

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

COMMUNICATIONS ACT 2003

EXPLANATORY NOTES

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

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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.