



Communications Act 2003

2003 CHAPTER 21

PART 3

TELEVISION AND RADIO SERVICES

CHAPTER 6

OTHER PROVISIONS ABOUT TELEVISION AND RADIO SERVICES

Supplemental provisions of Part 3

361 Meaning of “available for reception by members of the public”

- (1) The services that are to be taken for the purposes of this Part to be available for reception by members of the public include (subject to subsection (2)) any service which—
 - (a) is made available for reception, or is made available for reception in an intelligible form, only to persons who subscribe to the service (whether for a period or in relation to a particular occasion) or who otherwise request its provision; but
 - (b) is a service the facility of subscribing to which, or of otherwise requesting its provision, is offered or made available to members of the public.
- (2) A service is not to be treated as available for reception by members of the public if each of the three conditions set out in subsections (3) to (5) is satisfied.
- (3) The first condition is that the service is confined to the provision of a facility—
 - (a) for the making by users of the service of individual selections of the material to be received; and
 - (b) for receiving whatever is selected.
- (4) The second condition is that it is only in response to a selection made by a user of the service that anything (whether encrypted or not)—

Status: This is the original version (as it was originally enacted).

- (a) is broadcast from a satellite or by means of a multiplex service; or
 - (b) is otherwise transmitted by means of an electronic communications network.
- (5) The third condition is that the individual selections that may be made do not include any that are limited to electing to be one of the recipients of material that is or has been offered for reception on the basis—
 - (a) that it is material selected by the provider of the service for the purpose of being made available for broadcasting or distribution simultaneously, or virtually so, to an audience consisting of users of the service; and
 - (b) that it will be broadcast or distributed simultaneously, or virtually so, to every member of the audience (if any) that consists of the users of the service who have elected to receive it.
- (6) References in this section to members of the public are references to members of the public in, or in any area of, any one or more countries or territories (which may or may not include the United Kingdom).
- (7) The Secretary of State may by order modify any of the provisions of this section if it appears to him appropriate to do so having regard to any one or more of the following—
 - (a) the protection which, taking account of the means by which the programmes and services are received or may be accessed, is expected by members of the public as respects the contents of television programmes or sound programmes;
 - (b) the extent to which members of the public are able, before television programmes are watched or accessed, to make use of facilities for exercising control, by reference to the contents of the programmes, over what is watched or accessed;
 - (c) the practicability of applying different levels of regulation in relation to different services;
 - (d) the financial impact for providers of particular services of any modification of the provisions of that section; and
 - (e) technological developments that have occurred or are likely to occur.
- (8) No order is to be made containing provision authorised by subsection (7) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.
- (9) In this section “multiplex service” means a television multiplex service, a radio multiplex service or a general multiplex service.