

# COMMUNICATIONS ACT 2003

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 1: Functions of 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.

*These notes refer to the Communications Act 2003  
(c.21) which received Royal Assent on 17 July 2003*

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)).