



# Communications Act 2003

## 2003 CHAPTER 21

### PART 2

#### NETWORKS, SERVICES AND THE RADIO SPECTRUM

### CHAPTER 1

#### ELECTRONIC COMMUNICATIONS NETWORKS AND SERVICES

PROSPECTIVE

#### *Persistent misuse of network or service*

#### **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

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*Status: This version of this cross heading contains provisions that are prospective.*

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- (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.

## **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.

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- (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.

### **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 £5,000 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

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- (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.

### **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.

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**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Act, associated Parts and Chapters:**

- Act amendment to earlier affecting provision SI 2003/3195 by [S.I. 2004/715 art. 3 Sch.](#)
- Act amendment to earlier affecting provision SI 2003/3195 art. 6 Sch. 2 by [S.I. 2004/1116 art. 2](#)
- Act amendment to earlier affecting provision SI 2003/3197 by [S.I. 2004/308 art. 6\(3\) Sch. 2](#)
- Act amendment to earlier affecting provision SI 2003/3197 by [S.I. 2004/716 art. 3](#)
- Act amendment to earlier affecting provision SI 2003/3197 art. 6 Sch. 2 by [S.I. 2004/1114 art. 2](#)
- Act amendment to earlier affecting provision SI 2003/3198 by [S.I. 2004/309 art. 2\(2\) Sch. Pt. 2](#)
- Act amendment to earlier affecting provision SI 2003/3198 by [S.I. 2004/718 art. 2](#)
- Act amendment to earlier affecting provision SI 2003/3198 art. 6 Sch. 2 by [S.I. 2007/278 art. 3 Sch. 2 Pt. 1](#)
- Act amendment to earlier affecting provision SI 2003/3198 art. 6(1) by [S.I. 2004/1115 art. 2](#)
- Act applied (with modifications) by [S.I. 2004/1944 art. 4 Sch.](#)
- Act modified by [S.I. 2007/1118 art. 7](#)
- Act specified provisions extended (Guernsey) (with modifications) by [S.I. 2003/3195 art. 6 Sch. 2](#) (This SI is amended by SI 2004/307, 2004/715, 2004/1116, 2005/856)
- Act specified provisions extended (Guernsey) (with modifications) by [S.I. 2004/307 art. 4 Sch.](#)
- Act specified provisions extended (Isle of Man) (with modifications) by [S.I. 2003/3198 art. 6 Sch. 2](#) (This SI is amended by SI 2004/309, 2004/718, 2004/1115, 2007/278)
- Act specified provisions extended (Jersey) (with modifications) by [S.I. 2003/3197 art. 6 Sch. 2](#) (This SI is amended by SI 2004/308, 2004/716, 2004/1114, 2005/855)
- Act specified provisions extended (Jersey) (with modifications) by [S.I. 2004/308 art. 4 Sch. 1](#)
- Blanket amendment text amended by [S.I. 2011/1043 art. 3 4](#)
- Blanket amendment text amended by [S.I. 2011/1043 art. 3 6](#)

**Whole provisions yet to be inserted into this Act (including any effects on those provisions):**

- Pt. 4A inserted by [S.I. 2009/2979 reg. 2](#)
- s. 4A inserted by [S.I. 2011/1210 Sch. 1 para. 6](#)
- s. 35A inserted by [S.I. 2011/1210 Sch. 1 para. 11](#)
- s. 48A-48C inserted by [S.I. 2011/1210 Sch. 1 para. 23](#)
- s. 49A-49C inserted by [S.I. 2011/1210 Sch. 1 para. 25](#)
- s. 56A inserted by [S.I. 2011/1210 Sch. 1 para. 31](#)
- s. 76A inserted by [S.I. 2011/1210 Sch. 1 para. 41](#)
- s. 80A 80B inserted by [S.I. 2011/1210 Sch. 1 para. 43](#)
- s. 84A inserted by [S.I. 2011/1210 Sch. 1 para. 47](#)
- s. 89A 89B 89C inserted by [S.I. 2011/1210 Sch. 1 para. 50](#)
- s. 96A-96C inserted by [S.I. 2011/1210 Sch. 1 para. 55](#)

- s. 100A inserted by S.I. 2011/1210 Sch. 1 para. 60
- s. 105A-105D inserted by S.I. 2011/1210 Sch. 1 para. 65
- s. 110A inserted by S.I. 2011/1210 Sch. 1 para. 69
- s. 111A 111B inserted by S.I. 2011/1210 Sch. 1 para. 71
- s. 120A inserted by S.I. 2011/1210 Sch. 1 para. 77
- s. 124A inserted by 2010 c. 24 s. 3
- s. 124B inserted by 2010 c. 24 s. 4
- s. 124C inserted by 2010 c. 24 s. 5
- s. 124D inserted by 2010 c. 24 s. 6
- s. 124E inserted by 2010 c. 24 s. 7
- s. 124F inserted by 2010 c. 24 s. 8
- s. 124G inserted by 2010 c. 24 s. 9
- s. 124H inserted by 2010 c. 24 s. 10
- s. 124I inserted by 2010 c. 24 s. 11
- s. 124J inserted by 2010 c. 24 s. 12
- s. 124K inserted by 2010 c. 24 s. 13
- s. 124L inserted by 2010 c. 24 s. 14
- s. 124M inserted by 2010 c. 24 s. 15
- s. 124N inserted by 2010 c. 24 s. 16(1)
- s. 124O inserted by 2010 c. 24 s. 19
- s. 124P 124Q inserted by 2010 c. 24 s. 20(1)
- s. 124R inserted by 2010 c. 24 s. 21
- s. 134A-134C inserted by 2010 c. 24 s. 1(1)
- s. 139A-139C inserted by S.I. 2011/1210 Sch. 1 para. 83
- s. 146A inserted by S.I. 2011/1210 Sch. 1 para. 88
- s. 150A inserted by S.I. 2011/1210 Sch. 1 para. 89
- s. 185A inserted by S.I. 2011/1210 Sch. 1 para. 92
- s. 198A inserted by 2010 c. 24 s. 22(1)
- s. 198B-198D inserted by 2010 c. 24 s. 23(1)
- s. 216A inserted by 2010 c. 24 s. 24(7)
- s. 218A inserted by 2010 c. 24 s. 27
- s. 264A inserted by 2010 c. 24 s. 2
- s. 271A inserted by 2010 c. 24 s. 23(2)
- s. 335A inserted by S.I. 2009/2979 reg. 7
- s. 335A(1)(a) text amended by S.I. 2010/1883 reg. 4
- s. 368B(1) text amended by S.I. 2010/419 reg. 3(1)
- s. 368B(6) text amended by S.I. 2010/419 reg. 3(2)
- s. 368D(3)(za)(zb) inserted by S.I. 2010/419 reg. 5(1)
- s. 368D(3A) inserted by S.I. 2010/419 reg. 5(2)
- s. 368G(2) text amended by S.I. 2010/419 reg. 6
- s. 368H(16) text amended by S.I. 2010/831 reg. 7
- s. 368J(1) text amended by S.I. 2010/419 reg. 7
- s. 368K(1)(a) text amended by S.I. 2010/419 reg. 8(2)
- s. 368K(1)(b) text amended by S.I. 2010/419 reg. 8(3)
- s. 368O(2)(a) text amended by S.I. 2010/419 reg. 10
- s. 368P(A1) inserted by S.I. 2010/419 reg. 11(a)
- s. 368P(1) substituted by S.I. 2010/419 reg. 11(b)
- s. 368P(2)(b)(c) omitted by S.I. 2010/419 reg. 11(c)
- s. 368Q(A1) inserted by S.I. 2010/419 reg. 12(1)
- s. 368Q(4) text amended by S.I. 2010/419 reg. 12(2)
- s. 368Q(5) text amended by S.I. 2010/419 reg. 12(3)
- s. 368R(1) text amended by S.I. 2010/831 reg. 8
- s. 368BA 368BB inserted by S.I. 2010/419 reg. 4
- s. 368NA inserted by S.I. 2010/419 reg. 9
- Sch. 11A inserted by S.I. 2010/831 reg. 9
- specified provision(s) amendment to earlier commencing SI 2003/3142 by S.I. 2004/545 art. 2

- specified provision(s) amendment to earlier commencing SI 2003/3142 by [S.I. 2004/697 art. 2](#)
- specified provision(s) amendment to earlier commencing SI 2003/3142 art. 4 by [S.I. 2004/1492 art. 2](#)

**Commencement Orders yet to be applied to the Communications Act 2003:**

Commencement Orders bringing provisions within this Act into force:

- [S.I. 2003/1900 art. 2](#) commences (2003 c. 21)
- [S.I. 2004/3309 art. 2 3](#) commences (2003 c. 21)
- [S.I. 2009/2130 art. 2](#) commences (2003 c. 21)

Commencement Orders bringing legislation that affects this Act into force:

- [S.I. 2003/3142 art. 2-4](#) commences (2002 c. 11 and 2003 c. 21)
- [S.I. 2004/2575 art. 2 Sch. 1 2](#) commences (2004 c. 20)
- [S.I. 2005/3495 art. 2](#) commences (2005 c. 15)
- [S.I. 2007/2584 art. 2](#) commences (2006 c. 26)
- [S.I. 2007/3546 art. 3 Sch.](#) commences (2007 c. 17)
- [S.I. 2008/3068 art. 2-5](#) commences (2008 c. 17)
- [S.I. 2009/812 art. 3](#) commences (2006 c. 52)
- [S.I. 2009/1059](#) Order transitional provisions for effects of commencing SI 2009/812
- [S.I. 2009/1167 art. 3 4](#) commences (2006 c. 52)
- [S.I. 2010/2317 art. 2 3](#) commences (2010 c. 15)
- [S.I. 2011/2329 art. 2 3](#) commences (2011 c. 5)