



# Communications Act 2003

## 2003 CHAPTER 21

### PART 6

#### MISCELLANEOUS AND SUPPLEMENTAL

##### *Annual report*

#### **390 Annual report on the Secretary of State's functions**

- (1) The Secretary of State must prepare and lay before Parliament regular reports on the carrying out by him of the functions to which this section applies.
- (2) This section applies to the Secretary of State's functions under the following enactments—
  - (a) this Act;
  - (b) the Office of Communications Act 2002 (c. 11);
  - (c) the enactments relating to the management of the radio spectrum so far as not comprised in this Act;
  - (d) the 1990 Act;
  - (e) the 1996 Act.
- (3) The first report under this section must relate to the period which—
  - (a) begins with 19th March 2002 (the date of the passing of the Office of Communications Act 2002); and
  - (b) ends with the period of twelve months beginning with the first date to be appointed for the purposes of section 2 of this Act.
- (4) Every subsequent report must relate to the period of twelve months beginning with the end of the period to which the previous report related.
- (5) The obligation under this section to prepare and lay a report before Parliament is an obligation to do that as soon as reasonably practicable after the end of the period to which the report relates.

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- (6) Where a report for the purposes of this section relates to a period the whole or a part of which falls before the time when the whole of this Act is in force, the functions referred to in subsection (2) are to be taken as excluding all functions under the specified enactments that will have ceased to be functions of the Secretary of State when the whole of this Act is in force.

*Review of media ownership*

**391 Review of media ownership**

- (1) It shall be the duty of OFCOM—
- (a) to carry out regular reviews of the operation, taken together, of all the provisions to which this section applies; and
  - (b) to send a report on every such review to the Secretary of State.
- (2) This section applies to—
- (a) the provisions of Schedule 2 to the 1990 Act;
  - (b) the provision made by or under Schedule 14 to this Act;
  - (c) the provisions of sections 280 and 281 of this Act;
  - (d) whatever provision (if any) has been made under section 283 of this Act; and
  - (e) the provisions of Part 3 of the Enterprise Act 2002 (c. 40) so far as they relate to intervention by the Secretary of State in connection with newspapers or other media enterprises.
- (3) The first review must be carried out no more than three years after the commencement of this section, and subsequent reviews must be carried out at intervals of no more than three years.
- (4) The report to the Secretary of State on a review must set out OFCOM's recommendations, in consequence of their conclusions on the review, for the exercise by the Secretary of State of—
- (a) his power to make an order under section 348(5);
  - (b) his powers to make orders under Schedule 14;
  - (c) his powers under sections 282 and 283; and
  - (d) his powers under sections 44(11), 58(3) and 59(6A) of the Enterprise Act 2002 (media mergers).
- (5) OFCOM must publish every report sent by them to the Secretary of State under this section in such manner as they consider appropriate for bringing it to the attention of persons who, in their opinion, are likely to be affected by it.

*Guidelines as to penalties*

**392 Penalties imposed by OFCOM**

- (1) It shall be the duty of OFCOM to prepare and publish a statement containing the guidelines they propose to follow in determining the amount of penalties imposed by them under provisions contained in this Act or any other enactment apart from the Competition Act 1998 (c. 41).
- (2) OFCOM may from time to time revise that statement as they think fit.

- (3) Where OFCOM make or revise their statement under this section, they must publish the 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) Before publishing a statement or revised statement under this section OFCOM must consult both—
  - (a) the Secretary of State, and
  - (b) such other persons as they consider appropriate,about the guidelines they are proposing to include in the statement.
- (5) Before determining how to publish a statement or revised statement under this section OFCOM must consult the Secretary of State.
- (6) It shall be the duty of OFCOM, in determining the amount of any penalty to be imposed by them under this Act or any other enactment (apart from the Competition Act 1998 (c. 41)) to have regard to the guidelines contained in the statement for the time being in force under this section.
- (7) References in this section to penalties imposed by OFCOM under provisions contained in this Act include references to penalties which the BBC is liable to pay to OFCOM by virtue of section 198(3).

#### *Disclosure of information*

### **393 General restrictions on disclosure of information**

- (1) Subject to the following provisions of this section, information with respect to a particular business which has been obtained in exercise of a power conferred by—
  - (a) this Act,
  - (b) the enactments relating to the management of the radio spectrum (so far as not contained in this Act),
  - (c) the 1990 Act, or
  - (d) the 1996 Act,is not, so long as that business continues to be carried on, to be disclosed without the consent of the person for the time being carrying on that business.
- (2) Subsection (1) does not apply to any disclosure of information which is made—
  - (a) for the purpose of facilitating the carrying out by OFCOM of any of their functions;
  - (b) for the purpose of facilitating the carrying out by any relevant person of any relevant function;
  - (c) for the purpose of facilitating the carrying out by the Comptroller and Auditor General of any of his functions;
  - (d) for any of the purposes specified in section 17(2)(a) to (d) of the Anti-terrorism, Crime and Security Act 2001 (c. 24) (criminal proceedings and investigations);
  - (e) for the purpose of any civil proceedings brought under or by virtue of this Act or any of the enactments or instruments mentioned in subsection (5); or
  - (f) for the purpose of securing compliance with an international obligation of the United Kingdom.

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- (3) Each of the following is a relevant person for the purposes of this section—
- (a) a Minister of the Crown and the Treasury;
  - (b) the Scottish Executive;
  - (c) a Northern Ireland department;
  - (d) the Office of Fair Trading;
  - (e) the Competition Commission;
  - (f) the Consumer Panel;
  - (g) the Welsh Authority;
  - (h) a local weights and measures authority in Great Britain;
  - (i) any other person specified for the purposes of this subsection in an order made by the Secretary of State.
- (4) The following are relevant functions for the purposes of this section—
- (a) any function conferred by or under this Act;
  - (b) any function conferred by or under any enactment or instrument mentioned in subsection (5);
  - (c) any other function specified for the purposes of this subsection in an order made by the Secretary of State.
- (5) The enactments and instruments referred to in subsections (2) and (4) are—
- (a) the Wireless Telegraphy Act 1949 (c. 54);
  - (b) the Marine, &c., Broadcasting (Offences) Act 1967 (c. 41);
  - (c) the Wireless Telegraphy Act 1967 (c. 72);
  - (d) the Trade Descriptions Act 1968 (c. 29);
  - (e) the Fair Trading Act 1973 (c. 41);
  - (f) the Consumer Credit Act 1974 (c. 39);
  - (g) the Competition Act 1980 (c. 21);
  - (h) the Telecommunications Act 1984 (c. 12);
  - (i) the Consumer Protection Act 1987 (c. 43);
  - (j) the 1990 Act;
  - (k) the 1996 Act;
  - (l) the Wireless Telegraphy Act 1998 (c. 6);
  - (m) the Competition Act 1998 (c. 41);
  - (n) the Enterprise Act 2002 (c. 40);
  - (o) the Consumer Protection (Northern Ireland) Order 1987 (S.I. 1987/2049 (N.I. 20));
  - (p) the Control of Misleading Advertisements Regulations 1988 (S.I. 1988/915).
- (6) Nothing in this section—
- (a) limits the matters that may be published under section 15, 26 or 390;
  - (b) limits the matters that may be included in, or made public as part of, a report made by OFCOM by virtue of a provision of this Act or the Office of Communications Act 2002 (c. 11);
  - (c) prevents the disclosure of anything for the purposes of a report of legal proceedings in which it has been publicly disclosed;
  - (d) applies to information that has been published or made public as mentioned in paragraphs (a) to (c).

- (7) Nothing in this section applies to information obtained in exercise of the powers conferred by section 196 of the 1990 Act (powers of entry and search).
- (8) Information obtained by OFCOM in exercise of functions which are exercisable by them concurrently with the Office of Fair Trading under Part 1 of the Competition Act 1998 is subject to Part 9 of the Enterprise Act 2002, and not to the preceding provisions of this section.
- (9) Section 18 of the Anti-terrorism, Crime and Security Act 2001 (c. 24) (restriction on disclosure of information for overseas purposes) shall have effect in relation to a disclosure by virtue of subsection (2)(d) as it applies in relation to a disclosure in exercise of a power to which section 17 of that Act applies.
- (10) A person who discloses information in contravention of this section is guilty of an offence and shall be liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both.
- (11) No order is to be made containing provision authorised by subsection (3) or (4) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.
- (12) In this section “legal proceedings” means civil or criminal proceedings in or before any court, or proceedings before any tribunal established by or under any enactment.

*Notifications etc. and electronic working*

**394 Service of notifications and other documents**

- (1) This section applies where provision made (in whatever terms) by or under an enactment specified in subsection (2) authorises or requires—
  - (a) a notification to be given to any person; or
  - (b) a document of any other description (including a copy of a document) to be sent to any person.
- (2) Those enactments are—
  - (a) this Act;
  - (b) the Office of Communications Act 2002 (c. 11);
  - (c) the enactments relating to the management of the radio spectrum (so far as not contained in this Act);
  - (d) Schedule 2 to the Telecommunications Act 1984 (c. 12);
  - (e) the 1990 Act; and
  - (f) the 1996 Act.
- (3) The notification or document may be given or sent to the person in question—
  - (a) by delivering it to him;
  - (b) by leaving it at his proper address; or
  - (c) by sending it by post to him at that address.
- (4) The notification or document may be given or sent to a body corporate by being given or sent to the secretary or clerk of that body.

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- (5) The notification or document may be given or sent to a firm by being given or sent to—
- (a) a partner in the firm; or
  - (b) a person having the control or management of the partnership business.
- (6) The notification or document may be given or sent to an unincorporated body or association by being given or sent to a member of the governing body of the body or association.
- (7) For the purposes of this section and section 7 of the Interpretation Act 1978 (c. 30) (service of documents by post) in its application to this section, the proper address of a person is—
- (a) in the case of body corporate, the address of the registered or principal office of the body;
  - (b) in the case of a firm, unincorporated body or association, the address of the principal office of the partnership, body or association;
  - (c) in the case of a person to whom the notification or other document is given or sent in reliance on any of subsections (4) to (6), the proper address of the body corporate, firm or (as the case may be) other body or association in question; and
  - (d) in any other case, the last known address of the person in question.
- (8) In the case of—
- (a) a company registered outside the United Kingdom,
  - (b) a firm carrying on business outside the United Kingdom, or
  - (c) an unincorporated body or association with offices outside the United Kingdom,
- the references in subsection (7) to its principal office include references to its principal office within the United Kingdom (if any).
- (9) In this section—
- “document” includes anything in writing; and
- “notification” includes notice;
- and references in this section to giving or sending a notification or other document to a person include references to transmitting it to him and to serving it on him.
- (10) This section has effect subject to section 395.

### **395 Notifications and documents in electronic form**

- (1) This section applies where—
- (a) section 394 authorises the giving or sending of a notification or other document by its delivery to a particular person (“the recipient”); and
  - (b) the notification or other document is transmitted to the recipient—
    - (i) by means of an electronic communications network; or
    - (ii) by other means but in a form that nevertheless requires the use of apparatus by the recipient to render it intelligible.
- (2) The transmission has effect for the purposes of the enactments specified in section 394(2) as a delivery of the notification or other document to the recipient, but only if the requirements imposed by or under this section are complied with.

- (3) Where the recipient is OFCOM—
  - (a) they must have indicated their willingness to receive the notification or other document in a manner mentioned in subsection (1)(b);
  - (b) the transmission must be made in such manner and satisfy such other conditions as they may require; and
  - (c) the notification or other document must take such form as they may require.
- (4) Where the person making the transmission is OFCOM, they may (subject to subsection (5)) determine—
  - (a) the manner in which the transmission is made; and
  - (b) the form in which the notification or other document is transmitted.
- (5) Where the recipient is a person other than OFCOM—
  - (a) the recipient, or
  - (b) the person on whose behalf the recipient receives the notification or other document,must have indicated to the person making the transmission the recipient's willingness to receive notifications or documents transmitted in the form and manner used.
- (6) An indication to any person for the purposes of subsection (5)—
  - (a) must be given to that person in such manner as he may require;
  - (b) may be a general indication or one that is limited to notifications or documents of a particular description;
  - (c) must state the address to be used and must be accompanied by such other information as that person requires for the making of the transmission; and
  - (d) may be modified or withdrawn at any time by a notice given to that person in such manner as he may require.
- (7) An indication, requirement or determination given, imposed or made by OFCOM for the purposes of this section is to be given, imposed or made by being published 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.
- (8) Subsection (9) of section 394 applies for the purposes of this section as it applies for the purposes of that section.

### **396 Timing and location of things done electronically**

- (1) The Secretary of State may by order make provision specifying, for the purposes of the enactments specified in section 394(2), the manner of determining—
  - (a) the times at which things done under those enactments by means of electronic communications networks are done; and
  - (b) the places at which such things are so done, and at which things transmitted by means of such networks are received.
- (2) The provision made by subsection (1) may include provision as to the country or territory in which an electronic address is to be treated as located.
- (3) An order made by the Secretary of State may also make provision about the manner of proving in any legal proceedings—

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- (a) that something done by means of an electronic communications network satisfies the requirements of the enactments specified in section 394(2) for the doing of that thing; and
  - (b) the matters mentioned in subsection (1)(a) and (b).
- (4) An order under this section may provide for such presumptions to apply (whether conclusive or not) as the Secretary of State considers appropriate.

*Other miscellaneous provisions*

**397 Purchase of Duchy of Lancaster land**

- (1) The Chancellor and Council of the Duchy of Lancaster may, if they think fit, agree with a person who provides a public electronic communications network for the sale, and absolutely make sale, for such sum of money as appears to them sufficient consideration for the same, of any land which—
- (a) belongs to Her Majesty in right of the Duchy of Lancaster; and
  - (b) is land which that person seeks to acquire for, or in connection with, the provision of his network.
- (2) In this section “public electronic communications network” has the same meaning as in Chapter 1 of Part 2.

**398 Repeal of certain provisions of the Telecommunications Act 1984**

- (1) The Telecommunications Act 1984 (c. 12) shall be amended as follows.
- (2) In Part 5 (transfer of undertakings of British Telecommunications), the following provisions (which include spent provisions) shall cease to have effect—
- (a) section 60;
  - (b) section 61(1) to (6);
  - (c) section 62;
  - (d) section 63(1) to (4);
  - (e) sections 64 to 67;
  - (f) section 69 to 71;
  - (g) sections 72(2), (4) and (5); and
  - (h) section 73.
- (3) In section 68(2) (liability of Secretary of State on winding up), after “any outstanding liability of the successor company” there shall be inserted “for the payment of pensions”.
- (4) In Part 7 (miscellaneous and supplemental) the following provisions shall cease to have effect—
- (a) section 93 (grants to promote interests of disabled persons); and
  - (b) section 97 (contributions by local authorities towards the provision of telecommunications facilities).



### *Supplemental*

#### **399 Expenses**

There shall be paid out of money provided by Parliament—

- (a) any expenditure incurred by the Secretary of State for or in connection with the carrying out of any of his functions under this Act; and
- (b) any increase attributable to this Act in the sums which are payable out of money so provided under any other Act.

#### **400 Destination of licence fees and penalties**

- (1) This section applies (subject to section 401) to the following amounts—
  - (a) an amount paid to OFCOM in respect of a penalty imposed by them under Chapter 1 of Part 2 (including a penalty imposed by virtue of section 191(5));
  - (b) so much of an amount paid to OFCOM under numbering conditions in respect of an allocation of telephone numbers as is an amount determined by reference to an indication given in response to an invitation such as is mentioned in section 58(5)(a);
  - (c) an amount paid to OFCOM in pursuance of an obligation imposed by or under the Wireless Telegraphy Act 1998 (c. 6);
  - (d) an amount paid to OFCOM in respect of a penalty imposed by them under section 175;
  - (e) a cash bid amount paid to OFCOM under a Broadcasting Act licence for the first year falling within the period for which the licence is in force;
  - (f) an amount paid to OFCOM under such a licence for a subsequent year as the amount equal to a cash bid amount increased by the appropriate percentage;
  - (g) an amount paid to OFCOM under such a licence as an amount representing a percentage of relevant revenue for an accounting period;
  - (h) an amount paid to OFCOM in respect of a penalty imposed by them under Part 1 or 3 of the 1990 Act, Part 1 or 2 of the 1996 Act or Part 3 of this Act.
- (2) Where OFCOM receive an amount to which this section applies, it must be paid into the appropriate Consolidated Fund; but this subsection does not apply to an amount which is required by OFCOM for making an adjustment in respect of an overpayment.
- (3) The reference in subsection (2) to the payment of an amount into the appropriate Consolidated Fund—
  - (a) in the case of an amount received in respect of matters appearing to OFCOM to have no connection with Northern Ireland, is a reference to the payment of the amount into the Consolidated Fund of the United Kingdom;
  - (b) in the case of an amount received in respect of matters appearing to OFCOM to have a connection with Northern Ireland but no connection with the rest of the United Kingdom, is a reference to the payment of the amount into the Consolidated Fund of Northern Ireland; and
  - (c) in any other case, is a reference to the payment of the amount, in such proportions as OFCOM consider appropriate, into each of those Funds.
- (4) OFCOM must, in respect of each financial year, prepare an account showing—
  - (a) the amounts to which this section applies that have been received by them during that year;

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- (b) the sums paid into the Consolidated Funds of the United Kingdom and Northern Ireland respectively under this section in respect of those amounts;
  - (c) the aggregate amount of the sums received by them during that year that is retained in accordance with a statement of principles under section 401 for meeting the costs of carrying out functions mentioned in subsection (4) of that section during that year;
  - (d) the aggregate amount that they estimate will fall to be so retained out of amounts due to them and likely to be paid or recovered; and
  - (e) the cost to OFCOM of carrying out during that year the functions in respect of which amounts are or are to be retained in accordance with such a statement.
- (5) OFCOM must send that account to the Comptroller and Auditor General not later than the end of the month of November following the financial year to which it relates.
- (6) The Comptroller and Auditor General must examine, certify and report on the account and lay copies of it, together with his report, before each House of Parliament.
- (7) References in this section to penalties imposed by OFCOM under Part 3 of this Act include references to penalties which the BBC is liable to pay to OFCOM by virtue of section 198(3).
- (8) In this section—
- “the appropriate percentage” has the same meaning as in section 19 of the 1990 Act;
  - “cash bid amount” means an amount specified in a cash bid for a Broadcasting Act licence or the amount determined by OFCOM for the purposes of any provision of the 1990 Act or this Part to be what would have been the amount of a cash bid for a licence;
  - “financial year” has the same meaning as in the Schedule to the Office of Communications Act 2002 (c. 11);
  - “numbering conditions” means conditions the setting of which is authorised by section 58 or 59; and
  - “relevant revenue” means any of the following—
    - (a) the amount which for the purposes of section 19, 52(1), 102(1) or 118 (1) of the 1990 Act is the amount of qualifying revenue for an accounting period;
    - (b) the amount which for the purposes of section 13(1) or 55(1) of the 1996 Act is the amount of multiplex revenue for an accounting period; or
    - (c) an amount which for the purposes of paragraph 7 of Schedule 10 to this Act is the amount of qualifying revenue for an accounting period.

#### **401 Power of OFCOM to retain costs of carrying out spectrum functions**

- (1) OFCOM have power to make a statement of the principles under which they may retain any or all of the amounts paid to them in pursuance of obligations imposed by or under the Wireless Telegraphy Act 1998 (c. 6).
- (2) Where such a statement of principles authorises the retention of an amount, OFCOM are not required to pay it into the appropriate Consolidated Fund in accordance with section 400.

- (3) Principles contained in a statement made by OFCOM under this section must be such as appear to them to be likely to secure, on the basis of such estimates of the likely costs as it is practicable to make—
- (a) that, on a year by year basis, the aggregate amount of the amounts retained by OFCOM does not exceed the amount required by OFCOM for meeting the annual cost to OFCOM of carrying out the functions mentioned in subsection (4);
  - (b) that the amounts retained by OFCOM are objectively justifiable and proportionate to the costs in respect of which they are retained; and
  - (c) that the relationship between meeting the cost of carrying out those functions and the amounts retained is transparent.
- (4) Those functions are—
- (a) OFCOM's functions under the enactments relating to the management of the radio spectrum except those specified in subsection (5); and
  - (b) the function of taking any steps that OFCOM consider it necessary to take—
    - (i) in preparation for the carrying out of any of the functions mentioned in paragraph (a) of this subsection; or
    - (ii) for the purpose of facilitating the carrying out of those functions or otherwise in connection with carrying them out.
- (5) The excepted functions of OFCOM are—
- (a) their functions under section 22(2);
  - (b) their functions under subsections (1) and (2) of section 152 so far as carried out in relation to the use of the electro-magnetic spectrum at places outside the United Kingdom, and their functions under subsection (5) of that section;
  - (c) their functions under section 155;
  - (d) their functions under section 158;
  - (e) their functions under section 168;
  - (f) their functions under sections 175 to 177;
  - (g) any functions conferred on them under section 5 of the Wireless Telegraphy Act 1949 (c. 54); and
  - (h) any function not falling within the preceding paragraphs in so far as the costs of carrying it out are met from payments made to OFCOM by virtue of section 28 or 152(8) of this Act.
- (6) A statement under this section may include provision which, for the purposes of the principles contained in the statement and of the preparation of accounts in accordance with section 400(4), requires an amount actually received in one year—
- (a) to be treated as referable to costs incurred in that year and in one or more subsequent years; and
  - (b) to be brought into account, in each of those years, in accordance with an apportionment for which provision is made in the statement.
- (7) A deficit or surplus shown (after applying this subsection for all previous years) by an account prepared under section 400(4) is to be carried forward and taken into account in determining what is required by OFCOM in relation to the following year for meeting the costs of carrying out the functions mentioned in subsection (4) of this section.
- (8) A statement of principles under this section—

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- (a) if it is expressed to apply for a limited period, does not apply to any amounts paid to OFCOM after the end of that period; and
  - (b) in any event, does not apply to amounts paid to them after a withdrawal of the statement takes effect.
- (9) OFCOM may revise a statement made under this section.
- (10) The consent of the Treasury is required for the making, revision or withdrawal of a statement under this section.
- (11) Where OFCOM make or revise a statement of this section they must publish so much of the statement or revised statement as appears to them necessary for demonstrating that the statement or revision complies with subsection (3).

#### **402 Power of Secretary of State to make orders and regulations**

- (1) Every power conferred by this Act on the Secretary of State to make orders or regulations, other than the powers conferred by Schedule 4, is a power exercisable by statutory instrument.
- (2) A statutory instrument containing an order or regulations made in exercise of any such power, other than—
- (a) an order under section 31 or 411,
  - (b) an order containing a direction under section 156, or
  - (c) any order that is required, by any provision of this Act, to be laid before Parliament and approved in draft,
- shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) Every power of the Secretary of State to make an order or regulations under this Act, other than an order under section 31 or 411 or an order made in exercise of a power conferred by Schedule 4, includes power—
- (a) to make different provision for different cases (including different provision in respect of different areas);
  - (b) to make provision subject to such exemptions and exceptions as the Secretary of State thinks fit; and
  - (c) to make such incidental, supplemental, consequential and transitional provision as the Secretary of State thinks fit.

#### **403 Regulations and orders made by OFCOM**

- (1) This section applies to any power of OFCOM to make regulations or to make an order or scheme if that power is one to which this section is expressly applied.
- (2) The powers to which this section applies shall be exercisable by statutory instrument, and the Statutory Instruments Act 1946 (c. 36) is to apply in relation to those powers as if OFCOM were a Minister of the Crown.
- (3) Where an instrument made under a power to which this section applies falls to be laid before Parliament, OFCOM must, immediately after it is made, send it to the Secretary of State for laying by him.
- (4) Before making any regulations or order under a power to which this section applies, OFCOM must—

- (a) give a notice of their proposal to do so to such persons representative of the persons appearing to OFCOM to be likely to be affected by the implementation of the proposal as OFCOM think fit;
  - (b) publish notice of their proposal 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 and are not given notice by virtue of paragraph (a); and
  - (c) consider any representations that are made to OFCOM, before the time specified in the notice.
- (5) A notice for the purposes of subsection (4) must—
- (a) state that OFCOM propose to make the regulations or order in question;
  - (b) set out the general effect of the regulations or order;
  - (c) specify an address from which a copy of the proposed regulations or order may be obtained; and
  - (d) specify a time before which any representations with respect to the proposal must be made to OFCOM.
- (6) The time specified for the purposes of subsection (5)(d) must be no earlier than the end of the period of one month beginning with the day after the latest day on which the notice is given or published for the purposes of subsection (4).
- (7) Every power of OFCOM to which this section applies includes power—
- (a) to make different provision for different cases (including different provision in respect of different areas);
  - (b) to make provision subject to such exemptions and exceptions as OFCOM think fit; and
  - (c) to make such incidental, supplemental, consequential and transitional provision as OFCOM think fit.
- (8) The Documentary Evidence Act 1868 (c. 37) (proof of orders and regulations etc.) shall have effect as if—
- (a) OFCOM were included in the first column of the Schedule to that Act;
  - (b) OFCOM and persons authorised to act on their behalf were mentioned in the second column of that Schedule.

#### **404 Criminal liability of company directors etc.**

- (1) Where an offence under any enactment to which this section applies is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—
- (a) a director, manager, secretary or other similar officer of the body corporate, or
  - (b) a person who was purporting to act in any such capacity,
- he (as well as the body corporate) is guilty of that offence and shall be liable to be proceeded against and punished accordingly.
- (2) Where an offence under any enactment to which this section applies—
- (a) is committed by a Scottish firm, and
  - (b) is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of a partner of the firm,
- he (as well as the firm) is guilty of that offence and shall be liable to be proceeded against and punished accordingly.

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- (3) In this section “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.
- (4) The enactments to which this section applies are every enactment contained in—
- (a) this Act;
  - (b) the Wireless Telegraphy Act 1949 (c. 54);
  - (c) the Marine, &c., Broadcasting (Offences) Act 1967 (c. 41);
  - (d) the Wireless Telegraphy Act 1967 (c. 72); or
  - (e) the Telecommunications Act 1984 (c. 12).
- (5) Section 14(2) of the Wireless Telegraphy Act 1949 (which is superseded by this section) shall cease to have effect.

#### **405 General interpretation**

- (1) In this Act, except in so far as the context otherwise requires—
- “the 1990 Act” means the Broadcasting Act 1990 (c. 42);
  - “the 1996 Act” means the Broadcasting Act 1996 (c. 55);
  - “access” is to be construed in accordance with subsection (4);
  - “apparatus” includes any equipment, machinery or device and any wire or cable and the casing or coating for any wire or cable;
  - “associated facility” has the meaning given by section 32;
  - “the BBC” means the British Broadcasting Corporation;
  - “body” (without more) means any body or association of persons, whether corporate or unincorporate, including a firm;
  - “broadcast” means broadcast by wireless telegraphy, and cognate expressions are to be construed accordingly;
  - “Broadcasting Act licence” means a licence under Part 1 or 3 of the 1990 Act or under Part 1 or 2 of the 1996 Act;
  - “business” includes any trade or profession;
  - “C4C” means the Channel Four Television Corporation;
  - “communications provider” means a person who (within the meaning of section 32(4)) provides an electronic communications network or an electronic communications service;
  - “the Consumer Panel” means the panel established under section 16;
  - “consumers” has the meaning given by subsection (5);
  - “Content Board” means the committee of OFCOM established and maintained under section 12;
  - “contravention” includes a failure to comply, and cognate expressions are to be construed accordingly;
  - “customers”, in relation to a communications provider or a person who makes an associated facility available, means the following (including any of them whose use or potential use of the network, service or facility is for the purposes of, or in connection with, a business)—
    - (a) the persons to whom the network, service or facility is provided or made available in the course of any business carried on as such by the provider or person who makes it available;

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- (b) the persons to whom the communications provider or person making the facility available is seeking to secure that the network, service or facility is so provided or made available;
- (c) the persons who wish to be so provided with the network or service, or to have the facility so made available, or who are likely to seek to become persons to whom the network, service or facility is so provided or made available;

“distribute”, in relation to a service, does not include broadcast, and cognate expressions shall be construed accordingly;

“electronic communications network” and “electronic communications service” have the meanings given by section 32;

“enactment” includes any enactment comprised in an Act of the Scottish Parliament or in any Northern Ireland legislation;

“the enactments relating to the management of the radio spectrum” means

- (a) the Wireless Telegraphy Act 1949 (c. 54);
- (b) the Marine, &c., Broadcasting (Offences) Act 1967 (c. 41);
- (c) the Wireless Telegraphy Act 1967 (c. 72) (except Part 1);
- (d) Part 6 of the Telecommunications Act 1984 (c. 12);
- (e) the Wireless Telegraphy Act 1998 (c. 6);
- (f) Chapter 2 of Part 2 of this Act; and
- (g) the other provisions of this Act so far as relating to any of the enactments mentioned in the preceding paragraphs;

“frequency” includes frequency band;

“holder”, in relation to a Broadcasting Act licence, is to be construed in accordance with subsection (7), and cognate expressions are to be construed accordingly;

“information” includes accounts, estimates and projections and any document;

“intelligible” is to be construed in accordance with subsection (9);

“international obligation of the United Kingdom” includes any Community obligation and any obligation which will or may arise under any international agreement or arrangements to which the United Kingdom is a party;

“modification” includes omissions, alterations and additions, and cognate expressions are to be construed accordingly;

“OFCOM” means the Office of Communications;

“other member State” means a member State other than the United Kingdom;

“pre-commencement regulator” means any of the following—

- (a) the Broadcasting Standards Commission;
- (b) the Director General of Telecommunications;
- (c) the Independent Television Commission;
- (d) the Radio Authority;

“programme” includes an advertisement and, in relation to a service, anything included in that service;

“programme service” means—

- (a) a television programme service;
- (b) the public teletext service;

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- (c) an additional television service;
- (d) a digital additional television service;
- (e) a radio programme service; or
- (f) a sound service provided by the BBC;

and expressions used in this definition and in Part 3 have the same meanings in this definition as in that Part;

“provide” and cognate expressions, in relation to an electronic communications network, electronic communications service or associated facilities, are to be construed in accordance with section 32(4);

“purposes of public service television broadcasting in the United Kingdom” shall be construed in accordance with subsection (4) of section 264 and subsections (5) and (6) of that section shall apply for the purposes of any provision of this Act referring to such purposes as they apply for the purposes of a report under that section;

“the radio transfer date” means the date on which the Radio Authority’s functions under Part 3 of the 1990 Act and Part 2 of the 1996 Act are transferred under this Act to OFCOM;

“representation”, in relation to a proposal or the contents of any notice or notification, includes an objection to the proposal or (as the case may be) to the whole or any part of those contents;

“subordinate legislation” means—

- (a) any subordinate legislation, within the meaning of the Interpretation Act 1978 (c. 30); or
- (b) any statutory rules (within the meaning of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)));

“television and radio services” means—

- (a) programme services apart from those provided by the BBC; and
- (b) services provided by the BBC in relation to which OFCOM have functions;

“television programme” means any programme (with or without sounds) which—

- (a) is produced wholly or partly to be seen on television; and
- (b) consists of moving or still images or of legible text or of a combination of those things;

“the television transfer date” means the date on which the Independent Television Commission’s functions under Part 1 of the 1990 Act and Part 1 of the 1996 Act are transferred under this Act to OFCOM;

“TV licence” means a licence for the purposes of section 363;

“the Welsh Authority” means the authority whose name is, by virtue of section 56(1) of the 1990 Act, Sianel Pedwar Cymru;

“wireless telegraphy” has the same meaning as in the Wireless Telegraphy Act 1949 (c. 54);

“wireless telegraphy licence” means a licence under section 1 of the Wireless Telegraphy Act 1949.

- (2) Any power under this Act to provide for the manner in which anything is to be done includes power to provide for the form in which it is to be done.



- (3) References in this Act to OFCOM's functions under an enactment include references to their power to do anything which appears to them to be incidental or conducive to the carrying out of their functions under that enactment.
- (4) References in this Act to access—
- (a) in relation to an electronic communications network or electronic communications service, are references to the opportunity of making use of the network or service; and
  - (b) in relation to a programme service, are references to the opportunity of viewing in an intelligible form the programmes included in the service or (as the case may be) of listening to them in such a form.
- (5) For the purposes of this Act persons are consumers in a market for a service, facility or apparatus, if they are—
- (a) persons to whom the service, facility or apparatus is provided, made available or supplied (whether in their personal capacity or for the purposes of, or in connection with, their businesses);
  - (b) persons for whose benefit the service, facility or apparatus is provided, made available or supplied or for whose benefit persons falling within paragraph (a) arrange for it to be provided, made available or supplied;
  - (c) persons whom the person providing the service or making the facility available, or the supplier of the apparatus, is seeking to make into persons falling within paragraph (a) or (b); or
  - (d) persons who wish to become persons falling within paragraph (a) or (b) or who are likely to seek to become persons falling within one or both of those paragraphs.
- (6) References in this Act to services in relation to which OFCOM have functions include references to any services in relation to which OFCOM are required to set standards under section 319.
- (7) In this Act references, in relation to a time or a period, to the holder of a Broadcasting Act licence or of a particular description of such licence are references to the person who held that licence at that time or (as the case may be) to every person who held that licence for the whole or a part of that period.
- (8) For the purposes of this Act the fact that a service is not in an intelligible form shall be disregarded, except where express provision is made to the contrary, in determining whether it has been provided—
- (a) for general reception;
  - (b) for reception by particular persons; or
  - (c) for reception at a particular place or in a particular area.
- (9) For the purposes of this Act something is not to be regarded as in an intelligible form if it cannot readily be understood without being decrypted or having some comparable process applied to it.

#### **406 Minor and consequential amendments, transitionals and repeals**

- (1) Schedule 17 (which provides for minor and consequential amendments in connection with the other provision made by this Act) shall have effect.

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- (2) The Secretary of State may by order make such consequential modifications of any enactment as—
- (a) correspond to amendments of any other enactment that are made by Schedule 17; and
  - (b) appear to him to be appropriate in consequence of that provision of this Act.
- (3) The Secretary of State may by order make any provision that he thinks fit for substituting a reference in any enactment or subordinate legislation to something defined for the purposes of this Act, or of any provisions contained in this Act, for a reference to something equivalent or similar that was defined for the purposes of the Telecommunications Act 1984 (c. 12), or of provisions contained in that Act.
- (4) The Secretary of State may by order make such further consequential modifications of—
- (a) an enactment extending only to Scotland,
  - (b) an enactment extending only to Northern Ireland,
  - (c) a local enactment, or
  - (d) the provision of any subordinate legislation,
- as appear to him to be appropriate in consequence of any provision of this Act.
- (5) If it appears to the Secretary of State that a local enactment contains a provision which corresponds to a provision the effect of which is modified by an amendment in Schedule 17 of this Act of a listed provision, it shall be his duty to exercise his powers under this section to secure that a modification corresponding to that effected by that amendment is made to the local enactment.
- (6) Schedule 18 (which contains transitional provisions in connection with the other provision made by this Act) shall have effect.
- (7) Subject to the provisions of Schedule 18 and to the savings and commencement provisions set out in the notes to Schedule 19, the enactments and instruments specified in Schedule 19 (which include provisions that are spent or have ceased to be of any practical utility) are hereby repealed or revoked to the extent specified in the second column of that Schedule.
- (8) In this section “local enactment” means—
- (a) a local or personal Act;
  - (b) a public general Act relating only to London;
  - (c) an order or scheme made under an Act which has been confirmed by Parliament or brought into operation in accordance with special Parliamentary procedure;
  - (d) an enactment in a public general Act but amending a local enactment.
- (9) In subsection (5) “listed provision” means the provisions of the following enactments—
- (a) sections 11 and 14 of the [London Overground Wires, etc. Act 1933 \(c. xliv\)](#);
  - (b) section 7(6) of the [London County Council \(General Powers\) Act 1949 \(c. lv\)](#);
  - (c) section 17(2) of the [Lough Neagh and Lower Bann Drainage and Navigation Act \(Northern Ireland\) 1955 \(c. 15 \(N.I.\)\)](#);
  - (d) section 17(4)(a) of the [London County Council \(General Powers\) Act 1963 \(c. xvii\)](#);
  - (e) section 7(6) of the [Greater London Council \(General Powers\) Act 1969 \(c. lii\)](#);

- (f) section 20(1)(a) of the [Thames Barrier and Flood Prevention Act 1972 \(c. xlv\)](#);
- (g) section 32 of and paragraph 3(2)(b) of Schedule 2 and Part 10 of Schedule 7 to the Channel Tunnel Act 1987 (c. 53);
- (h) section 25(1) of the Norfolk and Suffolk Broads Act 1988 (c. 4);
- (i) section 5 of the [London Local Authorities \(No. 2\) Act 1990 \(c. xxx\)](#);
- (j) paragraphs 1(c) and 16 of Schedule 2, paragraph 3(2)(c) of Schedule 4 and paragraph 21 of Schedule 7 to the Cardiff Bay Barrage Act 1993 (c. 42);
- (k) section 3(1) of the [British Waterways Act 1995 \(c. i\)](#);
- (l) paragraphs 6(4) and 15(4) of Schedule 6 and Part 4 of Schedule 15 to the Channel Tunnel Rail Link Act 1996 (c. 61).

(10) This section has effect subject to section 408.

#### **407 Pre-consolidation amendments**

- (1) The Secretary of State may by order make such modifications of—
  - (a) the enactments relating to the management of the radio spectrum,
  - (b) the enactments relating to broadcasting, and
  - (c) enactments referring to enactments falling within paragraph (a) or (b),as in his opinion facilitate, or are otherwise desirable in connection with, the consolidation of those enactments or any of them.
- (2) No order is to be made under this section unless a Bill for repealing and re-enacting—
  - (a) the enactments modified by the order, or
  - (b) enactments relating to matters connected with the matters to which enactments modified by the order relate,has been presented to either House of Parliament.
- (3) An order under this section is not to come into force until immediately before the commencement of the Act resulting from that Bill.
- (4) No order is to be made containing provision authorised by this section unless a draft of the order has been laid before Parliament and approved by a resolution of each House.
- (5) In this section “the enactments relating to broadcasting” means—
  - (a) the 1990 Act;
  - (b) the 1996 Act;
  - (c) Part 3 of this Act; and
  - (d) the other provisions of this Act so far as relating to the 1990 Act, the 1996 Act or that Part.

#### **408 Transitional provision for anticipatory carrying out of functions**

- (1) This section applies where an order under section 411 bringing into force—
  - (a) a provision of Part 1, 2 or 6, or
  - (b) a provision of Chapter 1 of Part 5,states that that provision is brought into force at a particular time for the purpose only of enabling specified networks and services functions, or specified spectrum functions, to be carried out during the transitional period by the Director General of Telecommunications or the Secretary of State.

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- (2) In relation to times falling in the transitional period, that provision is to have effect as if—
- (a) references in that provision to OFCOM, and
  - (b) references to OFCOM inserted by that provision in any other enactment,
- were references, in accordance with subsection (3), to the Director General of Telecommunications or to the Secretary of State.
- (3) The references have effect—
- (a) as references to the Director General of Telecommunications to the extent that the provision is brought into force for the purpose of enabling specified networks and services functions to be carried out; and
  - (b) as references to the Secretary of State, to the extent that the provision is brought into force for the purpose of enabling specified spectrum functions to be carried out.
- (4) An order bringing a provision into force as mentioned in subsection (1) may include provision specifying the extent to which it is to be taken, for the purposes of subsection (3), to have been brought into force for the purpose of enabling particular functions to be carried out.
- (5) In relation to times after the end of the transitional period for a provision which has been brought into force for enabling specified functions to be carried out by the Director General of Telecommunications or the Secretary of State, anything which—
- (a) was done, during that period, by or in relation to that Director or the Secretary of State, and
  - (b) was so done for the purposes of, or in connection with, the carrying out of those functions,
- is to have effect as if had been done by or in relation to OFCOM.
- (6) In this section “the transitional period”, in relation to a provision brought into force as mentioned in subsection (1) by an order under section 411, means the period which—
- (a) begins with the time when it is so brought into force; and
  - (b) ends with the time from which that order, or a subsequent order under that section, brings the provision into force for the purpose of conferring on OFCOM the functions in question.
- (7) In this section “networks and services functions” means any of the following functions of OFCOM under this Act—
- (a) their functions under sections 24 and 25;
  - (b) their functions under Chapter 1 of Part 2;
  - (c) their functions under Chapter 3 of Part 2, except to the extent that those functions relate to—
    - (i) disputes relating to rights or obligations conferred or imposed by or under the enactments relating to the management of the radio spectrum; or
    - (ii) decisions made under those enactments;
  - (d) their functions under Chapter 1 of Part 5, except to the extent that those functions relate to broadcasting or related matters;
  - (e) their functions under Schedule 18 to this Act in relation to the abolition of licensing (within the meaning of that Schedule).

- (8) In this section “spectrum functions” means—
- (a) the functions under the enactments relating to the management of the radio spectrum which by virtue of this Act are conferred on OFCOM; and
  - (b) the functions conferred on OFCOM by so much of Chapter 3 of Part 2 as relates to the disputes and decisions mentioned in subsection (7)(c).

#### **409 Modifications consequential on regulations implementing Directives**

- (1) This section applies if it appears to the Secretary of State that regulations under section 2 of the European Communities Act 1972 (c. 68) for giving effect to Community obligations imposed by the Communications Directives have come into force before the passing of this Act.
- (2) The Secretary of State may by order—
  - (a) repeal any relevant provision of this Act which appears to him to be unnecessary, or to have become spent, in consequence of the regulations;
  - (b) make such other modifications of the relevant provisions of this Act as he considers appropriate in consequence of the regulations;
  - (c) revoke provision made by the regulations; and
  - (d) make transitory or transitional provision in relation to anything done by or under the regulations.
- (3) The Secretary of State’s power under this section includes power to make consequential amendments of enactments not contained in this Act.
- (4) In this section—

“the Communications Directives” means—

  - (a) the Access Directive, that is to say, Directive 2002/19/EC of the European Parliament and of the Council on access to, and interconnection of, electronic communications networks and associated facilities;
  - (b) the Authorisation Directive, that is to say, Directive 2002/20/EC of the European Parliament and of the Council on the authorisation of electronic communications networks and services;
  - (c) the Framework Directive, that is to say, Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services;
  - (d) the Universal Service Directive, that is to say, Directive 2002/22/EC of the European Parliament and of the Council on universal service and users’ rights relating to electronic communications networks and services;

“relevant provision of this Act” means a provision contained in—

  - (a) Part 1, 2 or 6; or
  - (b) Chapter 1 of Part 5.
- (5) No order is to be made containing provision authorised by this section unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

#### **410 Application of enactments to territorial sea and other waters**

- (1) This section applies to—

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- (a) provision made by or under Part 2 of this Act;
  - (b) any provision of the enactments relating to the management of the radio spectrum that are not contained in that Part; and
  - (c) any provision of Chapter 1 of Part 5 of this Act so far as it relates to a matter as respects which provision falling within paragraph (a) or (b) is made.
- (2) Her Majesty may by Order in Council provide—
- (a) for an area of the territorial sea to be treated, for the purposes of any provision to which this section applies, as if it were situated in such part of the United Kingdom as may be specified in the Order; and
  - (b) for jurisdiction with respect to questions arising in relation to the territorial sea under any such provision to be conferred on courts in a part of the United Kingdom so specified.
- (3) An Order in Council under section 11 of the Petroleum Act 1998 (c. 17) (application of civil law to offshore installations etc.) may make provision for treating—
- (a) an installation with respect to which provision is made under that section and which is outside the territorial sea but in waters to which that section applies, and
  - (b) waters within 500 metres of the installation,
- as if for the purposes of provisions to which this section applies, they were situated in such part of the United Kingdom as is specified in the Order.
- (4) The jurisdiction conferred on a court by an Order in Council under this section is in addition to any jurisdiction exercisable apart from this section by that or any other court.
- (5) Subsection (3) of section 402 applies to the power to make an Order in Council under this section as it applies to any power of the Secretary of State to make an order under this Act, but as if references in that subsection to the Secretary of State were references to Her Majesty in Council.
- (6) A statutory instrument containing an Order in Council under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) In this section—
- “installation” includes any floating structure or device maintained on a station by whatever means, and installations in transit;
  - “the territorial sea” means the territorial sea adjacent to the United Kingdom.

#### **411 Short title, commencement and extent**

- (1) This Act may be cited as the Communications Act 2003.
- (2) This Act (except the provisions listed in subsection (3), which come into force on the passing of this Act) shall come into force on such day as the Secretary of State may by order appoint; and different days may be appointed under this subsection for different purposes.
- (3) Those provisions are sections 31(1) to (4) and (6) and 405 and this section.
- (4) An order under subsection (2) may include provision making such transitional or transitory provision, in addition to that made by Schedule 18, as the Secretary of State

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considers appropriate in connection with the bringing into force of any provisions of this Act; and the power to make transitional or transitory provision includes power to make—

- (a) different provision for different cases (including different provision in respect of different areas);
  - (b) provision subject to such exemptions and exceptions as the Secretary of State thinks fit; and
  - (c) such incidental, supplemental and consequential provision as he thinks fit.
- (5) This Act extends to Northern Ireland.
- (6) Subject to subsection (7), Her Majesty may by Order in Council extend the provisions of this Act, with such modifications as appear to Her Majesty in Council to be appropriate, to any of the Channel Islands or to the Isle of Man.
- (7) Subsection (6) does not authorise the extension to any place of a provision of this Act so far as it gives effect to an amendment of an enactment that is not itself capable of being extended there in exercise of a power conferred on Her Majesty in Council.
- (8) Subsection (3) of section 402 applies to the power to make an Order in Council under this section as it applies to any power of the Secretary of State to make an order under this Act, but as if references in that subsection to the Secretary of State were references to Her Majesty in Council.