



# Communications Act 2003

## 2003 CHAPTER 21

### PART 1

#### FUNCTIONS OF OFCOM

##### *General duties in carrying out functions*

### 3 General duties of OFCOM

- (1) It shall be the principal duty of OFCOM, in carrying out their functions—
  - (a) to further the interests of citizens in relation to communications matters; and
  - (b) to further the interests of consumers in relevant markets, where appropriate by promoting competition.
- (2) The things which, by virtue of subsection (1), OFCOM are required to secure in the carrying out of their functions include, in particular, each of the following—
  - (a) the optimal use for wireless telegraphy of the electro-magnetic spectrum;
  - (b) the availability throughout the United Kingdom of a wide range of electronic communications services;
  - (c) the availability throughout the United Kingdom of a wide range of television and radio services which (taken as a whole) are both of high quality and calculated to appeal to a variety of tastes and interests;
  - (d) the maintenance of a sufficient plurality of providers of different television and radio services;
  - (e) the application, in the case of all television and radio services, of standards that provide adequate protection to members of the public from the inclusion of offensive and harmful material in such services;
  - (f) the application, in the case of all television and radio services, of standards that provide adequate protection to members of the public and all other persons from both—
    - (i) unfair treatment in programmes included in such services; and

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- (ii) unwarranted infringements of privacy resulting from activities carried on for the purposes of such services.
- (3) In performing their duties under subsection (1), OFCOM must have regard, in all cases, to—
- (a) the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed; and
  - (b) any other principles appearing to OFCOM to represent the best regulatory practice.
- (4) OFCOM must also have regard, in performing those duties, to such of the following as appear to them to be relevant in the circumstances—
- (a) the desirability of promoting the fulfilment of the purposes of public service television broadcasting in the United Kingdom;
  - (b) the desirability of promoting competition in relevant markets;
  - (c) the desirability of promoting and facilitating the development and use of effective forms of self-regulation;
  - (d) the desirability of encouraging investment and innovation in relevant markets;
  - (e) the desirability of encouraging the availability and use of high speed data transfer services throughout the United Kingdom;
  - [<sup>F1</sup>(ea) the desirability of ensuring the security and availability of public electronic communications networks and public electronic communications services;]
  - [<sup>F2</sup>(eb) the desirability of ensuring that relevant markets facilitate end-to-end connectivity in the interests of consumers in those markets;]
  - (f) the different needs and interests, so far as the use of the electro-magnetic spectrum for wireless telegraphy is concerned, of all persons who may wish to make use of it;
  - (g) the need to secure that the application in the case of television and radio services of standards falling within subsection (2)(e) and (f) is in the manner that best guarantees an appropriate level of freedom of expression;
  - (h) the vulnerability of children and of others whose circumstances appear to OFCOM to put them in need of special protection;
  - (i) the needs of persons with disabilities, of the elderly and of those on low incomes;
  - (j) the desirability of preventing crime and disorder;
  - (k) the opinions of consumers in relevant markets and of members of the public generally;
  - (l) the different interests of persons in the different parts of the United Kingdom, of the different ethnic communities within the United Kingdom and of persons living in rural and in urban areas;
  - (m) the extent to which, in the circumstances of the case, the furthering or securing of the matters mentioned in subsections (1) and (2) is reasonably practicable.
- (5) In performing their duty under this section of furthering the interests of consumers, OFCOM must have regard, in particular, to the interests of those consumers in respect of choice, price, quality of service and value for money.
- (6) Where it appears to OFCOM, in relation to the carrying out of any of the functions mentioned in section 4(1), that any of their general duties conflict with one or more

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of their duties under sections 4, 24 and 25, priority must be given to their duties under those sections.

[<sup>F3</sup>(6A) Where it appears to OFCOM, in relation to the carrying out of any of their functions in relation to postal services, that any of their general duties conflict with their duty under section 29 of the Postal Services Act 2011 (duty to secure provision of universal postal service), priority must be given to their duty under that section.]

(7) Where it appears to OFCOM that any of their general duties conflict with each other in a particular case, they must secure that the conflict is resolved in the manner they think best in the circumstances.

(8) Where OFCOM resolve a conflict in an important case between their duties under paragraphs (a) and (b) of subsection (1), they must publish a statement setting out—

- (a) the nature of the conflict;
- (b) the manner in which they have decided to resolve it; and
- (c) the reasons for their decision to resolve it in that manner.

(9) Where OFCOM are required to publish a statement under subsection (8), they must—

- (a) publish it as soon as possible after making their decision but not while they would (apart from a statutory requirement to publish) be subject to an obligation not to publish a matter that needs to be included in the statement; and
- (b) so publish it in such manner as they consider appropriate for bringing it to the attention of the persons who, in OFCOM's opinion, are likely to be affected by the matters to which the decision relates.

(10) Every report under paragraph 12 of the Schedule to the Office of Communications Act 2002 (c. 11) (OFCOM's annual report) for a financial year must contain a summary of the manner in which, in that year, OFCOM resolved conflicts arising in important cases between their general duties.

(11) A case is an important case for the purposes of subsection (8) or (10) only if—

- (a) it involved one or more of the matters mentioned in subsection (12); or
- (b) it otherwise appears to OFCOM to have been of unusual importance.

(12) Those matters are—

- (a) a major change in the activities carried on by OFCOM;
- (b) matters likely to have a significant impact on persons carrying on businesses in any of the relevant markets; or
- (c) matters likely to have a significant impact on the general public in the United Kingdom or in a part of the United Kingdom.

(13) This section is subject to sections 370(11) and 371(11) of this Act and to section 119A(4) of the Enterprise Act 2002 (c. 40) (which applies to functions conferred on OFCOM by Chapter 2 of Part 5 of this Act).

(14) In this section—

“citizens” means all members of the public in the United Kingdom;

“communications matters” means the matters in relation to which OFCOM have functions;

[<sup>F4</sup>“end-to-end connectivity” has the meaning given by section 74(3);]

“general duties”, in relation to OFCOM, means—

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- (a) their duties under subsections (1) to (5); and
- (b) the duty which, under section 107(5), is to rank equally for the purposes of subsections (6) and (7) with their duties under this section;
 

“relevant markets” means markets for any of the services, facilities, apparatus or directories in relation to which OFCOM have functions.

#### Textual Amendments

- F1** S. 3(4)(ea) inserted (31.12.2020) by [The Electronic Communications and Wireless Telegraphy \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/246\)](#), reg. 1(2), **Sch. 1 para. 2**; 2020 c. 1, Sch. 5 para. 1(1)
- F2** S. 3(4)(eb) inserted (21.12.2020) by [The Electronic Communications and Wireless Telegraphy \(Amendment\) \(European Electronic Communications Code and EU Exit\) Regulations 2020 \(S.I. 2020/1419\)](#), reg. 1(2), **Sch. 1 para. 2(2)**
- F3** S. 3(6A) inserted (1.10.2011) by [Postal Services Act 2011 \(c. 5\)](#), s. 93(2)(3), **Sch. 12 para. 57**; S.I. 2011/2329, art. 3
- F4** Words in s. 3(14) inserted (21.12.2020) by [The Electronic Communications and Wireless Telegraphy \(Amendment\) \(European Electronic Communications Code and EU Exit\) Regulations 2020 \(S.I. 2020/1419\)](#), reg. 1(2), **Sch. 1 para. 2(3)**

#### Modifications etc. (not altering text)

- C1** S. 3 excluded by 2002 c. 40, s. 119(4) (as inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), **ss. 385, 411(2)** (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11))

#### Commencement Information

- I1** S. 3 in force at 29.12.2003 by [S.I. 2003/3142](#), art. 3(1), **Sch. 1** (with art. 11)

## 4 Duties <sup>F5</sup>in relation to certain regulatory functions]

- (1) This section applies to the following functions of OFCOM—
  - (a) their functions under Chapter 1 of Part 2;
  - (b) their functions under the enactments relating to the management of the radio spectrum;
  - (c) their functions under Chapter 3 of Part 2 in relation to disputes referred to them under section 185;
  - (d) their functions under sections 24 and 25 so far as they relate to information required for purposes connected with matters in relation to which functions specified in this subsection are conferred on OFCOM; and
  - (e) their functions under section 26 so far as they are carried out for the purpose of making information available to persons mentioned in subsection (2)(a) to (c) of that section.
- (2) It shall be the duty of OFCOM, in carrying out any of those functions, to act in accordance with the <sup>F6</sup>six requirements set out in the following provisions of this section].
- (3) The first <sup>F7</sup>... requirement is a requirement to promote competition—
  - (a) in relation to the provision of electronic communications networks and electronic communications services;

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- (b) in relation to the provision and making available of services and facilities that are provided or made available in association with the provision of electronic communications networks or electronic communications services; and
- (c) in relation to the supply of directories capable of being used in connection with the use of electronic communications networks or electronic communications services.

<sup>F8</sup>(4) . . . . .

- (5) The [<sup>F9</sup>second] requirement is a requirement to promote the interests of all [<sup>F10</sup>members of the public in the United Kingdom].
- (6) The [<sup>F11</sup>third] requirement is a requirement to take account of the desirability of OFCOM's carrying out their functions in a manner which, so far as practicable, does not favour—
  - (a) one form of electronic communications network, electronic communications service or associated facility; or
  - (b) one means of providing or making available such a network, service or facility, over another.

[<sup>F12</sup>(6A) The [<sup>F13</sup>third] requirement does not apply to—

- (a) the imposition, in relation to a wireless telegraphy licence, of a limitation of a kind falling within section 9ZA(1) of the Wireless Telegraphy Act 2006; or
- (b) the review, variation or removal of such a limitation.]

(7) The [<sup>F14</sup>fourth] requirement is a requirement to encourage, to such extent as OFCOM consider appropriate for the purpose mentioned in subsection (8), the provision of network access and service interoperability.

(8) That purpose is the purpose of securing—

- (a) efficiency and sustainable competition <sup>F15</sup> . . . ; <sup>F16</sup> . . .
- [<sup>F17</sup>(aa) efficient investment and innovation; and]
- (b) the maximum benefit for the persons who are customers of communications providers and of persons who make [<sup>F18</sup>associated facilities] available.

(9) The [<sup>F19</sup>fifth] requirement is a requirement to encourage such compliance with the standards mentioned in subsection (10) as is necessary for—

- (a) facilitating service interoperability;
- [<sup>F20</sup>(aa) facilitating end-to-end connectivity;
- (ab) facilitating the changing by end-users of their communications provider;
- (ac) facilitating the retention by end-users of their telephone numbers after a change of communications provider; and]
- (b) securing freedom of choice for the customers of communications providers.

(10) Those standards are—

- (a) standards or specifications from time to time drawn up and published [<sup>F21</sup>by the European Commission] in accordance with Article 17 of the Framework Directive [<sup>F22</sup>or Article 39 of the EECC Directive][<sup>F23</sup>(whether before or after IP completion day)];
- (b) the standards and specifications from time to time adopted by—
  - (i) the European Committee for Standardisation;

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- (ii) the European Committee for Electrotechnical Standardisation;  
[<sup>F24</sup>and]
  - (iii) the European Telecommunications Standards Institute; and
  - (c) the international standards and recommendations from time to time adopted by—
    - (i) the International Telecommunication Union;
    - (ii) the International Organisation for Standardisation; <sup>F25</sup>...
    - [<sup>F26</sup>(ia) the European Conference of Postal and Telecommunications Administrations; and]
    - (iii) the International Electrotechnical Committee.
- [<sup>F27</sup>(10A) The [<sup>F28</sup>sixth] requirement is a requirement to promote connectivity and access to very high capacity networks by members of the public and businesses in the United Kingdom.]
- (11) Where it appears to OFCOM that any of the [<sup>F29</sup>six requirements in this section] conflict with each other, they must secure that the conflict is resolved in the manner they think best in the circumstances.
- (12) In this section—
- <sup>F30</sup>...
  - [<sup>F31</sup>“end-to-end connectivity” has the meaning given by section 74(3);
  - “network access” and “service interoperability” each has the same meaning as in Chapter 1 of Part 2.
  - [<sup>F32</sup>“telephone number” has the meaning given by section 56(5).]
- [<sup>F33</sup>(12A) In this Act “very high capacity network” means an electronic communications network which—
- (a) consists wholly of optical fibre elements at least up to the distribution point at the serving location; or
  - (b) is capable of delivering, under usual peak-time conditions, network performance that, in OFCOM’s opinion, is similar, in terms of available downlink and uplink bandwidth, resilience, error-related parameters and latency and its variation, to the network performance of a network falling within paragraph (a).
- (12B) For the purposes of subsection (12A)(b), network performance can be considered similar regardless of whether the end-user experience varies due to the inherently different characteristics of the medium by which the network ultimately connects with the network termination point.]
- [<sup>F34</sup>(13) In this section and sections 4A and 5, “the Framework Directive” means [Directive 2002/21/EC](#) of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services, as amended by [Directive 2009/140/EC](#) of the European Parliament and of the Council.]

#### Textual Amendments

- F5** Words in s. 4 heading substituted (31.12.2020) by [The Electronic Communications and Wireless Telegraphy \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/246\)](#), reg. 1(2), **Sch. 1 para. 3(11)**; 2020 c. 1, Sch. 5 para. 1(1)

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- F6** Words in s. 4(2) substituted (31.12.2020) by The Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020 (S.I. 2020/1419), reg. 1(3)(a), **Sch. 1 para. 67(2)**
- F7** Word in s. 4(3) omitted (31.12.2020) by virtue of The Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/246), reg. 1(2), **Sch. 1 para. 3(3)**; 2020 c. 1, Sch. 5 para. 1(1)
- F8** S. 4(4) omitted (31.12.2020) by virtue of The Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/246), reg. 1(2), **Sch. 1 para. 3(4)**; 2020 c. 1, Sch. 5 para. 1(1)
- F9** Word in s. 4(5) substituted (31.12.2020) by The Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/246), reg. 1(2), **Sch. 1 para. 3(5)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F10** Words in s. 4(5) substituted (31.12.2020) by The Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/246), reg. 1(2), **Sch. 1 para. 3(5)(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F11** Word in s. 4(6) substituted (31.12.2020) by The Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/246), reg. 1(2), **Sch. 1 para. 3(6)**; 2020 c. 1, Sch. 5 para. 1(1)
- F12** S. 4(6A) inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 5(a)** (with Sch. 3 para. 2)
- F13** Word in s. 4(6A) substituted (31.12.2020) by The Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/246), reg. 1(2), **Sch. 1 para. 3(6)**; 2020 c. 1, Sch. 5 para. 1(1)
- F14** Word in s. 4(7) substituted (31.12.2020) by The Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/246), reg. 1(2), **Sch. 1 para. 3(7)**; 2020 c. 1, Sch. 5 para. 1(1)
- F15** Words in s. 4(8)(a) omitted (26.5.2011) by virtue of The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 5(b)(i)** (with Sch. 3 para. 2)
- F16** Word in s. 4(8) omitted (26.5.2011) by virtue of The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 5(b)(ii)** (with Sch. 3 para. 2)
- F17** S. 4(8)(aa) inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 5(b)(ii)** (with Sch. 3 para. 2)
- F18** Words in s. 4(8)(b) substituted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 5(b)(iii)** (with Sch. 3 para. 2)
- F19** Word in s. 4(9) substituted (31.12.2020) by The Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/246), reg. 1(2), **Sch. 1 para. 3(8)**; 2020 c. 1, Sch. 5 para. 1(1)
- F20** S. 4(9)(aa)-(ac) substituted for word (21.12.2020) by The Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020 (S.I. 2020/1419), reg. 1(2), **Sch. 1 para. 3(3)**
- F21** Words in s. 4(10)(a) inserted (31.12.2020) by The Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/246), reg. 1(2), **Sch. 1 para. 3(9)**; 2020 c. 1, Sch. 5 para. 1(1)
- F22** Words in s. 4(10)(a) inserted (21.12.2020) by The Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020 (S.I. 2020/1419), reg. 1(2), **Sch. 1 para. 3(4)**
- F23** Words in s. 4(10)(a) inserted (31.12.2020) by The Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020 (S.I. 2020/1419), reg. 1(3)(a), **Sch. 1 para. 67(3)**
- F24** Word in s. 4(10)(b) substituted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 5(c)(i)** (with Sch. 3 para. 2)
- F25** Word in s. 4(10)(c)(ii) omitted (26.5.2011) by virtue of The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 5(c)(ii)** (with Sch. 3 para. 2)

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- F26** S. 4(10)(c)(ia) inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 5(c)(ii)** (with Sch. 3 para. 2)
- F27** S. 4(10A) inserted (21.12.2020) by The Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020 (S.I. 2020/1419), reg. 1(2), **Sch. 1 para. 3(5)**
- F28** Word in s. 4(10A) substituted (31.12.2020) by The Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020 (S.I. 2020/1419), reg. 1(3)(a), **Sch. 1 para. 67(4)**
- F29** Words in s. 4(11) substituted (31.12.2020) by The Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020 (S.I. 2020/1419), reg. 1(3)(a), **Sch. 1 para. 67(5)**
- F30** Words in s. 4(12) omitted (26.5.2011) by virtue of The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 5(d)** (with Sch. 3 para. 2)
- F31** Words in s. 4(12) inserted (21.12.2020) by The Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020 (S.I. 2020/1419), reg. 1(2), **Sch. 1 para. 3(6)(a)**
- F32** Words in s. 4(12) inserted (21.12.2020) by The Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020 (S.I. 2020/1419), reg. 1(2), **Sch. 1 para. 3(6)(b)**
- F33** S. 4(12A)(12B) inserted (21.12.2020) by The Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020 (S.I. 2020/1419), reg. 1(2), **Sch. 1 para. 3(7)**
- F34** S. 4(13) substituted (21.12.2020) by The Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020 (S.I. 2020/1419), reg. 1(2), **Sch. 1 para. 3(8)**

#### Commencement Information

- I2** S. 4 in force at 25.7.2003 for specified purposes by S.I. 2003/1900, arts. 1(2), 2(1), **Sch. 1** (with art. 3) (as amended by S.I. 2003/3142, art. 1(3))
- I3** S. 4 in force at 29.12.2003 in so far as not already in force by S.I. 2003/3142, **art. 3(2)** (with art. 11)

#### [<sup>F36</sup>4A. <sup>F35</sup>... European Commission recommendations for harmonisation

- (1) This section applies to the following functions of OFCOM—
- (a) their functions under Chapter 1 of Part 2;
  - (b) their functions under the enactments relating to the management of the radio spectrum;
  - (c) their functions under Chapter 3 of Part 2 in relation to disputes referred to them under section 185;
  - (d) their functions under sections 24 and 25 so far as they relate to information required for purposes connected with matters in relation to which functions specified in this subsection are conferred on OFCOM; and
  - (e) their functions under section 26 so far as they are carried out for the purpose of making information available to persons mentioned in subsection (2)(a) to (c) of that section.

[<sup>F37</sup>(2) In carrying out those functions, OFCOM may take account of recommendations issued by the European Commission under Article 19(1) of the Framework Directive or Article 38(1) of the EECC Directive (including recommendations issued before the coming into force of this section or after IP completion day) if the recommendations appear to OFCOM to be relevant to those functions.]



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<sup>F38</sup>(3) . . . . .]

#### Textual Amendments

- F35** Words in s. 4A heading omitted (31.12.2020) by virtue of [The Electronic Communications and Wireless Telegraphy \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/246\)](#), reg. 1(2), **Sch. 1 para. 4(4)**; 2020 c. 1, Sch. 5 para. 1(1)
- F36** S. 4A inserted (26.5.2011) by [The Electronic Communications and Wireless Telegraphy Regulations 2011 \(S.I. 2011/1210\)](#), reg. 1(2), **Sch. 1 para. 6** (with Sch. 3 para. 2)
- F37** S. 4A(2) substituted (31.12.2020) by [The Electronic Communications and Wireless Telegraphy \(Amendment\) \(European Electronic Communications Code and EU Exit\) Regulations 2020 \(S.I. 2020/1419\)](#), reg. 1(3)(a), **Sch. 1 para. 68**
- F38** S. 4A(3) omitted (31.12.2020) by virtue of [The Electronic Communications and Wireless Telegraphy \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/246\)](#), reg. 1(2), **Sch. 1 para. 4(3)**; 2020 c. 1, Sch. 5 para. 1(1)

## 5 Directions in respect of networks and spectrum functions

- (1) This section applies to the following functions of OFCOM—
  - (a) their functions under Part 2; and
  - (b) their functions under the enactments relating to the management of the radio spectrum that are not contained in that Part.
- (2) It shall be the duty of OFCOM to carry out those functions in accordance with such general or specific directions as may be given to them by the Secretary of State.
- (3) The Secretary of State’s power to give directions under this section shall be confined to a power to give directions for one or more of the following purposes—
  - (a) in the interests of national security;
  - (b) in the interests of relations with the government of a country or territory outside the United Kingdom;
  - (c) for the purpose of securing compliance with international obligations of the United Kingdom;
  - (d) in the interests of the safety of the public or of public health.
- <sup>F39</sup>(3A) The Secretary of State may not give a direction under this section in respect of a function that Article 3(3a) of the Framework Directive <sup>F40</sup>would have required]OFCOM to exercise without seeking or taking instructions from any other body.]
- (4) The Secretary of State is not entitled by virtue of any provision of this section to direct OFCOM to suspend or restrict—
  - (a) a person’s entitlement to provide an electronic communications network or electronic communications service; or
  - (b) a person’s entitlement to make available associated facilities.
- <sup>F41</sup>(4A) Before giving a direction under this section, the Secretary of State must take due account of the desirability of not favouring—
  - (a) one form of electronic communications network, electronic communications service or associated facility, or
  - (b) one means of providing or making available such a network, service or facility,

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over another.]

- (5) The Secretary of State must publish a direction under this section in such manner as appears to him to be appropriate for bringing it to the attention of the persons who, in his opinion, are likely to be affected by it.
- (6) The Secretary of State is not required by subsection (5) to publish a direction, and he may exclude matter from a direction he does publish, if he considers the publication of the direction or matter to be—
  - (a) against the interests of national security; or
  - (b) against the interests of relations with the government of a country or territory outside the United Kingdom.
- (7) Subsection (4) does not affect the Secretary of State’s powers under section 132.

#### Textual Amendments

- F39** S. 5(3A) inserted (26.5.2011) by [The Electronic Communications and Wireless Telegraphy Regulations 2011 \(S.I. 2011/1210\)](#), reg. 1(2), **Sch. 1 para. 7(a)** (with Sch. 3 para. 2)
- F40** Words in s. 5(3A) substituted (21.12.2020) by [The Electronic Communications and Wireless Telegraphy \(Amendment\) \(European Electronic Communications Code and EU Exit\) Regulations 2020 \(S.I. 2020/1419\)](#), reg. 1(2), **Sch. 1 para. 5**
- F41** S. 5(4A) inserted (26.5.2011) by [The Electronic Communications and Wireless Telegraphy Regulations 2011 \(S.I. 2011/1210\)](#), reg. 1(2), **Sch. 1 para. 7(b)** (with Sch. 3 para. 2)

#### Commencement Information

- I4** S. 5 in force at 25.7.2003 for specified purposes by [S.I. 2003/1900](#), arts. 1(2), 2(1), **Sch. 1** (with art. 3) (as amended by [S.I. 2003/3142](#), art. 1(3))
- I5** S. 5 in force at 18.9.2003 in so far as not already in force by [S.I. 2003/1900](#), art. 2(2), **Sch. 2**
- I6** S. 5 in force at 29.12.2003 in so far as not already in force by [S.I. 2003/3142](#), **art. 3(2)** (with art. 11)

## 6 Duties to review regulatory burdens

- (1) OFCOM must keep the carrying out of their functions under review with a view to securing that regulation by OFCOM does not involve—
  - (a) the imposition of burdens which are unnecessary; or
  - (b) the maintenance of burdens which have become unnecessary.
- (2) In reviewing their functions under this section it shall be the duty of OFCOM—
  - (a) to have regard to the extent to which the matters which they are required under section 3 to further or to secure are already furthered or secured, or are likely to be furthered or secured, by effective self-regulation; and
  - (b) in the light of that, to consider to what extent it would be appropriate to remove or reduce regulatory burdens imposed by OFCOM.
- (3) In determining for the purposes of this section whether procedures for self-regulation are effective OFCOM must consider, in particular—
  - (a) whether those procedures are administered by a person who is sufficiently independent of the persons who may be subjected to the procedures; and
  - (b) whether adequate arrangements are in force for funding the activities of that person in relation to those procedures.

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- (4) OFCOM must, from time to time, publish a statement setting out how they propose, during the period for which the statement is made, to secure that regulation by OFCOM does not involve the imposition or maintenance of unnecessary burdens.
- (5) The first statement to be published under this section—
  - (a) must be published as soon as practicable after the commencement of this section; and
  - (b) shall be a statement for the period of twelve months beginning with the day of its publication.
- (6) A subsequent statement—
  - (a) must be published during the period to which the previous statement related; and
  - (b) must be a statement for the period of twelve months beginning with the end of the previous period.
- (7) It shall be the duty of OFCOM, in carrying out their functions at times during a period for which a statement is in force under this section, to have regard to that statement.
- (8) OFCOM may, if they think fit, revise a statement under this section at any time before or during the period for which it is made.
- (9) Where OFCOM revise a statement, they must publish the revision as soon as practicable.
- (10) The publication under this section of a statement, or of a revision of a statement, must be 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 the matters to which it relates.

#### Commencement Information

I7 S. 6 in force at 29.12.2003 by S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

## 7 Duty to carry out impact assessments

- (1) This section applies where—
  - (a) OFCOM are proposing to do anything for the purposes of, or in connection with, the carrying out of their functions; and
  - (b) it appears to them that the proposal is important;but this section does not apply if it appears to OFCOM that the urgency of the matter makes it impracticable or inappropriate for them to comply with the requirements of this section.
- (2) A proposal is important for the purposes of this section only if its implementation would be likely to do one or more of the following—
  - (a) to involve a major change in the activities carried on by OFCOM;
  - (b) to have a significant impact on persons carrying on businesses in the markets for any of the services, facilities, apparatus or directories in relation to which OFCOM have functions; or
  - (c) to have a significant impact on the general public in the United Kingdom or in a part of the United Kingdom.

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- (3) Before implementing their proposal, OFCOM must either—
- (a) carry out and publish an assessment of the likely impact of implementing the proposal; or
  - (b) publish a statement setting out their reasons for thinking that it is unnecessary for them to carry out an assessment.
- (4) An assessment under subsection (3)(a) must set out how, in OFCOM’s opinion, the performance of their general duties (within the meaning of section 3) is secured or furthered by or in relation to what they propose.
- (5) An assessment carried out under this section—
- (a) may take such form, and
  - (b) must relate to such matters,
- as OFCOM consider appropriate.
- (6) In determining the matters to which an assessment under this section should relate, OFCOM must have regard to such general guidance relating to the carrying out of impact assessments as they consider appropriate.
- (7) Where OFCOM publish an assessment under this section—
- (a) they must provide an opportunity of making representations to them about their proposal to members of the public and other persons who, in OFCOM’s opinion, are likely to be affected to a significant extent by its implementation;
  - (b) the published assessment must be accompanied by a statement setting out how representations may be made; and
  - (c) OFCOM are not to implement their proposal unless the period for making representations about it has expired and they have considered all the representations that were made in that period.
- (8) Where OFCOM are required (apart from this section)—
- (a) to consult about a proposal to which this section applies, or
  - (b) to give a person an opportunity of making representations about it,
- the requirements of this section are in addition to, but may be performed contemporaneously with, the other requirements.
- (9) Every report under paragraph 12 of the Schedule to the Office of Communications Act 2002 (c. 11) (OFCOM’s annual report) must set out—
- (a) a list of the assessments under this section carried out during the financial year to which the report relates; and
  - (b) a summary of the decisions taken during that year in relation to proposals to which assessments carried out in that year or previous financial years relate.
- (10) The publication of anything under this section must be in such manner as OFCOM consider appropriate for bringing it to the attention of the persons who, in OFCOM’s opinion, are likely to be affected if their proposal is implemented.

#### Commencement Information

**18** S. 7 in force at 29.12.2003 by [S.I. 2003/3142](#), [art. 3\(1\)](#), [Sch. 1](#) (with [art. 11](#))

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## 8 Duty to publish and meet promptness standards

- (1) It shall be the duty of OFCOM to publish a statement setting out the standards they are proposing to meet with respect to promptness in—
  - (a) the carrying out of their different functions; and
  - (b) the transaction of business for purposes connected with the carrying out of those functions.
- (2) This section does not require standards to be set out with respect to anything which (apart from this section) is required to be done by a time, or within a period, provided for by or under an enactment.
- (3) OFCOM may, if they think fit, at any time revise the statement for the time being in force under this section.
- (4) It shall be the duty of OFCOM—
  - (a) in carrying out their functions, and
  - (b) in transacting business for purposes connected with the carrying out of their functions,to have regard to the statement for the time being in force under this section.
- (5) Where OFCOM revise a statement under this section, they must publish the revision as soon as practicable.
- (6) The publication under this section of a statement, or of a revision of a statement, must be 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 the matters to which it relates.
- (7) OFCOM's report under paragraph 12 of the Schedule to the Office of Communications Act 2002 (c. 11) (annual report) for each financial year must contain a statement by OFCOM summarising the extent to which they have complied during that year with the standards set out under this section.

### Commencement Information

**19** S. 8 in force at 29.12.2003 by [S.I. 2003/3142](#), [art. 3\(1\)](#), [Sch. 1](#) (with [art. 11](#))

## 9 Secretary of State's powers in relation to promptness standards

- (1) Where the Secretary of State considers that the statement published by OFCOM under section 8 is not adequate for securing that they meet satisfactory promptness standards, he may give them a notification to that effect.
- (2) If the period of three months after the date of the giving of a notification under subsection (1) expires without OFCOM taking steps which the Secretary of State is satisfied remedy the situation, he may give them a direction under this section.
- (3) A direction under this section is one requiring OFCOM to issue a new or revised statement under section 8 in accordance with the direction.
- (4) Before giving a direction under this section, the Secretary of State must—
  - (a) give OFCOM an opportunity of making representations to him about his proposed direction; and

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- (b) have regard to any representations made to him by them.
- (5) Where the Secretary of State gives a direction to OFCOM under this section, he must publish a copy of it in such manner as he considers appropriate for bringing it to the attention of persons who, in his opinion, are likely to be affected by OFCOM's promptness standards.
- (6) It shall be the duty of OFCOM to revise their statement under section 8 in accordance with any direction of the Secretary of State under this section.
- (7) In this section "promptness standards" means standards of promptness in—
  - (a) the carrying out by OFCOM of their different functions; and
  - (b) the transaction by them of business for purposes connected with the carrying out of those functions.
- (8) No notification is to be given under subsection (1) at any time in the period of twelve months beginning with the commencement of section 8.

**Commencement Information**

**I10** S. 9 in force at 29.12.2003 by [S.I. 2003/3142](#), [art. 3\(1\)](#), [Sch. 1](#) (with [art. 11](#))

**Status:**

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**Changes to legislation:**

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