198, art. 6(1)	Modified in relation to the Isle of Man	
Pt 3 c. 5 s. 353	Communications (Isle of Man) Order 2003/3198, art. 6(1)	Modified in relation to the Isle of Man	
Pt 3 c. 5 s. 353(5)(a)	Communications (Isle of Man) Order 2003/3198, Sch. 2 para. 51	Modified in relation to the Isle of Man	
Pt 3 c. 5 s. 353(5)(b)	Communications (Isle of Man) Order 2003/3198, Sch. 2 para. 51	Modified in relation to the Isle of Man	

Pt 3 c. 5 s. 353(5)(c)	Communications (Isle of Man) Order 2003/3198, Sch. 2 para. 51	Modified in relation to the Isle of Man	
Pt 3 c. 5 s. 354	Communications (Isle of Man) Order 2003/3198, art. 6(1)	Modified in relation to the Isle of Man	
Pt 3 c. 5 s. 355	Community Radio (Guernsey) Order 2013/243, Sch. 1(2) para. 13		
Pt 3 c. 5 s. 356	Community Radio (Guernsey) Order 2013/243, Sch. 1(2) para. 13		
Pt 3 c. 5 s. 357	Communications (Isle of Man) Order 2003/3198, art. 6(1)	Modified in relation to the Isle of Man	
Pt 3 c. 6 s. 358	Communications (Isle of Man) Order 2003/3198, art. 6(1)	Modified in relation to the Isle of Man	
Pt 3 c. 6 s. 358(2)	Communications (Isle of Man) Order 2003/3198, Sch. 2 para. 52	Modified in relation to the Isle of Man	
Pt 3 c. 6 s. 358(2)(a)	Communications (Bailiwick of Guernsey) Order 2003/3195, Sch. 2 para. 86	Modified in relation to the Bailiwick of Guernsey	art. 6
	Communications (Jersey) Order 2003/3197, Sch. 2 para. 83	Modified in relation to the Bailiwick of Jersey	art. 6
Pt 3 c. 6 s. 359(6)	Communications (Bailiwick of Guernsey) Order 2003/3195, Sch. 2 para. 87	Modified in relation to the Bailiwick of Guernsey	art. 6
	Communications (Jersey) Order 2003/3197, Sch. 2 para. 84	Modified in relation to the Bailiwick of Jersey	art. 6
Pt 3 c. 6 s. 360	Communications (Isle of Man) Order 2003/3198, art. 6(1)	Modified in relation to the Isle of Man	
Pt 3 c. 6 s. 361	Communications (Bailiwick of Guernsey) Order 2003/3195, Sch. 2 para. 88	Modified in relation to the Bailiwick of Guernsey	art. 6
	Communications (Isle of Man) Order 2003/3198, art. 6(1)	Modified in relation to the Isle of Man	
	Communications (Jersey) Order 2003/3197, Sch. 2 para. 85	Modified in relation to the Bailiwick of Jersey	art. 6
Pt 3 c. 6 s. 362	Communications (Bailiwick of Guernsey) Order 2003/3195, Sch. 2 para. 89		art. 6
	Communications (Isle of Man) Order 2003/3198, art. 6(1)	Modified in relation to the Isle of Man	
	Communications (Isle of Man) Order 2003/3198, Sch. 2 para. 53	Modified in relation to the Isle of Man	
	Communications (Jersey) Order 2003/3197, Sch. 2 para. 86	Modified in relation to the Bailiwick of Jersey	art. 6
Pt 4 s. 363	Broadcasting and Communications (Jersey) Order 2004/308, Sch. 1 para. 1	Modified in relation to Jersey	art. 4
	Communications (Bailiwick of Guernsey) Order 2004/307, Sch. 1 para. 1	Modified in relation to the Bailiwick of Guernsey	art. 4

	Communications (Isle of Man) Order 2003/3198, art. 6(1)	Modified in relation to the Isle of Man	
Pt 4 s. 364	Broadcasting and Communications (Jersey) Order 2004/308, Sch. 1 para. 2	Modified in relation to Jersey	art. 4
	Communications (Bailiwick of Guernsey) Order 2004/307, Sch. 1 para. 2	Modified in relation to the Bailiwick of Guernsey	art. 4
	Communications (Isle of Man) Order 2003/3198, art. 6(1)	Modified in relation to the Isle of Man	
Pt 4 s. 365	Broadcasting and Communications (Jersey) Order 2004/308, Sch. 1 para. 3	Modified in relation to Jersey	art. 4
	Communications (Bailiwick of Guernsey) Order 2004/307, Sch. 1 para. 3	Modified in relation to the Bailiwick of Guernsey	art. 4
	Communications (Isle of Man) Order 2003/3198, art. 6(1)	Modified in relation to the Isle of Man	
Pt 4 s. 365A	Communications (Isle of Man) Order 2003/3198, art. 6(1)	Modified in relation to the Isle of Man	
Pt 4 s. 365A(8)	Communications (Bailiwick of Guernsey) Order 2020/274, art. 3(2)	Modified in relation to the Bailiwick of Guernsey	
Pt 4 s. 366	Broadcasting and Communications (Jersey) Order 2004/308, Sch. 1 para. 4	Modified in relation to Jersey	art. 4
	Communications (Bailiwick of Guernsey) Order 2004/307, Sch. 1 para. 4	Modified in relation to the Bailiwick of Guernsey	art. 4
	Communications (Isle of Man) Order 2003/3198, art. 6(1)	Modified in relation to the Isle of Man	
	Communications (Isle of Man) Order 2003/3198, Sch. 2 para. 54	Modified in relation to the Isle of Man	
Pt 4 s. 368	Communications (Isle of Man) Order 2003/3198, art. 6(1)	Modified in relation to the Isle of Man	
Pt 4A s. 368NA	Audiovisual Media Services Regulations 2010/419, reg. 13(2)	Modified in relation to the period beginning with December 19, 2009 and ending with March 31, 2010	
Pt 4A s. 368NA(3)(a)	Audiovisual Media Services Regulations 2010/419, reg. 13(3)	Modified in relation to the appropriate regulatory authority	
Pt 6 s. 391	Communications (Bailiwick of Guernsey) Order 2003/3195, Sch. 2 para. 90	Modified in relation to the Bailiwick of Guernsey	art. 6
	Communications (Jersey) Order 2003/3197, Sch. 2 para. 87	Modified in relation to the Bailiwick of Jersey	art. 6
Pt 6 s. 392	Communications (Bailiwick of Guernsey) Order 2003/3195, Sch. 2 para. 91	Modified in relation to the Bailiwick of Guernsey	art. 6

	Communications (Isle of Man) Order 2003/3198, art. 6(1)	Modified in relation to the Isle of Man	
	Communications (Jersey) Order 2003/3197, Sch. 2 para. 88	Modified in relation to the Bailiwick of Jersey	art. 6
Pt 6 s. 393	Communications (Bailiwick of Guernsey) Order 2003/3195, Sch. 2 para. 92	Modified in relation to the Bailiwick of Guernsey	art. 6
	Communications (Isle of Man) Order 2003/3198, art. 6(1)	Modified in relation to the Isle of Man	
	Communications (Jersey) Order 2003/3197, Sch. 2 para. 89	Modified in relation to the Bailiwick of Jersey	art. 6
	Scotland Act 2012 c. 11, Pt 2 s. 12(4)	Modified in relation to a reference to the Scottish Government	
Pt 6 s. 394	Communications (Bailiwick of Guernsey) Order 2003/3195, Sch. 2 para. 93	Modified in relation to the Bailiwick of Guernsey	art. 6
	Communications (Isle of Man) Order 2003/3198, art. 6(1)	Modified in relation to the Isle of Man	
	Communications (Isle of Man) Order 2003/3198, Sch. 2 para. 55	Modified in relation to the Isle of Man	
	Communications (Jersey) Order 2003/3197, Sch. 2 para. 90	Modified in relation to the Bailiwick of Jersey	art. 6
Pt 6 s. 398	Communications (Isle of Man) Order 2003/3198, art. 6(1)	Modified in relation to the Isle of Man	
	Communications (Isle of Man) Order 2003/3198, Sch. 2 para. 56	Modified in relation to the Isle of Man	
Pt 6 s. 400	Communications (Bailiwick of Guernsey) Order 2003/3195, Sch. 2 para. 94	Modified in relation to the Bailiwick of Guernsey	art. 6
	Communications (Isle of Man) Order 2003/3198, art. 6(1)	Modified in relation to the Isle of Man	
	Communications (Isle of Man) Order 2003/3198, Sch. 2 para. 57	Modified in relation to the Isle of Man	
	Communications (Jersey) Order 2003/3197, Sch. 2 para. 91	Modified in relation to the Bailiwick of Jersey	art. 6
Pt 6 s. 402	Communications (Isle of Man) Order 2003/3198, art. 6(1)	Modified in relation to the Isle of Man	
Pt 6 s. 403	Communications (Bailiwick of Guernsey) Order 2003/3195, Sch. 2 para. 95	Modified in relation to the Bailiwick of Guernsey	art. 6
	Communications (Isle of Man) Order 2003/3198, art. 6(1)	Modified in relation to the Isle of Man	
	Communications (Jersey) Order 2003/3197, Sch. 2 para. 92	Modified in relation to the Bailiwick of Jersey	art. 6
Pt 6 s. 403(8)	Communications (Isle of Man) Order 2003/3198, Sch. 2 para. 58	Modified in relation to the Isle of Man	

Pt 6 s. 404	Communications (Bailiwick of Guernsey) Order 2003/3195, Sch. 2 para. 96	Modified in relation to the Bailiwick of Guernsey	art. 6
	Communications (Isle of Man) Order 2003/3198, art. 6(1)	Modified in relation to the Isle of Man	
	Communications (Jersey) Order 2003/3197, Sch. 2 para. 93	Modified in relation to the Bailiwick of Jersey	art. 6
Pt 6 s. 404(2)	Communications (Isle of Man) Order 2003/3198, Sch. 2 para. 59	Modified in relation to the Isle of Man	
Pt 6 s. 405	Communications (Bailiwick of Guernsey) Order 2003/3195, Sch. 2 para. 97	Modified in relation to the Bailiwick of Guernsey	art. 6
	Communications (Isle of Man) Order 2003/3198, art. 6(1)	Modified in relation to the Isle of Man	
	Communications (Jersey) Order 2003/3197, Sch. 2 para. 94	Modified in relation to the Bailiwick of Jersey	art. 6
Pt 6 s. 405(1)	Communications (Isle of Man) Order 2003/3198, Sch. 2 para. 60	Modified in relation to the Isle of Man	
Pt 6 s. 406	Communications (Bailiwick of Guernsey) Order 2003/3195, Sch. 2 para. 98	Modified in relation to the Bailiwick of Guernsey	art. 6
	Communications (Isle of Man) Order 2003/3198, art. 6(1)	Modified in relation to the Isle of Man	
	Communications (Isle of Man) Order 2003/3198, Sch. 2 para. 61	Modified in relation to the Isle of Man	
	Communications (Jersey) Order 2003/3197, Sch. 2 para. 95	Modified in relation to the Bailiwick of Jersey	art. 6
Pt 6 s. 408	Communications (Isle of Man) Order 2003/3198, Sch. 2 para. 62	Modified in relation to the Isle of Man	
Pt 6 s. 410	Communications (Bailiwick of Guernsey) Order 2003/3195, Sch. 2 para. 99	Modified in relation to the Bailiwick of Guernsey	art. 6
	Communications (Isle of Man) Order 2003/3198, art. 6(1)	Modified in relation to the Isle of Man	
	Communications (Isle of Man) Order 2003/3198, Sch. 2 para. 63	Modified in relation to the Isle of Man	
	Communications (Jersey) Order 2003/3197, Sch. 2 para. 96	Modified in relation to the Bailiwick of Jersey	art. 6
Pt 6 s. 411	Communications (Isle of Man) Order 2003/3198, art. 6(1)	Modified in relation to the Isle of Man	
Pt 6 s. 411(2)	Communications (Bailiwick of Guernsey) Order 2003/3195, Sch. 2 para. 100	Modified in relation to the Bailiwick of Guernsey	art. 6
	Communications (Isle of Man) Order 2003/3198, Sch. 2 para. 64	Modified in relation to the Isle of Man	
	Communications (Jersey) Order 2003/3197, Sch. 2 para. 97	Modified in relation to the Bailiwick of Jersey	art. 6

Pt 6 s. 411(3)	Communications (Bailiwick of Guernsey) Order 2003/3195, Sch. 2 para. 100	Modified in relation to the Bailiwick of Guernsey	art. 6
	Communications (Isle of Man) Order 2003/3198, Sch. 2 para. 64	Modified in relation to the Isle of Man	
	Communications (Jersey) Order 2003/3197, Sch. 2 para. 97	Modified in relation to the Bailiwick of Jersey	art. 6
Pt 6 s. 411(4)	Communications (Bailiwick of Guernsey) Order 2003/3195, Sch. 2 para. 100	Modified in relation to the Bailiwick of Guernsey	art. 6
	Communications (Isle of Man) Order 2003/3198, Sch. 2 para. 64	Modified in relation to the Isle of Man	
	Communications (Jersey) Order 2003/3197, Sch. 2 para. 97	Modified in relation to the Bailiwick of Jersey	art. 6
Pt 6 s. 411(5)	Communications (Bailiwick of Guernsey) Order 2003/3195, Sch. 2 para. 100	Modified in relation to the Bailiwick of Guernsey	art. 6
	Communications (Isle of Man) Order 2003/3198, Sch. 2 para. 64	Modified in relation to the Isle of Man	
	Communications (Jersey) Order 2003/3197, Sch. 2 para. 97	Modified in relation to the Bailiwick of Jersey	art. 6
Pt 6 s. 411(6)	Communications (Bailiwick of Guernsey) Order 2003/3195, Sch. 2 para. 100	Modified in relation to the Bailiwick of Guernsey	art. 6
	Communications (Isle of Man) Order 2003/3198, Sch. 2 para. 64	Modified in relation to the Isle of Man	
	Communications (Jersey) Order 2003/3197, Sch. 2 para. 97	Modified in relation to the Bailiwick of Jersey	art. 6
Pt 6 s. 411(7)	Communications (Bailiwick of Guernsey) Order 2003/3195, Sch. 2 para. 100	Modified in relation to the Bailiwick of Guernsey	art. 6
	Communications (Isle of Man) Order 2003/3198, Sch. 2 para. 64	Modified in relation to the Isle of Man	
	Communications (Jersey) Order 2003/3197, Sch. 2 para. 97	Modified in relation to the Bailiwick of Jersey	art. 6
Pt 6 s. 411(8)	Communications (Bailiwick of Guernsey) Order 2003/3195, Sch. 2 para. 100	Modified in relation to the Bailiwick of Guernsey	art. 6
	Communications (Isle of Man) Order 2003/3198, Sch. 2 para. 64	Modified in relation to the Isle of Man	
	Communications (Jersey) Order 2003/3197, Sch. 2 para. 97	Modified in relation to the Bailiwick of Jersey	art. 6
Sch. 1	Communications (Isle of Man) Order 2003/3198, art. 6(1)	Modified in relation to the Isle of Man	
Sch. 1 para. 1	Communications (Bailiwick of Guernsey) Order 2003/3195, Sch. 2 para. 101	Modified in relation to the Bailiwick of Guernsey	art. 6

	Communications (Isle of Man) Order 2003/3198, Sch. 2 para. 65(a)	Modified in relation to the Isle of Man	
	Communications (Jersey) Order 2003/3197, Sch. 2 para. 98(a)	Modified in relation to the Bailiwick of Jersey	art. 6
Sch. 1 para. 3	Communications (Jersey) Order 2003/3197, Sch. 2 para. 98(b)	Modified in relation to the Bailiwick of Jersey	art. 6
Sch. 1 para. 4	Communications (Jersey) Order 2003/3197, Sch. 2 para. 98(b)	Modified in relation to the Bailiwick of Jersey	art. 6
Sch. 1 para. 5	Communications (Jersey) Order 2003/3197, Sch. 2 para. 98(b)	Modified in relation to the Bailiwick of Jersey	art. 6
Sch. 1 para. 6	Communications (Isle of Man) Order 2003/3198, Sch. 2 para. 65(b)	Modified in relation to the Isle of Man	
	Communications (Jersey) Order 2003/3197, Sch. 2 para. 98(b)	Modified in relation to the Bailiwick of Jersey	art. 6
Sch. 1 para. 7	Communications (Isle of Man) Order 2003/3198, Sch. 2 para. 65(b)	Modified in relation to the Isle of Man	
	Communications (Jersey) Order 2003/3197, Sch. 2 para. 98(b)	Modified in relation to the Bailiwick of Jersey	art. 6
Sch. 1 para. 8	Communications (Jersey) Order 2003/3197, Sch. 2 para. 98(b)	Modified in relation to the Bailiwick of Jersey	art. 6
Sch. 1 para. 9	Communications (Jersey) Order 2003/3197, Sch. 2 para. 98(b)	Modified in relation to the Bailiwick of Jersey	art. 6
Sch. 1 para. 10	Communications (Jersey) Order 2003/3197, Sch. 2 para. 98(b)	Modified in relation to the Bailiwick of Jersey	art. 6
Sch. 1 para. 11	Communications (Jersey) Order 2003/3197, Sch. 2 para. 98(b)	Modified in relation to the Bailiwick of Jersey	art. 6
Sch. 1 para. 12	Communications (Jersey) Order 2003/3197, Sch. 2 para. 98(b)	Modified in relation to the Bailiwick of Jersey	art. 6
Sch. 1 para. 13	Communications (Jersey) Order 2003/3197, Sch. 2 para. 98(b)	Modified in relation to the Bailiwick of Jersey	art. 6
Sch. 1 para. 14	Communications (Jersey) Order 2003/3197, Sch. 2 para. 98(b)	Modified in relation to the Bailiwick of Jersey	art. 6
Sch. 2	Communications (Isle of Man) Order 2003/3198, art. 6(1)	Modified in relation to the Isle of Man	
Sch. 2 para. 1(4)	Postal Services Act 2011 c. 5, Pt 3 s. 64(2)	Modified in relation to the Postal Services Commission	
Sch. 2 para. 1(5)	Postal Services Act 2011 c. 5, Pt 3 s. 64(2)	Modified in relation to the Postal Services Commission	
Sch. 2 para. 2(4)	Postal Services Act 2011 c. 5, Pt 3 s. 64(2)	Modified in relation to the Postal Services Commission	
Sch. 2 para. 4	Postal Services Act 2011 c. 5, Pt 3 s. 64(2)	Modified in relation to the Postal Services Commission	
Sch. 2 para. 4(7)(a)	Communications (Isle of Man) Order 2003/3198, Sch. 2 para. 66(a)	Modified in relation to the Isle of Man	

Sch. 2 para. 4(7)(b)	Communications (Isle of Man) Order 2003/3198, Sch. 2 para. 66(a)	Modified in relation to the Isle of Man	
Sch. 2 para. 5	Communications (Bailiwick of Guernsey) Order 2003/3195, Sch. 2 para. 102	Modified in relation to the Bailiwick of Guernsey	art. 6
	Communications (Isle of Man) Order 2003/3198, Sch. 2 para. 66(b)	Modified in relation to the Isle of Man	
	Communications (Jersey) Order 2003/3197, Sch. 2 para. 99	Modified in relation to the Bailiwick of Jersey	art. 6
Sch. 2 para. 6	Postal Services Act 2011 c. 5, Pt 3 s. 64(2)	Modified in relation to the Postal Services Commission	
Sch. 5	Communications (Isle of Man) Order 2003/3198, art. 6(1)	Modified in relation to the Isle of Man	
Sch. 5 para. 6(12)(b)	Communications (Bailiwick of Guernsey) Order 2003/3195, Sch. 2 para. 103	Modified in relation to the Bailiwick of Guernsey	art. 6
	Communications (Jersey) Order 2003/3197, Sch. 2 para. 100	Modified in relation to the Bailiwick of Jersey	art. 6
Sch. 5 para. 7(4)	Communications (Bailiwick of Guernsey) Order 2003/3195, Sch. 2 para. 103	Modified in relation to the Bailiwick of Guernsey	art. 6
	Communications (Jersey) Order 2003/3197, Sch. 2 para. 100	Modified in relation to the Bailiwick of Jersey	art. 6
Sch. 8	Communications (Isle of Man) Order 2003/3198, art. 6(1)	Modified in relation to the Isle of Man	
Sch. 8 para. 3	Communications (Bailiwick of Guernsey) Order 2003/3195, Sch. 2 para. 104	Modified in relation to the Bailiwick of Guernsey	art. 6
	Communications (Bailiwick of Guernsey) Order 2003/3195, Sch. 2 para. 104	Modified in relation to the Bailiwick of Guernsey	art. 6
	Communications (Isle of Man) Order 2003/3198, Sch. 2 para. 67	Modified in relation to the Isle of Man	
	Communications (Jersey) Order 2003/3197, Sch. 2 para. 101	Modified in relation to the Bailiwick of Jersey	art. 6
Sch. 8 para. 4	Communications (Bailiwick of Guernsey) Order 2003/3195, Sch. 2 para. 104	Modified in relation to the Bailiwick of Guernsey	art. 6
	Communications (Bailiwick of Guernsey) Order 2003/3195, Sch. 2 para. 104	Modified in relation to the Bailiwick of Guernsey	art. 6
	Communications (Isle of Man) Order 2003/3198, Sch. 2 para. 67	Modified in relation to the Isle of Man	
	Communications (Jersey) Order 2003/3197, Sch. 2 para. 101	Modified in relation to the Bailiwick of Jersey	art. 6

Sch. 8 para. 5	Communications (Bailiwick of Guernsey) Order 2003/3195, Sch. 2 para. 104	Modified in relation to the Bailiwick of Guernsey	art. 6
	Communications (Bailiwick of Guernsey) Order 2003/3195, Sch. 2 para. 104	Modified in relation to the Bailiwick of Guernsey	art. 6
	Communications (Isle of Man) Order 2003/3198, Sch. 2 para. 67	Modified in relation to the Isle of Man	
	Communications (Jersey) Order 2003/3197, Sch. 2 para. 101	Modified in relation to the Bailiwick of Jersey	art. 6
Sch. 8 para. 6	Communications (Bailiwick of Guernsey) Order 2003/3195, Sch. 2 para. 104	Modified in relation to the Bailiwick of Guernsey	art. 6
	Communications (Bailiwick of Guernsey) Order 2003/3195, Sch. 2 para. 104	Modified in relation to the Bailiwick of Guernsey	art. 6
	Communications (Isle of Man) Order 2003/3198, Sch. 2 para. 67	Modified in relation to the Isle of Man	
	Communications (Jersey) Order 2003/3197, Sch. 2 para. 101	Modified in relation to the Bailiwick of Jersey	art. 6
Sch. 8 para. 7	Communications (Bailiwick of Guernsey) Order 2003/3195, Sch. 2 para. 104	Modified in relation to the Bailiwick of Guernsey	art. 6
	Communications (Bailiwick of Guernsey) Order 2003/3195, Sch. 2 para. 104	Modified in relation to the Bailiwick of Guernsey	art. 6
	Communications (Isle of Man) Order 2003/3198, Sch. 2 para. 67	Modified in relation to the Isle of Man	
	Communications (Jersey) Order 2003/3197, Sch. 2 para. 101	Modified in relation to the Bailiwick of Jersey	art. 6
Sch. 8 para. 8	Communications (Bailiwick of Guernsey) Order 2003/3195, Sch. 2 para. 104	Modified in relation to the Bailiwick of Guernsey	art. 6
	Communications (Bailiwick of Guernsey) Order 2003/3195, Sch. 2 para. 104	Modified in relation to the Bailiwick of Guernsey	art. 6
	Communications (Isle of Man) Order 2003/3198, Sch. 2 para. 67	Modified in relation to the Isle of Man	
	Communications (Jersey) Order 2003/3197, Sch. 2 para. 101	Modified in relation to the Bailiwick of Jersey	art. 6
Sch. 8 para. 9	Communications (Bailiwick of Guernsey) Order 2003/3195, Sch. 2 para. 104	Modified in relation to the Bailiwick of Guernsey	art. 6
	Communications (Bailiwick of Guernsey) Order 2003/3195, Sch. 2 para. 104	Modified in relation to the Bailiwick of Guernsey	art. 6
	Communications (Isle of Man) Order 2003/3198, Sch. 2 para. 67	Modified in relation to the Isle of Man	

	Communications (Jersey) Order 2003/3197, Sch. 2 para. 101	Modified in relation to the Bailiwick of Jersey	art. 6
Sch. 8 para. 9A	Communications (Bailiwick of Guernsey) Order 2003/3195, Sch. 2 para. 104	Modified in relation to the Bailiwick of Guernsey	art. 6
	Communications (Bailiwick of Guernsey) Order 2003/3195, Sch. 2 para. 104	Modified in relation to the Bailiwick of Guernsey	art. 6
	Communications (Isle of Man) Order 2003/3198, Sch. 2 para. 67	Modified in relation to the Isle of Man	
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