

COMMUNICATIONS ACT 2003

EXPLANATORY NOTES

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.