



# Digital Economy Act 2017

## 2017 CHAPTER 30

### PART 6

#### MISCELLANEOUS

##### *Other provisions relating to OFCOM*

#### **98 Strategic priorities and provision of information**

(1) After section 2 of the Communications Act 2003 insert—

*“Strategic priorities*

##### **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.

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- (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).

### **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.

### **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—

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- (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.”
- (2) After section 24 of that Act insert—

**“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—

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“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.

#### **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.”

- (3) The duty under subsection (1) of section 24A of that Act does not have effect until the day on which regulations made under subsection (4) of that section first come into force.
- (4) In section 393(6) of that Act (general restrictions on disclosure of information), after paragraph (a) insert—
  - “(aza) prevents the disclosure of information under section 24A or 24B;”.
- (5) In section 111(7) of the Wireless Telegraphy Act 2006 (general restrictions on disclosure of information), after paragraph (a) insert—
  - “(aa) prevents the disclosure of information under section 24A or 24B of that Act;”.
- (6) In section 56 of the Postal Services Act 2011 (general restrictions on disclosure of information), after subsection (6) insert—
  - “(6A) Nothing in this section prevents the disclosure of information under section 24A or 24B of the Communications Act 2003.”

#### **99 OFCOM and Northern Ireland**

- (1) Section 1 of the Office of Communications Act 2002 (the Office of Communications) is amended as follows.
- (2) In subsection (3), before paragraph (b) insert—
  - “(ac) a member appointed by the Minister for the Economy in Northern Ireland;”.

(3) Before subsection (4) insert—

“(3C) Before appointing a member under subsection (3)(ac) the Minister for the Economy must consult the Secretary of State.”

(4) In subsection (5) in the words before paragraph (a), before “and (b),” insert “, (ac)”.

(5) At the end insert—

“(13) Paragraphs 1 and 2 of the Schedule apply in relation to the appointment made under subsection (3)(ac) as if—

- (a) any reference to the Secretary of State were to the Minister for the Economy, and
- (b) at the end of paragraph 2 there were inserted—

“(9) Before the Minister for the Economy removes a person from office the Minister must consult the Secretary of State.”””

(6) The Schedule to the Office of Communications Act 2002 is amended as follows.

(7) In paragraph 11 (accounts and audit)—

- (a) in sub-paragraph (3)(c) at the end insert “and the Minister for the Economy in Northern Ireland”;
- (b) at the end insert—

“(6) The Minister for the Economy in Northern Ireland shall lay a copy of the statement and report sent to the Minister under sub-paragraph (3) before the Northern Ireland Assembly.”

(8) In paragraph 12 (annual report)—

- (a) in sub-paragraph (1) before “a report” insert “and the Minister for the Economy in Northern Ireland”;
- (b) at the end insert—

“(6) The Minister for the Economy in Northern Ireland shall lay a copy of every report sent to the Minister under this paragraph before the Northern Ireland Assembly.”

(9) The following provisions of section 44 of the Northern Ireland Act 1998 (power of Assembly to call for witnesses and documents: limitation by reference to transferred matters etc) do not apply in relation to requirements imposed in connection with the discharge of the functions of the Office of Communications in relation to Northern Ireland—

- (a) the words after paragraph (b) in subsection (1);
- (b) subsections (2), (3) and (5)(b).

## **100 Retention by OFCOM of amounts paid under Wireless Telegraphy Act 2006**

(1) The Communications Act 2003 is amended as follows.

(2) In section 400(4)(c) (destination of fees and penalties: account for financial year), for the words from “of principles” to “subsection (4)” substitute “under section 401 for meeting the costs set out in the statement in accordance with subsection (1)(b)”.

- (3) In section 401 (retention of amounts by OFCOM), for subsection (1) substitute—
- “(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).”
- (4) In subsection (2) of that section, omit “of principles”.
- (5) For subsections (3) to (5) of that section substitute—
- “(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.”
- (6) In subsection (6) of that section, omit “the principles contained in”.
- (7) In subsection (7) of that section, for “of carrying out the functions mentioned in subsection (4) of this section” substitute “set out in the statement in accordance with subsection (1)(b)”.
- (8) In subsection (8) of that section, omit “of principles”.
- (9) In subsection (10) of that section, after “Treasury” insert “and the Secretary of State”.
- (10) For the heading to that section substitute “Retention by OFCOM of amounts paid under Wireless Telegraphy Act 2006”.

## **101 International recognition of satellite frequency assignments: power of OFCOM to charge fees**

- (1) The Communications Act 2003 is amended as follows.
- (2) After section 28 (general power of OFCOM to charge for services), and before the italic heading following that section, insert—

### **“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.”
- (3) In section 38 (annual administrative charge), after subsection (11) insert—
- “(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.”
- (4) Section 28A(2) and (6)(c) of the Communications Act 2003, inserted by subsection (2), does not apply to any satellite filing work if OFCOM received the request to do that work before the coming into force of that section.