



# Communications Act 2003

## 2003 CHAPTER 21

### PART 2

#### NETWORKS, SERVICES AND THE RADIO SPECTRUM

### CHAPTER 1

#### ELECTRONIC COMMUNICATIONS NETWORKS AND SERVICES

##### *General conditions: must-carry obligations*

#### **64 Must-carry obligations**

- (1) General conditions may include conditions making any provision that OFCOM consider appropriate for securing that particular services are broadcast or otherwise transmitted by means of the electronic communications networks described in the conditions.
- (2) A general condition containing provision authorised by this section is not (subject to subsection (4)) to require a service to be broadcast or otherwise transmitted by means of an electronic communications network unless—
  - (a) the service is included in the list of must-carry services; and
  - (b) the effect of the requirement is confined to networks by means of which public electronic communications services are provided that are used by a significant number of end-users as their principal means of receiving television programmes.
- (3) That list is as follows—
  - (a) any service of television programmes provided by the BBC so far as it is provided in digital form and is a service in relation to which OFCOM have functions;
  - (b) the Channel 3 services so far as provided in digital form;

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- (c) Channel 4 so far as provided in digital form;
  - (d) Channel 5 so far as provided in digital form;
  - (e) S4C Digital;
  - (f) the digital public teletext service.
- (4) General conditions making provision authorised by this section in relation to a listed service must, to such extent as OFCOM consider appropriate (and subject to subsection (5))—
- (a) apply the requirement to broadcast or otherwise transmit that service to every service which is an ancillary service by reference to the listed service; and
  - (b) provide for the listed service to be treated for the purposes of the conditions as constituting such other services comprised in or provided with that service as may be determined by OFCOM.
- (5) General conditions making provision authorised by this section must also comply with all such restrictions (if any) as may be imposed by order made by the Secretary of State as to the maximum and minimum amounts, or proportions, of available capacity that are to be required by such conditions to be used in the case of a network for the broadcasting or other transmission of particular services, or descriptions of service.
- (6) In making an order under subsection (5) the Secretary of State must have regard to—
- (a) the objective of securing that services included in the list of must-carry services, and the other services to which conditions set in accordance with this section are likely to be applied by virtue of subsection (4), are available for reception by as many members of the public in the United Kingdom as practicable; and
  - (b) the need to secure that the amount of capacity available in the case of every network for making other services available is reasonable and, accordingly, that the burden of complying with conditions set in accordance with this section is proportionate to the public benefit to be secured by that objective.
- (7) It shall be the duty of the Secretary of State from time to time to review—
- (a) the list of must-carry services; and
  - (b) any requirements for the time being in force under this section with respect to the terms on which services must be broadcast or otherwise transmitted.
- (8) Where the Secretary of State carries out such a review, he must consult the following about the matters under review—
- (a) OFCOM; and
  - (b) such persons who, in his opinion, are likely to be affected by a modification of the list of must-carry services, or who represent any of those persons, as he thinks fit.
- (9) If, on such a review, he considers it appropriate to do so, the Secretary of State may by order modify the list of must-carry services.
- (10) In determining whether it is appropriate for the purposes of subsection (9) to add a service to the list of must-carry services or to remove it, the Secretary of State must have regard, in particular, to—
- (a) the public benefit to be secured by the addition of the service to the list, or by its retention in the list;

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- (b) the extent to which the service (if it were not included in the list) would nevertheless be made available to an acceptable technical standard by means of the networks to which conditions set in accordance with this section apply;
  - (c) the capacity left available, after the requirements of those conditions have been complied with, for the broadcasting or other transmission of material by means of each of those networks; and
  - (d) the need to secure that the burden of complying with conditions so set is proportionate to the objective of securing that the services in the list of must-carry services, and the other services to which conditions set in accordance with this section are likely to be applied by virtue of subsection (4), are available for reception by as many members of the public in the United Kingdom as practicable.
- (11) The Secretary of State may also, if (whether on such a review or in any other circumstances) he considers it appropriate to do so, by order make provision imposing requirements as to what, as between—
  - (a) the person providing a must-carry service, and
  - (b) the person providing a network by means of which it is to be provided,are to be the terms on which the service is to be broadcast or otherwise transmitted, in pursuance of general conditions set in accordance with this section, by means of that network.
- (12) An order under subsection (11) may provide for the terms to be determined by OFCOM in accordance with the provisions of the order.
- (13) Before making an order under subsection (5), and before making an order under subsection (11) in a case in which there has been no review under subsection (7), the Secretary of State must consult—
  - (a) OFCOM, and
  - (b) such persons who, in his opinion, are likely to be affected by the order, or who represent any of those persons, as he thinks fit.
- (14) Section 362 applies for construing this section as it applies for the purposes of Part 3.