



# Communications Act 2003

## 2003 CHAPTER 21

### PART 2

#### NETWORKS, SERVICES AND THE RADIO SPECTRUM

### CHAPTER 1

#### ELECTRONIC COMMUNICATIONS NETWORKS AND SERVICES

##### *Universal service conditions*

#### **65 Obligations to be secured by universal service conditions**

- (1) The Secretary of State must by order (“the universal service order”) set out the extent to which the things falling within subsection (2) must, for the purpose of securing compliance with Community obligations for the time being in force, be provided, made available or supplied throughout the United Kingdom.
- (2) Those things are—
  - (a) electronic communications networks and electronic communications services;
  - (b) facilities capable of being made available as part of or in connection with an electronic communications service;
  - (c) particular methods of billing for electronic communications services or of accepting payment for them;
  - (d) directories capable of being used in connection with the use of an electronic communications network or electronic communications service; and
  - (e) directory enquiry facilities capable of being used for purposes connected with the use of such a network or service.
- (3) The universal service order may contain guidance about matters relating to the pricing of things that the order says must be provided, made available or supplied.

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- (4) Before making or varying the universal service order, the Secretary of State must consult OFCOM and such other persons as he considers appropriate.

## **66 Designation of universal service providers**

- (1) OFCOM may by regulations make provision for the designation of the persons to whom universal service conditions are to be applicable.
- (2) Subject to subsection (3), those regulations are not to authorise the designation of a person other than a communications provider.
- (3) The regulations may provide for a person other than a communications provider to be designated for the purposes only of conditions relating to—
  - (a) the supply of directories capable of being used in connection with the use of an electronic communications network or electronic communications service; and
  - (b) the making available of directory enquiry facilities capable of being used for purposes connected with the use of such a network or service.
- (4) OFCOM may from time to time—
  - (a) review the designations for the time being in force in accordance with regulations under this section; and
  - (b) on such a review, consider what (if any) universal service conditions should continue to apply to each of the designated persons.
- (5) The procedure to be followed in the case of every such review must be the procedure provided for in regulations made by OFCOM.
- (6) Regulations made by OFCOM under this section must provide for a person's designation as a person to whom universal service conditions are to be applicable to cease to have effect where, in any such case as may be described in the regulations, the universal service conditions applied to him are all revoked.
- (7) Regulations made by OFCOM under this section providing a procedure for the designation of persons, or for the conduct of a review under subsection (4), must not provide for any procedure other than one appearing to OFCOM—
  - (a) to be efficient, objective and transparent; and
  - (b) not to involve, or to tend to give rise to, any undue discrimination against any person or description of persons.
- (8) Where—
  - (a) OFCOM designate a person in accordance with regulations under this section, or
  - (b) a designation of a person in accordance with any such regulations ceases to have effect,they must give a notification of that designation, or of that fact, to the European Commission.
- (9) A notification under this section must identify the person who has been designated, or the person whose designation has ceased to have effect.
- (10) Section 403 applies to the power of OFCOM to make regulations under this section.

## **67 Subject-matter of universal service conditions**

- (1) OFCOM may set any such universal service conditions as they consider appropriate for securing compliance with the obligations set out in the universal service order.
- (2) Universal service conditions applied to a person must include a condition requiring him to publish information about his performance in complying with the universal service conditions that apply to him.
- (3) A condition set in accordance with subsection (2) must contain provision which—
  - (a) requires information published in accordance with it to be updated from time to time and published again;
  - (b) requires information so published to satisfy the requirements that OFCOM consider appropriate for securing that it is adequate; and
  - (c) requires information so published to be framed by reference to the quality of service parameters, definitions and measurement methods for the time being set out in Annex III to the Universal Service Directive.
- (4) A condition set in accordance with that subsection may impose requirements as to—
  - (a) the times at which information published in accordance with it is to be published; and
  - (b) the manner in which that information is to be published.
- (5) Universal service conditions may impose an obligation on a person to whom they apply to do one or both of the following, if required to do so by OFCOM—
  - (a) to make facilities available for enabling information published in pursuance of a condition applied to that person under subsection (2) to be independently audited;
  - (b) to meet the costs of any independent auditing of that information that is required by OFCOM.
- (6) The reference in subsection (5) to the independent auditing of information is a reference to its being audited by a qualified auditor—
  - (a) for accuracy; and
  - (b) for its usefulness in the making of comparisons with information published by other designated universal service providers.
- (7) Universal service conditions may impose performance targets on designated universal service providers with respect to any of the matters in relation to which obligations may be imposed by such conditions.
- (8) In setting a universal service condition, OFCOM must have regard to any guidance about matters relating to pricing that is contained in the universal service order.
- (9) In this section “qualified auditor” means a person eligible, in accordance with Part 2 of the Companies Act 1989 (c. 40), for appointment as a company auditor.

## **68 Tariffs etc. for universal services**

- (1) It shall be the duty of OFCOM—
  - (a) to keep under review universal service tariffs; and
  - (b) to monitor changes to those tariffs.
- (2) Universal service conditions may require one or more of the following—

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- (a) the use of a common tariff, or of common tariffs, in relation to anything mentioned in section 65(2);
  - (b) the use, in such cases as may be specified or described in the conditions, of such special tariffs in relation to anything so mentioned as may be so specified or described;
  - (c) the fixing of tariffs used in accordance with the conditions by the use of such methods, and by reference to such methods of computing costs, as may be so specified or described.
- (3) Universal service conditions must secure that the terms on which a person is provided with anything required by the universal service order do not require him—
  - (a) to pay for an unnecessary additional service; or
  - (b) to pay, in respect of anything required by the order, any amount that is attributable to the provision to him of such a service.
- (4) The references in subsection (3), in relation to a person, to an unnecessary additional service are references to anything the provision of which—
  - (a) he has to accept by reason of his being provided, at his request, with something required by the order (“the requested service”); and
  - (b) is not necessary for the purpose of providing him with the requested service.
- (5) It shall be the duty of OFCOM, in setting a universal service condition about universal service tariffs, to have regard to anything ascertained by them in the performance of their duty under subsection (1).
- (6) References in this section to a universal service tariff are references to any of the tariffs used by designated universal service providers in relation to the things for the time being required by the universal service order.
- (7) References in this section to providing a person with anything include references to making it available or supplying it to him.
- (8) In this section “tariff” includes a pricing structure.

## **69 Directories and directory enquiry facilities**

- (1) This section applies where universal service conditions require a designated universal service provider—
  - (a) to supply a directory capable of being used in connection with the use of an electronic communications network or electronic communications service; or
  - (b) to make available directory enquiry facilities capable of being used for purposes connected with use of such a network or service.
- (2) The universal service conditions applied to the provider must include the conditions that OFCOM consider appropriate for securing that the provider does not unduly discriminate against a source of relevant information—
  - (a) in the compiling of the directory or the answering of directory enquiries; or
  - (b) in the treatment in the directory, or for the purposes of the facilities, of any relevant information from that source.
- (3) In this section—

- (a) references to relevant information are references to information provided for inclusion in the directory or for use in the answering of directory enquiries; and
- (b) references to a source of relevant information are references to a communications provider or designated universal service provider who provides relevant information.

## **70 Review of compliance costs**

- (1) OFCOM may from time to time review the extent (if any) of the financial burden for a particular designated universal service provider of complying in relation to any matter with any one or more of the universal service conditions applied to him.
- (2) Where—
  - (a) regulations under section 66 require the financial burden of so complying to be taken into account in determining whom to designate, and
  - (b) the regulations provide for a particular method of calculating that burden to be used for the purposes of that determination,that must be the method of calculation applied on a review under this section.
- (3) Where subsection (2) does not apply, the financial burden of so complying is to be taken to be the amount calculated by OFCOM to be the net cost of compliance after allowing for market benefits accruing to the designated universal service provider from—
  - (a) his designation; and
  - (b) the application to him of universal service conditions.
- (4) After carrying out a review under this section OFCOM must either—
  - (a) cause the calculations made by them on the review to be audited by a person who appears to them to be independent of designated universal service providers; or
  - (b) themselves carry out an audit of those calculations.
- (5) OFCOM must ensure, in the case of every audit carried out under subsection (4), that a report on the audit—
  - (a) is prepared; and
  - (b) if not prepared by OFCOM, is provided to them.
- (6) It shall be the duty of OFCOM, in the case of every review under this section, to publish—
  - (a) their conclusions on the review; and
  - (b) a summary of the report of the audit which was carried out as respects the calculations made for the purposes of that review.
- (7) The publication of anything under subsection (6) must be a publication in such manner as OFCOM consider appropriate for bringing it to the attention of the persons who, in their opinion, are likely to be affected by it.

## **71 Sharing of burden of universal service obligations**

- (1) This section applies where OFCOM—

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- (a) have concluded, on a review under section 70, that complying in relation to any matter with universal service conditions imposes a financial burden on a particular designated universal service provider; and
  - (b) have published that conclusion in accordance with that section.
- (2) OFCOM must determine, in the case of the designated universal service provider, whether they consider it would be unfair for that provider to bear, or to continue to bear, the whole or any part of so much of the burden.
- (3) If—
  - (a) OFCOM determine that it would be unfair for the designated universal service provider to bear, or to continue to bear, the whole or a part of the burden, and
  - (b) an application for a determination under this subsection is made to OFCOM by that provider,
 OFCOM may determine that contributions are to be made by communications providers to whom general conditions are applicable for meeting that burden.
- (4) The making of any of the following must be in accordance with regulations made by OFCOM—
  - (a) a determination by OFCOM of the extent of the financial burden that exists for the designated universal service provider of complying in relation to any matter with universal service conditions;
  - (b) an application for the purposes of subsection (3)(b);
  - (c) a determination by OFCOM of whether it is or would be unfair for the designated universal service provider to bear, or to continue to bear, the burden of complying in relation to any matter with universal service conditions;
  - (d) a determination of the extent (if any) to which that is or would be unfair.
- (5) The assessment, collection and distribution of contributions under subsection (3) is not to be carried out except in accordance with a mechanism provided for in a scheme contained in regulations made by OFCOM.
- (6) It shall be the duty of OFCOM to exercise their power to make regulations under this section in the manner which they consider will secure that the assessment, collection and distribution of contributions under subsection (3) is carried out—
  - (a) in an objective and transparent manner;
  - (b) in a manner that does not involve, or tend to give rise to, any undue discrimination against particular communications providers or particular designated universal service providers, or against a particular description of them; and
  - (c) in a manner that avoids, or (if that is impracticable) at least minimises, any distortion of competition or of customer demand.
- (7) Regulations made by OFCOM under this section may provide for a scheme containing the provision mentioned in subsection (5), and for any fund set up for the purposes of such a scheme, to be administered either—
  - (a) by OFCOM; or
  - (b) by such other person as may be specified in the regulations.
- (8) A person other than OFCOM are not to be specified in regulations under this section as the administrator of such a scheme or fund unless he is a person who OFCOM are satisfied is independent of both—
  - (a) the persons who are designated universal service providers; and

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- (b) communications providers to whom general conditions are applicable.
- (9) Section 403 applies to the powers of OFCOM to make regulations under this section.

## **72 Report on sharing mechanism**

- (1) This section applies where regulations under section 71 provide for a scheme for the assessment, collection and distribution of contributions under subsection (3) of that section.
- (2) OFCOM must prepare and publish a report setting out, in relation to the period to which it applies—
  - (a) every determination by OFCOM that has had effect in relation to a time in that period as a determination of the costs of providing anything contained in the universal service order;
  - (b) the market benefits for each designated universal service provider that have accrued to him during that period from his designation and from the application to him of universal service conditions; and
  - (c) the contribution made under section 71(3) by every person who has made a contribution during that period.
- (3) The first report under this section must be prepared in relation to the period of twelve months beginning with the coming into force of the first regulations to be made under section 71.
- (4) Every subsequent report must be prepared in relation to the period of twelve months beginning with the end of the period to which the previous report applied.
- (5) Every report under this section—
  - (a) must be prepared as soon as practicable after the end of the period to which it is to apply; and
  - (b) must be published as soon as practicable after its preparation is complete.
- (6) OFCOM are not required under this section—
  - (a) to publish any matter that is confidential in accordance with subsection (7) or (8); or
  - (b) to publish anything that it would not be reasonably practicable to publish without disclosing such a matter.
- (7) A matter is confidential under this subsection if—
  - (a) it relates specifically to the affairs of a particular body; and
  - (b) publication of that matter would or might, in OFCOM's opinion, seriously and prejudicially affect the interests of that body.
- (8) A matter is confidential under this subsection if—
  - (a) it relates to the private affairs of an individual; and
  - (b) publication of that matter would or might, in OFCOM's opinion, seriously and prejudicially affect the interests of that individual.
- (9) The publication of a report under this section must be a publication in such manner as OFCOM consider appropriate for bringing it to the attention of the persons who, in their opinion, are affected by the matters to which it relates.