Communications Act 2003

2003 CHAPTER 21

PART 2

NETWORKS, SERVICES AND THE RADIO SPECTRUM

CHAPTER 1

ELECTRONIC COMMUNICATIONS NETWORKS AND SERVICES

Preliminary

32 Meaning of electronic communications networks and services

(1) In this Act "electronic communications network" means—

(a) a transmission system for the conveyance, by the use of electrical, magnetic or electro-magnetic energy, of signals of any description; and

(b) such of the following as are used, by the person providing the system and in association with it, for the conveyance of the signals—

(i) apparatus comprised in the system;

(ii) apparatus used for the switching or routing of the signals; [F1]...

(iii) software and stored data**[**[F2]; and

(iv) (except for the purposes of sections 125 to 127) other resources, including network elements which are not active.**]**

(2) In this Act "electronic communications service" means a service consisting in, or having as its principal feature, the conveyance by means of an electronic communications network of signals, except in so far as it is a content service.

[[F3](3) In this Act "associated facility" means a facility, element or service which is available for use, or has the potential to be used, in association with the use of an electronic communications network or electronic communications service (whether or not one

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provided by the person making the facility, element or service available) for the purpose of—

(a) making the provision of that network or service possible;

(b) making possible the provision of other services provided by means of that network or service; or

(c) supporting the provision of such other services.**]**

(4) In this Act—

(a) references to the provision of an electronic communications network include references to its establishment, maintenance or operation;

(b) references, where one or more persons are employed or engaged to provide the network or service under the direction or control of another person, to the person by whom an electronic communications network or electronic communications service is provided are confined to references to that other person; and

(c) references, where one or more persons are employed or engaged to make facilities available under the direction or control of another person, to the person by whom any associated facilities are made available are confined to references to that other person.

(5) Paragraphs (a) and (b) of subsection (4) apply in relation to references in subsection (1) to the provision of a transmission system as they apply in relation to references in this Act to the provision of an electronic communications network.

(6) The reference in subsection (1) to a transmission system includes a reference to a transmission system consisting of no more than a transmitter used for the conveyance of signals.

(7) In subsection (2) "a content service" means so much of any service as consists in one or both of the following—

(a) the provision of material with a view to its being comprised in signals conveyed by means of an electronic communications network;

(b) the exercise of editorial control over the contents of signals conveyed by means of a such a network.

(8) In this section references to the conveyance of signals include references to the transmission or routing of signals or of parts of signals and to the broadcasting of signals for general reception.

(9) For the purposes of this section the cases in which software and stored data are to be taken as being used for a particular purpose include cases in which they—

(a) have been installed or stored in order to be used for that purpose; and

(b) are available to be so used.

(10) In this section "signal" includes—

(a) anything comprising speech, music, sounds, visual images or communications or data of any description; and

(b) signals serving for the impartation of anything between persons, between a person and a thing or between things, or for the actuation or control of apparatus.

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Textual Amendments

F1 Word in s. 32(1)(b)(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. 9(a)(i)** (with Sch. 3 para. 2)

F2 S. 32(1)(b)(iv) and word inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 9(a)(ii)** (with Sch. 3 para. 2)

F3 S. 32(3) substituted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 9(b)** (with Sch. 3 para. 2)

Commencement Information

I1 S. 32 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))

I2 S. 32 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)

Notification by providers

33 Advance notification to OFCOM

(1) A person shall not—

(a) provide a designated electronic communications network,

(b) provide a designated electronic communications service, or

(c) make available a designated associated facility,

unless, before beginning to provide it or to make it available, he has given a notification to OFCOM of his intention to provide that network or service, or to make that facility available.

(2) An electronic communications network, electronic communications service or associated facility is designated for the purposes of this section if it is of a description of networks, services or facilities that is for the time being designated by OFCOM as a description of networks, services or facilities for which notification under this section is required.

(3) A person who has given a notification for the purposes of subsection (1) must, before—

(a) providing or making available the notified network, service or facility with any significant differences, or

(b) ceasing to provide it or to make it available,

give a notification to OFCOM of the differences or (as the case may be) of his intention to cease to provide the network or service or to make the facility available.

(4) A notification for the purposes of this section must—

(a) be sent to OFCOM in such manner as OFCOM may require; and

(b) contain all such information as OFCOM may require.

(5) The only information OFCOM may require a notification to contain is—

(a) a declaration of the relevant proposal of the person giving the notification;

(b) the time when it is intended that effect should be given to the relevant proposal;

(c) particulars identifying the person giving the notification;

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(d) particulars identifying one or more persons with addresses in the United Kingdom who, for the purposes of matters relating to the notified network, service or facility, are authorised to accept service at an address in the United Kingdom on behalf of the person giving the notification;

(e) particulars identifying one or more persons who may be contacted if there is an emergency that is caused by or affects the provision of the notified network, service or facility;

(f) addresses and other particulars necessary for effecting service on or contacting each of the persons mentioned in paragraphs (c) to (e).

(6) The declaration of the relevant proposal that may be required under subsection (5) is whichever of the following is appropriate in the case of the person giving the notification—

(a) a declaration of his proposal to provide the network or service described in the notification or to make available the facility so described;

(b) a declaration of his proposal to make the modifications that are so described of the network, service or facility specified in the notification; or

(c) a declaration of his proposal to cease to provide the network or service so specified or to cease to make available the facility so specified.

(7) Requirements imposed under subsection (4) are not to require a notification by a person to contain particulars falling within subsection (5)(d) in a case in which—

(a) that person is resident in a member State or has a place of business in a member State;

(b) the notification contains a statement under subsection (8);

(c) the notification sets out an address in a member State at which service will be accepted by the person who, in accordance with that statement, is authorised to accept it; and

(d) OFCOM are satisfied that adequate arrangements exist for effecting service on that person at that address.

(8) That statement is one which—

(a) declares that the person authorised, for the purposes of matters relating to the notified network, service or facilities, to accept service on behalf of the person giving the notification is that person himself; or

(b) identifies another person who is resident in a member State, or has a place of business in such State, as the person so authorised.

(9) The reference in subsection (3) to providing or making available a notified network, service or facility with significant differences is a reference to continuing to provide it, or to make it available, after a change in whatever falling within subsection (5)(a) to (f) was last notified to OFCOM under this section.

(10) References in this section to accepting service at an address are references—

(a) to accepting service of documents or process at that address; or

(b) otherwise to receiving notifications at that address;

and the reference in subsection (7) to effecting service at an address is to be construed accordingly.

(11) Where a description of electronic communications network, electronic communications service or associated facility is designated for the purposes of this

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section at a time when a network, service or facility of that description is already being provided or made available by a person—

(a) that person's obligation under this section to give a notification before beginning to provide or make available that network, service or facility shall have effect as an obligation to give a notification within such period after the coming into force of the designation as may be specified in the notice in which the designation is contained; and

(b) that notification is to be one stating that that person is already providing the network or service, or making the facility available (rather than that it is his intention to do so).

(12) Subsection (11) has effect subject to any transitional provision—

(a) which is contained in the notification setting out the designation; and

(b) treats a person as having given the notification required by that subsection.

Commencement Information

I3 S. 33 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))

I4 S. 33 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)

34 Designations and requirements for the purposes of s. 33

(1) Before—

(a) making or withdrawing a designation for the purposes of section 33, or

(b) imposing or modifying a requirement under subsection (4) of that section,

OFCOM must consult such of the persons who, in their opinion, are likely to be affected by it as they think fit.

(2) Before making or withdrawing a designation for the purposes of section 33 OFCOM must also consult the Secretary of State.

(3) The way in which a designation for the purposes of section 33 or a requirement under subsection (4) of that section—

(a) is to be made or imposed, or

(b) may be withdrawn or modified,

is by a notice published in such manner as OFCOM consider appropriate for bringing the designation, requirement, withdrawal or modification to the attention of the persons who, in their opinion, are likely to be affected by it.

(4) A designation for the purposes of section 33 may be framed by reference to any such description of networks, services or facilities, or such other factors, as OFCOM think fit.

(5) Requirements imposed under section 33(4) may make different provision for different cases.

Commencement Information

I5 S. 34 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))

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I6 S. 34 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)

35 Notification of contraventions of s. 33

(1) Where OFCOM determine that there are reasonable grounds for believing that a person has contravened section 33, they may give him a notification under this section.

(2) A notification under this section is one which—

(a) sets out the determination made by OFCOM; [F4]...

[[F5](b) specifies the contravention in respect of which the determination has been made;

(c) specifies the period during which the person notified has an opportunity to make representations;

(d) specifies information to be provided by the person to OFCOM; and

(e) specifies any penalty which OFCOM are minded to impose in accordance with section 35A.**]**

[F6](3) . . . . . .

[F6](4) . . . . . .

[F6](5) . . . . . .

[F6](6) . . . . . .

[F6](7) . . . . . .

(8) A notification under this section—

(a) may be given in respect of more than one contravention of section 33; and

(b) if it is given in respect of a continuing contravention, may be given in respect of any period during which the contravention has continued.

(9) Where a notification under this section has been given to a person in respect of a contravention of section 33, OFCOM may give a further notification in respect of the same contravention if, and only if—

(a) the subsequent notification is in respect of so much of a period during which the contravention in question was continuing as falls after a period to which the earlier notification relates; or

(b) the earlier notification has been withdrawn without a penalty having been imposed by reference to the notified contravention.

[F7](10) . . . . . .

Textual Amendments

F4 Word in s. 35(2)(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. 10(a)** (with Sch. 3 paras. 2, 3)

F5 S. 35(2)(b)-(e) substituted for s. 35(2)(b) (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 10(a)** (with Sch. 3 paras. 2, 3)

F6 S. 35(3)-(7) 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. 10(b)** (with Sch. 3 paras. 2, 3)

F7 S. 35(10) 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. 10(b)** (with Sch. 3 paras. 2, 3)

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Commencement Information

I7 S. 35 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))

I8 S. 35 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)

[F8 35A. Penalties for contravention of section 33

(1) This section applies where a person is given a notification under section 35 which specifies a proposed penalty.

(2) Where the notification relates to more than one contravention, a separate penalty may be specified in respect of each contravention.

(3) Where the notification relates to a continuing contravention, no more than one penalty may be specified in respect of the period of contravention specified in the notification.

(4) But, in relation to a continuing contravention, a penalty may be specified in respect of each day on which the contravention continues after—

(a) the giving of a confirmation decision under section 36(4)(c) which requires immediate action; or

(b) the expiry of any period specified in the confirmation decision for complying with a requirement so specified.

(5) The amount of a penalty under subsection (4) is to be such amount not exceeding £100 per day as OFCOM determine to be—

(a) appropriate; and

(b) proportionate to the contravention in respect of which it is imposed.

(6) The amount of any other penalty specified in a notification under section 35 is to be such amount not exceeding £10,000 as OFCOM determine to be—

(a) appropriate, and

(b) proportionate to the contravention in respect of which it is imposed.

(7) The Secretary of State may by order amend this section so as to substitute a different maximum penalty for the maximum penalty for the time being specified in subsection (6).

(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.**]**

Textual Amendments

F8 S. 35A inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 11** (with Sch. 3 paras. 2, 3)

36 [F9 Confirmation decision] for contravention of s. 33

(1) This section applies where—

(a) a person ("the notified provider") has been given a notification under section 35;

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(b) OFCOM have allowed the notified provider an opportunity of making representations about the notified determination; and

(c) the period allowed for the making of the representations has expired.

[F10(2) OFCOM may—

(a) give the notified provider a decision (a "confirmation decision") confirming the imposition of requirements in accordance with the notification under section 35; or

(b) inform the notified provider that they are satisfied with the notified provider's representations and that no further action will be taken.

(3) OFCOM may not give a confirmation decision to the notified provider unless, after considering any representations, they are satisfied that the notified provider has, in one or more of the respects notified, been in contravention of section 33.**]**

[F11(4) A confirmation decision—

(a) must be given to the person without delay;

(b) must include reasons for the decision;

(c) may require immediate action by the person to comply with requirements imposed by virtue of section 35(2)(d), or may specify a period within which the person must comply with those requirements; and

(d) may require the person to pay—

(i) the penalty specified in the notification under section 35, or

(ii) such lesser penalty as OFCOM consider appropriate in the light of the person's representations or steps taken by the person to comply with the condition or remedy the consequences of the contravention, and

may specify the period within which the penalty is to be paid.**]**

(5) It shall be the duty of a person to whom **[**F12a confirmation decision**]** has been given to comply with **[**F13any requirement imposed by it**]** .

(6) That duty shall be enforceable in civil proceedings by OFCOM—

(a) for an injunction;

(b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988 (c. 36); or

(c) for any other appropriate remedy or relief.

[F14(7) A penalty imposed by a confirmation decision—

(a) must be paid to OFCOM; and

(b) if not paid within the period specified by them, is to be recoverable by them accordingly.**]**

Textual Amendments

F9 Words in s. 36 heading substituted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 12(e)** (with Sch. 3 paras. 2, 3)

F10 S. 36(2)(3) substituted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 12(a)** (with Sch. 3 paras. 2, 3)

F11 S. 36(4) substituted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 12(b)** (with Sch. 3 paras. 2, 3)

F12 Words in s. 36(5) substituted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 12(c)(i)** (with Sch. 3 paras. 2, 3)

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F13 Word in s. 36(5) substituted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 12(c)(ii)** (with Sch. 3 paras. 2, 3)
F14 S. 36(7) inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 12(d)** (with Sch. 3 paras. 2, 3)

Commencement Information
I9 S. 36 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))
I10 S. 36 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)

F15 37 Penalties for contravention of s. 33

. . . . . .

Textual Amendments
F15 S. 37 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. 13** (with Sch. 3 paras. 2, 3)

Commencement Information
I11 S. 37 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))
I12 S. 37 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)

Administrative charges imposed on providers

38 Fixing of charges

(1) A person who, at any time in a charging year, is a person to whom this section applies shall—
(a) in respect of the network, service or facility provided or made available by him,
(b) in respect of the application to him of a universal service condition relating to matters mentioned in section 66(3),
(c) in respect of the application to him of an SMP apparatus condition, or
(d) in respect of the application of the electronic communications code in his case,
pay to OFCOM the administrative charge (if any) that is fixed by them for the case that is applicable to him.

(2) This section applies to a person at a time if, at that time, he is—
(a) providing an electronic communications network of a description which is, at that time, designated for the purposes of this section;
(b) providing an electronic communications service of a description which is, at that time, so designated;
(c) making available an associated facility of a description which is, at that time, so designated;
(d) a person who without being a communications provider is designated in accordance with regulations under section 66;
(e) a supplier of apparatus to whom an SMP apparatus condition applies; or

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(f) a person in whose case the electronic communications code applies by virtue of a direction given under section 106 otherwise than for the purposes of the provision by him of an electronic communications network of a designated description.

(3) OFCOM are not to fix the administrative charge for a charging year unless—

(a) at the time the charge is fixed there is in force a statement by OFCOM of the principles that OFCOM are proposing to apply in fixing charges under this section for that year; and

(b) the charge is fixed in accordance with those charging principles.

(4) Those principles must be such as appear to OFCOM to be likely to secure, on the basis of such estimates of the likely costs as it is practicable for them to make—

(a) that, on a year by year basis, the aggregate amount of the charges payable to OFCOM is sufficient to meet, but does not exceed, the annual cost to OFCOM of carrying out the functions mentioned in subsection (5);

(b) that the cost of carrying out those functions is met by the imposition of charges that are objectively justifiable and proportionate to the matters in respect of which they are imposed;

(c) that the relationship between meeting the cost of carrying out those functions and the amounts of the charges is transparent;

(d) that the charges fixed for persons who are liable to charges by reason only of being persons to whom SMP apparatus conditions apply are referable only to things done in, or in connection with, the setting, modification or enforcement of SMP apparatus conditions or the carrying out of the functions mentioned in subsection (6)(l); and

(e) that the charges fixed for persons who are liable to charges by reason only of being persons falling within subsection (2)(f), are referable only to costs incurred in, or in connection with, the carrying out of the functions mentioned in subsection (6)(g) and (l).

(5) Those functions are—

(a) the relevant Chapter 1 functions;

(b) the carrying out for a Chapter 1 purpose of any research by OFCOM or the Consumer Panel into any of the matters mentioned in section 14(1)(c) to (f);

(c) the publication under section 26 of any information or advice that it appears to OFCOM to be appropriate to make available to the persons mentioned in subsection (2)(a) to (c) of that section; and

(d) 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 paragraphs (a) to (c) of this subsection; or

(ii) for the purpose of facilitating the carrying out of those functions or otherwise in connection with carrying them out.

(6) The relevant Chapter 1 functions are—

(a) OFCOM's functions under sections 33 to 37 and 44;

(b) the setting, modification and enforcement of conditions under section 45;

(c) the supervision, as respects the requirements of sections 33 to 37 and of any such conditions, of communications providers and of persons who make associated facilities available;

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(d) the monitoring of compliance with those requirements and with any such conditions;

(e) the functions conferred on OFCOM by or under section 55;

F16(f) . . . . . .

(g) their functions under sections 106 to 119;

(h) their functions under sections 185 to 191;

(i) securing international co-operation in relation to the regulation of electronic communications networks, electronic communications services and associated facilities;

(j) securing the harmonisation and standardisation of the regulation of electronic communications networks, electronic communications services and associated facilities;

(k) market analysis and any monitoring of the controls operating in the markets for electronic communications networks, electronic communications services and associated facilities;

(l) OFCOM's functions under this section and sections 39 to 43.

(7) A purpose is a Chapter 1 purpose for the purposes of subsection (5)(b) if it is the purpose of ascertaining the effectiveness of one or more of the following—

(a) the regulation of the provision of electronic communications networks or electronic communications services;

(b) the regulation of the making available of associated facilities;

(c) the mechanisms in place for the handling, by communications providers and by persons making such facilities available, of complaints made to them by consumers in markets for such services or facilities;

(d) the mechanisms in place for resolving disputes between such consumers and communications providers or persons who make such facilities available.

(8) OFCOM's power to fix charges for a particular case includes—

(a) power to provide that the charges in that case are to be equal to the amounts produced by a computation made in the manner, and by reference to the factors, specified by them;

(b) power to provide for different charges to be imposed in that case on different descriptions of persons; and

(c) power to provide for particular descriptions of persons falling within subsection (2)(d) to (f) to be excluded from the liability to pay charges in that case.

(9) As soon as reasonably practicable after the end of each charging year, OFCOM must publish a statement setting out, in respect of that year—

(a) the aggregate amounts of the administrative charges for that year that have been received by OFCOM;

(b) the aggregate amount of the administrative charges for that year that remain outstanding and are likely to be paid or recovered; and

(c) the cost to OFCOM of carrying out the functions mentioned in subsection (5).

(10) Any deficit or surplus shown (after applying this subsection for all previous years) by a statement under subsection (9) shall be carried forward and taken into account in determining what is required to satisfy the requirement imposed by virtue of subsection (4)(a) in relation to the following year.

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(11) Section 34 applies in relation to the making and withdrawal of a designation for the purposes of this section as it applies to the making and withdrawal of a designation for the purposes of section 33.

(12) In this section "charging year" means—

(a) the period beginning with the commencement of this section and ending with the next 31st March; or

(b) any subsequent period of twelve months beginning with 1st April.

Textual Amendments

F16 S. 38(6)(f) 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. 14** (with Sch. 3 para. 2)

Commencement Information

I13 S. 38 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))

I14 S. 38 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)

39 Supplemental provision about fixing charges

(1) OFCOM's power to fix a charge under section 38—

(a) is to be exercisable only by the publication or giving of such notification as they consider appropriate for bringing the charge to the attention of the persons who, in their opinion, are likely to be affected by it; and

(b) includes power, by setting it out in that notification, to fix the time at which the charge is to become due to OFCOM.

(2) A charge fixed under section 38 for a charging year may be fixed in terms providing for a deduction from the charge on a proportionate basis to be made for a part of the year during which—

(a) the network, service or facility in respect of which it is fixed is not provided or made available by the person otherwise liable to the charge;

(b) the universal service condition in respect of which it is fixed does not apply in that person's case;

(c) the SMP apparatus condition in respect of which it is fixed does not apply in that person's case; or

(d) the electronic communications code does not apply in that person's case.

(3) Such a charge may also be fixed (subject to subsection (4)) so that it is referable, in whole or in part—

(a) to the provision or making available of a network, service or facility during a part of the year falling before the fixing of the charge;

(b) to the application of a universal service condition to a person for a part of the year so falling;

(c) to a person's being a person to whom an SMP apparatus condition applies for a part of the year so falling; or

(d) to the application of the electronic communications code in a person's case during a part of the year so falling.

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(4) A charge may be fixed so as to be referable to a time before it is fixed to the extent only that both—

(a) the imposition of the charge, and

(b) the amount of the charge,

are required by, and consistent with, the statement of charging principles in force at the beginning of the charging year.

(5) Before making or revising a statement of charging principles, OFCOM must consult such of the persons who, in OFCOM's opinion, are likely to be affected by those principles as they think fit.

(6) The way in which a statement of charging principles must be made or may be revised is by the publication of the statement or revised statement in such manner as OFCOM consider appropriate for bringing it to the attention of the persons who, in their opinion, are likely to be affected by it.

(7) References in this section to a statement of charging principles are references to a statement by OFCOM of the principles that they are proposing to apply in fixing charges under section 38 for a charging year.

(8) In this section "charging year" has the same meaning as in section 38.

Commencement Information

I15 S. 39 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))

I16 S. 39 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)

40 Notification of non-payment of charges

(1) OFCOM are not entitled to bring proceedings for the recovery from a person of an administrative charge fixed for any year under section 38 unless they have given that person a notification under this section with respect to the amount they are seeking to recover.

(2) Where OFCOM determine that there are reasonable grounds for believing that a person is in contravention (whether in respect of the whole or a part of a charge) of a requirement to pay such an administrative charge, they may give him a notification under this section.

(3) A notification under this section is one which—

(a) sets out the determination made by OFCOM; and

(b) specifies the period during which the person notified has an opportunity of **[**F17making representations about the notified determination**]** .

F18(4) . . . . . .

F18(5) . . . . . .

F18(6) . . . . . .

F18(7) . . . . . .

F18(8) . . . . . .

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(9) A notification under this section—

(a) may be given in respect of contraventions of more than one requirement to pay an administrative charge; and

(b) if it is given in respect of a continuing contravention, may be given in respect of any period during which the contravention has continued.

(10) Where a notification under this section has been given to a person in respect of an amount outstanding, OFCOM may give a further notification in respect of the whole or a part of that amount if, and only if—

(a) the subsequent notification is in respect of so much of a period during which that amount was outstanding as falls after a period to which the earlier notification relates; or

(b) the earlier notification has been withdrawn without a penalty having been imposed in respect of the matters notified.

F19(11) . . . . . .

Textual Amendments

F17 Words in s. 40(3)(b) substituted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 15(a)** (with Sch. 3 paras. 2, 4)

F18 S. 40(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. 15(b)** (with Sch. 3 paras. 2, 4)

F19 S. 40(11) 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. 15(b)** (with Sch. 3 paras. 2, 4)

Commencement Information

I17 S. 40 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))

I18 S. 40 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)

41 Penalties for non-payment of charges

(1) This section applies where—

(a) a person ("the notified charge payer") has been given a notification under section 40;

(b) OFCOM have allowed the notified charge payer an opportunity of making representations about the notified determination; and

(c) the period allowed for the making of the representations has expired.

(2) OFCOM may impose a penalty on the notified charge payer if he—

(a) has, in one or more of the respects notified, been in contravention of a requirement to pay an administrative charge fixed under section 38; F20...

F20(b) . . . . . .

(3) Where a notification under section 40 relates to more than one contravention, a separate penalty may be imposed in respect of each contravention.

(4) Where such a notification relates to a continuing contravention, no more than one penalty may be imposed in respect of the period of contravention specified in the notification.

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(5) The amount of a penalty imposed under this section is to be such amount, not exceeding twice the amount of the charge fixed for the relevant year, as OFCOM determine to be—

(a) appropriate; and

(b) proportionate to the contravention in respect of which it is imposed.

(6) In making that determination OFCOM must have regard to—

(a) any representations made to them by the notified charge payer; and

(b) any steps taken by him towards paying the amounts that he was notified under section 40 were outstanding.

(7) Where OFCOM impose a penalty on a person under this section, they shall—

(a) **[**F21without delay,**]** notify that person of that decision and of their reasons for that decision; and

(b) in that notification, fix a reasonable period after it is given as the period within which the penalty is to be paid.

(8) A penalty imposed under this section—

(a) must be paid to OFCOM; and

(b) if not paid within the period fixed by them, is to be recoverable by them accordingly.

(9) In this section "the relevant year", in relation to a contravention of a requirement to pay the whole or a part of the administrative charge fixed for any year, means that year.

(10) The provisions of this section do not affect OFCOM's power, apart from those provisions, to bring proceedings (whether before or after the imposition of a penalty under this section) for the recovery of the whole or part of an amount due to them under section 38(1).

Textual Amendments

F20 S. 41(2)(b) and preceding word 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. 16(a)** (with Sch. 3 paras. 2, 4)

F21 Words in s. 41(7)(a) substituted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 16(b)** (with Sch. 3 paras. 2, 4)

Commencement Information

I19 S. 41 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))

I20 S. 41 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)

42 Suspending service provision for non-payment

(1) OFCOM may give a direction under this section to a person who is a communications provider or who makes associated facilities available ("the contravening provider") if they are satisfied—

(a) that he is or has been in **[**F22serious or repeated**]** contravention of requirements to pay administrative charges fixed under section 38 (whether in respect of the whole or a part of the charges);

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(b) that the contraventions are not contraventions relating only to charges in respect of the application to the contravening provider of SMP apparatus conditions;

[F23(ba) that, in the case of a single serious contravention, a notification has been given to the contravening provider under section 40 and the period for making representations under that section has expired;**]**

(c) that **[**F24, in the case of a repeated contravention,**]** the bringing of proceedings for the recovery of the amounts outstanding has failed to secure complete compliance by the contravening provider with the requirements to pay the charges fixed in his case, or has no reasonable prospect of securing such compliance;

(d) that **[**F25, in the case of a repeated contravention,**]** an attempt, by the imposition of penalties under section 41, to secure such compliance has failed; and

[F26(e) that the giving of the direction is appropriate and proportionate to the contravention in respect of which it is given.**]**

(2) A direction under this section is—

(a) a direction that the entitlement of the contravening provider to provide electronic communications networks or electronic communications services, or to make associated facilities available, is suspended (either generally or in relation to particular networks, services or facilities); or

(b) a direction that that entitlement is restricted in the respects set out in the direction.

(3) A direction under this section—

(a) must specify the networks, services and facilities to which it relates; and

(b) except so far as it otherwise provides, takes effect for an indefinite period beginning with the time at which it is notified to the person to whom it is given.

(4) A direction under this section—

(a) in providing for the effect of a suspension or restriction to be postponed may provide for it to take effect only at a time determined by or in accordance with the terms of the direction; and

(b) in connection with the suspension or restriction contained in the direction or with the postponement of its effect, may impose such conditions on the contravening provider as appear to OFCOM to be appropriate for the purpose of protecting that provider's customers.

(5) Those conditions may include a condition requiring the making of payments—

(a) by way of compensation for loss or damage suffered by the contravening provider's customers as a result of the direction; or

(b) in respect of annoyance, inconvenience or anxiety to which they have been put in consequence of the direction.

(6) OFCOM are not to give a direction under this section unless they have—

(a) notified the contravening provider of the proposed direction and of the conditions (if any) which they are proposing to impose by that direction;

(b) provided him with an opportunity of making representations about the proposals and of proposing steps for remedying the situation; and

(c) considered every representation and proposal made to them during the period allowed by them for the contravening provider to take advantage of that opportunity.

Status: *Point in time view as at 13/04/2015.*
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[F27(7) That period is such reasonable period as OFCOM may specify, beginning with the day of the giving of the notification.**]**

(8) If OFCOM consider it appropriate to do so (whether or not in consequence of any representations or proposals made to them), they may revoke a direction under this section, or modify its conditions—

(a) with effect from such time as they may direct;

(b) subject to compliance with such requirements as they may specify; and

(c) to such extent and in relation to such networks, services or facilities, or parts of a network, service or facility, as they may determine.

(9) For the purposes of this section there are repeated contraventions by a person of requirements to pay administrative charges to the extent that—

(a) in the case of a previous notification given to that person under section 40, OFCOM have determined for the purposes of section 41(2) that such a contravention did occur; and

(b) in the period of **[**F28**]**24 months following the day of the making of that determination, one or more further notifications have been given to that person in respect of the same or different failures to pay administrative charges.

Textual Amendments

F22 Words in s. 42(1)(a) substituted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 17(a)(i)** (with Sch. 3 paras. 2, 4)

F23 S. 42(1)(ba) inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 17(a)(ii)** (with Sch. 3 paras. 2, 4)

F24 Words in s. 42(1)(c) inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 17(a)(iii)** (with Sch. 3 paras. 2, 4)

F25 Words in s. 42(1)(d) inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 17(a)(iv)** (with Sch. 3 paras. 2, 4)

F26 S. 42(1)(e) substituted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 17(a)(v)** (with Sch. 3 paras. 2, 4)

F27 S. 42(7) substituted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 17(b)** (with Sch. 3 paras. 2, 4)

F28 Word in s. 42(9)(b) substituted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 17(c)** (with Sch. 3 paras. 2, 4, 5)

Commencement Information

I21 S. 42 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))

I22 S. 42 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)

43 Enforcement of directions under s. 42

(1) A person is guilty of an offence if he provides an electronic communications network or electronic communications service, or makes available any associated facility—

(a) while his entitlement to do so is suspended by a direction under section 42; or

(b) in contravention of a restriction contained in such a direction.

(2) A person guilty of an offence under subsection (1) shall be liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum;

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(b) on conviction on indictment, to a fine.

(3) The duty of a person to comply with a condition of a direction under section 42 shall be a duty owed to every person who may be affected by a contravention of the condition.

(4) Where a duty is owed by virtue of subsection (3) to a person—

(a) a breach of the duty that causes that person to sustain loss or damage, and

(b) an act which—

(i) by inducing a breach of the duty or interfering with its performance, causes that person to sustain loss or damage, and

(ii) is done wholly or partly for achieving that result,

shall be actionable at the suit or instance of that person.

(5) In proceedings brought against a person by virtue of subsection (4)(a) it shall be a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid contravening the condition in question.

(6) Sections **[**F29 96A**]** to 99 apply in relation to a contravention of conditions imposed by a direction under section 42 as they apply in relation to a contravention of conditions set under section 45.

Textual Amendments

F29 Word in s. 43(6) substituted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 18** (with Sch. 3 paras. 2, 4)

Commencement Information

I23 S. 43 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))

I24 S. 43 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)

Register of providers required to notify or to pay charges

44 Duty of OFCOM to keep publicly accessible register

(1) It shall be the duty of OFCOM to establish and maintain a register for the purposes of section 33.

(2) OFCOM must record in the register—

(a) every designation by them for the purposes of section 33 or 38;

(b) every withdrawal by them of such a designation;

(c) every notification given to them under section 33; and

(d) every notification treated as given to them under that section by a transitional provision made under subsection (12) of that section.

(3) Information recorded in the register must be so recorded in such manner as OFCOM consider appropriate.

(4) It shall be the duty of OFCOM to publish a notification setting out—

(a) the times at which the register is for the time being available for public inspection; and

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Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) the fees that must be paid for, or in connection with, an inspection of the register.

(5) The publication of a notification under subsection (4) 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 it.

(6) OFCOM must make the register available for public inspection—

(a) during such hours, and

(b) on payment of such fees,

as are set out in the notification for the time being in force under subsection (4).

Commencement Information

I25 S. 44 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))

I26 S. 44 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)

Conditions of entitlement to provide network or service etc.

45 Power of OFCOM to set conditions

(1) OFCOM shall have the power to set conditions under this section binding the persons to whom they are applied in accordance with section 46.

(2) A condition set by OFCOM under this section must be either—

(a) a general condition; or

(b) a condition of one of the following descriptions—

(i) a universal service condition;

(ii) an access-related condition;

(iii) a privileged supplier condition;

(iv) a significant market power condition (an "SMP condition").

(3) A general condition is a condition which contains only provisions authorised or required by one or more of sections 51, 52, 57, 58 or 64.

(4) A universal service condition is a condition which contains only provisions authorised or required by section 67.

(5) An access-related condition is a condition which contains only provisions authorised by section 73.

(6) A privileged supplier condition is a condition which contains only the provision required by section 77.

(7) An SMP condition is either—

(a) an SMP services condition; or

(b) an SMP apparatus condition.

(8) An SMP services condition is a condition which contains only provisions which—

(a) are authorised or required by one or more of sections 87 to **[**F30**]**91**]** ; or

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) in the case of a condition applying to a person falling within section 46(8)(b), correspond to provision authorised or required by one or more of sections 87 to **[**[F31]89A**]** .

(9) An SMP apparatus condition is a condition containing only provisions authorised by section 93.

(10) OFCOM's power to set a condition under this section making provision authorised or required by this Chapter includes each of the following—

(a) power to impose a requirement on the person or persons to whom the condition is applied to comply with such directions with respect to the matters to which the condition relates as may be given from time to time by OFCOM or by another person specified in the condition;

(b) power to impose an obligation with respect to those matters that is framed by reference to, or is conditional upon, the giving of a consent or of an approval, or on the making of a recommendation, by OFCOM or by another person so specified;

(c) power, for the purposes of provision made by virtue of either of the preceding paragraphs, to confer a discretion exercisable from time to time by OFCOM or by another person specified in the condition or determined in accordance with provision contained in it;

(d) power (subject to section 51(3)) to set different conditions for different cases (including different conditions in relation to different parts of the United Kingdom); and

(e) power to revoke or modify the conditions for the time being in force.

(11) The directions that may be authorised by virtue of subsection (10) do not include directions withdrawing, suspending or restricting a person's entitlement—

(a) to provide, in whole or in part, any electronic communications network or electronic communications service; or

(b) to make available, in whole or in part, any associated facilities.

Textual Amendments

F30 Word in s. 45(8)(a) substituted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 19(a)** (with Sch. 3 para. 2)

F31 Word in s. 45(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. 19(b)** (with Sch. 3 para. 2)

Commencement Information

I27 S. 45 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))

I28 S. 45 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)

46 Persons to whom conditions may apply

(1) A condition set under section 45 is not to be applied to a person except in accordance with the following provisions of this section.

(2) A general condition may be applied generally—

(a) to every person providing an electronic communications network or electronic communications service; or

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Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) to every person providing such a network or service of a particular description specified in the condition.

(3) A universal service condition, access-related condition, privileged supplier condition or SMP condition may be applied to a particular person specified in the condition.

(4) A privileged supplier condition may also be applied generally—

(a) to every person to whom such a condition is required to apply under section 77; or

(b) to every such person who is of a particular description specified in the condition.

(5) The particular person to whom a universal service condition is applied—

(a) except in the case of a condition relating to matters mentioned in subsection (3) of section 66, must be a communications provider designated in accordance with regulations under that section; and

(b) in that excepted case, must be a communications provider so designated or a person who is not such a provider but who is so designated for the purposes only of conditions relating to those matters.

(6) The particular person to whom an access-related condition is applied—

(a) in the case of a condition falling within section 74(1), may be any person whatever; and

(b) in any other case, must be a person who provides an electronic communications network or makes associated facilities available.

(7) The particular person to whom an SMP services condition is applied must—

(a) be a communications provider or a person who makes associated facilities available; and

(b) fall within subsection (8).

(8) A person falls within this subsection if—

(a) he is a person whom OFCOM have determined to be a person having significant market power in a specific market for electronic communications networks, electronic communications services or associated facilities (a "services market"); or

(b) it appears to OFCOM that he is a person on whom it is necessary, for the purpose of securing compliance with an international obligation of the United Kingdom, to impose a condition containing provision that corresponds to provision which, in the case of a person falling within paragraph (a), must be made (or may be made) under any of sections 87 to **[**F32**]** 89A**]** .

(9) The particular person to whom an SMP apparatus condition is applied must be—

(a) a person who supplies electronic communications apparatus; and

(b) a person whom OFCOM have determined to be a person having significant market power in a specific market for electronic communications apparatus (an "apparatus market").

Textual Amendments

F32 Word in s. 46(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. 20** (with Sch. 3 para. 2)

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Commencement Information

I29 S. 46 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))

I30 S. 46 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)

47 Test for setting or modifying conditions

(1) OFCOM must not, in exercise or performance of any power or duty under this Chapter—

(a) set a condition under section 45, or

(b) modify such a condition,

unless they are satisfied that the condition or (as the case may be) the modification satisfies the test in subsection (2).

(2) That test is that the condition or modification is—

(a) objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates **[**F33(but this paragraph is subject to subsection (3))**]** ;

(b) not such as to discriminate unduly against particular persons or against a particular description of persons;

(c) proportionate to what the condition or modification is intended to achieve; and

(d) in relation to what it is intended to achieve, transparent.

[F34(3) Subsection (2)(a) does not apply in relation to the setting of a general condition.**]**

Textual Amendments

F33 Words in s. 47(2)(a) inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 21(a)** (with Sch. 3 para. 2)

F34 S. 47(3) inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 21(b)** (with Sch. 3 para. 2)

Commencement Information

I31 S. 47 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))

I32 S. 47 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)

48 Procedure for setting, modifying and revoking conditions

(1) Subject to the following provisions of this Chapter—

(a) the way in which conditions are to be set or modified under section 45 is by the publication of a notification setting out the conditions or modifications; and

(b) the way in which such a condition is to be revoked is by the publication of a notification stating that the condition is revoked.

[F35(2) Where section 48A applies, OFCOM must comply with the applicable requirements of that section and section 48B before—

(a) setting conditions under section 45; or

(b) modifying or revoking a condition so set.

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(2A) Where section 48A does not apply to the setting, modification or revocation of conditions because of subsection (2) of that section—

(a) the conditions, or their modification or revocation, must be temporary; and

(b) the notification published under subsection (1) of this section must state the period for which the conditions, or their modification or revocation, are to have effect.

(2B) Where OFCOM propose to extend or make permanent any such temporary conditions, modification or revocation—

(a) sections 48A and 48B(1) do not apply in relation to the proposal; and

(b) subsections (2) to (9) of section 48B apply in relation to the proposal as if the words from the beginning of subsection (2) to "appropriate" were omitted.**]**

(4) In the case of a **[**F36proposal by OFCOM**]** with respect to an SMP condition, the applicable requirements of sections 79 to 86 must also be complied with.

F37(5) . . . . . .

(6) The publication of a notification under this section **[**F38or section 48A**]** must be in such manner as appears to OFCOM to be appropriate for bringing the contents of the notification—

(a) in the case of a notification setting general conditions, to the attention of such persons as OFCOM consider appropriate; and

(b) in any other case, to the attention of the persons who, in OFCOM's opinion, are likely to be affected by the contents of the notification.

(7) Nothing in the following provisions of this Chapter imposing a duty on OFCOM to set or modify a condition shall be taken as dispensing with any of the requirements of this section **[**F39, section 48A or section 48B**]** .

Textual Amendments

F35 S. 48(2)-(2B) substituted for s. 48(2)(3) (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 22(a)** (with Sch. 3 paras. 2, 6)

F36 Words in s. 48(4) substituted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 22(b)** (with Sch. 3 paras. 2, 6)

F37 S. 48(5) 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. 22(c)** (with Sch. 3 paras. 2, 6)

F38 Words in s. 48(6) inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 22(d)** (with Sch. 3 paras. 2, 6)

F39 Words in s. 48(7) inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 22(e)** (with Sch. 3 paras. 2, 6)

Commencement Information

I33 S. 48 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))

I34 S. 48 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)

[F40**48A. Domestic consultation for section 45 conditions**

(1) This section applies where OFCOM propose to set, modify or revoke—

(a) SMP apparatus conditions; or

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) any other conditions set under section 45 where what is proposed would, in OFCOM's opinion, have a significant impact on a market for any of the services, facilities, apparatus or directories in relation to which they have functions under this Chapter.

(2) But this section does not apply where the proposal is of EU significance and in OFCOM's opinion—

(a) there are exceptional circumstances; and

(b) there is an urgent need to act in order to safeguard competition and to protect the interests of consumers.

(3) OFCOM must publish a notification—

(a) stating that they are proposing to set, modify or revoke the conditions that are specified in the notification;

(b) setting out the effect of those conditions, modifications or revocations;

(c) giving their reasons for making the proposal; and

(d) specifying the period within which representations may be made to OFCOM about their proposal.

(4) That period must end no less than one month after the day of the publication of the notification.

(5) But where OFCOM are satisfied that there are exceptional circumstances justifying the use of a shorter period, the period specified as the period for making representations may be whatever shorter period OFCOM consider reasonable in those circumstances.

(6) OFCOM must—

(a) consider every representation about the proposal made to them during the period specified in the notification; and

(b) have regard to every international obligation of the United Kingdom (if any) which has been notified to them for the purposes of this paragraph by the Secretary of State.

(7) Where the proposal is not of EU significance, OFCOM may then give effect to it, with any modifications that appear to OFCOM to be appropriate.

Textual Amendments

F40 Ss. 48A-48C inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 23** (with Sch. 3 paras. 2, 6)

48B. EU consultation for section 45 conditions

(1) This section applies where, after complying with section 48A(6) in relation to a proposal of EU significance, OFCOM wish to proceed with the proposal.

(2) After making any modifications of the proposal that appear to OFCOM to be appropriate, OFCOM must send a copy of the proposal, and of a statement setting out the reasons for it, to—

(a) the European Commission;

(b) BEREC; and

(c) the regulatory authorities in every other member State.

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(3) If at the end of the period of one month referred to in Article 7(3) of the Framework Directive no notification has been given to OFCOM by the Commission under Article 7a(1) of that Directive, OFCOM may give effect to the proposal, with any modifications that appear to OFCOM to be appropriate.

(4) Before giving effect to the proposal under subsection (3), OFCOM must consider any comments made by—

(a) the Commission;

(b) BEREC; and

(c) any regulatory authority in any other member State.

(5) Subsections (6) to (9) apply where such a notification is given by the Commission to OFCOM during that period.

(6) During the period of 3 months beginning with the notification, OFCOM must co-operate with the Commission and BEREC to identify the most appropriate and effective measure.

(7) OFCOM may give effect to the proposal, with any modifications that appear to them to be appropriate, within one month (or such longer period as may be allowed under paragraph (6) of Article 7a of the Framework Directive) of the Commission—

(a) issuing a recommendation to amend or withdraw the proposal in accordance with paragraph (5)(a) of that Article; or

(b) taking a decision to lift its reservations in accordance with paragraph (5)(b) of that Article.

(8) In a case in which OFCOM give effect to the proposal despite a recommendation of the Commission to amend or withdraw the proposal, OFCOM must send to the Commission a copy of a reasoned justification for their decision.

(9) If at the end of the period of one month referred to in paragraph (5) of Article 7a of the Framework Directive the Commission has neither issued a recommendation nor lifted its reservations in accordance with that paragraph, OFCOM may give effect to the proposal, with any modifications that appear to them to be appropriate.

Textual Amendments

F40 Ss. 48A-48C inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 23** (with Sch. 3 paras. 2, 6)

48C. Delivery of copies of notifications etc. in respect of section 45 conditions

(1) OFCOM must send to the Secretary of State a copy of every notification published under section 48(1) or 48A(3).

(2) OFCOM must send to the European Commission a copy of every notification published under section 48(1) with respect to—

(a) a universal service condition;

(b) an access-related condition falling within section 73(2);

(c) an SMP services condition.

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(3) OFCOM must send to BEREC a copy of every notification published under section 48(1) with respect to a proposal of EU significance.

(4) Where a notification published under section 48(1) relates to a proposal to which section 48A did not apply because of subsection (2) of that section, OFCOM must send a copy of a statement setting out the reasons for the proposal and for the urgent need to act to—

(a) the Commission;

(b) BEREC; and

(c) the regulatory authorities in every other member State.**]**

Textual Amendments

F40 Ss. 48A-48C inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 23** (with Sch. 3 paras. 2, 6)

49 Directions and approvals for the purposes of a s. 45 condition

(1) This section applies where—

(a) a condition set under section 45 has effect by reference to directions, approvals or consents given by a person (whether OFCOM themselves or another); and

(b) that person **[**F41(referred to in this section and sections 49A to 49C as "the responsible person")**]** is proposing to give a direction, approval or consent that affects the operation of that condition or to modify or withdraw a direction, approval or consent so as to affect the condition's operation.

(2) **[**F42The responsible person**]** must not give, modify or withdraw the direction, approval or consent unless he is satisfied that to do so is—

(a) objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates **[**F43(but this paragraph is subject to subsection (2A))**]** ;

(b) not such as to discriminate unduly against particular persons or against a particular description of persons;

(c) proportionate to what it is intended to achieve; and

(d) in relation to what it is intended to achieve, transparent.

[F44(2A) Subsection (2)(a) does not apply in relation to a direction, approval or consent affecting a general condition.**]**

(3) **[**F45Where the responsible person is a person other than OFCOM, that person shall in giving, modifying or withdrawing the direction**]** be under the same duty as OFCOM to act in accordance with the six Community requirements set out in section 4.

[F46(4) Where section 49A applies, the applicable requirements of that section and section 49B must be complied with before the direction, approval or consent is given, modified or withdrawn.

(4A) Where section 49A does not apply because of subsection (2) of that section—

(a) the direction, approval or consent given, or its modification or withdrawal, must be temporary; and

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) the instrument that gives, modifies or withdraws the direction, approval or consent must state the period for which it is to have effect.

(4B) Where it is proposed to extend or make permanent any such temporary direction, approval or consent, or modification or withdrawal—

(a) sections 49A and 49B(1) do not apply in relation to the proposal; and

(b) subsections (2) to (10) of section 49B apply in relation to the proposal as if for the words from the beginning of subsection (2) to "the person" were substituted "The responsible person".

(4C) Where the responsible person is a person other than OFCOM, that person must refer to OFCOM such of the following questions as are relevant in the case in question—

(a) whether OFCOM is of the opinion mentioned in section 49A(1)(b);

(b) whether OFCOM is of the opinion mentioned in section 49A(2); and

(c) whether the proposal is of EU significance.

(4D) OFCOM must immediately determine any question so referred to them.**]**

Textual Amendments

F41 Words in s. 49(1)(b) inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 24(a)** (with Sch. 3 paras. 2, 7)

F42 Words in s. 49(2) substituted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 24(b)(i)** (with Sch. 3 paras. 2, 7)

F43 Words in s. 49(2)(a) inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 24(b)(ii)** (with Sch. 3 paras. 2, 7)

F44 S. 49(2A) inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 24(c)** (with Sch. 3 paras. 2, 7)

F45 Words in s. 49(3) substituted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 24(d)** (with Sch. 3 paras. 2, 7)

F46 S. 49(4)-(4D) substituted for s. 49(4)-(10) (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 24(e)** (with Sch. 3 paras. 2, 7)

Commencement Information

I35 S. 49 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))

I36 S. 49 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)

[F47 49A. Domestic consultation for directions, approvals and consents

(1) This section applies where the responsible person is proposing to give, modify or withdraw a direction, approval or consent for the purposes of—

(a) an SMP apparatus condition; or

(b) any other condition set under section 45 where what is proposed would, in OFCOM's opinion, have a significant impact on a market for any of the services, facilities, apparatus or directories in relation to which they have functions under this Chapter.

(2) But this section does not apply where the proposal is of EU significance and in OFCOM's opinion—

(a) there are exceptional circumstances; and

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) there is an urgent need to act in order to safeguard competition and to protect the interests of consumers.

(3) The responsible person must publish a notification—

(a) stating that there is a proposal to give, modify or withdraw the direction, approval or consent;

(b) identifying the responsible person;

(c) setting out the direction, approval or consent to which the proposal relates;

(d) setting out the effect of the direction, approval or consent or of its proposed modification or withdrawal;

(e) giving reasons for the making of the proposal; and

(f) specifying the period within which representations may be made about the proposal to the responsible person.

(4) That period must be one ending not less than one month after the day of the publication of the notification.

(5) But where the responsible person is satisfied that there are exceptional circumstances justifying the use of a shorter period, the period specified as the period for making representations may be whatever shorter period that person considers reasonable in those circumstances.

(6) The responsible person must—

(a) consider every representation about the proposal made to that person during the period specified in the notification; and

(b) have regard to every international obligation of the United Kingdom (if any) which has been notified to OFCOM for the purposes of this paragraph by the Secretary of State.

(7) Where the proposal is not of EU significance, the responsible person may then give effect to the proposal, with any modifications that appear to that person to be appropriate.

(8) The publication of a notification under this section must be in such manner as appears to the responsible person to be appropriate for bringing the contents of the notification to the attention of such persons as that person considers appropriate.

Textual Amendments

F47 Ss. 49A-49C inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 25** (with Sch. 3 paras. 2, 7)

49B. EU consultation for directions, approvals and consents

(1) This section applies where, after complying with section 49A(6) in relation to a proposal of EU significance, the responsible person wishes to proceed with it.

(2) After the responsible person has made any modifications of the proposal that appear to the person to be appropriate, the person must send a copy of the proposal, and of a statement setting out the reasons for it, to—

(a) the European Commission;

(b) BEREC; and

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(c) the regulatory authorities in every other member State.

(3) If at the end of the period of one month referred to in Article 7(3) of the Framework Directive no notification has been given to the responsible person by the Commission under Article 7a(1) of that Directive, the responsible person may give effect to the proposal, with any amendments that appear to the responsible person to be appropriate.

(4) Before giving effect to the proposal under subsection (3), the responsible person must consider any comments made by—

(a) the Commission;

(b) BEREC; and

(c) any regulatory authority in any other member State.

(5) Subsections (6) to (10) apply where such a notification is given by the Commission to the responsible person during that period.

(6) During the period of 3 months beginning with the notification, the responsible person must co-operate with the Commission and BEREC to identify the most appropriate and effective measure.

(7) The responsible person may give effect to the proposal, with any modifications that appear to that person to be appropriate, within one month (or such longer period as may be allowed under paragraph (6) of Article 7a of the Framework Directive) of the Commission—

(a) issuing a recommendation to amend or withdraw the proposal in accordance with paragraph (5)(a) of that Article; or

(b) taking a decision to lift its reservations in accordance with paragraph (5)(b) of that Article.

(8) In a case in which the responsible person is a person other than OFCOM and the Commission has recommended that the proposal be amended or withdrawn, the responsible person may give effect to the proposal only with the agreement of OFCOM.

(9) In a case in which the responsible person gives effect to the proposal despite a recommendation of the Commission to amend or withdraw it, the responsible person must send to the Commission a copy of the responsible person's reasoned justification for the decision.

(10) If at the end of the period of one month referred to in paragraph (5) of Article 7a of the Framework Directive the Commission has neither issued a recommendation nor lifted its reservations in accordance with that paragraph, the responsible person may give effect to the proposal, with any modifications that appear to that person to be appropriate.

Textual Amendments

F47 Ss. 49A-49C inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 25** (with Sch. 3 paras. 2, 7)

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

49C. Delivery of copies of notifications etc. in respect of directions, approvals and consents

(1) The responsible person must send to the Secretary of State—

(a) a copy of every notification published under section 49A(3);

(b) a copy of every direction, approval or consent given for the purposes of a condition set under section 45; and

(c) a copy of every instrument modifying or withdrawing such a direction, approval or consent.

(2) The responsible person must send to the European Commission—

(a) a copy of every direction, approval or consent given for the purposes of a universal service condition, an access-related condition falling within section 73(2) or an SMP services condition; and

(b) a copy of every instrument modifying or withdrawing such a direction, approval or consent.

(3) The responsible person must send to BEREC—

(a) a copy of every direction, approval or consent given for the purposes of a condition set under section 45 where the proposal to give the direction, approval or consent was a proposal of EU significance;

(b) a copy of every instrument modifying or withdrawing a direction, approval or consent given for the purposes of a condition set under section 45 where the proposal to modify or withdraw the direction, approval or consent was a proposal of EU significance.

(4) In a case in which the responsible person is a person other than OFCOM, the responsible person must send to OFCOM—

(a) a copy of every notification published under section 49A(3);

(b) a copy of every direction, approval or consent given for the purposes of a condition set under section 45;

(c) a copy of every instrument modifying or withdrawing such a direction, approval or consent;

(d) a copy of every proposal and statement to which section 49B(2) applies;

(e) a copy of any comments about such a proposal made by the Commission, BEREC or any regulatory authority in any other member State;

(f) a copy of every notification given to the responsible person by the Commission under Article 7a(1) of the Framework Directive;

(g) a copy of every recommendation made in respect of the proposal by the Commission under Article 7a(5)(a) of the Framework Directive.

(5) Where because of subsection (2) of section 49A, that section did not apply in relation to a proposal to give a direction, approval or consent for the purposes of a condition, or to modify or withdraw such a direction, approval or consent, the responsible person must send a copy of a statement setting out the reasons for the proposal and for the urgent need to act to—

(a) the Commission;

(b) BEREC; and

(c) the regulatory authorities in every other member State.

(6) In a case in which the responsible person is a person other than OFCOM, references to OFCOM in section 395(4), (5) and (6A) are to be read as references to the

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

responsible person in relation to copies of directions, approvals, consents, instruments and statements to which subsections (2), (3) and (5) of this section apply.**]**

Textual Amendments

F47 Ss. 49A-49C inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 25** (with Sch. 3 paras. 2, 7)

[F48]50 Delivery of copies of notifications etc.

. . . . . .

Textual Amendments

F48 S. 50 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. 26** (with Sch. 3 paras. 2, 8)

Commencement Information

I37 S. 50 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))

I38 S. 50 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)

General conditions: subject-matter

51 Matters to which general conditions may relate

(1) Subject to sections 52 to 64, the only conditions that may be set under section 45 as general conditions are conditions falling within one or more of the following paragraphs—

(a) conditions making such provision as OFCOM consider appropriate for protecting the interests of the end-users of public electronic communications services;

(b) conditions making such provision as OFCOM consider appropriate for securing service interoperability and for securing, or otherwise relating to, network access;

(c) conditions making such provision as OFCOM consider appropriate for securing the proper and effective functioning of public electronic communications networks;

(d) conditions for giving effect to determinations or regulations made under section 71;

(e) conditions requiring [F49]... the provision, availability and use, in the event of a disaster, of electronic communications networks, electronic communications services and associated facilities;

(f) conditions making such provision as OFCOM consider appropriate for securing the protection of public health by the prevention or avoidance of the exposure of individuals to electro-magnetic fields created in connection with the operation of electronic communications networks;

(g) conditions requiring compliance with relevant international standards.

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(2) The power under subsection (1)(a) to set conditions for protecting the interests of the end-users of public electronic communications services includes power to set conditions for that purpose which—

(a) relate to the supply, provision or making available of goods, services or facilities in association with the provision of public electronic communications services; [F50]...

(b) give effect to **[**[F51]EU**]** obligations to provide protection for such end-users in relation to the supply, provision or making available of those goods, services or facilities.

[[F52](c) specify requirements in relation to the provision of services to disabled end-users;

(d) require the provision, free of charge, of specified information, or information of a specified kind, to end-users;

(e) in order to prevent the degradation of service and the hindering or slowing down of traffic over networks, impose minimum requirements in relation to the quality of public electronic communications networks;

(f) require a communications provider, in specified circumstances, to block access to telephone numbers or services in order to prevent fraud or misuse, and enable them to withhold fees payable to another communications provider in those circumstances;

(g) impose a limit on the duration of a contract between an end-user and a communications provider; and

(h) ensure that conditions and procedures for the termination of a contract do not act as a disincentive to an end-user changing communications provider.**]**

[[F53](2A) Where OFCOM propose to set a general condition of a kind specified in subsection (2)(e), they must—

(a) notify the European Commission and BEREC, and

(b) take due account of comments and recommendations made by the Commission.**]**

(3) The power to set general conditions in relation to a description of electronic communications network or electronic communications service does not include power—

(a) to set conditions that are made applicable according to the identity of the provider of a network or service; or

(b) to set conditions that differ according to the identity of the provider of the networks or services to which they relate.

(4) The power to set general conditions falling within subsection (1)(b) does not include power to set conditions containing provision which under—

(a) section 73, or

(b) any of sections 87 to **[**[F54]91**]** ,

must be or may be included, in a case in which it appears to OFCOM to be appropriate to do so, in an access-related condition or SMP condition.

(5) The conditions falling within subsection (1)(c) include conditions making such provision as OFCOM consider appropriate for the purpose, in accordance with **[**[F51]EU**]** obligations, of preventing or restricting electro-magnetic interference—

(a) with the provision of an electronic communications network or electronic communications service; or

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) with, or with the receipt of, anything conveyed or provided by means of such a network or service.

(6) In this section "electro-magnetic interference" means interference by means of the emission or reflection of electro-magnetic energy in the course of, or in connection with, the provision any electronic communications network or electronic communications service.

(7) In this section "disaster" includes any major incident having a significant effect on the general public; and for this purpose a major incident includes any incident of contamination involving radioactive substances or other toxic materials.

Textual Amendments

F49 Words in s. 51(1)(e) 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. 27(a)** (with Sch. 3 para. 2)

F50 Word in s. 51(2)(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. 27(b)(i)** (with Sch. 3 para. 2)

F51 Words in Act substituted (22.4.2011) by The Treaty of Lisbon (Changes in Terminology) Order 2011 (S.I. 2011/1043), arts. 2, **3**, 6 (with art. 3(2)(3), 4(2), 6(4)(5))

F52 S. 51(2)(c)-(h) inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 27(b)(ii)** (with Sch. 3 para. 2)

F53 S. 51(2A) inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 27(c)** (with Sch. 3 para. 2)

F54 Word in s. 51(4)(b) substituted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 27(d)** (with Sch. 3 para. 2)

Commencement Information

I39 S. 51 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))

I40 S. 51 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)

General conditions: customer interests

52 Conditions relating to customer interests

(1) It shall be the duty of OFCOM to set such general conditions (if any) as they consider appropriate for securing that—

(a) public communications providers, or

(b) such descriptions of them as OFCOM consider appropriate,

establish and maintain procedures, standards and policies with respect to the matters mentioned in subsection (2).

(2) Those matters are—

(a) the handling of complaints made to public communications providers by any of their domestic and small business customers **[**F55, where the complaint relates to contractual conditions, or to the performance of a contract for the supply of an electronic communications network or service**]** ;

(b) the resolution of disputes between such providers and any of their domestic and small business customers **[**F56, where the complaint relates to contractual

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conditions, or to the performance of a contract for the supply of an electronic communications network or service**]** ;

(c) the provision of remedies and redress in respect of matters that form the subject-matter of such complaints or disputes;

[F57(ca) the payment of compensation to a person in respect of delay in porting a number to another public communications provider, or abuse of the process for porting a number;**]**

(d) the information about service standards and about the rights of domestic and small business customers that is to be made available to those customers by public communications providers;

(e) any other matter appearing to OFCOM to be necessary for securing effective protection for the domestic and small business customers of such providers.

(3) It shall be the duty of OFCOM, in setting conditions in accordance with subsection (1), to secure so far as they consider appropriate—

(a) that the procedures established and maintained for the handling of complaints and the resolution of disputes are easy to use, transparent **[**F58, non-discriminatory**]** and effective;

(b) that domestic and small business customers have the right to use those procedures free of charge; and

(c) that where public communications providers are in contravention of conditions set in accordance with the preceding provisions of this section, the providers follow such procedures as may be required by the general conditions.

(4) Subject to section 55, OFCOM's duties under subsections (1) and (3) so far as relating to procedures for the handling of complaints are to be performed, to such extent as they consider appropriate, by the setting of general conditions requiring public communications providers to establish and maintain procedures that conform with a code of practice which is—

(a) applicable to the providers to whom the conditions apply; and

(b) for the time being approved by OFCOM for the purposes of this subsection.

(5) Subject to section 55, OFCOM's duties under subsections (1) and (3) so far as relating to procedures for resolving disputes are to be performed, to such extent as they consider appropriate, by the setting of general conditions requiring public communications providers—

(a) to establish and maintain procedures for resolving disputes; and

(b) to secure that those procedures are, and continue to be, approved by OFCOM.

(6) In this section "domestic and small business customer", in relation to a public communications provider, means a customer of that provider who is neither—

(a) himself a communications provider; nor

(b) a person who is such a customer in respect of an undertaking carried on by him for which more than ten individuals work (whether as employees or volunteers or otherwise).

Textual Amendments

F55 Words in s. 52(2)(a) inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 28(a)** (with Sch. 3 para. 2)

Status: *Point in time view as at 13/04/2015.*
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F56 Words in s. 52(2)(b) inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 28(b)** (with Sch. 3 para. 2)

F57 S. 52(2)(ca) inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 28(c)** (with Sch. 3 para. 2)

F58 Words in s. 52(3)(a) inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 28(d)** (with Sch. 3 para. 2)

Commencement Information

I41 S. 52 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))

I42 S. 52 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)

53 Approval of codes of practice for the purposes of s. 52

(1) Where a code of practice is submitted to OFCOM for approval, they shall approve that code if and only if, in their opinion, it makes all such provision as they consider necessary in relation to the matters dealt with in the code for the protection of the domestic and small business customers of the public communications providers to whom the code applies.

(2) It shall be the duty of OFCOM to keep under review the codes of practice for the time being approved by them.

(3) OFCOM may at any time, by a notification given or published in such manner as they consider appropriate—

(a) approve modifications that have been made to an approved code;

(b) withdraw their approval from a code; or

(c) give notice that the withdrawal of their approval will take effect from such time as may be specified in the notification unless such modifications of the code as are specified in the notification are made before that time.

(4) In considering—

(a) whether to approve a code of practice, or

(b) whether or in what manner to exercise their powers under subsections (2) and (3) of this section,

OFCOM must have regard to the matters mentioned in subsection (5).

(5) Those matters are—

(a) the need to secure that customers are able readily to comprehend the procedures that are provided for by an approved code of practice;

(b) the need to secure that there is consistency between the different codes for the time being approved by OFCOM; and

(c) the need to secure that the number of different codes so approved is kept to a minimum.

(6) In this section—

"approval" means approval for the purposes of section 52(4) and "approve" and "approved" are to be construed accordingly; and

"domestic and small business customer" has the same meaning as in section 52.

Status: *Point in time view as at 13/04/2015.*
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Commencement Information

I43 S. 53 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))

I44 S. 53 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)

54 Approval of dispute procedures for the purposes of s. 52

(1) Before giving their approval to any dispute procedures, OFCOM must consult the Secretary of State.

(2) OFCOM are not to approve dispute procedures unless they are satisfied that the arrangements under which the procedures have effect—

(a) are administered by person who is for practical purposes independent (so far as decisions in relation to disputes are concerned) of both OFCOM and the communications providers to whom the arrangements apply;

(b) give effect to procedures that are easy to use, transparent **[**F59, non-discriminatory**]** and effective;

(c) give, in the case of every communications provider to whom the arrangements apply, a right to each of his domestic and small business customers to use the procedures free of charge;

(d) ensure that all information necessary for giving effect to the procedures is obtained;

(e) ensure that disputes are effectively investigated;

(f) include provision conferring power to make awards of appropriate compensation; and

(g) are such as to enable awards of compensation to be properly enforced.

(3) OFCOM may approve dispute procedures subject to such conditions (including conditions as to the provision of information to OFCOM) as they may think fit.

(4) It shall be the duty of OFCOM to keep under review the dispute procedures for the time being approved by them.

(5) OFCOM may at any time, by a notification given or published in such manner as they consider appropriate—

(a) modify the conditions of their approval of any dispute procedures or withdraw such an approval; or

(b) give notice that the modification of those conditions, or the withdrawal of such an approval, will take effect from such time as may be specified in the notification unless the procedures (or the arrangements under which they have effect) are modified before that time in the manner required by the notification.

(6) In considering—

(a) whether to approve dispute procedures, or

(b) whether or in what manner to exercise their powers under subsections (3) to (5),

OFCOM must have regard to the matters mentioned in subsection (7).

(7) Those matters are—

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(a) the need to secure that customers are able readily to comprehend dispute procedures;

(b) the need to secure that there is consistency between the different procedures for the time being approved by OFCOM; and

(c) the need to secure that the number of different sets of procedures so approved is kept to a minimum.

(8) In this section—

"approval" means approval for the purposes of subsection (5) of section 52 and "approve" and "approved" are to be construed accordingly;

"dispute procedures" means any such procedures as may fall to be approved for the purposes of that subsection; and

"domestic and small business customer" has the same meaning as in section 52.

Textual Amendments

F59 Words in s. 54(2)(b) inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 29** (with Sch. 3 para. 2)

Commencement Information

I45 S. 54 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))

I46 S. 54 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)

55 Orders by OFCOM in the absence of conditions under s. 52

(1) OFCOM may make an order under this section if, at any time, they consider in relation to any one or more public communications providers—

(a) that it is not practicable, or at least not appropriate, for OFCOM's duties under subsections (1) and (3) of section 52 to be performed in a particular respect by the setting of general conditions; and

(b) that it is necessary to make the order for the purpose—

(i) of securing the necessary protection for the customers of that provider or of those providers; or

(ii) of securing compliance with a **[**[F51]EU**]** obligation.

(2) An order under this section may make such of the following provisions as OFCOM think fit—

(a) provision imposing requirements with respect to the complaints and disputes mentioned in section 52(2);

(b) provision for the enforcement of those requirements;

(c) provision making other arrangements for the purposes of those requirements.

(3) The power to make provision by an order under this section includes, in particular—

(a) power to establish a body corporate with the capacity to make its own rules and to establish its own procedures;

(b) power to determine the jurisdiction of a body established by such an order or, for the purposes of the order, of any other person;

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(c) power to confer jurisdiction with respect to any matter on OFCOM themselves;

(d) power to provide for a person on whom jurisdiction is conferred by the arrangements to make awards of compensation, to direct the reimbursement of costs or expenses, or to do both;

(e) power to provide for such a person to enforce, or to participate in the enforcement of, any awards or directions made under such an order; and

(f) power to make such other provision as OFCOM think fit for the enforcement of such awards and directions.

(4) An order under this section may require such public communications providers as may be determined by or under the order to make payments to OFCOM in respect of expenditure incurred by OFCOM in connection with—

(a) the establishment and maintenance, in accordance with such an order, of a body corporate or of a procedure; or

(b) the making of any other arrangements for the purposes of the requirements of such an order.

(5) The consent of the Secretary of State is required for the making by OFCOM of an order under this section.

(6) Section 403 applies to the power of OFCOM to make an order under this section.

(7) A statutory instrument containing an order made by OFCOM under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Textual Amendments

F51 Words in Act substituted (22.4.2011) by The Treaty of Lisbon (Changes in Terminology) Order 2011 (S.I. 2011/1043), arts. 2, **3**, 6 (with art. 3(2)(3), 4(2), 6(4)(5))

Commencement Information

I47 S. 55 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))

I48 S. 55 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)

General conditions: telephone numbers

56 The National Telephone Numbering Plan

(1) It shall be the duty of OFCOM to publish a document (to be known as "the National Telephone Numbering Plan") setting out—

(a) the numbers that they have determined to be available for allocation by them as telephone numbers;

(b) such restrictions as they consider appropriate on the adoption of numbers available for allocation in accordance with the plan; [F60]...

[[F61](ba) such requirements as they consider appropriate, for the purpose of protecting consumers, in relation to the tariff principles and maximum prices applicable to numbers so adopted or available for allocation; and**]**

(c) such restrictions as they consider appropriate on the other uses to which numbers available for allocation in accordance with the plan may be put.

Status: *Point in time view as at 13/04/2015.*
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(2) It shall be OFCOM's duty—

(a) from time to time to review the National Telephone Numbering Plan; and

(b) to make any revision of that plan that they think fit in consequence of such a review;

but this duty must be performed in compliance with the requirements, so far as applicable, of section 60.

(3) OFCOM must also keep such day to day records as they consider appropriate of the telephone numbers allocated by them in accordance with the National Telephone Numbering Plan.

(4) The publication of the National Telephone Numbering Plan, or of a revision of it, must be in such manner as appears to OFCOM to be appropriate for bringing the contents of the Plan, or of the revised Plan, to the attention of such persons as OFCOM consider appropriate.

(5) In this Chapter references to a telephone number are (subject to subsection (7)) references to any number that is used (whether or not in connection with telephony) for any one or more of the following purposes—

(a) identifying the destination for, or recipient of, an electronic communication;

(b) identifying the origin, or sender, of an electronic communication;

(c) identifying the route for an electronic communication;

(d) identifying the source from which an electronic communication or electronic communications service may be obtained or accessed;

(e) selecting the service that is to be obtained or accessed, or required elements or characteristics of that service; or

(f) identifying the communications provider by means of whose network or service an electronic communication is to be transmitted, or treated as transmitted.

(6) In this Chapter references to the adoption of a telephone number by a communications provider are references to his doing any of the following in relation to a number allocated (whether or not to that provider) by OFCOM—

(a) allocating or transferring that number to a particular customer or piece of apparatus;

(b) using that number for identifying a service or route used by that provider or by any of his customers;

(c) using that number for identifying a communication as one to be transmitted by that provider;

(d) designating that number for use in selecting a service or the required elements or characteristics of a service;

(e) authorising the use of that number by others for any of the purposes mentioned in subsection (5).

(7) The Secretary of State may by order exclude such numbers as may be described in the order from the numbers that are to be treated as telephone numbers for the purposes of this Chapter.

(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.

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(9) References in this section to the allocation of a number are references to its allocation for the purposes of general conditions under section 58 or in accordance with conditions under section 59.

(10) In this section—

"electronic communication" means a communication for transmission by means of an electronic communications network; and

"number" includes data of any description.

Textual Amendments

F60 Word in s. 56(1)(b) 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. 30** (with Sch. 3 para. 2)

F61 S. 56(1)(ba) inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 30** (with Sch. 3 para. 2)

Commencement Information

I49 S. 56 in force at 25.7.2003 for specified purposes by S.I. 2003/1900, art. 2(1), **Sch. 1** (with art. 3) (as amended by S.I. 2003/3142, art. 1(3))

I50 S. 56 in force at 29.12.2003 in so far as not already in force by S.I. 2003/3142, art. 3(1), **Sch. 1** (with art. 11)

[F62 56A. Conditions for limitations on allocation of telephone numbers

(1) When OFCOM allocate telephone numbers in accordance with the National Telephone Numbering Plan, they must specify whether an allocation may be transferred from one person to another, and may set out the conditions under which the allocation may be transferred.

(2) If OFCOM allocate telephone numbers for a limited period of time, the limitation must be objectively justifiable in relation to the services to which it relates, taking account of the need to allow for an appropriate period of investment amortisation.]

Textual Amendments

F62 S. 56A inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 31** (with Sch. 3 para. 2)

57 Conditions to secure access to telephone numbers

(1) General conditions may impose such requirements as OFCOM consider appropriate for securing that every end-user of a public electronic communications service is able, by means of that service—

(a) to make calls or otherwise transmit electronic communications to every normal telephone number; and

(b) to receive every call or other electronic communication that is made or transmitted to him using such a service from apparatus identified by a normal telephone number.

(2) A normal telephone number is one which—

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(a) has been made available, in accordance with the National Telephone Numbering Plan, as a number to be used for the purpose of identifying the destination for, or the recipient of, electronic communications; and

(b) is for the time being—

(i) a number adopted by a communications provider to be used for such a purpose; or

(ii) a number in use for such a purpose by a person other than a communications provider to whom it has been allocated in accordance with conditions under section 59.

(3) In this section "electronic communication" has the same meaning as in section 56.

Commencement Information

I51 S. 57 in force at 25.7.2003 for specified purposes by S.I. 2003/1900, art. 2(1), **Sch. 1** (with art. 3) (as amended by S.I. 2003/3142, art. 1(3))

I52 S. 57 in force at 29.12.2003 in so far as not already in force by S.I. 2003/3142, art. 3(1), **Sch. 1** (with art. 11)

58 Conditions about allocation and adoption of numbers

(1) General conditions may include conditions which—

(a) prohibit the adoption of telephone numbers by a communications provider except in cases where the numbers have been allocated by OFCOM to a person;

[F63(aa) impose tariff principles and maximum prices for the purpose of protecting consumers in relation to the provision of an electronic communications service by means of telephone numbers adopted or available for use;**]**

(b) regulate the use by a communications provider, for the purpose of providing an electronic communications network or electronic communications service, of telephone numbers not allocated to that provider;

(c) impose restrictions on the adoption of telephone numbers by a communications provider, and on other practices by communications providers in relation to telephone numbers allocated to them;

(d) impose requirements on a communications provider in connection with the adoption by him of telephone numbers;

(e) require an allocation of particular telephone numbers to be transferred from one communications provider to another in the circumstances provided for in the conditions;

(f) impose such requirements and restrictions on a communications provider from whom an allocation is required to be transferred as may be provided for, in relation to the transfer, in the conditions;

(g) require payments of such amounts as may be determined by OFCOM to be made to them by a person in respect of the allocation to him of telephone numbers;

(h) require payments of such amounts as may be determined by OFCOM to be made to them by a person in respect of transfers of allocations from one person to another; and

(i) require communications providers to secure compliance with such rules relating to the use of telephone numbers by their customers as OFCOM may

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set out in general conditions or determine in accordance with provision made by the general conditions.

(2) General conditions may also—

(a) provide for the procedure to be followed on the making of applications to OFCOM for the allocation of telephone numbers;

(b) provide for the information that must accompany such applications and for the handling of such applications;

(c) provide a procedure for telephone numbers to be reserved pending the making and disposal of an application for their allocation;

(d) provide for the procedure to be followed on the making of applications for telephone numbers to be reserved, and for the handling of such applications;

(e) regulate the procedures to be followed, the system to be applied and the charges to be imposed for the purposes of, or in connection with, the adoption by a communications provider of telephone numbers allocated to that provider;

(f) regulate the procedures to be followed, the system to be applied and the charges to be imposed for the purposes of, or in connection with, the transfer of an allocation from one person to another.

(3) The conditions that may be set under subsection (1)(d) include conditions imposing requirements with respect to the provision of information for purposes connected with—

(a) the compilation of directories; and

(b) the provision of directory enquiry facilities.

(4) The procedure to be followed on the making of an application for the allocation of numbers that are available for allocation in accordance with the National Telephone Numbering Plan must require OFCOM's determination of the application to be made—

(a) in the case of an application made in response to an invitation in accordance with subsection (5), before the end of six weeks after the day on which the application is received; and

(b) in any other case, before the end of three weeks after that day.

(5) Where OFCOM are proposing to allocate any telephone numbers, they may—

(a) invite persons to indicate the payments each would be willing to make to OFCOM if allocated the numbers; and

(b) make the allocation according to the amounts indicated.

(6) General conditions providing for payments to be made to OFCOM in respect of anything mentioned in subsection (1)(g) or (h)—

(a) must set out the principles according to which the amounts of the payments are to be determined;

(b) may provide for the payments to consist of a lump sum in respect of a particular allocation or transfer or of sums payable periodically while an allocation remains in force, or of both;

(c) may provide for the amounts to be determined by reference to—

(i) any indication according to which the allocation has been made as mentioned in subsection (5); or

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(ii) any other factors (including the costs incurred by OFCOM in connection with the carrying out of their functions by virtue of section 56 and this section) as OFCOM think fit.

(7) General conditions may—

(a) make modifications from time to time of, or of the method of determining, the amounts of periodic payments falling to be made by virtue of conditions containing provision authorised by this section; and

(b) make different provision in relation to different descriptions of communications provider and different descriptions of telephone number.

(8) Nothing in subsection (7) authorises the modification, after it has been fixed, of the amount of a periodic payment fixed in accordance with arrangements made in relation to numbers allocated as mentioned in subsection (5)(b).

(9) Payments that are required to be made to OFCOM in respect of anything mentioned in subsection (1)(g) or (h)—

(a) must be paid to them as soon as they become due in accordance with the conditions imposing the obligation to pay; and

(b) if not so paid, are to be recoverable by them accordingly.

Textual Amendments

F63 S. 58(1)(aa) inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 32** (with Sch. 3 para. 2)

Commencement Information

I53 S. 58 in force at 25.7.2003 for specified purposes by S.I. 2003/1900, art. 2(1), **Sch. 1** (with art. 3) (as amended by S.I. 2003/3142, art. 1(3))

I54 S. 58 in force at 29.12.2003 in so far as not already in force by S.I. 2003/3142, art. 3(1), **Sch. 1** (with art. 11)

59 Telephone numbering conditions binding non-providers

(1) OFCOM may set conditions under this section that apply to persons other than communications providers and relate to—

(a) the allocation of telephone numbers to such persons;

(b) the transfer of allocations to and from such persons; and

(c) the use of telephone numbers by such persons.

(2) The conditions that may be set under this section include conditions imposing obligations corresponding to any of the obligations that may be imposed on communications providers by general conditions making provision for, or in connection with—

(a) the allocation of telephone numbers;

(b) the transfer of allocations; or

(c) the use of telephone numbers.

(3) Subsection (10) of section 45 applies to OFCOM's power to set a condition under this section as it applies to their power to set a condition under that section.

(4) Sections 47 to 49 apply in relation to—

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) the setting of conditions under this section and the modification and revocation of such conditions; and

(b) the giving, modification or withdrawal of any direction, approval or consent for the purposes of a condition under this section,

as they apply in the case of general conditions and in the case of directions, approvals and consents given for the purposes of general conditions.

(5) It shall be the duty of a person who—

(a) is not a communications provider, but

(b) applies for the allocation of a telephone number, or is allocated such a number,

to comply with any conditions set under this section.

(6) That duty shall be enforceable in civil proceedings by OFCOM—

(a) for an injunction;

(b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988 (c. 36); or

(c) for any other appropriate remedy or relief.

(7) Subsection (6) does not apply in the case of a person against whom the obligations contained in the condition in question are enforceable (by virtue of his having become a communications provider) as obligations imposed by general conditions.

Commencement Information

I55 S. 59 in force at 25.7.2003 for specified purposes by S.I. 2003/1900, art. 2(1), **Sch. 1** (with art. 3) (as amended by S.I. 2003/3142, art. 1(3))

I56 S. 59 in force at 29.12.2003 in so far as not already in force by S.I. 2003/3142, art. 3(1), **Sch. 1** (with art. 11)

60 Modification of documents referred to in numbering conditions

(1) This section applies where numbering conditions for the time being have effect by reference to provisions, as they have effect from time to time, of—

(a) the National Telephone Numbering Plan; or

(b) another document published by OFCOM.

(2) OFCOM must not revise or otherwise modify the relevant provisions unless they are satisfied that the revision or modification is—

(a) objectively justifiable in relation to the matters to which it relates;

(b) not such as to discriminate unduly against particular persons or against a particular description of persons;

(c) proportionate to what the modification is intended to achieve; and

(d) in relation to what it is intended to achieve, transparent.

(3) Before revising or otherwise modifying the relevant provisions, OFCOM must publish a notification—

(a) stating that they are proposing to do so;

(b) specifying the Plan or other document that they are proposing to revise or modify;

(c) setting out the effect of their proposed revisions or modifications;

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(d) giving their reasons for making the proposal; and

(e) specifying the period within which representations may be made to OFCOM about their proposal.

(4) That period must be one ending not less than one month after the day of the publication of the notification.

(5) OFCOM may give effect, with or without modifications, to a proposal with respect to which they have published a notification under subsection (3) only if—

(a) they have considered every representation about the proposal that is made to them within the period specified in the notification; and

(b) they have had regard to every international obligation of the United Kingdom (if any) which has been notified to them for the purposes of this paragraph by the Secretary of State.

(6) The publication of a notification under this section must be in such manner as appears to OFCOM to be appropriate for bringing the contents of the notification to the attention of such persons as OFCOM consider appropriate.

(7) In this section—

"numbering conditions" means—

(a) general conditions the making of which is authorised by section 57 or 58;

(b) conditions set under section 59;

"the relevant provisions", in relation to the Plan or document, means the provisions of the Plan or document by reference to which (as they have effect from time to time) the numbering conditions in question have effect.

Commencement Information

I57 S. 60 in force at 25.7.2003 for specified purposes by S.I. 2003/1900, art. 2(1), **Sch. 1** (with art. 3) (as amended by S.I. 2003/3142, art. 1(3))

I58 S. 60 in force at 29.12.2003 in so far as not already in force by S.I. 2003/3142, art. 3(1), **Sch. 1** (with art. 11)

61 Withdrawal of telephone number allocations

(1) Where OFCOM have allocated telephone numbers for the purposes of any numbering conditions, they may withdraw that allocation if, and only if, the case is one in which the withdrawal of an allocation is authorised by this section.

(2) The withdrawal of an allocation is authorised (subject to section 62) if—

(a) consent to the withdrawal is given by the person to whom the numbers are for the time being allocated;

(b) the withdrawal is made for the purposes of a transfer of the allocation required by numbering conditions;

(c) the withdrawal is made for the purposes of a numbering reorganisation applicable to a particular series of telephone numbers;

(d) the withdrawal is made in circumstances specified in the numbering conditions and for the purpose of securing that what appears to OFCOM to be the best and most efficient use is made of the numbers and other data that are appropriate for use as telephone numbers;

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(e) the allocated numbers are numbers that have not been adopted during such period after their allocation as may be specified in the numbering conditions; or

(f) the allocated numbers are comprised in a series of numbers which have not to a significant extent been adopted or used during such period as may be so specified.

(3) The withdrawal of an allocation is also authorised where—

(a) there have been **[**[F64]serious or repeated**]** contraventions, by the person to whom the allocation is for the time being allocated, of the numbering conditions; and

(b) it appears to OFCOM that the taking of other steps in respect of the contraventions is likely to prove ineffective for securing future compliance.

(4) The withdrawal of an allocation is also authorised where—

(a) the person to whom the allocation is for the time being allocated is not a communications provider; and

(b) it appears to OFCOM that contraventions by that person of numbering conditions makes the withdrawal of the allocation appropriate.

(5) OFCOM's power to set conditions specifying circumstances for the purposes of subsection (2)(d), and their power to withdraw an allocation in the specified circumstances, are each exercisable only in a manner that does not discriminate unduly—

(a) against particular communications providers;

(b) against particular users of the allocated numbers; or

(c) against a particular description of such providers or users;

and the purposes for which those powers may be exercised do not include the carrying out of a numbering reorganisation of the sort mentioned in subsection (2)(c).

(6) Where OFCOM are proposing to withdraw an allocation in exercise of the power conferred by virtue of subsection (2)(e) or (f), they must—

(a) give a notification of their proposal;

(b) consider any representations made to them about the proposal within the period of one month following the day on which the notification is given; and

(c) ensure that the withdrawal (if OFCOM decide to proceed with it after considering those representations) does not take effect until the end of the three months beginning with the end of the period mentioned in paragraph (b).

(7) A notification for the purposes of subsection (6) must be given in such manner as OFCOM consider appropriate for bringing it to the attention of—

(a) the person to whom the numbers to which the proposed withdrawal relates are for the time being allocated;

(b) every person appearing to OFCOM to be a person to whom communications are or may be transmitted using one of those numbers for identifying the destination or route;

(c) every person who uses one or more of those numbers for obtaining access to services or for communication; and

(d) every other person who, in OFCOM's opinion, is likely to be affected by the proposal.

(8) For the purposes of this section there are repeated contraventions by a person of numbering conditions to the extent that—

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

[F65(a) in the case of a previous notification of a contravention given to that person under section 96A, OFCOM have given a confirmation decision to that person under section 96C(2) in respect of the contravention; and

(b) in the period of 24 months following the giving of that confirmation decision, one or more further confirmation decisions have been given to the person in respect of contraventions of numbering conditions;**]**

and for the purposes of this subsection it shall be immaterial whether the **[**F66confirmation decisions**]** related to the same contravention or to different contraventions of the same or different conditions.

(9) In this section "numbering conditions" means—

(a) general conditions the making of which is authorised by section 58; or

(b) conditions set under section 59.

Textual Amendments

F64 Words in s. 61(3)(a) substituted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 33(a)** (with Sch. 3 paras. 2, 9)

F65 S. 61(8)(a)(b) substituted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 33(b)(i)** (with Sch. 3 paras. 2, 9)

F66 Words in s. 61(8) substituted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 33(b)(ii)** (with Sch. 3 paras. 2, 9, 10)

Commencement Information

I59 S. 61 in force at 25.7.2003 for specified purposes by S.I. 2003/1900, art. 2(1), **Sch. 1** (with art. 3) (as amended by S.I. 2003/3142, art. 1(3))

I60 S. 61 in force at 29.12.2003 in so far as not already in force by S.I. 2003/3142, art. 3(1), **Sch. 1** (with art. 11)

62 Numbering reorganisations

(1) This section applies to the withdrawal of an allocation for the purposes of a numbering reorganisation that is applicable to a particular series of telephone numbers.

(2) The allocation is to be withdrawn only if the reorganisation, so far as it relates to numbers of any description, is not such as to discriminate unduly—

(a) against particular communications providers;

(b) against particular users of the allocated numbers; or

(c) against a particular description of such providers or users.

(3) The allocation must not be withdrawn if the reorganisation fails to provide for withdrawn allocations to be replaced by allocations of telephone numbers so nearly resembling the numbers to which the withdrawal relates as the purpose of the reorganisation allows.

(4) Where a replacement allocation is made for the purposes of the re-organisation—

(a) no payment is to be made to OFCOM in respect of the making of the replacement allocation; but

(b) subsection (5) is to apply.

(5) Where this subsection applies—

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) a provision for the making of periodic payments in respect of the withdrawn allocation is to be treated, to the extent that OFCOM determine that it should, as a provision requiring the making of periodic payments in respect of the replacement allocation; and

(b) OFCOM may, if they think fit, make such repayments or adjustments of a provision for payment as appear to them to be appropriate in consequence of differences between—

(i) the numbers to which the withdrawn allocation relates; and

(ii) the numbers to which the replacement allocation relates.

Commencement Information

I61 S. 62 in force at 25.7.2003 for specified purposes by S.I. 2003/1900, art. 2(1), **Sch. 1** (with art. 3) (as amended by S.I. 2003/3142, art. 1(3))

I62 S. 62 in force at 29.12.2003 in so far as not already in force by S.I. 2003/3142, art. 3(1), **Sch. 1** (with art. 11)

63 General duty as to telephone numbering functions

(1) It shall be the duty of OFCOM, in the carrying out of their functions under sections 56 to 62—

(a) to secure that what appears to them to be the best use is made of the numbers that are appropriate for use as telephone numbers; and

(b) to encourage efficiency and innovation for that purpose.

(2) It shall also be the duty of OFCOM, in carrying out those functions, to secure that there is no undue discrimination by communications providers against other communications providers in relation to the adoption of telephone numbers for purposes connected with the use by one communications provider, or his customers, of an electronic communications network or electronic communications service provided by another.

(3) In this section "number" has the same meaning as in section 56.

Commencement Information

I63 S. 63 in force at 25.7.2003 for specified purposes by S.I. 2003/1900, art. 2(1), **Sch. 1** (with art. 3) (as amended by S.I. 2003/3142, art. 1(3))

I64 S. 63 in force at 29.12.2003 in so far as not already in force by S.I. 2003/3142, art. 3(1), **Sch. 1** (with art. 11)

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.

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(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;

(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 **[**[F67](including, but not limited to, a service enabling access for disabled end-users)**]** ; 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.

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(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;

(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 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.

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F67 Words in s. 64(4)(a) inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 34** (with Sch. 3 para. 2)

Commencement Information

I65 S. 64 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))

I66 S. 64 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)

Universal service conditions

65 Obligations to be secured by universal service conditions

(1) The Secretary of State must by order ("the universal service order") set out the extent to which the things falling within subsection (2) must, for the purpose of securing compliance with **[**F51EU**]** obligations for the time being in force, be provided, made available or supplied throughout the United Kingdom.

(2) Those things are—

(a) electronic communications networks and electronic communications services;

(b) facilities capable of being made available as part of or in connection with an electronic communications service;

(c) particular methods of billing for electronic communications services or of accepting payment for them;

(d) directories capable of being used in connection with the use of an electronic communications network or electronic communications service; and

(e) directory enquiry facilities capable of being used for purposes connected with the use of such a network or service.

(3) The universal service order may contain guidance about matters relating to the pricing of things that the order says must be provided, made available or supplied.

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

[F68(5) Before making or varying the universal service order, 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, over another.**]**

Textual Amendments

F51 Words in Act substituted (22.4.2011) by The Treaty of Lisbon (Changes in Terminology) Order 2011 (S.I. 2011/1043), arts. 2, **3**, 6 (with art. 3(2)(3), 4(2), 6(4)(5))

F68 S. 65(5) inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 35** (with Sch. 3 para. 2)

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Modifications etc. (not altering text)

C1 S. 65 excluded (11.12.2003) by The Privacy and Electronic Communications (EC Directive) Regulations 2003 (S.I. 2003/2426), regs. 1, **35(2)** (with regs. 4, 15(3), 28, 29)

Commencement Information

I67 S. 65 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))

I68 S. 65 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)

66 Designation of universal service providers

(1) OFCOM may by regulations make provision for the designation of the persons to whom universal service conditions are to be applicable.

(2) Subject to subsection (3), those regulations are not to authorise the designation of a person other than a communications provider.

(3) The regulations may provide for a person other than a communications provider to be designated for the purposes only of conditions relating to—

(a) the supply of directories capable of being used in connection with the use of an electronic communications network or electronic communications service; and

(b) the making available of directory enquiry facilities capable of being used for purposes connected with the use of such a network or service.

(4) OFCOM may from time to time—

(a) review the designations for the time being in force in accordance with regulations under this section; and

(b) on such a review, consider what (if any) universal service conditions should continue to apply to each of the designated persons.

(5) The procedure to be followed in the case of every such review must be the procedure provided for in regulations made by OFCOM.

(6) Regulations made by OFCOM under this section must provide for a person's designation as a person to whom universal service conditions are to be applicable to cease to have effect where, in any such case as may be described in the regulations, the universal service conditions applied to him are all revoked.

(7) Regulations made by OFCOM under this section providing a procedure for the designation of persons, or for the conduct of a review under subsection (4), must not provide for any procedure other than one appearing to OFCOM—

(a) to be efficient, objective and transparent; and

(b) not to involve, or to tend to give rise to, any undue discrimination against any person or description of persons.

(8) Where—

(a) OFCOM designate a person in accordance with regulations under this section, or

(b) a designation of a person in accordance with any such regulations ceases to have effect,

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

they must give a notification of that designation, or of that fact, to the European Commission.

(9) A notification under this section must identify the person who has been designated, or the person whose designation has ceased to have effect.

(10) Section 403 applies to the power of OFCOM to make regulations under this section.

Commencement Information

I69 S. 66 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))

I70 S. 66 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)

67 Subject-matter of universal service conditions

(1) OFCOM may set any such universal service conditions as they consider appropriate for securing compliance with the obligations set out in the universal service order.

[F69(1A) OFCOM may also set universal service conditions which apply to a designated universal service provider who proposes to make a disposal to another person of a substantial part or all of the designated universal service provider's local access network assets.

(1B) But subsection (1A) does not apply where the disposal is made by a company to a connected company (within the meaning given by section 1122(2) of the Corporation Tax Act 2010).**]**

(2) Universal service conditions applied to a person must include a condition requiring him to publish information about his performance in complying with the universal service conditions that apply to him.

(3) A condition set in accordance with subsection (2) must contain provision which—

(a) requires information published in accordance with it to be updated from time to time and published again;

(b) requires information so published to satisfy the requirements that OFCOM consider appropriate for securing that it is adequate; and

(c) requires information so published to be framed by reference to the quality of service parameters, definitions and measurement methods for the time being set out in Annex III to the Universal Service Directive.

(4) A condition set in accordance with that subsection may impose requirements as to—

(a) the times at which information published in accordance with it is to be published; and

(b) the manner in which that information is to be published.

(5) Universal service conditions may impose an obligation on a person to whom they apply to do one or both of the following, if required to do so by OFCOM—

(a) to make facilities available for enabling information published in pursuance of a condition applied to that person under subsection (2) to be independently audited;

(b) to meet the costs of any independent auditing of that information that is required by OFCOM.

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(6) The reference in subsection (5) to the independent auditing of information is a reference to its being audited by a qualified auditor—

(a) for accuracy; and

(b) for its usefulness in the making of comparisons with information published by other designated universal service providers.

(7) Universal service conditions may impose performance targets on designated universal service providers with respect to any of the matters in relation to which obligations may be imposed by such conditions.

(8) In setting a universal service condition, OFCOM must have regard to any guidance about matters relating to pricing that is contained in the universal service order.

[F70(9) In this section "qualified auditor" means a person who—

(a) is eligible for appointment as a statutory auditor under Part 42 of the Companies Act 2006, and

(b) if the appointment to carry out such auditing as is mentioned in subsection (5) were an appointment as a statutory auditor, would not be prohibited from acting by section 1214 of that Act (independence requirement).**]**

Textual Amendments

F69 S. 67(1A)(1B) inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 36** (with Sch. 3 para. 2)

F70 S. 67(9) substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), art. 2(2), **Sch. 1 para. 30(2)** (with arts. 6, 11, 12)

Commencement Information

I71 S. 67 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))

I72 S. 67 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)

68 Tariffs etc. for universal services

(1) It shall be the duty of OFCOM—

(a) to keep under review universal service tariffs; and

(b) to monitor changes to those tariffs.

(2) Universal service conditions may require one or more of the following—

(a) the use of a common tariff, or of common tariffs, in relation to anything mentioned in section 65(2);

(b) the use, in such cases as may be specified or described in the conditions, of such special tariffs in relation to anything so mentioned as may be so specified or described;

(c) the fixing of tariffs used in accordance with the conditions by the use of such methods, and by reference to such methods of computing costs, as may be so specified or described.

(3) Universal service conditions must secure that the terms on which a person is provided with anything required by the universal service order do not require him—

(a) to pay for an unnecessary additional service; or

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) to pay, in respect of anything required by the order, any amount that is attributable to the provision to him of such a service.

(4) The references in subsection (3), in relation to a person, to an unnecessary additional service are references to anything the provision of which—

(a) he has to accept by reason of his being provided, at his request, with something required by the order ("the requested service"); and

(b) is not necessary for the purpose of providing him with the requested service.

(5) It shall be the duty of OFCOM, in setting a universal service condition about universal service tariffs, to have regard to anything ascertained by them in the performance of their duty under subsection (1).

(6) References in this section to a universal service tariff are references to any of the tariffs used by designated universal service providers **[**F71or, where there is no designated universal service provider, by other persons,**]** in relation to the things for the time being required by the universal service order.

(7) References in this section to providing a person with anything include references to making it available or supplying it to him.

(8) In this section "tariff" includes a pricing structure.

Textual Amendments

F71 Words in s. 68(6) inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 37** (with Sch. 3 para. 2)

Commencement Information

I73 S. 68 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))

I74 S. 68 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)

69 Directories and directory enquiry facilities

(1) This section applies where universal service conditions require a designated universal service provider—

(a) to supply a directory capable of being used in connection with the use of an electronic communications network or electronic communications service; or

(b) to make available directory enquiry facilities capable of being used for purposes connected with use of such a network or service.

(2) The universal service conditions applied to the provider must include the conditions that OFCOM consider appropriate for securing that the provider does not unduly discriminate against a source of relevant information—

(a) in the compiling of the directory or the answering of directory enquiries; or

(b) in the treatment in the directory, or for the purposes of the facilities, of any relevant information from that source.

(3) In this section—

(a) references to relevant information are references to information provided for inclusion in the directory or for use in the answering of directory enquiries; and

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) references to a source of relevant information are references to a communications provider or designated universal service provider who provides relevant information.

Commencement Information

I75 S. 69 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))

I76 S. 69 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)

70 Review of compliance costs

(1) OFCOM may from time to time review the extent (if any) of the financial burden for a particular designated universal service provider of complying in relation to any matter with any one or more of the universal service conditions applied to him.

(2) Where—

(a) regulations under section 66 require the financial burden of so complying to be taken into account in determining whom to designate, and

(b) the regulations provide for a particular method of calculating that burden to be used for the purposes of that determination,

that must be the method of calculation applied on a review under this section.

(3) Where subsection (2) does not apply, the financial burden of so complying is to be taken to be the amount calculated by OFCOM to be the net cost of compliance after allowing for market benefits accruing to the designated universal service provider from—

(a) his designation; and

(b) the application to him of universal service conditions.

(4) After carrying out a review under this section OFCOM must either—

(a) cause the calculations made by them on the review to be audited by a person who appears to them to be independent of designated universal service providers; or

(b) themselves carry out an audit of those calculations.

(5) OFCOM must ensure, in the case of every audit carried out under subsection (4), that a report on the audit—

(a) is prepared; and

(b) if not prepared by OFCOM, is provided to them.

(6) It shall be the duty of OFCOM, in the case of every review under this section, to publish—

(a) their conclusions on the review; and

(b) a summary of the report of the audit which was carried out as respects the calculations made for the purposes of that review.

(7) The publication of anything under subsection (6) must be a publication in such manner as OFCOM consider appropriate for bringing it to the attention of the persons who, in their opinion, are likely to be affected by it.

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Commencement Information

I77 S. 70 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))

I78 S. 70 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)

71 Sharing of burden of universal service obligations

(1) This section applies where OFCOM—

(a) have concluded, on a review under section 70, that complying in relation to any matter with universal service conditions imposes a financial burden on a particular designated universal service provider; and

(b) have published that conclusion in accordance with that section.

(2) OFCOM must determine, in the case of the designated universal service provider, whether they consider it would be unfair for that provider to bear, or to continue to bear, the whole or any part of so much of the burden.

(3) If—

(a) OFCOM determine that it would be unfair for the designated universal service provider to bear, or to continue to bear, the whole or a part of the burden, and

(b) an application for a determination under this subsection is made to OFCOM by that provider,

OFCOM may determine that contributions are to be made by communications providers to whom general conditions are applicable for meeting that burden.

(4) The making of any of the following must be in accordance with regulations made by OFCOM—

(a) a determination by OFCOM of the extent of the financial burden that exists for the designated universal service provider of complying in relation to any matter with universal service conditions;

(b) an application for the purposes of subsection (3)(b);

(c) a determination by OFCOM of whether it is or would be unfair for the designated universal service provider to bear, or to continue to bear, the burden of complying in relation to any matter with universal service conditions;

(d) a determination of the extent (if any) to which that is or would be unfair.

(5) The assessment, collection and distribution of contributions under subsection (3) is not to be carried out except in accordance with a mechanism provided for in a scheme contained in regulations made by OFCOM.

(6) It shall be the duty of OFCOM to exercise their power to make regulations under this section in the manner which they consider will secure that the assessment, collection and distribution of contributions under subsection (3) is carried out—

(a) in an objective and transparent manner;

(b) in a manner that does not involve, or tend to give rise to, any undue discrimination against particular communications providers or particular designated universal service providers, or against a particular description of them; and

(c) in a manner that avoids, or (if that is impracticable) at least minimises, any distortion of competition or of customer demand.

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(7) Regulations made by OFCOM under this section may provide for a scheme containing the provision mentioned in subsection (5), and for any fund set up for the purposes of such a scheme, to be administered either—

(a) by OFCOM; or

(b) by such other person as may be specified in the regulations.

(8) A person other than OFCOM is not to be specified in regulations under this section as the administrator of such a scheme or fund unless he is a person who OFCOM are satisfied is independent of both—

(a) the persons who are designated universal service providers; and

(b) communications providers to whom general conditions are applicable.

(9) Section 403 applies to the powers of OFCOM to make regulations under this section.

Commencement Information

I79 S. 71 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))

I80 S. 71 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)

72 Report on sharing mechanism

(1) This section applies where regulations under section 71 provide for a scheme for the assessment, collection and distribution of contributions under subsection (3) of that section.

(2) OFCOM must prepare and publish a report setting out, in relation to the period to which it applies—

(a) every determination by OFCOM that has had effect in relation to a time in that period as a determination of the costs of providing anything contained in the universal service order;

(b) the market benefits for each designated universal service provider that have accrued to him during that period from his designation and from the application to him of universal service conditions; and

(c) the contribution made under section 71(3) by every person who has made a contribution during that period.

(3) The first report under this section must be prepared in relation to the period of twelve months beginning with the coming into force of the first regulations to be made under section 71.

(4) Every subsequent report must be prepared in relation to the period of twelve months beginning with the end of the period to which the previous report applied.

(5) Every report under this section—

(a) must be prepared as soon as practicable after the end of the period to which it is to apply; and

(b) must be published as soon as practicable after its preparation is complete.

(6) OFCOM are not required under this section—

(a) to publish any matter that is confidential in accordance with subsection (7) or (8); or

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Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) to publish anything that it would not be reasonably practicable to publish without disclosing such a matter.

(7) A matter is confidential under this subsection if—

(a) it relates specifically to the affairs of a particular body; and

(b) publication of that matter would or might, in OFCOM's opinion, seriously and prejudicially affect the interests of that body.

(8) A matter is confidential under this subsection if—

(a) it relates to the private affairs of an individual; and

(b) publication of that matter would or might, in OFCOM's opinion, seriously and prejudicially affect the interests of that individual.

(9) The publication of a report under this section must be a publication in such manner as OFCOM consider appropriate for bringing it to the attention of the persons who, in their opinion, are affected by the matters to which it relates.

Commencement Information

I81 S. 72 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))

I82 S. 72 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)

Access-related conditions

73 Permitted subject-matter of access-related conditions

(1) The only conditions that may be set under section 45 as access-related conditions are those authorised by this section.

(2) Access-related conditions may include conditions relating to the provision of such network access and service interoperability as appears to OFCOM appropriate for the purpose of securing—

(a) efficiency[F72]...;

(b) sustainable competition [F73]...; [F74]...

[[F75](ba) efficient investment and innovation; and**]**

(c) the greatest possible benefit for the end-users of public electronic communications services.

(3) Access-related conditions may include conditions appearing to OFCOM to be appropriate for securing that persons to whom the electronic communications code applies participate[F76]... in arrangements for—

(a) sharing the use of electronic communications apparatus; and

(b) apportioning and making contributions towards costs incurred in relation to shared electronic communications apparatus.

[[F77](3A) The power to set access-related conditions falling within subsection (3) is to be exercised for the purpose of—

(a) encouraging efficient investment in infrastructure; and

(b) promoting innovation.**]**

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

F78(4) . . . . . .

(5) Access-related conditions may include conditions containing any provision required by section 75(2).

Textual Amendments

F72 Words in s. 73(2)(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. 38(a)(i)** (with Sch. 3 para. 2)

F73 Words in s. 73(2)(b) 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. 38(a)(ii)** (with Sch. 3 para. 2)

F74 Word in s. 73(2)(b) 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. 38(a)(iii)** (with Sch. 3 para. 2)

F75 S. 73(2)(ba) inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 38(a)(iii)** (with Sch. 3 para. 2)

F76 Words in s. 73(3) 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. 38(b)** (with Sch. 3 para. 2)

F77 S. 73(3A) inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 38(c)** (with Sch. 3 para. 2)

F78 S. 73(4) 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. 38(d)** (with Sch. 3 para. 2)

Commencement Information

I83 S. 73 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))

I84 S. 73 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)

74 Specific types of access-related conditions

(1) The conditions that may be set by virtue of section 73(2) include conditions which, for the purpose of securing end-to-end connectivity for the end-users of public electronic communications services provided by means of a series of electronic communications networks—

(a) impose obligations on a person controlling network access to any of those networks; and

(b) require the interconnection of the networks.

[F79(1A) The conditions that may be set by virtue of section 73(2) also include conditions which impose such obligations on a person controlling network access to customers as OFCOM consider necessary for the purpose of securing service interoperability.**]**

(2) The conditions that may be set by virtue of section 73(2) also include such conditions imposing obligations on a person providing facilities for the use of application programme interfaces or electronic programme guides as OFCOM consider to be necessary for securing—

(a) that persons are able to have access to such programme services provided in digital form as OFCOM may determine; and

(b) that the facility for using those interfaces or guides is provided on terms which—

(i) are fair and reasonable; and

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Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(ii) do not involve, or tend to give rise to, any undue discrimination against any person or description of persons.

(3) In this section—

"application programme interface" means a facility for allowing software to make use, in connection with any of the matters mentioned in subsection (4), of facilities contained in other software;

"electronic programme guide" means a facility by means of which a person has access to any service which consists of—

(a) the listing or promotion, or both the listing and the promotion, of some or all of the programmes included in any one or more programme services; and

(b) a facility for obtaining access, in whole or in part, to the programme service or services listed or promoted in the guide;

"end-to-end connectivity" means the facility—

(a) for different end-users of the same public electronic communications service to be able to communicate with each other; and

(b) for the end-users of different such services to be able, each using the service of which he is the end-user, to communicate with each other.

(4) The matters mentioned in subsection (3), in the definition of "application programme interface", are—

(a) allowing a person to have access to programme services;

(b) allowing a person, other than a communications provider or a person who makes associated facilities available, to make use of an electronic communications network by means of which a programme service is broadcast or otherwise transmitted;

(c) allowing a person to become the end-user of a description of public electronic communications service.

(5) This section is not to be construed as restricting the provision that may be made under section 73(2).

Textual Amendments

F79 S. 74(1A) inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 39** (with Sch. 3 para. 2)

Commencement Information

I85 S. 74 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))

I86 S. 74 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)

75 Conditional access systems and access to digital services

F80(1) . . . . . .

(2) It shall be the duty of OFCOM to ensure—

(a) that access-related conditions are applied to every person who provides a conditional access system in relation to a protected programme service; and

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(b) that those conditions make all such provision as is required by the provision contained from time to time in Part I of Annex I to the Access Directive (conditions relating to access to digital programme services).

(3) In this section—

"conditional access system" means any system, facility, arrangements or technical measure under or by means of which access to programme services requires—

(a) a subscription to the service or to a service that includes that service; or

(b) an authorisation to view it, or to listen to it, on a particular occasion;

"protected programme service" means a programme service the programmes included in which cannot be viewed or listened to in an intelligible form except by the use of a conditional access system.

Textual Amendments

F80 S. 75(1) 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. 40** (with Sch. 3 para. 2)

Commencement Information

I87 S. 75 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))

I88 S. 75 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)

76 Modification and revocation of conditions imposed under s. 75

(1) This section applies in the case of conditions falling within section 75(2) which have been set by OFCOM in relation to a particular person ("the system provider").

(2) OFCOM must not give effect to a proposal to modify or revoke any of the conditions unless—

(a) they have carried out an analysis for the purpose of determining in accordance with this Chapter whether that person is or remains a person on whom SMP services conditions are capable of being imposed;

(b) they have determined in consequence of that analysis that he is not; and

(c) they are satisfied that the modification or revocation will not have an adverse effect on any or all of the matters mentioned in subsection (3).

(3) Those matters are—

(a) the accessibility to any persons of services that are for the time being included in the list of must-carry services in section 64;

(b) the prospects for effective competition in the market for programme services provided by being broadcast or otherwise transmitted in digital form; and

(c) the prospects for effective competition in the markets for conditional access systems and other associated facilities.

(4) In this section "conditional access system" has the same meaning as in section 75.

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Commencement Information

I89 S. 76 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))

I90 S. 76 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)

[F81 76A. Information about electronic communications apparatus available for shared use

(1) OFCOM may make available to such persons as they consider appropriate information about electronic communications apparatus that in OFCOM's opinion is suitable for shared use.

(2) OFCOM may impose such restrictions as they consider appropriate on the use and further disclosure of information made available under this section.**]**

Textual Amendments

F81 S. 76A inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 41** (with Sch. 3 para. 2)

Privileged supplier conditions

77 Imposition of privileged supplier conditions

(1) It shall be the duty of OFCOM to secure that privileged supplier conditions containing all such provision falling within subsection (3) as they consider appropriate are applied to every public communications provider to whom this section applies.

(2) This section applies to every public communications provider who—

(a) enjoys special or exclusive rights in relation to the provision of any non-communications services; and

(b) is not such a provider in respect only of associated facilities.

(3) The provision that may be contained in a condition set under section 45 as a privileged supplier condition is any provision that OFCOM consider appropriate for any one or more of the following purposes—

(a) requiring the provider to whom it applies to keep separate accounts in relation to his public electronic communications network or public electronic communications service and other matters;

(b) requiring that provider to submit the accounts of the different parts of his undertaking, and any financial report relating to a part of that undertaking, to a qualified auditor for auditing;

(c) requiring the accounts of the different parts of his undertaking to be published;

(d) securing, by means other than the keeping of separate accounts, the structural separation of the different parts of his undertaking.

(4) OFCOM are not required under this section to apply a condition to a person where they are satisfied that that person has an annual turnover in relation to all his communications activities that is less than ?50 million.

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Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(5) Where in a case falling within subsection (4) OFCOM are not required to apply a privileged supplier condition to a person, they may apply such a condition to him if they think fit.

(6) The reference in subsection (4) to a person's communications activities is a reference to any activities of his that consist in, or are connected with, either or both of the following—

(a) the provision of any one or more electronic communications networks;

(b) the provision of any one or more electronic communications services.

(7) The making, for the purposes of subsection (4), of—

(a) a determination of the period in respect of which a person's annual turnover in relation to any activities is computed, and

(b) a determination of the amount in Euros of that turnover for any period,

must be in accordance with such rules as OFCOM consider to be reasonable.

(8) OFCOM must publish any rules made by them for the purposes of subsection (7) in such manner as they consider appropriate for bringing them to the attention of the persons who, in their opinion, are likely to be affected by them.

(9) In this section—

"non-communications services", in relation to a person, means services other than those consisting in, or connected with, the provision by him of—

(a) an electronic communications network; or

(b) an electronic communications service;

[[F82]"qualified auditor" means a person who—

(a) is eligible for appointment as a statutory auditor under Part 42 of the Companies Act 2006, and

(b) if the appointment to carry out such auditing as is mentioned in subsection (3)(b) were an appointment as a statutory auditor, would not be prohibited from acting by section 1214 of that Act (independence requirement);**]**

"special or exclusive rights" has the same meaning as in **[**[F83]Article 106 of the Treaty on the Functioning of the European Union**]** .

Textual Amendments

F82 Words in s. 77(9) substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), art. 2(2), **Sch. 1 para. 30(3)** (with arts. 6, 11, 12)

F83 Words in s. 77(9) substituted (1.8.2012) by The Treaty of Lisbon (Changes in Terminology or Numbering) Order 2012 (S.I. 2012/1809), art. 2(1), **Sch. Pt. 1** (with art. 2(2))

Commencement Information

I91 S. 77 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))

I92 S. 77 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)

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

SMP conditions: procedure

78 Circumstances required for the setting of SMP conditions

(1) For the purposes of this Chapter a person shall be taken to have significant market power in relation to a market if he enjoys a position which amounts to or is equivalent to dominance of the market.

(2) References in this section to dominance of a market must be construed in accordance with any applicable provisions of Article 14 of the Framework Directive.

(3) A person is to be taken to enjoy a position of dominance of a market if he is one of a number of persons who enjoy such a position in combination with each other.

(4) A person or combination of persons may also be taken to enjoy a position of dominance of a market by reason wholly or partly of his or their position in a closely related market if the links between the two markets allow the market power held in the closely related market to be used in a way that influences the other market so as to strengthen the position in the other market of that person or combination of persons.

(5) The matters that must be taken into account in determining whether a combination of persons enjoys a position of dominance of a services market include, in particular, the matters set out in Annex II to the Framework Directive.

Commencement Information

I93 S. 78 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))

I94 S. 78 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)

79 Market power determinations

(1) Before making a market power determination, OFCOM must—

(a) identify (by reference, in particular, to area and locality) the markets which in their opinion are the ones which in the circumstances of the United Kingdom are the markets in relation to which it is appropriate to consider whether to make the determination; and

(b) carry out an analysis of the identified markets.

(2) In identifying or analysing any services market for the purposes of this Chapter, OFCOM must take due account of all applicable guidelines and recommendations which—

(a) have been issued or made by the European Commission in pursuance of the provisions of a **[**F51EU**]** instrument; and

(b) relate to market identification and analysis.

(3) In considering whether to make or revise a market power determination in relation to a services market, OFCOM must take due account of all applicable guidelines and recommendations which—

(a) have been issued or made by the European Commission in pursuance of the provisions of a **[**F51EU**]** instrument; and

(b) relate to market analysis or the determination of what constitutes significant market power.

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(4) The way in which—

(a) a market is to be identified for the purposes of this section, or

(b) a market power determination is to be made,

is by the publication of a notification containing the identification or determination.

(5) Notifications for the purposes of subsection (4)—

(a) may be given separately;

(b) may be contained in a single notification relating to both the identification of a market and the making of a market determination in relation to that market; or

(c) may be contained in a single notification under section 48(1) with respect to the setting or modification of an SMP condition and either—

(i) the making of the market power determination by reference to which OFCOM set or modify that condition; or

(ii) the making of that market power determination and the identification of the market in relation to which they make that determination.

(6) The publication of a notification under this section must be in such manner as appears to OFCOM to be appropriate for bringing the contents of the notification to the attention of the persons who, in OFCOM's opinion, are likely to be affected by the matters notified.

(7) References in this section to guidelines and recommendations issued by the European Commission and to a **[**F51EU**]** instrument include references, respectively, to guidelines and recommendations issued after the commencement of this section and to a **[**F51EU**]** instrument made after the commencement of this section.

Textual Amendments

F51 Words in Act substituted (22.4.2011) by The Treaty of Lisbon (Changes in Terminology) Order 2011 (S.I. 2011/1043), arts. 2, **3**, 6 (with art. 3(2)(3), 4(2), 6(4)(5))

Commencement Information

I95 S. 79 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))

I96 S. 79 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)

80 Proposals for identifying markets and for market power determinations

[F84(1) Where section 80A applies, OFCOM must comply with the applicable requirements of that section and section 80B before—

(a) identifying a market for the purposes of making a market power determination, or

(b) making a market power determination.

(1A) Where section 80A does not apply because of subsection (2) of that section—

(a) any identification of a market or market power determination must be temporary; and

(b) the notification published under section 79(4) containing the identification or determination must state the period for which the identification or determination is to have effect.

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(1B) Where OFCOM propose to extend or make permanent any such temporary identification or determination—

(a) sections 80A and 80B(1) do not apply in relation to the proposal; and

(b) subsections (2) to (8) of section 80B apply in relation to the proposal as if the words from the beginning of subsection (2) to "appropriate" were omitted.**]**

(7) The power of OFCOM to **[**F85identify a market or make a market power determination is subject to section 83**]** .

Textual Amendments

F84 S. 80(1)(1A)(1B) substituted for s. 80(1)-(6) (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 42(a)** (with Sch. 3 paras. 2, 11)

F85 Words in s. 80(7) substituted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 42(b)** (with Sch. 3 paras. 2, 11)

Commencement Information

I97 S. 80 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))

I98 S. 80 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)

[F86**80A. Domestic consultation for market identifications and market power determinations**

(1) This section applies where—

(a) OFCOM propose—

(i) to identify a market for the purposes of making a market power determination; or

(ii) to make a market power determination; and

(b) (in the case of a services market) the proposed identification or determination is in OFCOM's opinion likely to result in the setting, modification or revocation of SMP services conditions that will have a significant impact on the market.

(2) But this section does not apply where the proposal is of EU significance and in OFCOM's opinion—

(a) there are exceptional circumstances; and

(b) there is an urgent need to act in order to safeguard competition and to protect the interests of consumers.

(3) OFCOM must publish a notification of what they are proposing to do.

(4) Notifications for the purposes of subsection (3)—

(a) may be given separately;

(b) may be contained in a single notification relating to both the identification of a market and the making of a market power determination in relation to that market; or

(c) may be contained in a single notification under section 48A(3) with respect to the setting or modification of an SMP condition and either—

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(i) the making of the market power determination by reference to which OFCOM are proposing to set or modify that condition; or

(ii) the making of that market power determination and the identification of the market in relation to which they are proposing to make that determination.

(5) A notification under this section relating to a proposal to identify a market or to make a market power determination must—

(a) state that OFCOM are proposing to identify that market or to make that market power determination;

(b) set out the effect of the proposal;

(c) give their reasons for making the proposal; and

(d) specify the period within which representations may be made to OFCOM about their proposal.

(6) That period must be a period of not less than one month after the day of the publication of the notification.

(7) But where OFCOM are satisfied that there are exceptional circumstances justifying the use of a shorter period, the period specified as the period for making representations may be whatever shorter period OFCOM considers reasonable in those circumstances.

(8) The publication of a notification under this section must be in such manner as appears to OFCOM to be appropriate for bringing the contents of the notification to the attention of the persons who, in OFCOM's opinion, are likely to be affected by the matters notified.

(9) OFCOM must—

(a) consider every representation about the proposal made to them during the period specified in the notification; and

(b) have regard to every international obligation of the United Kingdom (if any) which has been notified to them for the purposes of this paragraph by the Secretary of State.

(10) Where the proposal is not of EU significance, OFCOM may then give effect to it, with any modifications that appear to OFCOM to be appropriate.

Textual Amendments

F86 Ss. 80A, 80B inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 43** (with Sch. 3 paras. 2, 11)

80B. EU consultation for market identifications and market power determinations

(1) This section applies where, after complying with section 80A(9) in relation to a proposal of EU significance, OFCOM wish to proceed with the proposal.

(2) After making any modifications of the proposal that appear to OFCOM to be appropriate, OFCOM must send a copy of the proposal, and of a statement setting out the reasons for it, to—

(a) the European Commission;

(b) BEREC; and

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(c) the regulatory authorities in every other member State.

(3) If at the end of the period of one month referred to in paragraph (3) of Article 7 of the Framework Directive no indication has been given to OFCOM by the Commission under paragraph (4) of that Article, OFCOM may give effect to the proposal, with any modifications that appear to them to be appropriate.

(4) Before giving effect to the proposal under subsection (3), OFCOM must consider any comments made by—

(a) the Commission;

(b) BEREC; and

(c) any regulatory authority in any other member State.

(5) Subsections (6) to (8) apply where such an indication is given by the Commission to OFCOM during that period.

(6) If under Article 7(5)(a) of the Framework Directive the Commission requires OFCOM to withdraw the proposal, OFCOM must amend or withdraw the proposal within 6 months of the date of the Commission's decision.

(7) Where the proposal is amended under subsection (6), section 80 applies in relation to the amended proposal as if it were a new proposal.

(8) OFCOM may give effect to the proposal, with any modifications that appear to them to be appropriate—

(a) if the Commission takes a decision to lift its reservations in accordance with paragraph (5)(b) of Article 7 of the Framework Directive; or

(b) if at the end of the period of 2 months referred to in paragraph (4) of that Article the Commission has neither required OFCOM to withdraw the proposal under paragraph (5)(a) nor lifted its reservations under paragraph (5)(b).**]**

Textual Amendments

F86 Ss. 80A, 80B inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 43** (with Sch. 3 paras. 2, 11)

[F87 81 Delivery of copies of notifications under sections 79 and 80A

(1) OFCOM must send to the Secretary of State a copy of every notification published under section 79(4) or 80A(3).

(2) OFCOM must send to the European Commission a copy of every notification published under section 79(4) in relation to a services market.

(3) OFCOM must send to BEREC a copy of every notification published under section 79(4) where the proposal to identify the market or make a market power determination was a proposal of EU significance.

(4) Where a notification published under section 79(4) relates to a proposal to which section 80A did not apply because of subsection (2) of that section, OFCOM must send a copy of a statement setting out the reasons for the proposal and for the urgent need to act to—

(a) the Commission;

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) BEREC; and

(c) the regulatory authorities in every other member State.**]**

Textual Amendments

F87 S. 81 substituted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 44** (with Sch. 3 paras. 2, 11)

Commencement Information

I99 S. 81 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))

I100 S. 81 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)

[F88]82 European Commission's powers in respect of proposals

. . . . . .

Textual Amendments

F88 S. 82 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. 45** (with Sch. 3 paras. 2, 11)

Commencement Information

I101 S. 82 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))

I102 S. 82 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)

83 Special rules for transnational markets

(1) This section applies where a services market is for the time being identified by a decision of the European Commission under Article 15(4) of the Framework Directive as a transnational market.

(2) Where the market area includes the whole or a part of the United Kingdom, OFCOM must enter into and maintain arrangements with the other relevant regulatory authorities about—

(a) the extent to which the agreement of all the relevant regulatory authorities is required for the doing of any of the things mentioned in subsection (3); and

(b) the procedures to be followed for securing that agreement where it is required.

(3) Those things are—

(a) the identification of the whole or a part of the market as a market in relation to which it is appropriate to determine whether a person has significant market power;

(b) the making of such a determination in relation to the whole or a part of the market;

(c) the setting of a condition the setting of which requires such a determination to have been made;

(d) the modification or revocation of such a condition.

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(4) OFCOM must not do any of the things mentioned in subsection (3) except in accordance with arrangements maintained under that subsection.

(5) Those arrangements may include arrangements requiring OFCOM, when doing any of those things, to comply with—

(a) a decision made, by one or more other regulatory authorities; or

(b) a decision made by a person appointed under the arrangements to act on behalf of some or all of the relevant regulatory authorities.

(6) In this section—

"market area", in relation to a services market identified by the European Commission as a transnational market, means the area identified by that Commission as the area for which the market operates; and

"relevant regulatory authorities", in relation to such a market, means the regulatory authorities for each member State the whole or a part of which is comprised in the market area.

Commencement Information

I103 S. 83 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))

I104 S. 83 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)

84 Review of services market identifications and determinations

(1) This section applies where OFCOM have identified and analysed a services market for the purposes of making a market power determination.

(2) OFCOM **[**[F89]may (and, when required to do so by section 84A, must)**]** carry out further analyses of the identified market for one or both of the following purposes—

(a) reviewing market power determinations made on the basis of an earlier analysis;

(b) deciding whether to make proposals for the modification of SMP conditions set by reference to a market power determination made on such a basis.

[F90](3) . . . . . .

(4) Where on, or in consequence of, a further analysis under this section, OFCOM determine that a person to whom any SMP conditions apply is no longer a person with significant market power in that market, they must revoke every SMP services condition applied to that person by reference to the market power determination made on the basis of the earlier analysis.

(5) Before carrying out a further analysis under subsection (2), OFCOM may review any decision of theirs identifying the markets which it was appropriate to consider for the purpose of carrying out an earlier analysis.

(6) Where, on such a review, OFCOM conclude that the appropriate markets have changed—

(a) they must identify the markets they now consider to be the appropriate ones; and

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) those markets shall be the identified markets for the purposes of the further analysis.

(7) Sections 79 to 83 apply—

(a) in relation to the identification of a services market for the purposes of reviewing a market power determination under this section, as they apply in relation to the identification of such a market for the purpose of making a market determination; and

(b) in relation to the review of such a determination, as they apply in relation to the making of such a determination.

Textual Amendments

F89 Words in s. 84(2) substituted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 46(a)** (with Sch. 3 paras. 2, 12)

F90 S. 84(3) 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. 46(b)** (with Sch. 3 paras. 2, 12)

Commencement Information

I105 S. 84 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))

I106 S. 84 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)

[F91 84A. Timing of services market identifications and determinations

(1) This section makes provision about the exercise by OFCOM of their powers—

(a) to identify and analyse services markets;

(b) to make and review market power determinations in respect of such markets; and

(c) to set, modify and revoke SMP services conditions by reference to such determinations.

(2) Where under Article 15(1) of the Framework Directive the European Commission has adopted a revised recommendation identifying a services market not previously notified to the Commission, OFCOM must ensure that within the specified period they have—

(a) carried out any identification and analysis of markets that is necessary in consequence of the recommendation; and

(b) sent the Commission copies of any resulting proposals with respect to market identification, market power determinations and SMP services conditions.

(3) Where, following the identification and analysis of a services market, OFCOM have made a market power determination in relation to it, they must ensure that within the specified period they have—

(a) carried out a further analysis of the market and reviewed the identification and determination made on the basis of the earlier analysis; and

(b) sent the Commission copies of any resulting proposals with respect to market identification, market power determinations and SMP services conditions.

(4) Subsection (3) applies only where the market power determination was made after 25 May 2011.

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Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(5) Where it appears to OFCOM that they are unlikely to be able to comply with the requirements of subsection (2) or (3) within the specified period, they may request assistance from BEREC under Article 16(7) of the Framework Directive.

(6) Where OFCOM request such assistance—

(a) they must inform the Commission of the request;

(b) subsection (2) or (as the case may be) (3) applies in the case in question as if the words "within the specified period" were omitted; and

(c) within 6 months of the assistance being provided they must send copies of any resulting proposals to the Commission.

(7) In this section "the specified period" means—

(a) in the case of subsection (2), the period of 2 years from the adoption of the recommendation; and

(b) in the case of subsection (3), the period of 3 years from the publication under section 79(4) of the notification of the market power determination made on the basis of the earlier analysis, subject to any extension of that period under Article 16(6)(a) of the Framework Directive.**]**

Textual Amendments

F91 S. 84A inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 47** (with Sch. 3 para. 2)

85 Review of apparatus market identifications and determinations

(1) This section applies where OFCOM have identified and analysed an apparatus market for the purposes of making a market power determination.

(2) OFCOM must, at such intervals as they consider appropriate, carry out further analyses of the identified market for one or both of the following purposes—

(a) reviewing market power determinations made on the basis of an earlier analysis;

(b) deciding whether to make proposals for the modification of SMP conditions set by reference to any such market power determination.

(3) Where on, or in consequence of, a further analysis under this section, OFCOM determine that a person to whom any SMP conditions apply is no longer a person with significant market power in that market, they shall revoke every SMP apparatus condition applied to that person by reference to the market power determination made on the basis of the earlier analysis.

(4) Before carrying out any further analysis under subsection (2), OFCOM may review any decision of theirs identifying the markets which it was appropriate to consider for the purpose of carrying out any earlier analysis.

(5) Where on such a review OFCOM conclude that the appropriate markets have changed—

(a) they shall identify the markets they now consider to be the appropriate ones; and

(b) those markets shall be the identified markets for the purposes of the further analysis.

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(6) Where on such a review OFCOM conclude that there is no person at all with significant market power in relation to the identified market—

(a) they must so inform the Secretary of State; and

(b) the Secretary of State may by order remove or restrict OFCOM's power under this Chapter to set SMP apparatus conditions by reference to that market.

(7) Sections 79, **[**F92 80, 80A and 81(1)**]** apply—

(a) in relation to the identification of a apparatus market for the purposes of reviewing a market power determination under this section, as they apply in relation to the identification of such a market for the purpose of making a market determination; and

(b) in relation to the review of such a determination, as they apply in relation to the making of such a determination.

Textual Amendments

F92 Words in s. 85(7) substituted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 48** (with Sch. 3 paras. 2, 11)

Commencement Information

I107 S. 85 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))

I108 S. 85 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)

86 Cases where review required

(1) OFCOM must not set an SMP services condition by a notification which does not also make the market power determination by reference to which the condition is set unless—

(a) the condition is set by reference to a market power determination which has been reviewed under section 84 and, in consequence of that review, is confirmed in the notification setting the condition; or

(b) the condition is set by reference to a market power determination made in relation to a market in which OFCOM are satisfied there has been no material change since the determination was made.

(2) OFCOM must not modify or revoke SMP services conditions applying to a person except in a case falling within subsection (3) or (4).

(3) The first case is where, for the purpose of determining whether to make the modification or revocation, OFCOM have—

(a) carried out a further analysis under section 84 of the market in question; and

(b) reviewed the market power determination for the time being in force in that person's case.

(4) The second case is where OFCOM are satisfied that there has not—

(a) in the case of an unmodified condition, since the condition was set, or

(b) in any other case, since the condition was last modified,

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

been a material change in the market identified or otherwise used for the purposes of the market power determination by reference to which the condition was set or last modified.

(5) OFCOM must not modify SMP apparatus conditions applying to a person except where, for the purpose of determining whether to make the modification or revocation, they have—

(a) carried out a further analysis under section 85 of the market in question; and

(b) reviewed the market power determination for the time being in force in that person's case.

(6) A change is a material change for the purposes of subsection (1) or (4) if it is one that is material to—

(a) the setting of the condition in question; or

(b) the modification or revocation in question.

Commencement Information

I109 S. 86 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))

I110 S. 86 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)

SMP services conditions: subject-matter

87 Conditions about network access etc.

(1) Where OFCOM have made a determination that a person to whom this section applies ("the dominant provider") has significant market power in an identified services market, they shall—

(a) set such SMP conditions authorised by this section as they consider it appropriate to apply to that person in respect of the relevant network or relevant facilities; and

(b) apply those conditions to that person.

(2) This section applies to—

(a) a person who provides a public electronic communications network; and

(b) a person who makes available facilities that are associated facilities by reference to such a network.

(3) This section authorises SMP conditions requiring the dominant provider to give such entitlements as OFCOM may from time to time direct as respects—

(a) the provision of network access to the relevant network;

(b) the use of the relevant network; and

(c) the availability of the relevant facilities.

(4) In determining what conditions authorised by subsection (3) to set in a particular case, OFCOM must take into account, in particular, the following factors—

(a) the technical and economic viability **[**[F93](including the viability of other network access products, whether provided by the dominant provider or another person)**]** , having regard to the state of market development, of

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installing and using facilities that would make the proposed network access unnecessary;

(b) the feasibility of the provision of the proposed network access;

(c) the investment made by the person initially providing or making available the network or other facility in respect of which an entitlement to network access is proposed **[**F94(taking account of any public investment made)**]** ;

(d) the need to secure effective competition **[**F95(including, where it appears to OFCOM to be appropriate, economically efficient infrastructure based competition)**]** in the long term;

(e) any rights to intellectual property that are relevant to the proposal; and

(f) the desirability of securing that electronic communications services are provided that are available throughout the member States.

(5) The conditions authorised by subsection (3) may include provision—

(a) for securing fairness and reasonableness in the way in which requests for network access are made and responded to; and

(b) for securing that the obligations contained in the conditions are complied with within the periods and at the times required by or under the conditions.

[F96(5A) The SMP conditions authorised by this section also include a condition which—

(a) is of a technical or operational nature; and

(b) appears to OFCOM to be appropriate for securing the proper operation of an electronic communications network in compliance with a condition under subsection (3).

(5B) A condition falling within subsection (5A) may provide that compliance with the condition is not required unless a person on whom an entitlement is or may be conferred in pursuance of a requirement imposed by a condition under subsection (3) fulfils such technical or operational requirements as may be specified by OFCOM.

(5C) It shall be the duty of OFCOM, when setting a condition falling within subsection (5A), to ensure that it contains all such provision as they consider appropriate for the purpose of taking account of the relevant international standards.**]**

(6) The SMP conditions authorised by this section also include one or more of the following—

(a) a condition requiring the dominant provider not to discriminate unduly against particular persons, or against a particular description of persons, in relation to matters connected with network access to the relevant network or with the availability of the relevant facilities;

(b) a condition requiring the dominant provider to publish, in such manner as OFCOM may from time to time direct, all such information as they may direct for the purpose of securing transparency in relation to such matters;

(c) a condition requiring the dominant provider to publish, in such manner as OFCOM may from time to time direct, the terms and conditions on which he is willing to enter into an access contract;

(d) a condition requiring the terms and conditions on which the dominant provider is willing to enter into an access contract to include such terms and conditions as may be specified or described in the condition;

(e) a condition requiring the dominant provider to make such modifications as OFCOM may direct of any offer by that provider which sets out the terms and conditions on which he is willing to enter into an access contract.

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(7) The SMP conditions authorised by this section also include conditions requiring the dominant provider to maintain a separation for accounting purposes between such different matters relating—

(a) to network access to the relevant network, or

(b) to the availability of the relevant facilities,

as OFCOM may from time to time direct.

(8) The SMP conditions authorised by subsection (7) include conditions imposing requirements about the accounting methods to be used in maintaining the separation.

(9) The SMP conditions authorised by this section also include (subject to section 88) conditions imposing on the dominant provider—

(a) such price controls as OFCOM may direct in relation to matters connected with the provision of network access to the relevant network, or with the availability of the relevant facilities;

(b) such rules as they may make in relation to those matters about the recovery of costs and cost orientation;

(c) such rules as they may make for those purposes about the use of cost accounting systems; and

(d) obligations to adjust prices in accordance with such directions given by OFCOM as they may consider appropriate.

(10) The SMP conditions authorised by subsection (9) include conditions requiring the application of presumptions in the fixing and determination of costs and charges for the purposes of the price controls, rules and obligations imposed by virtue of that subsection.

(11) Where OFCOM set a condition authorised by this section which imposes rules on the dominant provider about the use of cost accounting systems, it shall be their duty also to set, and to apply to him, an SMP condition which imposes on him an obligation—

(a) to make arrangements for a description to be made available to the public of the cost accounting system used in pursuance of that condition; and

(b) to include in that description details of—

(i) the main categories under which costs are brought into account for the purposes of that system; and

(ii) the rules applied for the purposes of that system with respect to the allocation of costs.

(12) In this section—

"access contract" means—

(a) a contract for the provision by a person to whom this section applies to another person of network access to the relevant network; or

(b) a contract under which the relevant facilities are made available by a person to whom this section applies to another person;

"the relevant facilities", in relation to a person to whom this section applies, means the associated facilities made available by that person in relation to a public electronic communications network; and

"the relevant network", in relation to such a person, means the public electronic communications network provided by him.

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F93 Words in s. 87(4)(a) inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 49(a)** (with Sch. 3 para. 2)

F94 Words in s. 87(4)(c) inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 49(b)** (with Sch. 3 para. 2)

F95 Words in s. 87(4)(d) inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 49(c)** (with Sch. 3 para. 2)

F96 S. 87(5A)-(5C) inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 49(d)** (with Sch. 3 para. 2)

Commencement Information

I111 S. 87 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))

I112 S. 87 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)

88 Conditions about network access pricing etc.

(1) OFCOM are not to set an SMP condition falling within section 87(9) except where—

(a) it appears to them from the market analysis carried out for the purpose of setting that condition that there is a relevant risk of adverse effects arising from price distortion; and

(b) it also appears to them that the setting of the condition is appropriate for the purposes of—

(i) promoting efficiency;

(ii) promoting sustainable competition; and

(iii) conferring the greatest possible benefits on the end-users of public electronic communications services.

(2) In setting an SMP condition falling within section 87(9) OFCOM must take account of the extent of the investment in the matters to which the condition relates of the person to whom it is to apply.

(3) For the purposes of this section there is a relevant risk of adverse affects arising from price distortion if the dominant provider might—

(a) so fix and maintain some or all of his prices at an excessively high level, or

(b) so impose a price squeeze,

as to have adverse consequences for end-users of public electronic communications services.

(4) In considering the matters mentioned in subsection (1)(b) OFCOM may—

(a) have regard to the prices at which services are available in comparable competitive markets;

(b) determine what they consider to represent efficiency by using such cost accounting methods as they think fit.

(5) In this section "the dominant provider" has the same meaning as in section 87.

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Commencement Information

I113 S. 88 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))

I114 S. 88 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)

89 Conditions about network access in exceptional cases

(1) This section applies where—

(a) OFCOM have made a determination that a person ("the dominant provider") has significant market power in an identified services market;

(b) that person is the provider of an electronic communications network or a person who makes associated facilities available; and

(c) OFCOM consider that there are exceptional circumstances making it appropriate for conditions with respect to the provision of network access to be applied to the dominant provider in addition to those that are required to be or may be applied to him apart from this section.

(2) OFCOM may set the additional SMP conditions and apply them to the dominant provider if—

(a) they have submitted the additional conditions to the European Commission for approval; and

(b) the Commission has approved the imposition on the dominant provider of the obligations contained in those conditions.

Commencement Information

I115 S. 89 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))

I116 S. 89 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)

[F97 89A. Functional separation

(1) This section applies where—

(a) OFCOM have made a determination that a person ("the dominant provider") has significant market power in an identified services market;

(b) that person is the provider of a public electronic communications network or a person who makes available facilities that are associated facilities by reference to such a network;

(c) it appears to OFCOM that the setting of conditions applying to the dominant provider under section 87 (and, where OFCOM think it appropriate, section 88) has failed to address competition problems identified by OFCOM in carrying out a market analysis for the purpose of setting or modifying those conditions; and

(d) OFCOM have identified important and persisting competition problems or market failures in relation to the provision of network access.

(2) OFCOM may set an SMP services condition (referred to in this section and section 89B as a "functional separation condition") requiring the dominant provider to transfer

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activities relating to the provision of network access to an independently operating business entity which is a part of the dominant provider.

(3) Where a functional separation condition is imposed on the dominant provider, the products or services specified in the condition must be given to the dominant provider and to other persons—

(a) on the same timescales, terms and conditions, including those relating to price and service levels, and

(b) by means of the same systems and processes.

(4) A functional separation condition must, where relevant, specify—

(a) the precise nature and level of separation, specifying in particular the legal status of the entity to which activities are transferred;

(b) an identification of the assets of that entity and the products or services to be supplied by it;

(c) the governance arrangements (including incentive structures) to ensure the independence of the staff employed in that entity;

(d) rules for ensuring compliance with the obligations imposed by the condition;

(e) rules for ensuring transparency of operational procedures, in particular towards persons, other than the dominant provider, who in OFCOM's opinion are likely to be affected by the condition; and

(f) a monitoring programme to ensure compliance, including a requirement for the publication of an annual report.

Textual Amendments

F97 Ss. 89A-89C inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 50** (with Sch. 3 para. 2)

89B. Functional separation conditions: consultation and notification

(1) Where OFCOM propose to apply a functional separation condition to a person, they must submit their proposal, including the draft functional separation condition, to the European Commission.

(2) The proposal must set out—

(a) evidence justifying the conclusions mentioned in section 89A(1)(c) and (d);

(b) a reasoned assessment that there is little or no prospect of effective and sustainable infrastructure based competition within a reasonable time frame;

(c) an analysis of the expected impact of the condition on—

(i) OFCOM;

(ii) the person on whom the condition is to be imposed;

(iii) the staff of the entity to which activities are to be transferred;

(iv) the electronic communications sector as a whole;

(v) incentives to invest in the electronic communications sector, particularly with regard to the need to ensure social and territorial cohesion;

(vi) competition in the services market affected by the condition; and

(vii) other persons who in OFCOM's opinion are likely to be affected by the condition, including, in particular, consumers; and

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Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(d) an analysis of the reasons why a functional separation condition would be the most effective means of addressing important and persisting competition problems or market failures identified by OFCOM.

(3) OFCOM may set the functional separation condition and apply it to a person if—

(a) the Commission has approved the imposition on the person of the obligations contained in the condition, and

(b) OFCOM have considered the impact that the obligations contained in the condition and approved by the Commission are likely to have on SMP services conditions set in relation to the services markets which, in OFCOM's opinion, will be affected by the proposed condition.

(4) A proposal for a functional separation condition is to be submitted to the European Commission under this section before OFCOM carry out a consultation under section 48A in relation to the condition.

Textual Amendments

F97 Ss. 89A-89C inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 50** (with Sch. 3 para. 2)

89C. Obligation to notify OFCOM of voluntary separation

(1) This section applies where—

(a) OFCOM have made a determination that a person ("the dominant provider") has significant market power in an identified services market;

(b) the dominant provider is the provider of a public electronic communications network or a person who makes associated facilities available; and

(c) the dominant provider decides to transfer a substantial part or all of the dominant provider's local access network assets to an independently operating business entity (which may be a part of the dominant provider or another person) for the purpose specified in subsection (2).

(2) That purpose is to use the assets to provide products or services to the dominant provider and to other persons—

(a) on the same timescales, terms and conditions, including those relating to price and service levels; and

(b) by means of the same systems and processes.

(3) The dominant provider must notify OFCOM of—

(a) the decision to transfer the assets;

(b) any changes to its intentions; and

(c) the taking effect of the transfer.

(4) Where OFCOM receive a notification under this section, they must, as soon as reasonably practicable, consider the impact that the transfer is likely to have on SMP services conditions set in relation to the services markets which, in OFCOM's opinion, will be affected by the proposed transfer.]

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F97 Ss. 89A-89C inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 50** (with Sch. 3 para. 2)

F98 90 Conditions about carrier selection and pre-selection

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Textual Amendments

F98 S. 90 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. 51** (with Sch. 3 para. 2)

Commencement Information

I117 S. 90 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))

I118 S. 90 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)

91 Conditions about regulation of services etc. for end-users

(1) Where—

(a) OFCOM have made a determination that a person ("the dominant provider") has significant market power in an identified services market ("the relevant market"),

(b) the relevant market is one for the end-users of public electronic communications services that are available in that market, and

(c) it appears to OFCOM that the test in subsection (2) is satisfied in the case of that provider,

they shall set, and apply to that provider, such SMP conditions authorised by this section as they consider appropriate.

(2) That test is that OFCOM are unable, by the setting of conditions of the sorts specified in subsection (3), to perform, or fully to perform, their duties under section 4 in relation to the market situation in the relevant market.

(3) The sorts of conditions referred to in subsection (2) are—

(a) access-related conditions; and

(b) SMP conditions authorised or required by sections 87 to **[**F99 89**]** .

(4) The reference in subsection (2) to the market situation in the relevant market is a reference to the situation revealed by such market analyses of that market as may have been carried out for the purposes of this Chapter.

(5) The SMP conditions authorised by this section are conditions imposing on the dominant provider such regulatory controls as OFCOM may from time to time direct in relation to the provision by that provider of any public electronic communications service to the end-users of that service.

(6) Where OFCOM set a condition which is authorised by this section and imposes regulatory control on tariffs or other matters to which costs are relevant, they shall

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

also set, and apply to the dominant provider, an SMP condition which requires him, to the extent that they consider it appropriate—

(a) to use such cost accounting systems as may be determined by them;

(b) to have the use of those systems audited annually by a qualified auditor; and

(c) to publish an annual statement about compliance by the dominant provider with the obligations imposed by virtue of paragraph (a).

F100(7) . . . . . .

[F101(8) In this section "qualified auditor" means a person who—

(a) is eligible for appointment as a statutory auditor under Part 42 of the Companies Act 2006, and

(b) if the appointment to carry out such auditing as is mentioned in subsection (6)(b) were an appointment as a statutory auditor, would not be prohibited from acting by section 1214 of that Act (independence requirement).**]**

Textual Amendments

F99 Word in s. 91(3)(b) substituted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 52(a)** (with Sch. 3 para. 2)

F100 S. 91(7) 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. 52(b)** (with Sch. 3 para. 2)

F101 S. 91(8) substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), art. 2(2), **Sch. 1 para. 30(4)** (with arts. 6, 11, 12)

Commencement Information

I119 S. 91 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))

I120 S. 91 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)

F102 92 Conditions about leased lines

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Textual Amendments

F102 S. 92 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. 53** (with Sch. 3 para. 2)

Commencement Information

I121 S. 92 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))

I122 S. 92 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)

SMP apparatus conditions: subject-matter

93 Conditions about apparatus supply

(1) Where OFCOM have made a determination that a person ("the dominant supplier") has significant market power in an identified apparatus market, they may—

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) set such SMP conditions authorised by this section as they consider it appropriate to apply to that person in respect of the supply of electronic communications apparatus; and

(b) apply those conditions to that person.

(2) This section authorises the setting of SMP conditions of each of the following descriptions—

(a) conditions requiring the dominant supplier to maintain such a separation for accounting purposes between matters relating to the supply of electronic communications apparatus and other matters as may be described in the conditions;

(b) conditions imposing requirements about the accounting methods to be used in maintaining the separation; and

(c) conditions imposing such rules as OFCOM may make, for the purpose of securing the maintenance of the separation, about the use of cost accounting systems.

(3) This section also authorises the setting of SMP conditions imposing price controls in relation to the hiring of telephones which are hardwired to an electronic communications network.

(4) Conditions set under this section must not make provision in relation to the supply of electronic communications apparatus unless the apparatus is of a description of apparatus as respects the supply of which the dominant supplier has been found to have significant market power.

(5) For the purposes of this section a telephone is hardwired to an electronic communications network where, in order for it to be used with that network—

(a) it has to be physically attached to apparatus comprised in the network; and

(b) the attachment has to be effected by a process that requires the use of a tool.

Commencement Information

I123 S. 93 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))

I124 S. 93 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)

Enforcement of conditions

94 Notification of contravention of [F103SMP apparatus] conditions

(1) Where OFCOM determine that there are reasonable grounds for believing that a person is contravening, or has contravened, **[**F104an SMP apparatus condition**]** 5, they may give that person a notification under this section.

(2) A notification under this section is one which—

(a) sets out the determination made by OFCOM;

(b) specifies the condition and contravention in respect of which that determination has been made; and

(c) specifies the period during which the person notified has an opportunity of doing the things specified in subsection (3).

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(3) Those things are—

(a) making representations about the matters notified;

(b) complying with notified conditions of which he remains in contravention; and

(c) remedying the consequences of notified contraventions.

(4) Subject to subsections (5) to (7) and section 98(3), the period for doing those things must be the period of one month beginning with the day after the one on which the notification was given.

(5) OFCOM may, if they think fit, allow a longer period for doing those things either—

(a) by specifying a longer period in the notification; or

(b) by subsequently, on one or more occasions, extending the specified period.

(6) The person notified shall have a shorter period for doing those things if a shorter period is agreed between OFCOM and the person notified.

(7) The person notified shall also have a shorter period if—

(a) OFCOM have reasonable grounds for believing that the contravention is a repeated contravention;

(b) they have determined that, in those circumstances, a shorter period would be appropriate; and

(c) the shorter period has been specified in the notification.

(8) A notification under this section—

(a) may be given in respect of more than one contravention; and

(b) if it is given in respect of a continuing contravention, may be given in respect of any period during which the contravention has continued.

(9) Where a notification under this section has been given to a person in respect of a contravention of a condition, OFCOM may give a further notification in respect of the same contravention of that condition if, and only if—

(a) the contravention is one occurring after the time of the giving of the earlier notification;

(b) the contravention is a continuing contravention and the subsequent notification is in respect of so much of a period as falls after a period to which the earlier notification relates; or

(c) the earlier notification has been withdrawn without a penalty having been imposed in respect of the notified contravention.

[[F105](10) Before giving a notification under this section, OFCOM must consider whether it would be more appropriate to proceed under the Competition Act 1998.

(10A) OFCOM must not give a notification under this section if they consider that it would be more appropriate to proceed under the Competition Act 1998.

(10B) In a case where OFCOM decide that it would be more appropriate to proceed under the Competition Act 1998, they must publish a statement to that effect in such manner as they consider appropriate for bringing their decision to the attention of persons whom they consider are likely to be affected by it.**]**

(11) For the purposes of this section a contravention is a repeated contravention, in relation to a notification with respect to that contravention, if—

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) a previous notification under this section has been given in respect of the same contravention or in respect of another contravention of the same condition; and

(b) the subsequent notification is given no more than twelve months after the day of the making by OFCOM of a determination for the purposes of section 95(2) or 96(2) that the contravention to which the previous notification related did occur.

Textual Amendments

F103 Words in s. 94 heading inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 54(b)** (with Sch. 3 paras. 2, 13)

F104 Words in s. 94(1) substituted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 54(a)** (with Sch. 3 paras. 2, 13)

F105 S. 94(10)-(10B) substituted for s. 94(10) (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 14 para. 17**; S.I. 2014/416, art. 2(1)(e) (with Sch.)

Modifications etc. (not altering text)

C2 Ss. 94-97 applied (with modifications) by S.I. 2000/730, reg. 18(5) (as inserted (25.7.2003) by Radio Equipment and Telecommunications Terminal Equipment (Amendment) Regulations 2003 (S.I. 2003/1903), regs. 1(1), **2(12)(b)**)

Commencement Information

I125 S. 94 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))

I126 S. 94 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)

95 Enforcement notification for contravention of conditions

(1) This section applies where—

(a) a person ("the notified provider") has been given a notification under section 94;

(b) OFCOM have allowed the notified provider an opportunity of making representations about the matters notified; and

(c) the period allowed for the making of the representations has expired.

(2) OFCOM may give the notified provider an enforcement notification if they are satisfied—

(a) that he has, in one or more of the respects notified, been in contravention of a condition specified in the notification under section 94; and

(b) that he has not, during the period allowed under that section, taken all such steps as they consider appropriate—

(i) for complying with that condition; and

(ii) for remedying the consequences of the notified contravention of that condition.

(3) An enforcement notification is a notification which imposes one or both of the following requirements on the notified provider—

(a) a requirement to take such steps for complying with the notified condition as may be specified in the notification;

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Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) a requirement to take such steps for remedying the consequences of the notified contravention as may be so specified.

(4) A decision of OFCOM to give an enforcement notification to a person—

(a) must be notified by them to that person, together with the reasons for the decision, no later than one week after the day on which it is taken; and

(b) must fix a reasonable period for the taking of the steps required by the notification.

(5) It shall be the duty of a person to whom an enforcement notification has been given to comply with it.

(6) That duty shall be enforceable in civil proceedings by OFCOM—

(a) for an injunction;

(b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988 (c. 36); or

(c) for any other appropriate remedy or relief.

Modifications etc. (not altering text)

C2 Ss. 94-97 applied (with modifications) by S.I. 2000/730, reg. 18(5) (as inserted (25.7.2003) by Radio Equipment and Telecommunications Terminal Equipment (Amendment) Regulations 2003 (S.I. 2003/1903), regs. 1(1), **2(12)(b)**)

Commencement Information

I127 S. 95 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))

I128 S. 95 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)

96 Penalties for contravention of conditions

(1) This section applies (in addition to section 95) where—

(a) a person ("the notified provider") has been given a notification under section 94;

(b) OFCOM have allowed the notified provider an opportunity of making representations about the matters notified; and

(c) the period allowed for the making of the representations has expired.

(2) OFCOM may impose a penalty on the notified provider if he—

(a) has, in one or more of the respects notified, been in contravention of a condition specified in the notification under section 94; and

(b) has not, during the period allowed under that section, taken the steps OFCOM consider appropriate—

(i) for complying with the notified condition; and

(ii) for remedying the consequences of the notified contravention of that condition.

(3) Where a notification under section 94 relates to more than one contravention, a separate penalty may be imposed in respect of each contravention.

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(4) Where such a notification relates to a continuing contravention, no more than one penalty may be imposed in respect of the period of contravention specified in the notification.

(5) OFCOM may also impose a penalty on the notified provider if he has contravened, or is contravening, a requirement of an enforcement notification given under section 95 in respect of the notified contravention.

(6) Where OFCOM impose a penalty on a person under this section, they shall—

(a) within one week of making their decision to impose the penalty, notify that person of that decision and of their reasons for that decision; and

(b) in that notification, fix a reasonable period after it is given as the period within which the penalty is to be paid.

(7) A penalty imposed under this section—

(a) must be paid to OFCOM; and

(b) if not paid within the period fixed by them, is to be recoverable by them accordingly.

Modifications etc. (not altering text)

C2 Ss. 94-97 applied (with modifications) by S.I. 2000/730, reg. 18(5) (as inserted (25.7.2003) by Radio Equipment and Telecommunications Terminal Equipment (Amendment) Regulations 2003 (S.I. 2003/1903), regs. 1(1), **2(12)(b)**)

Commencement Information

I129 S. 96 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))

I130 S. 96 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)

[F106 96A. Notification of contravention of condition other than SMP apparatus condition

(1) Where OFCOM determine that there are reasonable grounds for believing that a person is contravening, or has contravened, a condition (other than an SMP apparatus condition) set under section 45, they may give that person a notification under this section.

(2) A notification under this section is one which—

(a) sets out the determination made by OFCOM;

(b) specifies the condition and contravention in respect of which that determination has been made;

(c) specifies the period during which the person notified has an opportunity to make representations;

(d) specifies the steps that OFCOM think should be taken by the person in order to—

(i) comply with the condition;

(ii) remedy the consequences of the contravention;

(e) specifies any penalty which OFCOM are minded to impose in accordance with section 96B;

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(f) where the contravention is serious, specifies any direction which OFCOM are minded to give under section 100; and

(g) where the contravention relates to a condition set under sections 87 to 91, specifies any direction which OFCOM are minded to give under section 100A.

(3) A notification under this section—

(a) may be given in respect of more than one contravention; and

(b) if it is given in respect of a continuing contravention, may be given in respect of any period during which the contravention has continued.

(4) Where a notification under this section has been given to a person in respect of a contravention of a condition, OFCOM may give a further notification in respect of the same contravention of that condition if, and only if—

(a) the contravention is one occurring after the time of the giving of the earlier notification;

(b) the contravention is a continuing contravention and the subsequent notification is in respect of so much of a period as falls after a period to which the earlier notification relates; or

(c) the earlier notification has been withdrawn without a penalty having been imposed in respect of the notified contravention.

[F107(5) Before giving a notification under this section, OFCOM must consider whether it would be more appropriate to proceed under the Competition Act 1998.

(6) OFCOM must not give a notification under this section if they consider that it would be more appropriate to proceed under the Competition Act 1998.

(7) In a case where OFCOM decide that it would be more appropriate to proceed under the Competition Act 1998, they must publish a statement to that effect in such manner as they consider appropriate for bringing their decision to the attention of persons whom they consider are likely to be affected by it.**]**

Textual Amendments

F106 Ss. 96A-96C inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 55** (with Sch. 3 paras. 2, 13)

F107 S. 96A(5)-(7) substituted for s. 96A(5) (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 14 para. 18**; S.I. 2014/416, art. 2(1)(e) (with Sch.)

96B. Penalties for contravention of conditions

(1) This section applies where a person is given a notification under section 96A which specifies a proposed penalty.

(2) Where the notification relates to more than one contravention, a separate penalty may be specified in respect of each contravention.

(3) Where the notification relates to a continuing contravention, no more than one penalty may be specified in respect of the period of contravention specified in the notification.

(4) But, in relation to a continuing contravention, a penalty may be specified in respect of each day on which the contravention continues after—

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) the giving of a confirmation decision under section 96C(4)(c) which requires immediate action; or

(b) the expiry of any period specified in the confirmation decision for complying with a requirement so specified.

(5) The amount of a penalty under subsection (4) is to be such amount not exceeding £20,000 per day as OFCOM determine to be—

(a) appropriate; and

(b) proportionate to the contravention in respect of which it is imposed.

Textual Amendments

F106 Ss. 96A-96C inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 55** (with Sch. 3 paras. 2, 13)

96C. Enforcement of notification under section 96A

(1) This section applies where—

(a) a person has been given a notification under section 96A;

(b) OFCOM have allowed the person an opportunity to make representations about the matters notified; and

(c) the period allowed for the making of representations has expired.

(2) OFCOM may—

(a) give the person a decision (a "confirmation decision") confirming the imposition of requirements on the person, or the giving of a direction to the person, or both, in accordance with the notification under section 96A; or

(b) inform the person that they are satisfied with the person's representations and that no further action will be taken.

(3) OFCOM may not give a confirmation decision to a person unless, after considering any representations, they are satisfied that the person has, in one or more of the respects notified, been in contravention of a condition specified in the notification under section 96A.

(4) A confirmation decision—

(a) must be given to the person without delay;

(b) must include reasons for the decision;

(c) may require immediate action by the person to comply with requirements of a kind mentioned in section 96A(2)(d), or may specify a period within which the person must comply with those requirements; and

(d) may require the person to pay—

(i) the penalty specified in the notification under section 96A, or

(ii) such lesser penalty as OFCOM consider appropriate in the light of the person's representations or steps taken by the person to comply with the condition or remedy the consequences of the contravention, and

may specify the period within which the penalty is to be paid.

(5) It is the duty of the person to comply with any requirement imposed by a confirmation decision.

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(6) That duty is enforceable in civil proceedings by OFCOM—

(a) for an injunction;

(b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988; or

(c) for any other appropriate remedy or relief.

(7) A penalty imposed by a confirmation decision—

(a) must be paid to OFCOM; and

(b) if not paid within the period specified by them, is to be recoverable by them accordingly.**]**

Textual Amendments

F106 Ss. 96A-96C inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 55** (with Sch. 3 paras. 2, 13)

97 Amount of penalty under s. 96 [F108or 96A]

(1) The amount of a penalty imposed under section 96 **[**F109or notified under section 96A (other than a penalty falling within section 96B(4))**]** is to be such amount not exceeding ten per cent. of the turnover of the **[**F110person**]** 's relevant business for the relevant period as OFCOM determine to be—

(a) appropriate; and

(b) proportionate to the contravention in respect of which it is imposed.

(2) In making **[**F111a determination in relation to a penalty imposed under section 96**]** OFCOM must have regard to—

(a) any representations made to them by the **[**F112person**]** ;

(b) any steps taken by him towards complying with the conditions contraventions of which have been notified to him under section 94; and

(c) any steps taken by him for remedying the consequences of those contraventions.

(3) For the purposes of this section—

(a) the turnover of a person's relevant business for a period shall be calculated in accordance with such rules as may be set out by order made by the Secretary of State; and

(b) provision may also be made by such an order for determining what is to be treated as the network, service, facility or business by reference to which the calculation of that turnover falls to be made.

(4) No order is to be made containing provision authorised by subsection (3) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

(5) In this section—

"relevant business" means (subject to the provisions of an order under subsection (3) and to subsections (6) and (7)) so much of any business carried on by the **[**F113person**]** as consists in any one or more of the following—

(a) the provision of an electronic communications network;

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(b) the provision of an electronic communications service;

(c) the making available of associated facilities;

(d) the supply of directories for use in connection with the use of such a network or service;

(e) the making available of directory enquiry facilities for use for purposes connected with the use of such a network or service;

(f) any business not falling within any of the preceding paragraphs which is carried on in association with any business in respect of which any access-related condition is applied to the person carrying it on;

"relevant period", in relation to a contravention by a person of a condition set under section 45, means—

(a) except in a case falling within paragraph (b) or (c), the period of one year ending with the 31st March next before the time when notification of the contravention was given under section 94 **[**F114or 96A**]** ;

(b) in the case of a person who at that time has been carrying on that business for a period of less than a year, the period, ending with that time, during which he has been carrying it on; and

(c) in the case of a person who at that time has ceased to carry on that business, the period of one year ending with the time when he ceased to carry it on.

(6) In the case of a contravention of an SMP apparatus condition the relevant business is so much of any business carried on by the person in respect of whose contravention the penalty is imposed as consists in the supply of electronic communications apparatus.

(7) So much of any business of a person on whom the penalty is imposed as falls within paragraph (f) of the definition of a relevant business shall be disregarded for the purposes of this section except in relation to—

(a) a contravention of an access-related condition imposed in respect of that business; or

(b) a contravention of an enforcement notification given under section 95 **[**F115or a confirmation decision under section 96C**]** relating to such a condition.

F116(8) . . . . . .

Textual Amendments

F108 Words in s. 97 heading inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 56(g)** (with Sch. 3 paras. 2, 13)

F109 Words in s. 97(1) inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 56(a)** (with Sch. 3 paras. 2, 13)

F110 Word in s. 97(1) substituted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 56(b)** (with Sch. 3 paras. 2, 13)

F111 Words in s. 97(2) substituted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 56(c)** (with Sch. 3 paras. 2, 13)

F112 Word in s. 97(2)(a) substituted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 56(b)** (with Sch. 3 paras. 2, 13)

F113 Word in s. 97(5) substituted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 56(b)** (with Sch. 3 paras. 2, 13)

F114 Words in s. 97(5) inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 56(d)** (with Sch. 3 paras. 2, 13)

F115 Words in s. 97(7) inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 56(e)** (with Sch. 3 paras. 2, 13)

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

F116 S. 97(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. 56(f)** (with Sch. 3 paras. 2, 13)

Modifications etc. (not altering text)

C2 Ss. 94-97 applied (with modifications) by S.I. 2000/730, reg. 18(5) (as inserted (25.7.2003) by Radio Equipment and Telecommunications Terminal Equipment (Amendment) Regulations 2003 (S.I. 2003/1903), regs. 1(1), **2(12)(b)**)

Commencement Information

I131 S. 97 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))

I132 S. 97 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)

98 Power to deal with urgent cases

(1) This section applies where OFCOM determine—

(a) that they are entitled to give a notification under section **[**F117**]**96A**]** with respect to a contravention by a person ("the contravening provider") of a condition set under section 45, F118...;

(b) that there are reasonable grounds for suspecting that the case is an urgent case; and

(c) that the urgency of the case makes it appropriate for OFCOM to take action under this section.

(2) A case is an urgent case for the purposes of this section if the contravention has resulted in, or creates an immediate risk of—

(a) a serious threat to the safety of the public, to public health or to national security;

(b) serious economic or operational problems for persons (other than the contravening provider) who are communications providers or persons who make associated facilities available; or

(c) serious economic or operational problems for persons who make use of electronic communications networks, electronic communications services or associated facilities.

F119(3) . . . . . .

(4) OFCOM shall F120... have power to give to the contravening provider—

(a) a direction that his entitlement to provide electronic communications networks or electronic communications services, or to make associated facilities available, is suspended (either generally or in relation to particular networks, services or facilities); or

(b) a direction that that entitlement is restricted in the respects set out in the direction.

(5) A direction under subsection (4)—

(a) must specify the networks, services and facilities to which it relates; and

(b) except so far as it otherwise provides, takes effect for an indefinite period beginning with the time at which it is notified to the person to whom it is given.

(6) A direction under subsection (4)—

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) in providing for the effect of a suspension or restriction to be postponed, may provide for it to take effect only at a time determined by or in accordance with the terms of the direction; and

(b) in connection with the suspension or restriction contained in the direction or with the postponement of its effect, may impose such conditions on the contravening provider as appear to OFCOM to be appropriate for the purpose of protecting his customers.

(7) Those conditions may include a condition requiring the making of payments—

(a) by way of compensation for loss or damage suffered by the contravening provider's customers as a result of the direction; or

(b) in respect of annoyance, inconvenience or anxiety to which they have been put in consequence of the direction.

(8) OFCOM have power to revoke a direction given under subsection (4)—

(a) with effect from such time as they may direct;

(b) subject to compliance with such requirements as they may specify; and

(c) to such extent and in relation to such networks, services or facilities, or parts of a network, service or facility, as they may determine.

Textual Amendments

F117 Word in s. 98(1)(a) substituted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 57(a)** (with Sch. 3 paras. 2, 13)

F118 Words in s. 98(1)(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. 57(a)** (with Sch. 3 paras. 2, 13)

F119 S. 98(3) 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. 57(b)** (with Sch. 3 paras. 2, 13)

F120 Word in s. 98(4) 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. 57(c)** (with Sch. 3 paras. 2, 13)

Commencement Information

I133 S. 98 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))

I134 S. 98 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)

99 Confirmation of directions under s. 98

(1) As soon as reasonably practicable after giving a direction under section 98(4), OFCOM must give the person to whom it is given—

(a) an opportunity of making representations to them about the grounds on which it was given and its effect; and

(b) an opportunity of proposing steps to remedy the situation.

(2) As soon as practicable after the period allowed by OFCOM for making those representations has ended **[**F121(and in any event within 3 months beginning with the day on which the direction under section 98(4) was given)**]** , they must determine—

(a) whether the contravention providing the grounds for the giving of the direction did occur; and

(b) whether the circumstances made it an urgent case justifying the giving of the direction.

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

[F122(2A) The period of 3 months mentioned in subsection (2) may be extended by up to 3 months if OFCOM—

(a) require additional time to consider representations received; or

(b) decide that it is necessary to obtain additional information from the person in order to make a determination under subsection (2).**]**

(3) If OFCOM decide that the contravention did occur and that the direction was justified, they may confirm the direction.

(4) If not, they must exercise their power to revoke it.

(5) As soon as reasonably practicable after determining whether to confirm the direction, OFCOM must notify the person to whom it was given of their decision.

(6) Conditions included in a direction by virtue of section 98(7) have effect only if the direction is confirmed.

Textual Amendments

F121 Words in s. 99(2) inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 58(a)** (with Sch. 3 paras. 2, 13)

F122 S. 99(2A) inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 58(b)** (with Sch. 3 paras. 2, 13)

Commencement Information

I135 S. 99 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))

I136 S. 99 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)

100 Suspending service provision for contraventions of conditions

[F123(1) OFCOM may give a direction under this section to a person where—

(a) either Condition A or Condition B is satisfied in relation to the person; and

(b) the giving of a direction is appropriate and proportionate to the contravention in respect of which it is imposed.

(1A) Condition A is that—

(a) the person is in serious contravention of a condition set under section 45, other than SMP apparatus conditions; and

(b) the proposed direction has been notified to the person under section 96A and confirmed by a confirmation decision under section 96C.

(1B) Condition B is that—

(a) the person has repeatedly contravened a condition set under section 45, other than SMP apparatus conditions; and

(b) an attempt, by the imposition of penalties or the giving of notifications under section 96A and confirmation decisions under section 96C, or both, to secure compliance with the contravened conditions has failed.

(1C) Where Condition A is satisfied, a direction under this section is given where OFCOM give a confirmation decision under section 96C to the person in respect of a direction proposed in a notification under section 96A.

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(1D) Where Condition B is satisfied, a direction under this section is to be given in accordance with the procedure set out in section 102.**]**

(2) A direction under this section is—

(a) a direction that the entitlement of the **[**F124person**]** to provide electronic communications networks or electronic communications services, or to make associated facilities available, is suspended (either generally or in relation to particular networks, services or facilities); or

(b) a direction that that entitlement is restricted in the respects set out in the direction.

(3) A direction under this section—

(a) must specify the networks, services and facilities to which it relates; and

(b) except so far as it otherwise provides, takes effect for an indefinite period beginning with the time at which it is notified to the person to whom it is given.

(4) A direction under this section—

(a) in providing for the effect of a suspension or restriction to be postponed, may provide for it to take effect only at a time determined by or in accordance with the terms of the direction; and

(b) in connection with the suspension or restriction contained in the direction or with the postponement of its effect, may impose such conditions on the **[**F125person**]** as appear to OFCOM to be appropriate for the purpose of protecting that provider's customers.

(5) Those conditions may include a condition requiring the making of payments—

(a) by way of compensation for loss or damage suffered by the **[**F126person**]** 's customers as a result of the direction; or

(b) in respect of annoyance, inconvenience or anxiety to which they have been put in consequence of the direction.

(6) If OFCOM consider it appropriate to do so (whether or not in consequence of representations or proposals made to them), they may revoke a direction under this section or modify its conditions—

(a) with effect from such time as they may direct;

(b) subject to compliance with such requirements as they may specify; and

(c) to such extent and in relation to such networks, services or facilities, or parts of a network, service or facility, as they may determine.

(7) For the purposes of this section there are repeated contraventions by a person of conditions set under section 45 to the extent that—

[F127(a) in the case of a previous notification of a contravention given to that person under section 96A, OFCOM have given a confirmation decision to that person under section 96C(2) in respect of the contravention;**]**

[F128(b) in the period of 24 months following the giving of that confirmation decision, one or more further confirmation decisions have been given to the person in respect of contraventions of a condition under section 45;**]**

(c) the previous **[**F129confirmation decision**]** and the subsequent ones all relate to contraventions of the same condition (whether the same contravention or different contraventions).

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F123 S. 100(1)-(1D) substituted for s. 100(1) (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 59(a)** (with Sch. 3 paras. 2, 13, 14)

F124 Word in s. 100(2)(a) substituted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 59(b)** (with Sch. 3 paras. 2, 13)

F125 Word in s. 100(4)(b) substituted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 59(b)** (with Sch. 3 paras. 2, 13)

F126 Word in s. 100(5)(a) substituted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 59(b)** (with Sch. 3 paras. 2, 13)

F127 S. 100(7)(a) substituted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 59(c)(i)** (with Sch. 3 paras. 2, 13)

F128 S. 100(7)(b) substituted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 59(c)(ii)** (with Sch. 3 paras. 2, 13)

F129 Words in s. 100(7)(c) substituted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 59(c)(iii)** (with Sch. 3 paras. 2, 13)

Commencement Information

I137 S. 100 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))

I138 S. 100 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)

[F130 100A Suspending service provision for breach of SMP services condition

(1) OFCOM may give a direction under this section to a person who provides a public electronic communications network, or a person who makes available facilities that are associated facilities by reference to such a network, if OFCOM are satisfied that—

(a) the person is or has been in contravention of conditions set under sections 87 to 91; and

(b) the provision of an electronic communications service by the person on that public electronic communications network could result in significant harm to competition.

(2) A direction under this section is given where OFCOM give a confirmation decision under section 96C to the person in respect of a direction proposed in a notification under section 96A.

(3) A direction under this section is—

(a) a direction that the entitlement of the person to provide an electronic communications service over the public electronic communications network to which the contravened condition relates is suspended (either generally or in relation to particular services); or

(b) a direction that the person may not begin to provide an electronic communications service over the public electronic communications network to which the contravened provision relates.

(4) A direction under this section—

(a) must specify the electronic communications services to which it relates, and

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) takes effect for an indefinite period beginning with the time at which a confirmation decision relating to the direction is given to the person under section 96C.

(5) A direction under this section—

(a) may provide for a suspension or prohibition to take effect only at a time determined by or in accordance with the terms of the direction; and

(b) in connection with a suspension or prohibition contained in the direction or with the postponement of its effect, may impose such conditions on the person to whom it is given as appear to OFCOM to be appropriate for the purpose of protecting that person's customers.

(6) Those conditions may include a condition requiring the making of payments—

(a) by way of compensation for loss or damage suffered by the person's customers as a result of the direction; or

(b) in respect of annoyance, inconvenience or anxiety to which they have been put in consequence of the direction.

(7) If OFCOM consider it appropriate to do so (whether or not in consequence of representations or proposals made to them), they may revoke a direction under this section or modify its conditions—

(a) with effect from such time as they may direct;

(b) subject to compliance with such requirements as they may specify; and

(c) to such extent and in relation to such services, or parts of a service, as they may determine.**]**

Textual Amendments

F130 S. 100A inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 60** (with Sch. 3 paras. 2, 13, 14)

101 Suspending apparatus supply for contraventions of conditions

(1) OFCOM may give a direction under this section to a person who supplies electronic communications apparatus ("the contravening supplier") if they are satisfied—

(a) that he is or has been in serious and repeated contravention of any SMP apparatus conditions;

(b) that an attempt, by the imposition of penalties or the giving of enforcement notifications under section 95 or both, to secure compliance with the contravened conditions has failed; and

(c) that the giving of the direction is appropriate and proportionate to the seriousness (when repeated as they have been) of the contraventions.

(2) A direction under this section is—

(a) a direction to the contravening supplier to cease to act as a supplier of electronic communications apparatus (either generally or in relation to apparatus of a particular description); or

(b) a direction imposing such restrictions as may be set out in the direction on the supply by that supplier of electronic communications apparatus (either generally or in relation to apparatus of a particular description).

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(3) A direction under this section takes effect, except so far as it otherwise provides, for an indefinite period beginning with the time at which it is notified to the person to whom it is given.

(4) A direction under this section—

(a) may provide for a prohibition or restriction to take effect only at a time determined by or in accordance with the terms of the direction; and

(b) in connection with a prohibition or restriction contained in the direction or with the postponement of its effect, may impose such conditions on the contravening supplier as appear to OFCOM to be appropriate for the purpose of protecting that supplier's customers.

(5) Those conditions may include a condition requiring the making of payments—

(a) by way of compensation for loss or damage suffered by the contravening supplier's customers as a result of the direction; or

(b) in respect of annoyance, inconvenience or anxiety to which they have been put in consequence of the direction.

(6) If OFCOM consider it appropriate to do so (whether or not in consequence of representations or proposals made to them), they may at any time revoke a direction under this section or modify its conditions—

(a) with effect from such time as they may direct;

(b) subject to compliance with such requirements as they may specify; and

(c) to such extent and in relation to such apparatus or descriptions of apparatus as they may determine.

(7) For the purposes of this section there are repeated contraventions by a person of SMP apparatus conditions to the extent that—

(a) in the case of a previous notification given to that person under section 94, OFCOM have determined for the purposes of section 95(2) or 96(2) that such a contravention did occur;

(b) in the period of twelve months following the day of the making of that determination, one or more further notifications have been given to that person in respect of contraventions of an SMP apparatus condition; and

(c) the previous notification and the subsequent ones all relate to contraventions of the same condition (whether the same contravention or different contraventions).

Commencement Information

I139 S. 101 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))

I140 S. 101 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)

102 Procedure for directions under ss. 100 and 101

(1) Except in an urgent case, **[**[F131]or a case where Condition A in section 100 is satisfied,**]** OFCOM are not to give a direction under section 100 or 101 unless they have—

(a) notified the contravening provider or contravening supplier of the proposed direction and of the conditions (if any) which they are proposing to impose by that direction;

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) provided him with an opportunity of making representations about the proposals and of proposing steps for remedying the situation; and

(c) considered every representation and proposal made to them during the period allowed by them for the contravening provider or the contravening supplier to take advantage of that opportunity.

[F132(2) That period must be—

(a) in relation to a direction under section 100, such reasonable period as OFCOM may determine, and

(b) in relation to a direction under section 101, a period ending not less than one month after the day of the giving of the notification.**]**

(3) As soon as practicable after giving a direction under section 100 or 101 in an urgent case, OFCOM must, provide the contravening provider or contravening supplier with an opportunity of—

(a) making representations about the effect of the direction and of any of its conditions; and

(b) proposing steps for remedying the situation.

[F133(3A) In relation to a direction under section 100 in an urgent case, as soon as practicable after the period allowed by OFCOM for making those representations has ended (and in any event within 3 months beginning with the day on which the direction was given), they must determine—

(a) whether the contravention providing the grounds for the giving of the direction did occur; and

(b) whether the circumstances made it an urgent case justifying the giving of the direction.

(3B) The period of 3 months mentioned in subsection (3A) may be extended by up to 3 months if OFCOM—

(a) require additional time to consider representations received; or

(b) decide that it is necessary to obtain additional information from the person in order to make a determination under subsection (3A).**]**

(4) A case is an urgent case for the purposes of this section if OFCOM—

(a) consider that it would be inappropriate, because the contraventions in question fall within subsection (5), to allow time, before giving a direction under section 100 or 101, for the making and consideration of representations; and

(b) decide for that reason to act in accordance with subsection (3), instead of subsection (1).

(5) The contraventions fall within this subsection if they have resulted in, or create an immediate risk of—

(a) a serious threat to the safety of the public, to public health or to national security;

(b) serious economic or operational problems for persons (apart from the contravening provider or contravening supplier) who are communications providers or persons who make associated facilities available; or

(c) serious economic or operational problems for persons who make use of electronic communications networks, electronic communications services or associated facilities.

(6) In this section—

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

[[F134]"contravening provider" means a person who is a communications provider or makes associated facilities available;**]**

"contravening supplier" has the same meaning as in section 101.

Textual Amendments

F131 Words in s. 102(1) inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 61(a)** (with Sch. 3 paras. 2, 13)

F132 S. 102(2) substituted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 61(b)** (with Sch. 3 paras. 2, 13)

F133 S. 102(3A)(3B) inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 61(c)** (with Sch. 3 paras. 2, 13)

F134 Words in s. 102(6) substituted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 61(d)** (with Sch. 3 paras. 2, 13)

Commencement Information

I141 S. 102 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))

I142 S. 102 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)

103 Enforcement of directions under ss. 98, 100 [F135, 100A] and 101

(1) A person is guilty of an offence if he provides an electronic communications network or electronic communications service, or makes available any associated facility—

(a) while his entitlement to do so is suspended by a direction under section **[**[F136]98(4), 100 or 100A**]** ; or

(b) in contravention of a restriction contained in such a direction.

(2) A person is guilty of an offence if he supplies electronic communications apparatus—

(a) while prohibited from doing so by a direction under section 101; or

(b) in contravention of a restriction contained in such a direction.

(3) A person guilty of an offence under this section shall be liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to a fine.

[[F137](4) Sections 96A to 99 apply in relation to a contravention of conditions imposed by a direction under section 98, 100 or 100A as they apply in relation to a contravention of conditions set under section 45, other than SMP apparatus conditions.

(5) Sections 94 to 96 and 97 to 99 apply in relation to a contravention of conditions imposed by a direction under section 101 as they apply in relation to a contravention of SMP apparatus conditions.**]**

Textual Amendments

F135 Words in s. 103 heading inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 62(c)** (with Sch. 3 paras. 2, 13)

F136 Words in s. 103(1)(a) substituted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 62(a)** (with Sch. 3 paras. 2, 13)

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

F137 S. 103(4)(5) substituted for s. 103(4) (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 62(b)** (with Sch. 3 paras. 2, 13)

Commencement Information

I143 S. 103 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))

I144 S. 103 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)

104 Civil liability for breach of conditions or [F138confirmation decision]

(1) The obligation of a person to comply with—

(a) the conditions set under section 45 which apply to him,

(b) requirements imposed on him by an enforcement notification under section 95, F139...

[F140(ba) requirements imposed on the person by a notification under section 96A and a confirmation decision under section 96C; and]

(c) the conditions imposed by a direction under section 98 [F141, 100 or 100A] ,

shall be a duty owed to every person who may be affected by a contravention of the condition or requirement.

(2) Where a duty is owed by virtue of this section to a person—

(a) a breach of the duty that causes that person to sustain loss or damage, and

(b) an act which—

(i) by inducing a breach of the duty or interfering with its performance, causes that person to sustain loss or damage, and

(ii) is done wholly or partly for achieving that result,

shall be actionable at the suit or instance of that person.

(3) In proceedings brought against a person by virtue of subsection (2)(a) it shall be a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid contravening the condition or requirement in question.

(4) The consent of OFCOM is required for the bringing of proceedings by virtue of subsection (1)(a).

(5) Where OFCOM give a consent for the purposes of subsection (4) subject to conditions relating to the conduct of the proceedings, the proceedings are not to be carried on by that person except in compliance with those conditions.

Textual Amendments

F138 Words in s. 104 heading substituted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 63(c)** (with Sch. 3 paras. 2, 13)

F139 Word in s. 104(1)(b) 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. 63(a)** (with Sch. 3 paras. 2, 13)

F140 S. 104(1)(ba) inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 63(a)** (with Sch. 3 paras. 2, 13)

F141 Words in s. 104(1)(c) substituted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 63(b)** (with Sch. 3 paras. 2, 13)

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Commencement Information

I145 S. 104 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))

I146 S. 104 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)

OFCOM's duty to intervene on network access issues

F142 105 Consideration and determination of network access questions

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Textual Amendments

F142 S. 105 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. 64** (with Sch. 3 para. 2)

Commencement Information

I147 S. 105 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))

I148 S. 105 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)

[F143 Security of public electronic communications networks and services

Textual Amendments

F143 Ss. 105A-105D and cross-heading inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 65** (with Sch. 3 para. 2)

105A. Requirement to protect security of networks and services

(1) Network providers and service providers must take technical and organisational measures appropriately to manage risks to the security of public electronic communications networks and public electronic communications services.

(2) Measures under subsection (1) must, in particular, include measures to prevent or minimise the impact of security incidents on end-users.

(3) Measures under subsection (1) taken by a network provider must also include measures to prevent or minimise the impact of security incidents on interconnection of public electronic communications networks.

(4) A network provider must also take all appropriate steps to protect, so far as possible, the availability of the provider's public electronic communications network.

(5) In this section and sections 105B and 105C—

"network provider" means a provider of a public electronic communications network, and

"service provider" means a provider of a public electronic communications service.

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

105B. Requirement to notify OFCOM of security breach

(1) A network provider must notify OFCOM—

(a) of a breach of security which has a significant impact on the operation of a public electronic communications network, and

(b) of a reduction in the availability of a public electronic communications network which has a significant impact on the network.

(2) A service provider must notify OFCOM of a breach of security which has a significant impact on the operation of a public electronic communications service.

(3) If OFCOM receive a notification under this section, they must, where they think it appropriate, notify—

(a) the regulatory authorities in other member States, and

(b) the European Network and Information Security Agency ("ENISA").

(4) OFCOM may also inform the public of a notification under this section, or require the network provider or service provider to inform the public, if OFCOM think that it is in the public interest to do so.

(5) OFCOM must prepare an annual report summarising notifications received by them under this section during the year, and any action taken in response to a notification.

(6) A copy of the annual report must be sent to the European Commission and to ENISA.

105C. Requirement to submit to audit

(1) OFCOM may carry out, or arrange for another person to carry out, an audit of the measures taken by a network provider or a service provider under section 105A.

(2) A network provider or a service provider must—

(a) co-operate with an audit under subsection (1), and

(b) pay the costs of the audit.

105D. Enforcement of obligations under sections 105A to 105C

(1) Sections 96A to 96C, 98 to 100, 102 and 103 apply in relation to a contravention of a requirement under sections 105A to 105C as they apply in relation to a contravention of a condition set under section 45, other than an SMP apparatus condition.

(2) The obligation of a person to comply with the requirements of section 105A to 105C is a duty owed to every person who may be affected by a contravention of a requirement, and—

(a) section 104 applies in relation to that duty as it applies in relation to the duty set out in subsection (1) of that section, and

(b) section 104(4) applies in relation to proceedings brought by virtue of this section as it applies in relation to proceedings by virtue of section 104(1)(a).

(3) The amount of a penalty imposed under sections 96A to 96C, as applied by this section, is to be such amount not exceeding £2 million as OFCOM determine to be—

(a) appropriate; and

(b) proportionate to the contravention in respect of which it is imposed.**]**

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Electronic communications code

106 Application of the electronic communications code

(1) In this Chapter "the electronic communications code" means the code set out in Schedule 2 to the Telecommunications Act 1984 (c. 12).

(2) Schedule 3 (which amends Schedule 2 to the Telecommunications Act 1984 (c. 12) for the purpose of translating the telecommunications code into a code applicable in the context of the new regulatory regime established by this Act) shall have effect.

(3) The electronic communications code shall have effect—

(a) in the case of a person to whom it is applied by a direction given by OFCOM; and

(b) in the case of the Secretary of State or any Northern Ireland department where the Secretary of State or that department is providing or proposing to provide an electronic communications network.

(4) The only purposes for which the electronic communications code may be applied in a person's case by a direction under this section are—

(a) the purposes of the provision by him of an electronic communications network; or

(b) the purposes of the provision by him of a system of conduits which he is making available, or proposing to make available, for use by providers of electronic communications networks for the purposes of the provision by them of their networks.

(5) A direction applying the electronic communications code in any person's case may provide for that code to have effect in his case—

(a) in relation only to such places or localities as may be specified or described in the direction;

(b) for the purposes only of the provision of such electronic communications network, or part of an electronic communications network, as may be so specified or described; or

(c) for the purposes only of the provision of such conduit system, or part of a conduit system, as may be so specified or described.

(6) The Secretary of State may by order provide for the electronic communications code to have effect for all purposes with a different amount substituted for the amount for the time being specified in paragraph 16(3) of the code (minimum compensation).

(7) In this section "conduit" includes a tunnel, subway, tube or pipe.

Commencement Information

I149 S. 106 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))

I150 S. 106 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)

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

107 Procedure for directions applying code

(1) OFCOM are not to give a direction applying the electronic communications code in any person's case except on an application made for the purpose by that person.

[[F144](1A) Regulation 3 of the Electronic Communications and Wireless Telegraphy Regulations 2011 makes provision about the time within which an application under subsection (1) must be determined.**]**

(2) If OFCOM publish a notification setting out their requirements with respect to—

(a) the content of an application for a direction applying the electronic communications code, and

(b) the manner in which such an application is to be made,

such an application must be made in accordance with the requirements for the time being in force.

(3) OFCOM may—

(a) from time to time review the requirements for the time being in force for the purposes of subsection (2); and

(b) on any such review, modify them in such manner as they think fit by giving a notification of the revised requirements.

[[F145](3A) A modification may not be made under subsection (3) unless the modification is—

(a) objectively justifiable, and

(b) proportionate to what it is intended to achieve.

(3B) Before making a modification under subsection (3), OFCOM must publish a notification of the proposed modification which contains the following—

(a) a statement of the proposal,

(b) a statement of their reasons for the proposal, and

(c) a statement of the period within which representations may be made to them about the proposal.

(3C) The period specified under subsection (3B)(c) must end no less than one month after the day of the publication of the notification.**]**

(4) In considering whether to apply the electronic communications code in any person's case, OFCOM must have regard, in particular, to each of the following matters—

(a) the benefit to the public of the electronic communications network or conduit system by reference to which the code is to be applied to that person;

(b) the practicability of the provision of that network or system without the application of the code;

(c) the need to encourage the sharing of the use of electronic communications apparatus;

(d) whether the person in whose case it is proposed to apply the code will be able to meet liabilities arising as a consequence of—

(i) the application of the code in his case; and

(ii) any conduct of his in relation to the matters with which the code deals.

(5) For the purposes of subsections (6) and (7) of section 3 OFCOM's duty under subsection (4) ranks equally with their duties under that section.

(6) Before giving a direction under section 106, OFCOM must—

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) publish a notification of their proposal to give the direction; and

(b) consider any representations about that proposal that are made to them within the period specified in the notification.

(7) A notification for the purposes of subsection (6)(a) must contain the following—

(a) a statement of OFCOM's proposal;

(b) a statement of their reasons for that proposal;

(c) a statement of the period within which representations may be made to them about the proposal.

(8) The statement of OFCOM's proposal must—

(a) contain a statement that they propose to apply the code in the case of the person in question;

(b) set out any proposals of theirs to impose terms under section 106(5);

but this subsection is subject to sections 113(7) and 115(5).

(9) The period specified as the period within which representations may be made must end no less than one month after the day of the publication of the notification.

(10) The publication by OFCOM of a notification for any of the purposes of this section must be a publication in such manner as OFCOM consider appropriate for bringing the notification to the attention of the persons who, in their opinion, are likely to be affected by it.

Textual Amendments

F144 S. 107(1A) inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 66(a)** (with Sch. 3 paras. 1, 2)

F145 S. 107(3A)-(3C) inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 66(b)** (with Sch. 3 para. 2)

Commencement Information

I151 S. 107 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))

I152 S. 107 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)

108 Register of persons in whose case code applies

(1) It shall be the duty of OFCOM to establish and maintain a register of persons in whose case the electronic communications code applies by virtue of a direction under section 106.

(2) OFCOM must record in the register every direction given under that section.

(3) Information recorded in the register must be recorded in such manner as OFCOM consider appropriate.

(4) It shall be the duty of OFCOM to publish a notification setting out—

(a) the times at which the register is for the time being available for public inspection; and

(b) the fees that must be paid for, or in connection with, an inspection of the register.

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(5) The publication of a notification under subsection (4) must be a publication in such manner as OFCOM consider appropriate for bringing it to the attention of the persons who, in their opinion, are likely to be affected by it.

(6) OFCOM must make the register available for public inspection—

(a) during such hours, and

(b) on payment of such fees,

as are set out in the notification for the time being in force under subsection (4).

Commencement Information

I153 S. 108 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))

I154 S. 108 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)

109 Restrictions and conditions subject to which code applies

(1) Where the electronic communications code is applied in any person's case by a direction given by OFCOM, that code is to have effect in that person's case subject to such restrictions and conditions as may be contained in regulations made by the Secretary of State.

(2) In exercising his power to make regulations under this section it shall be the duty of the Secretary of State to have regard to each of the following—

(a) the duties imposed on OFCOM by sections 3 and 4;

(b) the need to protect the environment and, in particular, to conserve the natural beauty and amenity of the countryside;

[F146(ba) the need to promote economic growth in the United Kingdom;**]**

(c) the need to ensure that highways are not damaged or obstructed, and traffic not interfered with, to any greater extent than is reasonably necessary;

(d) the need to encourage the sharing of the use of electronic communications apparatus;

[F147(da) the need to ensure that restrictions and conditions are objectively justifiable and proportionate to what they are intended to achieve;**]**

(e) the need to secure that a person in whose case the code is applied will be able to meet liabilities arising as a consequence of—

(i) the application of the code in his case; and

(ii) any conduct of his in relation to the matters with which the code deals.

[F148(2A) Subsection (2B) applies if—

(a) the Secretary of State has complied with subsection (2)(b) in connection with any particular exercise before 6 April 2018 of the power to make regulations under this section, and

(b) the regulations in question are expressed to cease to have effect (other than for transitional purposes) before that date.

(2B) The Secretary of State is to be treated as also having complied with any duty imposed in connection with that exercise of that power by any of the following—

section 11A(2) of the National Parks and Access to the Countryside Act 1949;

section 85(1) of the Countryside and Rights of Way Act 2000;

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section 17A(1) of the Norfolk and Suffolk Broads Act 1988;
section 14 of the National Parks (Scotland) Act 2000 (asp 10);
Article 4(1) of the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985 (S.I. 1985/170 (N.I. 1)).**]**

(3) The power of the Secretary of State to provide by regulations for the restrictions and conditions subject to which the electronic communications code has effect includes power to provide for restrictions and conditions which are framed by reference to any one or more of the following—

(a) the making of a determination in accordance with the regulations by a person specified in the regulations;

(b) the giving of an approval or consent by a person so specified; or

(c) the opinion of any person.

(4) Before making any regulations under this section, the Secretary of State must consult—

(a) OFCOM; and

(b) such other persons as he considers appropriate.

Textual Amendments

F146 S. 109(2)(ba) inserted (25.4.2013) by Growth and Infrastructure Act 2013 (c. 27), **ss. 9(1)**, 35(2) (with s. 36(6))

F147 S. 109(2)(da) inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 67** (with Sch. 3 para. 2)

F148 S. 109(2A)(2B) inserted (25.4.2013) by Growth and Infrastructure Act 2013 (c. 27), **ss. 9(2)**, 35(2)

Modifications etc. (not altering text)

C3 S. 109(4) modified (25.4.2013) by Growth and Infrastructure Act 2013 (c. 27), **ss. 9(4)**, 35(2)

Commencement Information

I155 S. 109 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))

I156 S. 109 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)

110 Enforcement of restrictions and conditions

(1) Where OFCOM determine that there are reasonable grounds for believing that a person in whose case the electronic communications code applies is contravening, or has contravened, a requirement imposed by virtue of any restrictions or conditions under section 109, they may give him a notification under this section.

(2) A notification under this section is one which—

(a) sets out the determination made by OFCOM;

(b) specifies the requirement and the contravention in respect of which that determination has been made; [F149]...

[[F150](c) specifies the period during which the person notified has an opportunity to make representations;

(d) specifies the steps that OFCOM think should be taken by the person in order to—

(i) comply with the requirement;

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(ii) remedy the consequences of the contravention;

(e) specifies any penalty which OFCOM are minded to impose in accordance with section 110A; and

(f) where the contravention is serious, specifies any direction which OFCOM are minded to give under section 113(4).**]**

F151(3) . . . . . .

F151(4) . . . . . .

F151(5) . . . . . .

F151(6) . . . . . .

F151(7) . . . . . .

(8) A notification under this section—

(a) may be given in respect of more than one contravention; and

(b) if it is given in respect of a continuing contravention, may be given in respect of any period during which the contravention has continued.

(9) Where a notification under this section has been given to a person in respect of a contravention of a requirement, OFCOM may give a further notification in respect of the same contravention of that requirement if, and only if—

(a) the contravention is one occurring after the time of the giving of the earlier notification;

(b) the contravention is a continuing contravention and the subsequent notification is in respect of so much of a period as falls after a period to which the earlier notification relates; or

(c) the earlier notification has been withdrawn without a penalty having been imposed in respect of the notified contravention.

F152(10) . . . . . .

Textual Amendments

F149 Word in s. 110(2)(b) 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. 68(a)** (with Sch. 3 paras. 2, 15)

F150 S. 110(2)(c)-(f) substituted for s. 110(2)(c) (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 68(b)** (with Sch. 3 paras. 2, 15)

F151 S. 110(3)-(7) 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. 68(c)** (with Sch. 3 paras. 2, 15)

F152 S. 110(10) 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. 68(c)** (with Sch. 3 paras. 2, 15)

Commencement Information

I157 S. 110 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))

I158 S. 110 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)

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

[F153 110A Penalties for contravention of code restrictions

(1) This section applies where a person is given a notification under section 110 which specifies a proposed penalty.

(2) Where the notification relates to more than one contravention, a separate penalty may be specified in respect of each contravention.

(3) Where the notification relates to a continuing contravention, no more than one penalty may be specified in respect of the period of contravention specified in the notification.

(4) But, in relation to a continuing contravention, a penalty may be specified in respect of each day on which the contravention continues after—

(a) the giving of a confirmation decision under section 111(4)(c) which requires immediate action; or

(b) the expiry of any period specified in the confirmation decision for complying with a requirement so specified.

(5) The amount of a penalty under subsection (4) is to be such amount not exceeding £100 per day as OFCOM determine to be—

(a) appropriate; and

(b) proportionate to the contravention in respect of which it is imposed

(6) The amount of any other penalty specified in a notification under section 110 is to be such amount not exceeding £10,000 as OFCOM determine to be—

(a) appropriate, and

(b) proportionate to the contravention in respect of which it is imposed.

(7) The Secretary of State may by order amend this section so as to substitute a different maximum penalty for the maximum penalty for the time being specified in subsection (6).

(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.**]**

Textual Amendments

F153 S. 110A inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 69** (with Sch. 3 paras. 2, 15)

111 [F154 Confirmation decision] for contravention of code restrictions

(1) This section applies where—

(a) a person ("the notified provider") has been given a notification under section 110;

(b) OFCOM have allowed the notified provider an opportunity of making representations about the matters notified; and

(c) the period allowed for the making of the representations has expired.

[F155 (2) OFCOM may—

(a) give the notified provider a decision (a "confirmation decision") confirming the imposition of requirements on the notified provider, or the giving of a

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direction to the notified provider, or both, in accordance with the notification under section 110; or

(b) notify the notified provider that they are satisfied with the representations and that no further action will be taken.

(3) OFCOM may not give a confirmation decision to the notified provider unless, after considering any representations, they are satisfied that the notified provider has, in one or more of the respects notified, been in contravention of a requirement specified in the notification under section 110.**]**

[[F156](4) A confirmation decision—

(a) must be given to the person without delay;

(b) must include reasons for the decision;

(c) may require immediate action by the person to comply with requirements of a kind mentioned in section 110(2)(d), or may specify a period within which the person must comply with those requirements; and

(d) may require the person to pay—

(i) the penalty specified in the notification under section 110(2)(e), or

(ii) such lesser penalty as OFCOM consider appropriate in the light of the person's representations or steps taken by the person to comply with the condition or remedy the consequences of the contravention, and

may specify the period within which the penalty is to be paid.**]**

(5) It shall be the duty of a person to whom **[**[F157]a confirmation decision**]** has been given to comply with **[**[F158]any requirement imposed by it**]** .

(6) That duty shall be enforceable in civil proceedings by OFCOM—

(a) for an injunction;

(b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988 (c. 36); or

(c) for any other appropriate remedy or relief.

[[F159](7) A penalty imposed by a confirmation decision—

(a) must be paid to OFCOM; and

(b) if not paid within the period specified by them, is to be recoverable by them accordingly.**]**

Textual Amendments

F154 Words in s. 111 heading substituted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 70(e)** (with Sch. 3 paras. 2, 15)

F155 S. 111(2)(3) substituted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 70(a)** (with Sch. 3 paras. 2, 15)

F156 S. 111(4) substituted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 70(b)** (with Sch. 3 paras. 2, 15)

F157 Words in s. 111(5) substituted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 70(c)(i)** (with Sch. 3 paras. 2, 15)

F158 Words in s. 111(5) substituted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 70(c)(ii)** (with Sch. 3 paras. 2, 15)

Status: *Point in time view as at 13/04/2015.*
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F159 S. 111(7) inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 70(d)** (with Sch. 3 paras. 2, 15)

Commencement Information

I159 S. 111 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))

I160 S. 111 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)

[F160 111A Power to deal with urgent cases

(1) This section applies where OFCOM determine—

(a) that they are entitled to give a notification under section 110 with respect to a contravention by a person ("P") of a requirement imposed by virtue of any restrictions or conditions under section 109;

(b) that there are reasonable grounds for suspecting that the case is an urgent case; and

(c) that the urgency of the case makes it appropriate for OFCOM to take action under this section.

(2) A case is an urgent case for the purposes of this section if the contravention has resulted in, or creates an immediate risk of—

(a) a serious threat to the safety of the public, to public health or to national security;

(b) serious economic or operational problems for persons (other than P) who are communications providers or persons who make associated facilities available; or

(c) serious economic or operational problems for persons who make use of electronic communications networks, electronic communications services or associated facilities.

(3) OFCOM may, to the extent specified in subsection (4), give a direction suspending the application in P's case of the electronic communications code if the electronic communications code has been applied to P by a direction under section 106.

(4) The extent of a suspension under subsection (3) must not go beyond the following applications of the code in that person's case—

(a) its application for the purposes of electronic communications networks, or parts of such a network, which are not yet in existence at the time of the suspension;

(b) its application for the purposes of conduit systems, or parts of such systems, which are not yet in existence or not yet used for the purposes of electronic communications networks; and

(c) its application for other purposes in circumstances in which the provision of an electronic communications network, or part of such a network, would not have to cease if its application for those purposes were suspended.

(5) A direction under subsection (3), except so far as it otherwise provides, shall continue in force until such time (if any) as it is withdrawn by OFCOM.

(6) Subject to subsection (7), where the application of the electronic communications code is suspended in a person's case, the person is not entitled to exercise any right conferred by or by virtue of the code.

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(7) The suspension of the application of the electronic communications code in a person's case does not, except so far as otherwise provided by a scheme contained in an order under section 117—

(a) affect (as between the original parties to it) any agreement entered into for the purposes of the code or any agreement having effect in accordance with it;

(b) affect anything done under the code before the suspension of its application; or

(c) require the removal of, or prohibit the use of, any apparatus lawfully installed on, in or over any premises before that suspension.

Textual Amendments

F160 Ss. 111A, 111B inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 71** (with Sch. 3 paras. 2, 15)

111B. Confirmation of direction under section 111A

(1) As soon as reasonably practicable after giving a direction under section 111A(3), OFCOM must give the person to whom it is given—

(a) an opportunity to make representations to them about the grounds on which it was given and its effect; and

(b) an opportunity to propose steps to remedy the situation.

(2) As soon as practicable after the period allowed by OFCOM for making those representations has ended (and in any event within 3 months beginning with the day on which the direction was given), they must determine—

(a) whether the contravention providing the grounds for the giving of the direction did occur; and

(b) whether the circumstances made it an urgent case justifying the giving of the direction.

(3) The period of 3 months mentioned in subsection (2) may be extended by up to 3 months if OFCOM—

(a) require additional time to consider representations received; or

(b) decide that it is necessary to obtain additional information from the person in order to make a determination under subsection (2).

(4) If OFCOM decide that the contravention did occur and that the direction was justified, they may confirm the direction.

(5) If not, they must exercise their power to revoke it.

(6) As soon as reasonably practicable after determining whether to confirm the direction, OFCOM must notify the person to whom it was given of their decision.**]**

Textual Amendments

F160 Ss. 111A, 111B inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 71** (with Sch. 3 paras. 2, 15)

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

[F161]112 Penalties for contravention of code restrictions

. . . . . .

Textual Amendments

F161 S. 112 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. 72** (with Sch. 3 paras. 2, 15)

Commencement Information

I161 S. 112 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))

I162 S. 112 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)

113 Suspension of application of code

(1) OFCOM may suspend the application of the electronic communications code in any person's case if they are satisfied—

(a) that he is or has been in **[**[F162]serious or repeated**]** contravention of requirements to pay administrative charges fixed under section 38 (whether in respect of the whole or a part of the charges);

[[F163](aa) that, in the case of a single serious contravention, a notification has been given to the contravening provider under section 40 and the period for making representations under that section has expired;**]**

(b) that **[**[F164], in the case of a repeated contravention**]** the bringing of proceedings for the recovery of the amounts outstanding has failed to secure complete compliance by the contravening provider with the requirements to pay the charges fixed in his case, or has no reasonable prospect of securing such compliance;

(c) that **[**[F165], in the case of a repeated contravention**]** an attempt, by the imposition of penalties under section 41, to secure such compliance has failed; and

[[F166](d) that the suspension of the application of the code is appropriate and proportionate to the contravention.**]**

(2) OFCOM may, to the extent specified in subsection (3), suspend the application in that person's case of the electronic communications code if—

(a) the electronic communications code has been applied by a direction under section 106 in any person's case; and

(b) OFCOM give a direction under section 42, 100 **[**[F167](including that section as applied by section 105D)**]** , 132 or 140 for the suspension or restriction of that person's entitlement to provide an electronic communications network, or a part of such a network.

(3) The extent, in any person's case, of a suspension under subsection (2) must not go beyond the application of the code for the purposes of so much of an electronic communications network as that person is prohibited from providing by virtue of the suspension or restriction of his entitlement to provide such a network, or part of a network.

(4) OFCOM may, to the extent specified in subsection (5), suspend the application in that person's case of the electronic communications code if—

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) the electronic communications code has been applied by a direction under section 106 in any person's case; and

(b) that person is a person in whose case there have been **[**F168repeated or serious**]** contraventions of requirements imposed by virtue of any restrictions or conditions under section 109.

(5) The extent, in any person's case, of a suspension under subsection (4) must not go beyond the following applications of the code in his case—

(a) its application for the purposes of electronic communications networks, or parts of such a network, which are not yet in existence at the time of the suspension;

(b) its application for the purposes of conduit systems, or parts of such systems, which are not yet in existence or not yet used for the purposes of electronic communications networks; and

(c) its application for other purposes in circumstances in which the provision of an electronic communications network, or part of such a network, would not have to cease if its application for those purposes were suspended.

(6) A suspension under this section of the application of the code in any person's case must be by a further direction given to that person by OFCOM under section 106.

(7) The statement required by section 107(8) to be included, in the case of a direction for the purposes of this section, in the statement of OFCOM's proposal is a statement of their proposal to suspend the application of the code.

(8) A suspension of the application of the electronic communications code in any person's case—

(a) shall cease to have effect if the suspension is under subsection (2) and the network suspension or restriction ceases to have effect; but

(b) subject to that shall continue in force until such time (if any) as it is withdrawn by OFCOM.

(9) In subsection (8) the reference to the network suspension or restriction, in relation to a suspension of the application of the electronic communications code, is a reference to the suspension or restriction of an entitlement to provide an electronic communications network, or part of such a network, which is the suspension or restriction by reference to which the application of the code was suspended under subsection (2).

(10) Subject to subsection (11), where the application of the electronic communications code is suspended in a person's case, he shall not, while it is so suspended, be entitled to exercise any right conferred on him by or by virtue of the code.

(11) The suspension, in a person's case, of the application of the electronic communications code does not, except so far as otherwise provided by a scheme contained in an order under section 117—

(a) affect (as between the original parties to it) any agreement entered into for the purposes of the code or any agreement having effect in accordance with it;

(b) affect anything done under the code before the suspension of its application; or

(c) require the removal of, or prohibit the use of, any apparatus lawfully installed on, in or over any premises before that suspension.

(12) Subsection (9) of section 42 applies for the purposes of subsection (1) as it applies for the purposes of that section.

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

[F169(13) For the purposes of subsection (4) there are repeated contraventions by a person of conditions or restrictions under section 109 if—

(a) in the case of a previous notification given to the person under section 110, OFCOM have given a confirmation decision to the person under section 111(2);

(b) in the period of 24 months following the giving of that confirmation decision, one or more further confirmation decisions have been given to the person in respect of contraventions of a condition or restriction under section 109; and

(c) the previous confirmation decision and the subsequent ones all relate to contraventions of the same condition or restriction (whether the same contravention or different contraventions).**]**

Textual Amendments

F162 Words in s. 113(1)(a) substituted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 73(a)(i)** (with Sch. 3 paras. 2, 15)

F163 S. 113(1)(aa) inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 73(a)(ii)** (with Sch. 3 paras. 2, 15)

F164 Words in s. 113(1)(b) inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 73(a)(iii)** (with Sch. 3 paras. 2, 15)

F165 Words in s. 113(1)(c) inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 73(a)(iii)** (with Sch. 3 paras. 2, 15)

F166 S. 113(1)(d) substituted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 73(a)(iv)** (with Sch. 3 paras. 2, 15)

F167 Words in s. 113(2)(b) inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 73(b)** (with Sch. 3 paras. 2, 15)

F168 Words in s. 113(4)(b) substituted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 73(c)** (with Sch. 3 paras. 2, 15)

F169 S. 113(13) inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 73(d)** (with Sch. 3 paras. 2, 15)

Commencement Information

I163 S. 113 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))

I164 S. 113 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)

114 Procedure for directions under s. 113

(1) Except in an urgent case **[**F170, or a case of a single serious contravention,**]** , OFCOM are not to give a direction under section 113(4) suspending the application of the electronic communications code in the case of any person ("the operator") unless they have—

(a) notified the operator of the proposed suspension and of the steps (if any) that they are proposing to take under section 117;

(b) provided him with an opportunity of making representations about the proposals and of proposing steps for remedying the situation that has given rise to the proposed suspension; and

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(c) considered every representation and proposal made to them during the period allowed by them for the operator to take advantage of that opportunity.

[F171(2) That period is such reasonable period as OFCOM may specify, beginning with the day on which the notification is given.**]**

(3) As soon as practicable after giving a direction under section 113 in an urgent case, OFCOM must provide the operator with an opportunity of—

(a) making representations about the effect of the direction and of any steps taken under section 117 in connection with the suspension; and

(b) proposing steps for remedying the situation that has given rise to the situation.

[F172(3A) As soon as practicable after the period allowed by OFCOM for making those representations has ended (and in any event within 3 months beginning with the day on which the direction was given), they must determine—

(a) whether the contravention providing the grounds for the giving of the direction did occur; and

(b) whether the circumstances made it an urgent case justifying the giving of the direction.

(3B) The period of 3 months mentioned in subsection (3A) may be extended by up to 3 months if OFCOM—

(a) require additional time to consider representations received; or

(b) decide that it is necessary to obtain additional information from the person in order to make a determination under subsection (3A).

(3C) If OFCOM decide that the contravention did occur and that the direction was justified, they may confirm the direction.

(3D) If not, they must revoke it.**]**

(4) A case is an urgent case for the purposes of this section if OFCOM—

(a) consider that it would be inappropriate, because the circumstances appearing to OFCOM to require the suspension fall within subsection (5), to allow time, before giving a direction under section 113, for the making and consideration of representations; and

(b) decide for that reason to act in accordance with subsection (3), instead of subsection (1).

(5) Circumstances fall within this subsection if they have resulted in, or create an immediate risk of—

(a) a serious threat to the safety of the public, to public health or to national security;

(b) serious economic or operational problems for persons (apart from the operator) who are communications providers or persons who make associated facilities available; or

(c) serious economic or operational problems for persons who make use of electronic communications networks, electronic communications services or associated facilities.

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F170 Words in s. 114(1) inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 74(a)** (with Sch. 3 paras. 2, 15)

F171 S. 114(2) substituted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 74(b)** (with Sch. 3 paras. 2, 15)

F172 S. 114(3A)-(3D) inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 74(c)** (with Sch. 3 paras. 2, 15)

Commencement Information

I165 S. 114 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))

I166 S. 114 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)

115 Modification and revocation of application of code

(1) OFCOM may at any time modify the terms on which, by virtue of section 106(5), the code is applied in a person's case.

(2) OFCOM may revoke a direction applying the electronic communications code in a person's case if an application for the revocation has been made by that person.

(3) If at any time it appears to OFCOM that a person in whose case the electronic communications code has been applied is not the provider of an electronic communications network or conduit system for the purposes of which the code applies, OFCOM may revoke the direction applying the code in his case.

(4) A modification or revocation under this section shall be by a further direction under section 106 to the person in whose case the electronic communications code has been applied by the direction being modified or revoked.

[F173(4A) A modification under this section may not be made unless the modification is—

(a) objectively justifiable, and

(b) proportionate to what it is intended to achieve.**]**

(5) The matters required by section 107(8) to be included, in the case of a direction for the purposes of this section, in the statement of OFCOM's proposal are whichever of the following is applicable—

(a) a statement of their proposal to modify terms imposed under section 106(5);

(b) a statement of their proposal to revoke the direction applying the code.

Textual Amendments

F173 S. 115(4A) inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 75** (with Sch. 3 para. 2)

Commencement Information

I167 S. 115 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))

I168 S. 115 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)

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

116 Notification of cessation by person to whom code applies

(1) This section applies where, by virtue of a direction under section 106, the electronic communications code applies in any person's case for the purposes of the provision by him of—

(a) an electronic communications network which is not of a description designated for the purposes of section 33; or

(b) such a system of conduits as is mentioned in section 106(4)(b).

(2) If that person ceases to provide that network or conduit system, he must notify OFCOM of that fact.

(3) A notification under this section must be given within such period and in such manner as may be required by OFCOM.

(4) OFCOM may impose a penalty on a person who fails to comply with a requirement imposed by or under this section.

(5) The amount of a penalty imposed on a person under this section is to be such amount not exceeding £1,000 as OFCOM may determine to be both—

(a) appropriate; and

(b) proportionate to the matter in respect of which it is imposed.

(6) Where OFCOM impose a penalty on a person under this section, they shall—

(a) within one week of making their decision to impose the penalty, notify that person of that decision and of their reasons for that decision; and

(b) in that notification, fix a reasonable period after it is given as the period within which the penalty is to be paid.

(7) A penalty imposed under this section—

(a) must be paid to OFCOM; and

(b) if not paid within the period fixed by them, is to be recoverable by them accordingly.

(8) The Secretary of State may by order amend this section so as to substitute a different maximum penalty for the maximum penalty for the time being specified in subsection (5).

(9) No order is to be made containing provision authorised by subsection (8) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

Commencement Information

I169 S. 116 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))

I170 S. 116 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)

117 Transitional schemes on cessation of application of code

(1) Where it appears to OFCOM—

(a) that the electronic communications code has ceased or is to cease to apply, to any extent, in the case of any person ("the former operator"),

Status: *Point in time view as at 13/04/2015.*
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(b) that it has ceased or will cease so to apply for either of the reasons specified in subsection (2), and

(c) that it is appropriate for transitional provision to be made in connection with it ceasing to apply in the case of the former operator,

they may by order make a scheme containing any such transitional provision as they think fit in that case.

(2) Those reasons are—

(a) the suspension under section 113 of the application of the code in the former operator's case;

(b) the revocation or modification under section 115 of the direction applying the code in his case.

(3) A scheme contained in an order under this section may, in particular—

(a) impose any one or more obligations falling within subsection (4) on the former operator;

(b) provide for those obligations to be enforceable in such manner (otherwise than by criminal penalties) and by such persons as may be specified in the scheme;

(c) authorise the retention of apparatus on any land pending its subsequent use for the purposes of an electronic communications network, electronic communications service or conduit system to be provided by any person;

(d) provide for the transfer to such persons as may be specified in, or determined in accordance with, the scheme of any rights or liabilities arising out of any agreement or other obligation entered into or incurred in pursuance of the code by the former operator;

(e) provide, for the purposes of any provision contained in the scheme by virtue of any of the preceding paragraphs, for such questions arising under the scheme as are specified in the scheme, or are of a description so specified, to be referred to, and determined by, OFCOM.

(4) The obligations referred to in subsection (3)(a) are—

(a) an obligation to remove anything installed in pursuance of any right conferred by or in accordance with the code;

(b) an obligation to restore land to its condition before anything was done in pursuance of any such right; or

(c) an obligation to pay the expenses of any such removal or restoration.

(5) Sections 110 to 112 apply in relation to the requirements imposed by virtue of a scheme contained in an order under this section as they apply in relation to a requirement imposed by virtue of restrictions or conditions under section 109.

(6) Section 403 applies to the power of OFCOM to make an order under this section.

Commencement Information

I171 S. 117 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))

I172 S. 117 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)

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

118 Compulsory acquisition of land etc.

Schedule 4 (which provides for compulsory acquisition of land by the provider of an electronic communications network in whose case the electronic communications code applies and for entry on land by persons nominated by such a provider) shall have effect.

Commencement Information

I173 S. 118 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))

I174 S. 118 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)

119 Power to give assistance in relation to certain proceedings

(1) This section applies where any actual or prospective party to any proceedings falling within subsection (2) (other than the operator, within the meaning of the electronic communications code) applies to OFCOM for assistance under this section in relation to those proceedings.

(2) The proceedings falling within this subsection are any actual or prospective proceedings in which there falls to be determined any question arising under, or in connection with—

(a) the electronic communications code as applied in any person's case by a direction under section 106; or

(b) any restriction or condition subject to which that code applies.

(3) OFCOM may grant the application if, on any one or more of the following grounds, they think fit to do so—

(a) on the ground that the case raises a question of principle;

(b) on the ground that it is unreasonable, having regard to the complexity of the case or to any other matter, to expect the applicant to deal with the case without assistance under this section;

(c) by reason of any other special consideration.

(4) Assistance by OFCOM under this section may include—

(a) giving advice or arranging for the giving of advice by a solicitor or counsel;

(b) procuring or attempting to procure the settlement of the matter in dispute;

(c) arranging for the giving of any assistance usually given by a solicitor or counsel—

(i) in the steps preliminary or incidental to proceedings; or

(ii) in arriving at, or giving effect to, a compromise to avoid proceedings or to bring them to an end;

(d) arranging for representation by a solicitor or counsel;

(e) arranging for the giving of any other assistance by a solicitor or counsel;

(f) any other form of assistance which OFCOM consider appropriate.

(5) Nothing in subsection (4)(d) shall be taken to affect the law and practice regulating the descriptions of persons who may appear in, conduct or defend any proceedings, or who may address the court in any proceedings.

Status: *Point in time view as at 13/04/2015.*
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(6) In so far as expenses are incurred by OFCOM in providing the applicant with assistance under this section, the recovery of those expenses (as taxed or assessed in such manner as may be prescribed by rules of court) shall constitute a first charge for the benefit of OFCOM—

(a) on any costs or expenses which (whether by virtue of a judgment or order of a court, or an agreement or otherwise) are payable to the applicant by any other person in respect of the matter in connection with which the assistance is given; and

(b) so far as relates to costs or expenses, on the applicant's rights under a compromise or settlement arrived at in connection with that matter to avoid proceedings, or to bring them to an end.

(7) A charge conferred by subsection (6) is subject to—

(a) any charge imposed by **[**F174section 25 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012**]** and any provision made by or under Part 1 of that Act for the payment of any sum to the **[**F175Lord Chancellor**]** ;

(b) any charge or obligation for payment in priority to other debts under the Legal Aid (Scotland) Act 1986 (c. 47); or

(c) any charge under the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 (S.I. 1981/228 (N.I. 8)).

Textual Amendments

F174 Words in s. 119(7)(a) substituted (1.4.2013) by Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10), s. 151(1), **Sch. 5 para. 61(a)**; S.I. 2013/453, art. 3(h) (with savings and transitional provisions in S.I. 2013/534, art. 6)

F175 Words in s. 119(7)(a) substituted (1.4.2013) by Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10), s. 151(1), **Sch. 5 para. 61(b)**; S.I. 2013/453, art. 3(h) (with savings and transitional provisions in S.I. 2013/534, art. 6)

Commencement Information

I175 S. 119 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))

I176 S. 119 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)

Regulation of premium rate services

120 Conditions regulating premium rate services

(1) OFCOM shall have the power, for the purpose of regulating the provision, content, promotion and marketing of premium rate services, to set conditions under this section that bind the persons to whom they are applied.

(2) Conditions under this section may be applied either—

(a) generally to every person who provides a premium rate service; or

(b) to every person who is of a specified description of such persons, or who provides a specified description of such services.

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(3) The only provision that may be made by conditions under this section is provision requiring the person to whom the condition applies to comply, to the extent required by the condition, with—

(a) directions given in accordance with an approved code by the enforcement authority and for the purpose of enforcing its provisions; and

(b) if there is no such code, the provisions of the order for the time being in force under section 122.

(4) The power to set a condition under this section includes power to modify or revoke the conditions for the time being in force under this section.

(5) **[**F176Section 47 applies**]** to the setting, modification and revocation of a condition under this section as **[**F176it applies**]** to the setting, modification and revocation of a condition under section 45.

F177(6) . . . . . .

(7) A service is a premium rate service for the purposes of this Chapter if—

(a) it is a service falling within subsection (8);

(b) there is a charge for the provision of the service;

(c) the charge is required to be paid to a person providing an electronic communications service by means of which the service in question is provided; and

(d) that charge is imposed in the form of a charge made by that person for the use of the electronic communications service.

(8) A service falls within this subsection if its provision consists in—

(a) the provision of the contents of communications transmitted by means of an electronic communications network; or

(b) allowing the user of an electronic communications service to make use, by the making of a transmission by means of that service, of a facility made available to the users of the electronic communications service.

(9) For the purposes of this Chapter a person provides a premium rate service ("the relevant service") if—

(a) he provides the contents of the relevant service;

(b) he exercises editorial control over the contents of the relevant service;

(c) he is a person who packages together the contents of the relevant service for the purpose of facilitating its provision;

(d) he makes available a facility comprised in the relevant service; or

(e) he falls within subsection (10), (11) or (12).

(10) A person falls within this subsection if—

(a) he is the provider of an electronic communications service used for the provision of the relevant service; and

(b) under arrangements made with a person who is a provider of the relevant service falling within subsection (9)(a) to (d), he is entitled to retain some or all of the charges received by him in respect of the provision of the relevant service or of the use of his electronic communications service for the purposes of the relevant service.

(11) A person falls within this subsection if—

Status: *Point in time view as at 13/04/2015.*
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(a) he is the provider of an electronic communications network used for the provision of the relevant service; and

(b) an agreement relating to the use of the network for the provision of that service subsists between the provider of the network and a person who is a provider of the relevant service falling within subsection (9)(a) to (d).

(12) A person falls within this subsection if—

(a) he is the provider of an electronic communications network used for the provision of the relevant service; and

(b) the use of that network for the provision of premium rate services, or of services that include or may include premium rate services, is authorised by an agreement subsisting between that person and either an intermediary service provider or a person who is a provider of the relevant service by virtue of subsection (10) or (11).

(13) Where one or more persons are employed or engaged under the direction of another to do any of the things mentioned in subsection (9)(a) to (d), only that other person shall be a provider of the relevant service for the purposes of this Chapter.

(14) References in this section to a facility include, in particular, references to—

(a) a facility for making a payment for goods or services;

(b) a facility for entering a competition or claiming a prize; and

(c) a facility for registering a vote or recording a preference.

(15) In this section—

"approved code" means a code for the time being approved under section 121;

"enforcement authority", in relation to such a code, means the person who under the code has the function of enforcing it; and

"intermediary service provider" means a person who—

(a) provides an electronic communications service used for the provision of the relevant service or an electronic communications network so used; and

(b) is a party to an agreement with—

(i) a provider of the relevant service falling within subsection (9)(a) to (d), or

(ii) another intermediary service provider,

which relates to the use of that electronic communications service or network for the provision of premium rate services, or of services that include or may include premium rate services.

Textual Amendments

F176 Words in s. 120(5) substituted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 76(a)** (with Sch. 3 paras. 2, 16)

F177 S. 120(6) 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. 76(b)** (with Sch. 3 paras. 2, 16)

Commencement Information

I177 S. 120 in force at 29.12.2003 by S.I. 2003/3142, art. 3(1), **Sch. 1** (with art. 11)

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

[F178 120A Procedure for setting, modifying and revoking premium rate services conditions

(1) The way in which conditions are to be set or modified under section 120 is by the publication of a notification setting out the conditions or modifications.

(2) The way in which such a condition is to be revoked is by the publication of a notification stating that the condition is revoked.

(3) Before setting such conditions, or modifying or revoking a condition so set, OFCOM must publish a notification—

(a) stating that they are proposing to set, modify or revoke the conditions that are specified in the notification;

(b) setting out the effect of those conditions, modifications or revocations;

(c) giving their reasons for making the proposal; and

(d) specifying the period within which representations may be made to OFCOM about their proposal.

(3) That period must end no less than one month after the day of the publication of the notification.

(4) But where OFCOM are satisfied that there are exceptional circumstances justifying the use of a shorter period, the period specified as the period for making representations may be whatever shorter period OFCOM consider reasonable in those circumstances.

(5) OFCOM may give effect to the proposal, with any modifications that appear to OFCOM to be appropriate, after—

(a) considering every representation about the proposal made to them during the period specified in the notification; and

(b) having regard to every international obligation of the United Kingdom (if any) which has been notified to them for the purposes of this paragraph by the Secretary of State.

(6) The publication of a notification under this section must be in such manner as appears to OFCOM to be appropriate for bringing the contents of the notification to the attention of the persons who, in OFCOM's opinion, are likely to be affected by its contents.

(7) OFCOM must send a copy of every notification published under this section to the Secretary of State.**]**

Textual Amendments

F178 S. 120A inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 77** (with Sch. 3 paras. 2, 16)

121 Approval of code for premium rate services

(1) If it appears to OFCOM—

(a) that a code has been made by any person for regulating the provision and contents of premium rate services, and the facilities made available in the provision of such services;

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(b) that the code contains provision for regulating, to such extent (if any) as they think fit, the arrangements made by the providers of premium rate services for promoting and marketing those services; and

(c) that it would be appropriate for them to approve that code for the purposes of section 120,

they may approve that code for those purposes.

(2) OFCOM are not to approve a code for those purposes unless they are satisfied—

(a) that there is a person who, under the code, has the function of administering and enforcing it; and

(b) that that person is sufficiently independent of the providers of premium rate services;

(c) that adequate arrangements are in force for funding the activities of that person in relation to the code;

(d) that the provisions of the code are objectively justifiable in relation to the services to which it relates;

(e) that those provisions are not such as to discriminate unduly against particular persons or against a particular description of persons;

(f) that those provisions are proportionate to what they are intended to achieve; and

(g) that, in relation to what those provisions are intended to achieve, they are transparent.

(3) OFCOM are not for those purposes to approve so much of a code as imposes an obligation as respects a premium rate service on a person who is a provider of the service by virtue only of section 120(12) ("the relevant provider") unless they are satisfied that the obligation—

(a) arises only if there is no one who is a provider of the service otherwise than by virtue of section 120(12) against whom it is practicable to take action;

(b) arises only after a notice identifying the service and setting out respects in which requirements of the code have been contravened in relation to it has been given to the relevant provider by the person responsible for enforcing the code; and

(c) is confined to an obligation to secure that electronic communications networks provided by the relevant provider are not used for making the service available to persons who are in the United Kingdom.

(4) The provision that may be contained in a code and approved under this section includes, in particular, provision about the pricing of premium rate services and provision for the enforcement of the code.

(5) The provision for the enforcement of a code that may be approved under this section includes—

(a) provision for the payment, to a person specified in the code, of a penalty not exceeding the maximum penalty for the time being specified in section 123(2);

(b) provision requiring a provider of a premium rate service to secure that the provision of the service is suspended or otherwise ceases or is restricted in any respect;

(c) provision for the imposition on a person, in respect of a contravention of the code, of a temporary or permanent prohibition or restriction on his working in connection with the provision of premium rate services or, in the case of

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a body corporate, on its providing such services or on its carrying on other activities in connection with their provision.

(6) OFCOM may, at any time, for the purposes of section 120—

(a) approve modifications that have been made to an approved code; or

(b) withdraw their approval from an approved code.

(7) Where OFCOM give or withdraw an approval for the purposes of section 120, they must give notification of their approval or of its withdrawal.

(8) The notification must be published 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 by the approval or withdrawal.

Commencement Information

I178 S. 121 in force at 29.12.2003 by S.I. 2003/3142, art. 3(1), **Sch. 1** (with art. 11)

122 Orders by OFCOM in the absence of a code under s. 121

(1) OFCOM may make an order under this section if, at any time, they consider that there is no code in force to which they think it would be appropriate to give, or to continue to give, their approval under section 121.

(2) An order under this section may make such of the following provisions as OFCOM think fit—

(a) provision imposing requirements with respect to the provision and contents of premium rate services, and with respect to the facilities made available in the provision of such services (including provision about pricing);

(b) provision imposing requirements with respect to the arrangements made by the providers of premium rate services for the promotion and marketing of those services;

(c) provision for the enforcement of requirements imposed by virtue of paragraph (a) or (b);

(d) provision making other arrangements for the purposes of those requirements.

(3) The power to make provision by an order under this section includes, in particular—

(a) power to establish a body corporate with the capacity to make its own rules and to establish its own procedures;

(b) power to determine the jurisdiction of a body established by such an order or, for the purposes of the order, of any other person;

(c) power to confer jurisdiction with respect to any matter on OFCOM themselves;

(d) power to provide for a person on whom jurisdiction is conferred by the arrangements to make awards of compensation, to direct the reimbursement of costs or expenses, or to do both;

(e) power to provide for such a person to enforce, or to participate in the enforcement of, any awards or directions made under such an order;

(f) power to make provision falling within section 121(5)(c) for the enforcement of the provisions of the order; and

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(g) power to make such other provision as OFCOM think fit for the enforcement of such awards and directions.

(4) An order under this section may require such providers of premium rate services as may be determined by or under the order to make payments to OFCOM in respect of expenditure incurred by OFCOM in connection with—

(a) the establishment and maintenance, in accordance with such an order, of any body corporate or procedure; or

(b) the making of other arrangements for the purposes of the requirements of such an order.

(5) An order under this section is not to impose an obligation as respects a premium rate service on a person who is a provider of the service by virtue only of section 120(12) ("the relevant provider") unless the obligation—

(a) arises only if there is no one who is a provider of the service otherwise than by virtue of section 120(12) against whom it is practicable to take action;

(b) arises only after a notice identifying the service and setting out respects in which requirements of the order have been contravened in relation to it has been given to the relevant provider by OFCOM; and

(c) is confined to an obligation to secure that electronic communications networks provided by the relevant provider are not used for making the service available to persons who are in the United Kingdom.

(6) The consent of the Secretary of State is required for the making by OFCOM of an order under this section.

(7) Section 403 applies to the power of OFCOM to make an order under this section.

(8) A statutory instrument containing an order made by OFCOM under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Commencement Information

I179 S. 122 in force at 29.12.2003 by S.I. 2003/3142, art. 3(1), **Sch. 1** (with art. 11)

123 Enforcement of s. 120 conditions

(1) Sections 94 to 96 apply in relation to a contravention of conditions set under section 120 as they apply in relation to a contravention of a condition set under section 45.

(2) The amount of the penalty imposed under section 96 as applied by this section is to be such amount not exceeding **[**F179£250,000**]** as OFCOM determine to be—

(a) appropriate; and

(b) proportionate to the contravention in respect of which it is imposed.

(3) In making that determination OFCOM must have regard to—

(a) any representations made to them by the notified provider;

(b) any steps taken by him towards complying with the conditions contraventions of which have been notified to him under section 94 (as applied); and

(c) any steps taken by him for remedying the consequences of those contraventions.

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(4) The Secretary of State may by order amend this section so as to substitute a different maximum penalty for the maximum penalty for the time being specified in subsection (2).

(5) No order is to be made containing provision authorised by subsection (4) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

Textual Amendments

F179 Word in s. 123(2) substituted (30.12.2005) by Communications Act 2003 (Maximum Penalty and Disclosure of Information) Order 2005 (S.I. 2005/3469), arts. 1(1), **2** (with art. 2(2))

Commencement Information

I180 S. 123 in force at 29.12.2003 by S.I. 2003/3142, art. 3(1), **Sch. 1** (with art. 11)

124 Suspending service provision for contraventions of s. 120 conditions

(1) OFCOM may give a direction under this section to a person who is a communications provider ("the contravening provider") if they are satisfied—

(a) that he is or has been in serious and repeated contravention of conditions set under section 120;

(b) that an attempt, by the imposition of penalties or the giving of enforcement notifications under section 95 (as applied by section 123) or both, to secure compliance with the contravened conditions has failed;

(c) that the giving of the direction is appropriate and proportionate to the seriousness (when repeated as they have been) of the contraventions; and

(d) that the giving of the direction is required for reasons of public policy.

(2) OFCOM may also give a direction under this section to a person who is a communications provider ("the contravening provider") if they are satisfied—

(a) that he is, or has been, in contravention of conditions set under section 120 in respect of a premium rate service;

(b) that the circumstances of the contravention make it appropriate for OFCOM to suspend or restrict the provision of premium rate services provided by the contravening provider without the conditions set out in subsection (1) being satisfied; and

(c) that in those circumstances the giving of the direction is urgently required for reasons of public policy.

(3) A direction under this section is—

(a) a direction to the contravening provider to secure the suspension of the provision of premium rate services provided by him; or

(b) a direction requiring him to secure compliance with restrictions, set out in the direction, on the provision of such services.

(4) A direction under this section—

(a) must specify the services to which it relates; and

(b) except so far as it otherwise provides, takes effect for an indefinite period beginning with the time at which it is notified to the person to whom it is given.

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(5) A direction under this section—

(a) in providing for the effect of a suspension or restriction to be postponed, may provide for it to take effect only at a time determined by or in accordance with the terms of the direction; and

(b) in connection with the suspension or restriction contained in the direction or with the postponement of its effect, may impose such conditions on the contravening provider as appear to OFCOM to be appropriate for the purpose of protecting that provider's customers.

(6) Those conditions may include a condition requiring the making of payments—

(a) by way of compensation for loss or damage suffered by the contravening provider's customers as a result of the direction; or

(b) in respect of annoyance, inconvenience or anxiety to which they have been put in consequence of the direction.

(7) If OFCOM consider it appropriate to do so (whether or not in consequence of representations or proposals made to them), they may revoke a direction under this section or modify its conditions—

(a) with effect from such time as they may direct;

(b) subject to compliance with such requirements as they may specify; and

(c) to such extent and in relation to such services as they may determine.

(8) Sections 102 and 103 apply in the case of a direction under this section as they apply in the case of a direction under section 100, but as if references in section 103(1) to an electronic communications network or electronic communications service were references to a premium rate service.

(9) For the purposes of this section there are repeated contraventions by a person of conditions set under section 120 to the extent that—

(a) in the case of a previous notification given to that person under section section 94 (as applied by section 123), OFCOM have determined for the purposes of section 95(2) or 96(2) (as so applied) that such a contravention did occur; and

(b) in the period of twelve months following the day of the making of that determination, one or more further notifications have been given to that person in respect of contraventions of a condition set under section 120.

(10) For the purposes of this section the seriousness of repeated contraventions of conditions set under section 120 has to be determined by reference to the seriousness of the contraventions of the approved code or order by reference to which the conditions have effect.

Commencement Information

I181 S. 124 in force at 29.12.2003 by S.I. 2003/3142, art. 3(1), **Sch. 1** (with art. 11)

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

[F180 Online infringement of copyright: obligations of internet service providers

Textual Amendments

F180 S. 124A and cross-heading inserted (8.6.2010) by Digital Economy Act 2010 (c. 24), **ss. 3**, 47(1)

124A Obligation to notify subscribers of copyright infringement reports

(1) This section applies if it appears to a copyright owner that—

(a) a subscriber to an internet access service has infringed the owner's copyright by means of the service; or

(b) a subscriber to an internet access service has allowed another person to use the service, and that other person has infringed the owner's copyright by means of the service.

(2) The owner may make a copyright infringement report to the internet service provider who provided the internet access service if a code in force under section 124C or 124D (an "initial obligations code") allows the owner to do so.

(3) A "copyright infringement report" is a report that—

(a) states that there appears to have been an infringement of the owner's copyright;

(b) includes a description of the apparent infringement;

(c) includes evidence of the apparent infringement that shows the subscriber's IP address and the time at which the evidence was gathered;

(d) is sent to the internet service provider within the period of 1 month beginning with the day on which the evidence was gathered; and

(e) complies with any other requirement of the initial obligations code.

(4) An internet service provider who receives a copyright infringement report must notify the subscriber of the report if the initial obligations code requires the provider to do so.

(5) A notification under subsection (4) must be sent to the subscriber within the period of 1 month beginning with the day on which the provider receives the report.

(6) A notification under subsection (4) must include—

(a) a statement that the notification is sent under this section in response to a copyright infringement report;

(b) the name of the copyright owner who made the report;

(c) a description of the apparent infringement;

(d) evidence of the apparent infringement that shows the subscriber's IP address and the time at which the evidence was gathered;

(e) information about subscriber appeals and the grounds on which they may be made;

(f) information about copyright and its purpose;

(g) advice, or information enabling the subscriber to obtain advice, about how to obtain lawful access to copyright works;

(h) advice, or information enabling the subscriber to obtain advice, about steps that a subscriber can take to protect an internet access service from unauthorised use; and

(i) anything else that the initial obligations code requires the notification to include.

Status: *Point in time view as at 13/04/2015.*
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(7) For the purposes of subsection (6)(h) the internet service provider must take into account the suitability of different protection for subscribers in different circumstances.

(8) The things that may be required under subsection (6)(i), whether in general or in a particular case, include in particular—

(a) a statement that information about the apparent infringement may be kept by the internet service provider;

(b) a statement that the copyright owner may require the provider to disclose which copyright infringement reports made by the owner to the provider relate to the subscriber;

(c) a statement that, following such a disclosure, the copyright owner may apply to a court to learn the subscriber's identity and may bring proceedings against the subscriber for copyright infringement; and

(d) where the requirement for the provider to send the notification arises partly because of a report that has already been the subject of a notification under subsection (4), a statement that the number of copyright infringement reports relating to the subscriber may be taken into account for the purposes of any technical measures.

(9) In this section "notify", in relation to a subscriber, means send a notification to the electronic or postal address held by the internet service provider for the subscriber (and sections 394 to 396 do not apply).**]**

[F181 124B Obligation to provide copyright infringement lists to copyright owners

(1) An internet service provider must provide a copyright owner with a copyright infringement list for a period if—

(a) the owner requests the list for that period; and

(b) an initial obligations code requires the internet service provider to provide it.

(2) A "copyright infringement list" is a list that—

(a) sets out, in relation to each relevant subscriber, which of the copyright infringement reports made by the owner to the provider relate to the subscriber, but

(b) does not enable any subscriber to be identified.

(3) A subscriber is a "relevant subscriber" in relation to a copyright owner and an internet service provider if copyright infringement reports made by the owner to the provider in relation to the subscriber have reached the threshold set in the initial obligations code.**]**

Textual Amendments

F181 S. 124B inserted (8.6.2010) by Digital Economy Act 2010 (c. 24), **ss. 4**, 47(1)

[F182 124C Approval of code about the initial obligations

(1) The obligations of internet service providers under sections 124A and 124B are the "initial obligations".

(2) If it appears to OFCOM—

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) that a code has been made by any person for the purpose of regulating the initial obligations; and

(b) that it would be appropriate for them to approve the code for that purpose,

they may by order approve it, with effect from the date given in the order.

(3) The provision that may be contained in a code and approved under this section includes provision that—

(a) specifies conditions that must be met for rights and obligations under the copyright infringement provisions or the code to apply in a particular case;

(b) requires copyright owners or internet service providers to provide any information or assistance that is reasonably required to determine whether a condition under paragraph (a) is met.

(4) The provision mentioned in subsection (3)(a) may, in particular, specify that a right or obligation does not apply in relation to a copyright owner unless the owner has made arrangements with an internet service provider regarding—

(a) the number of copyright infringement reports that the owner may make to the provider within a particular period; and

(b) payment in advance of a contribution towards meeting costs incurred by the provider.

(5) The provision mentioned in subsection (3)(a) may also, in particular, provide that—

(a) except as provided by the code, rights and obligations do not apply in relation to an internet service provider unless the number of copyright infringement reports the provider receives within a particular period reaches a threshold set in the code; and

(b) if the threshold is reached, rights or obligations apply with effect from the date when it is reached or from a later time.

(6) OFCOM must not approve a code under this section unless satisfied that it meets the criteria set out in section 124E.

(7) Not more than one approved code may have effect at a time.

(8) OFCOM must keep an approved code under review.

(9) OFCOM may by order, at any time, for the purpose mentioned in subsection (2)—

(a) approve modifications that have been made to an approved code; or

(b) withdraw their approval from an approved code,

with effect from the date given in the order, and must do so if the code ceases to meet the criteria set out in section 124E.

(10) The consent of the Secretary of State is required for the approval of a code or the modification of an approved code.

(11) An order made by OFCOM under this section approving a code or modification must set out the code or modification.

(12) Section 403 applies to the power of OFCOM to make an order under this section.

(13) A statutory instrument containing an order made by OFCOM under this section is subject to annulment in pursuance of a resolution of either House of Parliament.**]**

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F182 S. 124C inserted (8.4.2010) by Digital Economy Act 2010 (c. 24), **ss. 5**, 47(2)(a)

[F183 124D Initial obligations code by OFCOM in the absence of an approved code

(1) For any period when sections 124A and 124B are in force but for which there is no approved initial obligations code under section 124C, OFCOM must by order make a code for the purpose of regulating the initial obligations.

(2) OFCOM may but need not make a code under subsection (1) for a time before the end of—

(a) the period of six months beginning with the day on which sections 124A and 124B come into force, or

(b) such longer period as the Secretary of State may specify by notice to OFCOM.

(3) The Secretary of State may give a notice under subsection (2)(b) only if it appears to the Secretary of State that it is not practicable for OFCOM to make a code with effect from the end of the period mentioned in subsection (2)(a) or any longer period for the time being specified under subsection (2)(b).

(4) A code under this section may do any of the things mentioned in section 124C(3) to (5).

(5) A code under this section may also—

(a) confer jurisdiction with respect to any matter (other than jurisdiction to determine appeals by subscribers) on OFCOM themselves;

(b) provide for OFCOM, in exercising such jurisdiction, to make awards of compensation, to direct the reimbursement of costs, or to do both;

(c) provide for OFCOM to enforce, or to participate in the enforcement of, any awards or directions made under the code;

(d) make other provision for the enforcement of such awards and directions;

(e) establish a body corporate, with the capacity to make its own rules and establish its own procedures, for the purpose of determining subscriber appeals;

(f) provide for a person with the function of determining subscriber appeals to enforce, or to participate in the enforcement of, any awards or directions made by the person;

(g) make other provision for the enforcement of such awards and directions; and

(h) make other provision for the purpose of regulating the initial obligations.

(6) OFCOM must not make a code under this section unless they are satisfied that it meets the criteria set out in section 124E.

(7) OFCOM must—

(a) keep a code under this section under review; and

(b) by order make any amendment of it that is necessary to ensure that while it is in force it continues to meet the criteria set out in section 124E.

(8) The consent of the Secretary of State is required for the making or amendment by OFCOM of a code under this section.

(9) Section 403 applies to the power of OFCOM to make an order under this section.

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(10) A statutory instrument containing an order made by OFCOM under this section is subject to annulment in pursuance of a resolution of either House of Parliament.**]**

Textual Amendments

F183 S. 124D inserted (8.4.2010) by Digital Economy Act 2010 (c. 24), **ss. 6**, 47(2)(a)

[F184 124E Contents of initial obligations code

(1) The criteria referred to in sections 124C(6) and 124D(6) are—

(a) that the code makes the required provision about copyright infringement reports (see subsection (2));

(b) that it makes the required provision about the notification of subscribers (see subsections (3) and (4));

(c) that it sets the threshold applying for the purposes of determining who is a relevant subscriber within the meaning of section 124B(3) (see subsections (5) and (6));

(d) that it makes provision about how internet service providers are to keep information about subscribers;

(e) that it limits the time for which they may keep that information;

(f) that it makes any provision about contributions towards meeting costs that is required to be included by an order under section 124M;

(g) that the requirements concerning administration and enforcement are met in relation to the code (see subsections (7) and (8));

(h) that the requirements concerning subscriber appeals are met in relation to the code (see section 124K);

(i) that the provisions of the code are objectively justifiable in relation to the matters to which it relates;

(j) that those provisions are not such as to discriminate unduly against particular persons or against a particular description of persons;

(k) that those provisions are proportionate to what they are intended to achieve; and

(l) that, in relation to what those provisions are intended to achieve, they are transparent.

(2) The required provision about copyright infringement reports is provision that specifies—

(a) requirements as to the means of obtaining evidence of infringement of copyright for inclusion in a report;

(b) the standard of evidence that must be included; and

(c) the required form of the report.

(3) The required provision about the notification of subscribers is provision that specifies, in relation to a subscriber in relation to whom an internet service provider receives one or more copyright infringement reports—

(a) requirements as to the means by which the provider identifies the subscriber;

(b) which of the reports the provider must notify the subscriber of; and

(c) requirements as to the form, contents and means of the notification in each case.

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(4) The provision mentioned in subsection (3) must not permit any copyright infringement report received by an internet service provider more than 12 months before the date of a notification of a subscriber to be taken into account for the purposes of the notification.

(5) The threshold applying in accordance with subsection (1)(c) may, subject to subsection (6), be set by reference to any matter, including in particular one or more of—

(a) the number of copyright infringement reports;

(b) the time within which the reports are made; and

(c) the time of the apparent infringements to which they relate.

(6) The threshold applying in accordance with subsection (1)(c) must operate in such a way that a copyright infringement report received by an internet service provider more than 12 months before a particular date does not affect whether the threshold is met on that date; and a copyright infringement list provided under section 124B must not take into account any such report.

(7) The requirements concerning administration and enforcement are—

(a) that OFCOM have, under the code, the functions of administering and enforcing it, including the function of resolving owner-provider disputes;

(b) that there are adequate arrangements under the code for OFCOM to obtain any information or assistance from internet service providers or copyright owners that OFCOM reasonably require for the purposes of administering and enforcing the code; and

(c) that there are adequate arrangements under the code for the costs incurred by OFCOM in administering and enforcing the code to be met by internet service providers and copyright owners.

(8) The provision mentioned in subsection (7) may include, in particular—

(a) provision for the payment, to a person specified in the code, of a penalty not exceeding the maximum penalty for the time being specified in section 124L(2);

(b) provision requiring a copyright owner to indemnify an internet service provider for any loss or damage resulting from the owner's failure to comply with the code or the copyright infringement provisions.

(9) In this section "owner-provider dispute" means a dispute that—

(a) is between persons who are copyright owners or internet service providers; and

(b) relates to an act or omission in relation to an initial obligation or an initial obligations code.**]**

Textual Amendments

F184 S. 124E inserted (8.4.2010) by Digital Economy Act 2010 (c. 24), **ss. 7**, 47(2)(a)

[F185 124F Progress reports

(1) OFCOM must prepare the following reports for the Secretary of State about the infringement of copyright by subscribers to internet access services.

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(2) OFCOM must prepare a full report for—

(a) the period of 12 months beginning with the first day on which there is an initial obligations code in force; and

(b) each successive period of 12 months.

(3) OFCOM must prepare an interim report for—

(a) the period of 3 months beginning with the first day on which there is an initial obligations code in force; and

(b) each successive period of 3 months, other than one ending at the same time as a period of 12 months under subsection (2).

But this is subject to any direction by the Secretary of State under subsection (4).

(4) The Secretary of State may direct that subsection (3) no longer applies, with effect from the date given in the direction.

(5) A full report under this section must include—

(a) an assessment of the current level of subscribers' use of internet access services to infringe copyright;

(b) a description of the steps taken by copyright owners to enable subscribers to obtain lawful access to copyright works;

(c) a description of the steps taken by copyright owners to inform, and change the attitude of, members of the public in relation to the infringement of copyright;

(d) an assessment of the extent of the steps mentioned in paragraphs (b) and (c);

(e) an assessment of the extent to which copyright owners have made copyright infringement reports;

(f) an assessment of the extent to which they have brought legal proceedings against subscribers in relation to whom such reports have been made;

(g) an assessment of the extent to which any such proceedings have been against subscribers in relation to whom a substantial number of reports have been made; and

(h) anything else that the Secretary of State directs OFCOM to include in the report.

(6) An interim report under this section must include—

(a) the assessments mentioned in subsection (5)(a), (e) and (f); and

(b) anything else that the Secretary of State directs OFCOM to include in the report.

(7) OFCOM must send a report prepared under this section to the Secretary of State as soon as practicable after the end of the period for which it is prepared.

(8) OFCOM must publish every full report under this section—

(a) as soon as practicable after they send it to the Secretary of State, and

(b) in such manner as they consider appropriate for bringing it to the attention of persons who, in their opinion, are likely to have an interest in it.

(9) OFCOM may exclude information from a report when it is published under subsection (8) if they consider that it is information that they could refuse to disclose in response to a request under the Freedom of Information Act 2000.**]**

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F185 S. 124F inserted (8.6.2010) by Digital Economy Act 2010 (c. 24), **ss. 8**, 47(1)

[F186 124G Obligations to limit internet access: assessment and preparation

(1) The Secretary of State may direct OFCOM to—

(a) assess whether one or more technical obligations should be imposed on internet service providers;

(b) take steps to prepare for the obligations;

(c) provide a report on the assessment or steps to the Secretary of State.

(2) A "technical obligation", in relation to an internet service provider, is an obligation for the provider to take a technical measure against some or all relevant subscribers to its service for the purpose of preventing or reducing infringement of copyright by means of the internet.

(3) A "technical measure" is a measure that—

(a) limits the speed or other capacity of the service provided to a subscriber;

(b) prevents a subscriber from using the service to gain access to particular material, or limits such use;

(c) suspends the service provided to a subscriber; or

(d) limits the service provided to a subscriber in another way.

(4) A subscriber to an internet access service is "relevant" if the subscriber is a relevant subscriber, within the meaning of section 124B(3), in relation to the provider of the service and one or more copyright owners.

(5) The assessment and steps that the Secretary of State may direct OFCOM to carry out or take under subsection (1) include, in particular—

(a) consultation of copyright owners, internet service providers, subscribers or any other person;

(b) an assessment of the likely efficacy of a technical measure in relation to a particular type of internet access service; and

(c) steps to prepare a proposed technical obligations code.

(6) Internet service providers and copyright owners must give OFCOM any assistance that OFCOM reasonably require for the purposes of complying with any direction under this section.

(7) The Secretary of State must lay before Parliament any direction under this section.

(8) OFCOM must publish every report under this section—

(a) as soon as practicable after they send it to the Secretary of State, and

(b) in such manner as they consider appropriate for bringing it to the attention of persons who, in their opinion, are likely to have an interest in it.

(9) OFCOM may exclude information from a report when it is published under subsection (8) if they consider that it is information that they could refuse to disclose in response to a request under the Freedom of Information Act 2000.**]**

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F186 S. 124G inserted (8.6.2010) by Digital Economy Act 2010 (c. 24), **ss. 9**, 47(1)

[F187 124H Obligations to limit internet access

(1) The Secretary of State may by order impose a technical obligation on internet service providers if—

(a) OFCOM have assessed whether one or more technical obligations should be imposed on internet service providers; and

(b) taking into account that assessment, reports prepared by OFCOM under section 124F, and any other matter that appears to the Secretary of State to be relevant, the Secretary of State considers it appropriate to make the order.

(2) No order may be made under this section within the period of 12 months beginning with the first day on which there is an initial obligations code in force.

(3) An order under this section must specify the date from which the technical obligation is to have effect, or provide for it to be specified.

(4) The order may also specify—

(a) the criteria for taking the technical measure concerned against a subscriber;

(b) the steps to be taken as part of the measure and when they are to be taken.

(5) No order is to be made under this section unless—

(a) the Secretary of State has complied with subsections (6) to (10), and

(b) a draft of the order has been laid before Parliament and approved by a resolution of each House.

(6) If the Secretary of State proposes to make an order under this section, the Secretary of State must lay before Parliament a document that—

(a) explains the proposal, and

(b) sets it out in the form of a draft order.

(7) During the period of 60 days beginning with the day on which the document was laid under subsection (6) ("the 60-day period"), the Secretary of State may not lay before Parliament a draft order to give effect to the proposal (with or without modifications).

(8) In preparing a draft order under this section to give effect to the proposal, the Secretary of State must have regard to any of the following that are made with regard to the draft order during the 60-day period—

(a) any representations, and

(b) any recommendations of a committee of either House of Parliament charged with reporting on the draft order.

(9) When laying before Parliament a draft order to give effect to the proposal (with or without modifications), the Secretary of State must also lay a document that explains any changes made to the proposal contained in the document laid before Parliament under subsection (6).

(10) In calculating the 60-day period, no account is to be taken of any time during which Parliament is dissolved or prorogued or during which either House is adjourned for more than 4 days.**]**

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F187 S. 124H inserted (8.6.2010) by Digital Economy Act 2010 (c. 24), **ss. 10**, 47(1)

[F188 124I Code by OFCOM about obligations to limit internet access

(1) For any period during which there are one or more technical obligations in force under section 124H, OFCOM must by order make a technical obligations code for the purpose of regulating those obligations.

(2) The code may be made separately from, or in combination with, any initial obligations code under section 124D.

(3) A code under this section may—

(a) do any of the things mentioned in section 124C(3) to (5) or section 124D(5)(a) to (g); and

(b) make other provision for the purpose of regulating the technical obligations.

(4) OFCOM must not make a code under this section unless they are satisfied that it meets the criteria set out in section 124J.

(5) OFCOM must—

(a) keep a code under this section under review; and

(b) by order make any amendment of it that is necessary to ensure that while it is in force it continues to meet the criteria set out in section 124J.

(6) The consent of the Secretary of State is required for the making or amendment by OFCOM of a code under this section.

(7) Section 403 applies to the power of OFCOM to make an order under this section.

(8) A statutory instrument containing an order made by OFCOM under this section is subject to annulment in pursuance of a resolution of either House of Parliament.**]**

Textual Amendments

F188 S. 124I inserted (8.6.2010) by Digital Economy Act 2010 (c. 24), **ss. 11**, 47(1)

[F189 124J Contents of code about obligations to limit internet access

(1) The criteria referred to in section 124I(4) are—

(a) that the requirements concerning enforcement and related matters are met in relation to the code (see subsections (2) and (3));

(b) that the requirements concerning subscriber appeals are met in relation to the code (see section 124K);

(c) that it makes any provision about contributions towards meeting costs that is required to be included by an order under section 124M;

(d) that it makes any other provision that the Secretary of State requires it to make;

(e) that the provisions of the code are objectively justifiable in relation to the matters to which it relates;

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(f) that those provisions are not such as to discriminate unduly against particular persons or against a particular description of persons;

(g) that those provisions are proportionate to what they are intended to achieve; and

(h) that, in relation to what those provisions are intended to achieve, they are transparent.

(2) The requirements concerning enforcement and related matters are—

(a) that OFCOM have, under the code, the functions of administering and enforcing it, including the function of resolving owner-provider disputes;

(b) that there are adequate arrangements under the code for OFCOM to obtain any information or assistance from internet service providers or copyright owners that OFCOM reasonably require for the purposes of administering and enforcing the code; and

(c) that there are adequate arrangements under the code for the costs incurred by OFCOM in administering and enforcing the code to be met by internet service providers and copyright owners.

(3) The provision made concerning enforcement and related matters may also (unless the Secretary of State requires otherwise) include, in particular—

(a) provision for the payment, to a person specified in the code, of a penalty not exceeding the maximum penalty for the time being specified in section 124L(2);

(b) provision requiring a copyright owner to indemnify an internet service provider for any loss or damage resulting from the owner's infringement or error in relation to the code or the copyright infringement provisions.

(4) In this section "owner-provider dispute" means a dispute that—

(a) is between persons who are copyright owners or internet service providers; and

(b) relates to an act or omission in relation to a technical obligation or a technical obligations code.**]**

Textual Amendments

F189 S. 124J inserted (8.6.2010) by Digital Economy Act 2010 (c. 24), **ss. 12**, 47(1)

[F190 124K Subscriber appeals

(1) The requirements concerning subscriber appeals are—

(a) for the purposes of section 124E(1)(h), the requirements of subsections (2) to (8); and

(b) for the purposes of section 124J(1)(b), the requirements of subsections (2) to (11).

(2) The requirements of this subsection are—

(a) that the code confers on subscribers the right to bring a subscriber appeal and, in the case of a technical obligations code, a further right of appeal to the First-tier Tribunal;

(b) that there is a person who, under the code, has the function of determining subscriber appeals;

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(c) that that person is for practical purposes independent (so far as determining subscriber appeals is concerned) of internet service providers, copyright owners and OFCOM; and

(d) that there are adequate arrangements under the code for the costs incurred by that person in determining subscriber appeals to be met by internet service providers, copyright owners and the subscriber concerned.

(3) The code must provide for the grounds of appeal (so far as an appeal relates to, or to anything done by reference to, a copyright infringement report) to include the following—

(a) that the apparent infringement to which the report relates was not an infringement of copyright;

(b) that the report does not relate to the subscriber's IP address at the time of the apparent infringement.

(4) The code must provide for the grounds of appeal to include contravention by the copyright owner or internet service provider of the code or of an obligation regulated by the code.

(5) The code must provide that an appeal on any grounds must be determined in favour of the subscriber unless the copyright owner or internet service provider shows that, as respects any copyright infringement report to which the appeal relates or by reference to which anything to which the appeal relates was done (or, if there is more than one such report, as respects each of them)—

(a) the apparent infringement was an infringement of copyright, and

(b) the report relates to the subscriber's IP address at the time of that infringement.

(6) The code must provide that, where a ground mentioned in subsection (3) is relied on, the appeal must be determined in favour of the subscriber if the subscriber shows that—

(a) the act constituting the apparent infringement to which the report relates was not done by the subscriber, and

(b) the subscriber took reasonable steps to prevent other persons infringing copyright by means of the internet access service.

(7) The powers of the person determining subscriber appeals must include power—

(a) to secure so far as practicable that a subscriber is not prejudiced for the purposes of the copyright infringement provisions by an act or omission in respect of which an appeal is determined in favour of the subscriber;

(b) to make an award of compensation to be paid by a copyright owner or internet service provider to a subscriber affected by such an act or omission; and

(c) where the appeal is determined in favour of the subscriber, to direct the copyright owner or internet service provider to reimburse the reasonable costs of the subscriber.

(8) The code must provide that the power to direct the reimbursement of costs under subsection (7)(c) is to be exercised to award reasonable costs to a subscriber whose appeal is successful, unless the person deciding the appeal is satisfied that it would be unjust to give such a direction having regard to all the circumstances including the conduct of the parties before and during the proceedings.

(9) In the case of a technical obligations code, the powers of the person determining subscriber appeals must include power—

Status: *Point in time view as at 13/04/2015.*
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(a) on an appeal in relation to a technical measure or proposed technical measure—

(i) to confirm the measure;

(ii) to require the measure not to be taken or to be withdrawn;

(iii) to substitute any other technical measure that the internet service provider has power to take;

(b) to exercise the power mentioned in paragraph (a)(ii) or (iii) where an appeal is not upheld but the person determining it is satisfied that there are exceptional circumstances that justify the exercise of the power;

(c) to take any steps that OFCOM could take in relation to the act or omission giving rise to the technical measure; and

(d) to remit the decision whether to confirm the technical measure, or any matter relating to that decision, to OFCOM.

(10) In the case of a technical obligations code, the code must make provision—

(a) enabling a determination of a subscriber appeal to be appealed to the First-tier Tribunal, including on grounds that it was based on an error of fact, wrong in law or unreasonable;

(b) giving the First-tier Tribunal, in relation to an appeal to it, the powers mentioned in subsections (7) and (9); and

(c) in relation to recovery of costs awarded by the Tribunal.

(11) In the case of a technical obligations code, the code must include provision to secure that a technical measure is not taken against a subscriber until—

(a) the period for bringing a subscriber appeal, or any further appeal to the First-tier Tribunal, in relation to the proposed measure has ended (or the subscriber has waived the right to appeal); and

(b) any such subscriber appeal or further appeal has been determined, abandoned or otherwise disposed of.**]**

Textual Amendments

F190 S. 124K inserted (8.6.2010) by Digital Economy Act 2010 (c. 24), **ss. 13**, 47(1)

[F191 124I Enforcement of obligations

(1) Sections 94 to 96 apply in relation to a contravention of an initial obligation or a technical obligation, or a contravention of an obligation under section 124G(6), as they apply in relation to a contravention of a condition set out under section 45.

(2) The amount of the penalty imposed under section 96 as applied by this section is to be such amount not exceeding £250,000 as OFCOM determine to be—

(a) appropriate; and

(b) proportionate to the contravention in respect of which it is imposed.

(3) In making that determination OFCOM must have regard to—

(a) any representations made to them by the internet service provider or copyright owner on whom the penalty is imposed;

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(b) any steps taken by the provider or owner towards complying with the obligations contraventions of which have been notified to the provider or owner under section 94 (as applied); and

(c) any steps taken by the provider or owner for remedying the consequences of those contraventions.

(4) The Secretary of State may by order amend this section so as to substitute a different maximum penalty for the maximum penalty for the time being specified in subsection (2).

(5) No order is to be made containing provision authorised by subsection (4) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.**]**

Textual Amendments

F191 S. 124L inserted (8.6.2010) by Digital Economy Act 2010 (c. 24), **ss. 14**, 47(1)

[F192 124M Sharing of costs

(1) The Secretary of State may by order specify provision that must be included in an initial obligations code or a technical obligations code about payment of contributions towards costs incurred under the copyright infringement provisions.

(2) Any provision specified under subsection (1) must relate to payment of contributions by one or more of the following only—

(a) copyright owners;

(b) internet service providers;

(c) in relation to a subscriber appeal or a further appeal by a subscriber to the First-tier Tribunal, the subscriber.

(3) Provision specified under subsection (1) may relate to, in particular—

(a) payment by a copyright owner of a contribution towards the costs that an internet service provider incurs;

(b) payment by a copyright owner or internet service provider of a contribution towards the costs that OFCOM incur.

(4) Provision specified under subsection (1) may include, in particular—

(a) provision about costs incurred before the provision is included in an initial obligations code or a technical obligations code;

(b) provision for payment in advance of expected costs (and for reimbursement of overpayments where the costs incurred are less than expected);

(c) provision about how costs, expected costs or contributions must be calculated;

(d) other provision about when and how contributions must be paid.

(5) No order is to be made under this section unless a draft of the order has been laid before Parliament and approved by a resolution of each House.**]**

Textual Amendments

F192 S. 124M inserted (8.4.2010) by virtue of Digital Economy Act 2010 (c. 24), **ss. 15**, 47(2)(a)

Status: *Point in time view as at 13/04/2015.*
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[F193 124N Interpretation

In sections 124A to 124M and this section—

"apparent infringement", in relation to a copyright infringement report, means the infringement of copyright that the report states appears to have taken place;

"copyright infringement list" has the meaning given in section 124B(2);

"copyright infringement provisions" means sections 124A to 124M and this section;

"copyright infringement report" has the meaning given in section 124A(3);

"copyright owner" means—

(a) a copyright owner within the meaning of Part 1 of the Copyright, Designs and Patents Act 1988 (see section 173 of that Act); or

(b) someone authorised by that person to act on the person's behalf;

"copyright work" has the same meaning as in Part 1 of the Copyright, Designs and Patents Act 1988 (see section 1(2) of that Act);

"initial obligations" has the meaning given in section 124C(1);

"initial obligations code" has the meaning given in section 124A(2);

"internet access service" means an electronic communications service that—

(a) is provided to a subscriber;

(b) consists entirely or mainly of the provision of access to the internet; and

(c) includes the allocation of an IP address or IP addresses to the subscriber to enable that access;

"internet service provider" means a person who provides an internet access service;

"IP address" means an internet protocol address;

"subscriber", in relation to an internet access service, means a person who—

(a) receives the service under an agreement between the person and the provider of the service; and

(b) does not receive it as a communications provider;

"subscriber appeal" means—

(a) in relation to an initial obligations code, an appeal by a subscriber on grounds specified in the code in relation to—

(i) the making of a copyright infringement report;

(ii) notification under section 124A(4);

(iii) the inclusion or proposed inclusion of an entry in a copyright infringement list; or

(iv) any other act or omission in relation to an initial obligation or an initial obligations code;

(b) in relation to a technical obligations code, an appeal by a subscriber on grounds specified in the code in relation to—

(i) the proposed taking of a technical measure; or

(ii) any other act or omission in relation to a technical obligation or a technical obligations code;

"technical measure" has the meaning given in section 124G(3);

"technical obligation" has the meaning given in section 124G(2);

"technical obligations code" means a code in force under section 124I.]

Status: *Point in time view as at 13/04/2015.*
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Textual Amendments

F193 S. 124N inserted (8.4.2010) by Digital Economy Act 2010 (c. 24), **ss. 16(1)**, 47(2)(a)

Offences relating to networks and services

125 Dishonestly obtaining electronic communications services

(1) A person who—

(a) dishonestly obtains an electronic communications service, and

(b) does so with intent to avoid payment of a charge applicable to the provision of that service,

is guilty of an offence.

(2) It is not an offence under this section to obtain a service mentioned in section 297(1) of the Copyright, Designs and Patents Act 1988 (c. 48) (dishonestly obtaining a broadcasting [F194]... service provided from a place in the UK).

(3) A person guilty of an offence under this section shall be liable—

(a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both;

(b) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine, or to both.

Textual Amendments

F194 Words in s. 125(2) repealed (31.10.2003) by The Copyright and Related Rights Regulations 2003 (S.I. 2003/2498), reg. 1, **Sch. 2** (with regs. 31-40)

Commencement Information

I182 S. 125 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))

I183 S. 125 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)

126 Possession or supply of apparatus etc. for contravening s. 125

(1) A person is guilty of an offence if, with an intention falling within subsection (3), he has in his possession or under his control anything that may be used—

(a) for obtaining an electronic communications service; or

(b) in connection with obtaining such a service.

(2) A person is guilty of an offence if—

(a) he supplies or offers to supply anything which may be used as mentioned in subsection (1); and

(b) he knows or believes that the intentions in relation to that thing of the person to whom it is supplied or offered fall within subsection (3).

(3) A person's intentions fall within this subsection if he intends—

(a) to use the thing to obtain an electronic communications service dishonestly;

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(b) to use the thing for a purpose connected with the dishonest obtaining of such a service;

(c) dishonestly to allow the thing to be used to obtain such a service; or

(d) to allow the thing to be used for a purpose connected with the dishonest obtaining of such a service.

(4) An intention does not fall within subsection (3) if it relates exclusively to the obtaining of a service mentioned in section 297(1) of the Copyright, Designs and Patents Act 1988 (c. 48).

(5) A person guilty of an offence under this section shall be liable—

(a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both; and

(b) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine, or to both.

(6) In this section, references, in the case of a thing used for recording data, to the use of that thing include references to the use of data recorded by it.

Commencement Information

I184 S. 126 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))

I185 S. 126 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)

127 Improper use of public electronic communications network

(1) A person is guilty of an offence if he—

(a) sends by means of a public electronic communications network a message or other matter that is grossly offensive or of an indecent, obscene or menacing character; or

(b) causes any such message or matter to be so sent.

(2) A person is guilty of an offence if, for the purpose of causing annoyance, inconvenience or needless anxiety to another, he—

(a) sends by means of a public electronic communications network, a message that he knows to be false,

(b) causes such a message to be sent; or

(c) persistently makes use of a public electronic communications network.

(3) A person guilty of an offence under this section shall be liable, on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale, or to both.

(4) Subsections (1) and (2) do not apply to anything done in the course of providing a programme service (within the meaning of the Broadcasting Act 1990 (c. 42)).

[F195(5) An information or complaint relating to an offence under this section may be tried by a magistrates' court in England and Wales or Northern Ireland if it is laid or made—

(a) before the end of the period of 3 years beginning with the day on which the offence was committed, and

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(b) before the end of the period of 6 months beginning with the day on which evidence comes to the knowledge of the prosecutor which the prosecutor considers sufficient to justify proceedings.

(6) Summary proceedings for an offence under this section may be commenced in Scotland—

(a) before the end of the period of 3 years beginning with the day on which the offence was committed, and

(b) before the end of the period of 6 months beginning with the day on which evidence comes to the knowledge of the prosecutor which the prosecutor considers sufficient to justify proceedings,

and section 136(3) of the Criminal Procedure (Scotland) Act 1995 (date when proceedings deemed to be commenced) applies for the purposes of this subsection as it applies for the purposes of that section.

(7) A certificate of a prosecutor as to the date on which evidence described in subsection (5)(b) or (6)(b) came to his or her knowledge is conclusive evidence of that fact.**]**

Textual Amendments

F195 S. 127(5)-(7) inserted (13.4.2015) by Criminal Justice and Courts Act 2015 (c. 2), **ss. 51(1)**, 95(1) (with s. 51(2)); S.I. 2015/778, art. 3, Sch. 1 para. 42

Commencement Information

I186 S. 127 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))

I187 S. 127 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)

Persistent misuse of network or service

128 Notification of misuse of networks and services

(1) Where OFCOM determine that there are reasonable grounds for believing that a person has persistently misused an electronic communications network or electronic communications services, they may give that person a notification under this section.

(2) A notification under this section is one which—

(a) sets out the determination made by OFCOM;

(b) specifies the use that OFCOM consider constitutes persistent misuse; and

(c) specifies the period during which the person notified has an opportunity of making representations about the matters notified.

(3) That period must not be less than the following—

(a) in an urgent case, seven days; and

(b) in any other case, one month.

(4) A case is an urgent case for the purposes of subsection (3) if OFCOM consider—

(a) that the misuse in question is continuing; and

(b) that the harm it causes makes it necessary for it to be stopped as soon as possible.

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Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(5) For the purposes of this Chapter a person misuses an electronic communications network or electronic communications service if—

(a) the effect or likely effect of his use of the network or service is to cause another person unnecessarily to suffer annoyance, inconvenience or anxiety; or

(b) he uses the network or service to engage in conduct the effect or likely effect of which is to cause another person unnecessarily to suffer annoyance, inconvenience or anxiety.

(6) For the purposes of this Chapter the cases in which a person is to be treated as persistently misusing a network or service include any case in which his misuse is repeated on a sufficient number of occasions for it to be clear that the misuse represents—

(a) a pattern of behaviour or practice; or

(b) recklessness as to whether persons suffer annoyance, inconvenience or anxiety.

(7) For the purpose of determining whether misuse on a number of different occasions constitutes persistent misuse for the purposes of this Chapter, each of the following is immaterial—

(a) that the misuse was in relation to a network on some occasions and in relation to a service on others;

(b) that different networks or services were involved on different occasions; and

(c) that the persons who were or were likely to suffer annoyance inconvenience or anxiety were different on different occasions.

(8) If he considers that appropriate alternative means of dealing with it exists, the Secretary of State may by order provide that a use of a description specified in the order is not to be treated for the purposes of this Chapter as a misuse of an electronic communications network or electronic communications service.

Commencement Information

I188 S. 128 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))

I189 S. 128 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)

129 Enforcement notifications for stopping persistent misuse

(1) This section applies where—

(a) a person ("the notified misuser") has been given a notification under section 128;

(b) OFCOM have allowed the notified misuser an opportunity of making representations about the matters notified; and

(c) the period allowed for the making of the representations has expired.

(2) OFCOM may give the notified misuser an enforcement notification if they are satisfied—

(a) that he has, in one or more of the notified respects, persistently misused an electronic communications network or electronic communications service; and

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(b) that he has not, since the giving of the notification, taken all such steps as OFCOM consider appropriate for—

(i) securing that his misuse is brought to an end and is not repeated; and

(ii) remedying the consequences of the notified misuse.

(3) An enforcement notification is a notification which imposes a requirement on the notified misuser to take all such steps for—

(a) securing that his misuse is brought to an end and is not repeated, and

(b) remedying the consequences of the notified misuse,

as may be specified in the notification.

(4) A decision of OFCOM to give an enforcement notification to a person must fix a reasonable period for the taking of the steps required by the notification.

(5) It shall be the duty of a person to whom an enforcement notification has been given to comply with it.

(6) That duty shall be enforceable in civil proceedings by OFCOM—

(a) for an injunction;

(b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988 (c. 36); or

(c) for any other appropriate remedy or relief.

(7) References in this section to remedying the consequences of misuse include references to paying an amount to a person—

(a) by way of compensation for loss or damage suffered by that person; or

(b) in respect of annoyance, inconvenience or anxiety to which he has been put.

Commencement Information

I190 S. 129 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))

I191 S. 129 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)

130 Penalties for persistent misuse

(1) This section applies (in addition to section 129) where—

(a) a person ("the notified misuser") has been given a notification under section 128;

(b) OFCOM have allowed the notified misuser an opportunity of making representations about the matters notified; and

(c) the period allowed for the making of the representations has expired.

(2) OFCOM may impose a penalty on the notified misuser if he has, in one or more of the notified respects, persistently misused an electronic communications network or electronic communications service.

(3) OFCOM may also impose a penalty on the notified misuser if he has contravened a requirement of an enforcement notification given in respect of the notified misuse.

(4) The amount of a penalty imposed is to be such amount not exceeding **[**[F196]£2,000,000**]** as OFCOM determine to be—

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(a) appropriate; and
(b) proportionate to the misuse in respect of which it is imposed.

(5) In making that determination OFCOM must have regard to—
(a) any representations made to them by the notified misuser;
(b) any steps taken by him for securing that his misuse is brought to an end and is not repeated; and
(c) any steps taken by him for remedying the consequences of the notified misuse.

(6) Where OFCOM impose a penalty on a person under this section, they shall—
(a) notify the person penalised; and
(b) in that notification, fix a reasonable period after it is given as the period within which the penalty is to be paid.

(7) A penalty imposed under this section—
(a) must be paid to OFCOM; and
(b) if not paid within the period fixed by them, is to be recoverable by them accordingly.

(8) It is to be possible for a person to be both liable for an offence under sections 125 to 127 and to have a penalty imposed on him under this section in respect of the same conduct.

(9) The Secretary of State may by order amend this section so as to substitute a different maximum penalty for the maximum penalty for the time being specified in subsection (4).

(10) No order is to be made containing provision authorised by subsection (9) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

Textual Amendments

F196 Word in s. 130(4) substituted (25.9.2010) by Communications Act 2003 (Maximum Penalty for Persistent Misuse of Network or Service) Order 2010 (S.I. 2010/2291), arts. 1, **2(1)** (with art. 2(2))

Commencement Information

I192 S. 130 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))

I193 S. 130 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)

131 Statement of policy on persistent misuse

(1) It shall be the duty of OFCOM to prepare and publish a statement of their general policy with respect to the exercise of their powers under sections 128 to 130.

(2) OFCOM may from time to time revise that statement as they think fit.

(3) Where OFCOM make or revise their statement of policy under this section, they must publish that 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.

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(4) It shall be the duty of OFCOM, in exercising the powers conferred on them by sections 128 to 130, to have regard to the statement for the time being in force under this section.

Commencement Information

I194 S. 131 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))

I195 S. 131 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)

Powers to deal with emergencies

132 Powers to require suspension or restriction of a provider's entitlement

(1) If the Secretary of State has reasonable grounds for believing that it is necessary to do so—

(a) to protect the public from any threat to public safety or public health, or

(b) in the interests of national security,

he may, by a direction to OFCOM, require them to give a direction under subsection (3) to a person ("the relevant provider") who provides an electronic communications network or electronic communications service or who makes associated facilities available.

(2) OFCOM must comply with a requirement of the Secretary of State under subsection (1) by giving to the relevant provider such direction under subsection (3) as they consider necessary for the purpose of complying with the Secretary of State's direction.

(3) A direction under this section is—

(a) a direction that the entitlement of the relevant provider to provide electronic communications networks or electronic communications services, or to make associated facilities available, is suspended (either generally or in relation to particular networks, services or facilities); or

(b) a direction that that entitlement is restricted in the respects set out in the direction.

(4) A direction under subsection (3)—

(a) must specify the networks, services and facilities to which it relates; and

(b) except so far as it otherwise provides, takes effect for an indefinite period beginning with the time at which it is notified to the person to whom it is given.

(5) A direction under subsection (3)—

(a) in providing for the effect of a suspension or restriction to be postponed, may provide for it to take effect only at a time determined by or in accordance with the terms of the direction; and

(b) in connection with the suspension or restriction contained in the direction or with the postponement of its effect, may impose such conditions on the relevant provider as appear to OFCOM to be appropriate for the purpose of protecting that provider's customers.

(6) Those conditions may include a condition requiring the making of payments—

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) by way of compensation for loss or damage suffered by the relevant provider's customers as a result of the direction; or

(b) in respect of annoyance, inconvenience or anxiety to which they have been put in consequence of the direction.

(7) Where OFCOM give a direction under subsection (3), they shall, as soon as practicable after doing so, provide that person with an opportunity of—

(a) making representations about the effect of the direction; and

(b) proposing steps for remedying the situation.

(8) If OFCOM consider it appropriate to do so (whether in consequence of any representations or proposals made to them under subsection (3) or otherwise), they may, without revoking it, at any time modify the terms of a direction under subsection (3) in such manner as they consider appropriate.

(9) If the Secretary of State considers it appropriate to do so, he may, by a direction to OFCOM, require them to revoke a direction under subsection (3).

(10) Where OFCOM modify or revoke a direction they have given under subsection (3), they may do so—

(a) with effect from such time as they may direct;

(b) subject to compliance with such requirements as they may specify; and

(c) to such extent and in relation to such networks, services or facilities, or parts of a network, service or facility, as they may determine.

(11) It shall be the duty of OFCOM to comply with—

(a) a requirement under subsection (9) to revoke a direction; and

(b) a requirement contained in that direction as to how they should exercise their powers under subsection (10) in the case of the required revocation.

Commencement Information

I196 S. 132 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))

I197 S. 132 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)

133 Enforcement of directions under s. 132

(1) A person is guilty of an offence if he provides an electronic communications network or electronic communications service, or makes available any associated facility—

(a) while his entitlement to do so is suspended by a direction under section 132; or

(b) in contravention of a restriction contained in such a direction.

(2) A person guilty of an offence under subsection (1) shall be liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to a fine.

(3) The duty of a person to comply with a condition of a direction under section 132 shall be a duty owed to every person who may be affected by a contravention of the condition.

(4) Where a duty is owed by virtue of subsection (3) to a person—

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) a breach of the duty that causes that person to sustain loss or damage, and

(b) an act which—

(i) by inducing a breach of the duty or interfering with its performance, causes that person to sustain loss or damage, and

(ii) is done wholly or partly for achieving that result,

shall be actionable at the suit or instance of that person.

(5) In proceedings brought against a person by virtue of subsection (4)(a) it shall be a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid contravening the condition in question.

(6) Sections **[**F197 96A**]** to 99 apply in relation to a contravention of conditions imposed by a direction under section 132 as they apply in relation to a contravention of conditions set under section 45 **[**F198, other than SMP apparatus conditions**]** .

Textual Amendments

F197 Word in s. 133(6) substituted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 78** (with Sch. 3 paras. 2, 17)

F198 Words in s. 133(6) inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 78** (with Sch. 3 paras. 2, 17)

Commencement Information

I198 S. 133 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))

I199 S. 133 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)

Restrictions in leases and licences

134 Restrictions in leases and licences

(1) This section applies where provision contained in a lease, licence or other agreement relating to premises has the effect of imposing on the occupier a prohibition or restriction under which his choice of—

(a) the person from whom he obtains electronic communications services, or particular electronic communications services, or

(b) the person through whom he arranges to be provided with electronic communications services, or particular electronic communications services,

is confined to a person with an interest in the premises, to a person selected by a person with such an interest or to persons who are one or the other.

(2) This section also applies where—

(a) provision contained in a lease for a year or more has the effect of imposing any other prohibition or restriction on the lessee with respect to an electronic communications matter; or

(b) provision contained in an agreement relating to premises to which a lease for a year or more applies has the effect of imposing a prohibition or restriction on the lessee with respect to such a matter.

(3) A provision falling within subsection (1) shall have effect—

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Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) as if the prohibition or restriction applied only where the lessor, licensor or other party to the agreement has not given his consent to a departure from the requirements imposed by the prohibition or restriction; and

(b) as if the lessor, licensor or other party were required not to withhold that consent unreasonably.

(4) A provision falling within subsection (2)(a) or (b) shall have effect—

(a) in relation to things done inside a building occupied by the lessee under the lease, or

(b) for purposes connected with the provision to the lessee of an electronic communications service,

as if the prohibition or restriction applied only where the lessor has not given his consent in relation to the matter in question and as if the lessor were required not to withhold that consent unreasonably.

(5) Where (whether by virtue of this section or otherwise) a provision falling within subsection (1) or (2) imposes a requirement on a lessor, licensor or party to an agreement not unreasonably to withhold his consent—

(a) in relation to an electronic communications matter, or

(b) to the obtaining by the occupier of premises of an electronic communications service from or through a particular person,

the question whether the consent is unreasonably withheld has to be determined having regard to all the circumstances and to the principle that no person should unreasonably be denied access to an electronic communications network or to electronic communications services.

(6) OFCOM may by order provide for this section not to apply in the case of such provisions as may be described in the order.

(7) References in this section to electronic communications matters are references to—

(a) the provision of an electronic communications network or electronic communications service;

(b) the connection of electronic communications apparatus to a relevant electronic communications network or of any such network to another; and

(c) the installation, maintenance, adjustment, repair, alteration or use for purposes connected with the provision of such a network or service of electronic communications apparatus.

(8) In this section—

"alteration" has the same meaning as in the electronic communications code;

"lease" includes—

(a) a leasehold tenancy (whether in the nature of a head lease, sub-lease or under lease) and an agreement to grant such a tenancy, and

(b) in Scotland, a sub-lease and an agreement to grant a sub-lease,

and "lessor" and "lessee" are to be construed accordingly;

"relevant electronic communications network" means—

(a) a public electronic communications network that is specified for the purposes of this section in an order made by the Secretary of State; or

(b) an electronic communications network that is, or is to be, connected (directly or indirectly) to such a network.

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(9) This section applies to provisions contained in leases, licences or agreements granted or entered into before the commencement of this section to the extent only that provision to that effect is contained in an order made by OFCOM.

(10) This section is not to be construed as affecting the operation of paragraph 2(3) of the electronic communications code (lessees etc. bound by rights granted under code by owners).

(11) The consent of the Secretary of State is required for the making by OFCOM of an order under this section.

(12) Section 403 applies to the powers of OFCOM to make orders under this section.

(13) A statutory instrument containing an order made by OFCOM under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Commencement Information

I200 S. 134 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))

I201 S. 134 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)

[F199 Reports on infrastructure etc

Textual Amendments

F199 Ss. 134A-134C and cross-headings inserted (8.6.2010) by Digital Economy Act 2010 (c. 24), **ss. 1(1)**, 47(1)

134A OFCOM reports on infrastructure etc

(1) OFCOM must prepare reports in accordance with subsections (2) and (3) and each report must deal with—

(a) the electronic communications networks matters listed in section 134B(1), and

(b) the electronic communications services matters listed in section 134B(2).

(2) The first report must—

(a) relate to the position on a day specified in the report which falls within the period of 12 months beginning with the day on which this section comes into force, and

(b) be sent to the Secretary of State by OFCOM not more than 2 months after the specified day.

(3) A further report must—

(a) be prepared for each relevant period, and

(b) be sent to the Secretary of State by OFCOM as soon as practicable after the end of the relevant period.

(4) "Relevant period" means—

(a) the period of 3 years beginning with the day specified in the first report, and

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(b) each subsequent period of 3 years beginning with the end of the previous period.

(5) Where there is a significant change in connection with a matter listed in section 134B(1) or (2) and OFCOM consider that the change should be brought to the attention of the Secretary of State, OFCOM must—

(a) prepare a report on the change, and

(b) send it to the Secretary of State as soon as practicable.

(6) For the purposes of subsection (5), a change is significant if OFCOM consider that it has, or is likely to have, a significant adverse impact on—

(a) persons carrying on business in the United Kingdom or a part of the United Kingdom, or

(b) the general public in the United Kingdom or a part of the United Kingdom.

(7) OFCOM must publish every report under this section—

(a) as soon as practicable after they send it to the Secretary of State, and

(b) in such manner as they consider appropriate for bringing it to the attention of persons who, in their opinion, are likely to have an interest in it.

(8) OFCOM may exclude information from a report when it is published under subsection (7) if they consider that it is information that they could refuse to disclose in response to a request under the Freedom of Information Act 2000.

134B Networks and services matters

(1) For the purposes of section 134A, the electronic communications networks matters are—

(a) the different types of electronic communications network provided in the United Kingdom ("UK networks"),

(b) the geographic coverage of the different UK networks,

(c) the proportion of the population covered by the different UK networks,

(d) the extent to which UK networks share infrastructure,

(e) the capacity of the different UK networks,

(f) the extent to which the providers of the different UK networks allow other communications providers to use their networks to provide services,

(g) the amount of time for which the different UK networks are and are not available, including the steps that have been or are to be taken to maintain or improve the level of availability,

(h) the preparations made by providers of UK networks for responding to an emergency, including preparations for restoring normal operation of UK networks disrupted by the emergency, and

(i) the standard of the different UK networks in comparison with electronic communications networks provided in a range of other countries, having regard, in particular, to their coverage and capacity.

(2) For the purposes of section 134A, the electronic communications services matters are—

(a) the use of the electromagnetic spectrum for wireless telegraphy in the United Kingdom,

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) the different types of electronic communications service provided in the United Kingdom ("UK services"),

(c) the geographic coverage of the different UK services,

(d) the proportion of the population covered by the different UK services,

(e) the amount of time for which the different UK services are and are not available, including the steps that have been or are to be taken to maintain or improve the level of availability,

(f) the preparations made by providers of UK services for responding to an emergency, including preparations for restoring normal operation of UK services disrupted by the emergency, and

(g) the standard of the different UK services in comparison with electronic communications services provided in a range of other countries.

(3) The preparations referred to in subsections (1)(h) and (2)(f) include—

(a) the steps taken to assess the risks of different types of emergency occurring,

(b) the steps taken to reduce or remove those risks, and

(c) the testing of proposed responses to different types of emergency.

(4) In a report under section 134A, OFCOM are required to include only information about, and analysis of, such networks, services and providers as they consider appropriate.

(5) In this section "emergency" means an event or situation that seriously disrupts a UK network or UK service.

Reports on internet domain names

134C OFCOM reports on internet domain names

(1) OFCOM must, if requested to do so by the Secretary of State—

(a) prepare a report on matters specified by the Secretary of State relating to internet domain names, and

(b) send the report to the Secretary of State as soon as practicable.

(2) The specified matters may, in particular, include matters relating to—

(a) the allocation and registration of internet domain names, and

(b) the misuse of internet domain names.

(3) OFCOM must publish every report under this section—

(a) as soon as practicable after they send it to the Secretary of State, and

(b) in such manner as they consider appropriate for bringing it to the attention of persons who, in their opinion, are likely to have an interest in it.

(4) OFCOM may exclude information from a report when it is published under subsection (3) if they consider that it is information that they could refuse to disclose in response to a request under the Freedom of Information Act 2000.**]**

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Information provisions

135 Information required for purposes of Chapter 1 functions

(1) OFCOM may require a person falling within subsection (2) to provide them with all such information as they consider necessary for the purpose of carrying out their functions under this Chapter.

(2) The persons falling within this subsection are—

(a) a communications provider;

(b) a person who has been a communications provider;

(c) a person who makes, or has made, any associated facilities available to others;

(d) a person, other than a communications provider, to whom a universal service condition applies or has applied;

(e) a person who supplies electronic communications apparatus;

(f) a person not falling within the preceding paragraphs who appears to OFCOM to have information required by them for the purpose of carrying out their functions under this Chapter.

(3) The information that may be required by OFCOM under subsection (1) includes, in particular, information that they require for any one or more of the following purposes—

(a) ascertaining whether a contravention of a condition or other requirement set or imposed by or under this Chapter has occurred or is occurring;

(b) ascertaining or verifying the charges payable by a person under section 38;

(c) ascertaining whether a provision of a condition set under section 45 which is for the time being in force continues to be effective for the purpose for which it was made;

(d) ascertaining or verifying amounts payable by virtue of a condition falling within section 51(1)(d);

(e) making a designation in accordance with regulations made under section 66;

(f) carrying out a review under section 66 or 70;

(g) identifying markets and carrying out market analyses in accordance with, or for the purposes of, any provision of this Chapter;

F200(h) . . . . . .

(i) considering a matter in exercise of that duty;

[F201(ia) preparing a report under section 124F;

(ib) carrying out an assessment, taking steps or providing a report under section 124G;**]**

[F202(ic) preparing a report under section 134A;

(id) preparing a report under section 134C;**]**

[F203(ie) assessing the security of a public electronic communications network or a public electronic communications service;

(if) assessing the availability of a public electronic communications network;

(ig) identifying electronic communications apparatus that is suitable for shared use;**]**

(j) statistical purposes connected with the carrying out of any of OFCOM's functions under this Chapter.

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

[F204(3A) The descriptions of information that a person may be required to provide under subsection (1) include, in particular—

(a) information concerning future developments of an electronic communications network or electronic communications service that could have an impact on the wholesale services made available by the person to competitors, and

(b) if a market power determination made in relation to a wholesale market is in force in the person's case, accounting data relating to any retail market associated with the wholesale market.**]**

(4) A person required to provide information under this section must provide it in such manner and within such reasonable period as may be specified by OFCOM.

(5) The powers in this section are subject to the limitations in section 137.

Textual Amendments

F200 S. 135(3)(h) 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. 79(a)(i)** (with Sch. 3 para. 2)

F201 S. 135(3)(ia)(ib) inserted (8.6.2010) by Digital Economy Act 2010 (c. 24), **ss. 16(2)**, 47(1)

F202 S. 135(3)(ic)(id) inserted (8.6.2010) by Digital Economy Act 2010 (c. 24), **ss. 1(2)**, 47(1)

F203 S. 135(3)(ie)-(ig) inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 79(a)(ii)** (with Sch. 3 para. 2)

F204 S. 135(3A) inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 79(b)** (with Sch. 3 para. 2)

Commencement Information

I202 S. 135 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))

I203 S. 135 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)

136 Information required for related purposes

(1) OFCOM may require—

(a) a communications provider, or

(b) a person who makes associated facilities available to others,

to provide OFCOM with all such information as they consider necessary for the purpose specified in subsection (2).

(2) That purpose is the carrying out—

(a) with a view to publication, and

(b) in the interest of the end-users of public electronic communications services,

of comparative overviews of the quality and prices of such services.

(3) OFCOM may also require—

(a) a communications provider, or

(b) a person who makes associated facilities available to others,

to provide them, for use for such statistical purposes as they think fit, with information relating to any electronic communications network, electronic communications service or associated facilities.

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(4) A person required to provide information under this section must provide it in such manner and within such reasonable period as may be specified by OFCOM.

(5) The powers in this section are subject to the limitations in section 137.

Commencement Information

I204 S. 136 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))

I205 S. 136 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)

137 Restrictions on imposing information requirements

(1) This section limits the purposes for which, and manner in which, information may be required under sections 135 and 136.

(2) OFCOM are not to require the provision of information for the purpose of ascertaining whether a contravention of a general condition has occurred, or is occurring, unless—

(a) the requirement is imposed for the purpose of investigating a matter about which OFCOM have received a complaint;

(b) the requirement is imposed for the purposes of an investigation that OFCOM have decided to carry out into whether or not the general condition in question has been complied with;

(c) the condition in question is one which OFCOM have reason to suspect is one that has been or is being contravened; [F205]...

(d) the condition in question is one falling within section 51(1)(d)**[**[F206]; or

(e) the condition in question is one relating to the effective and efficient use of telephone numbers.**]**

[[F207](2A) OFCOM are not to require the provision of information for a purpose specified in section 135(3)(ie) or (if) unless—

(a) the requirement is imposed for the purpose of investigating a matter about which OFCOM have received a complaint;

(b) the requirement is imposed for the purposes of an investigation that OFCOM have decided to carry out into whether or not an obligation under section 105A has been complied with; or

(c) OFCOM have reason to suspect that an obligation under section 105A has been or is being contravened.**]**

(3) OFCOM are not to require the provision of information under section 135 or 136 except—

(a) by a demand for the information that describes the required information and sets out OFCOM's reasons for requiring it; and

(b) where the making of a demand for the information is proportionate to the use to which the information is to be put in the carrying out of OFCOM's functions.

(4) The reasons for requiring information for statistical purposes under section 135 or 136 must set out the statistical purposes for which the information is required.

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(5) Except in the case of a demand made in the manner authorised by subsection (6), a demand for information required under section 135 or 136 must be contained in a notice served on the person from whom the information is required.

(6) In the case of information required by OFCOM for the purpose of ascertaining who is liable to charges under section 38, the demand may—

(a) be made by being published in such manner as OFCOM consider appropriate for bringing it to the attention of the persons who are described in the demand as the persons from whom the information is required; and

(b) take the form of a general demand for a person so described to provide information when specified conditions relevant to his liability to such charges are satisfied in his case.

Textual Amendments

F205 Word in s. 137(2)(c) 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. 80(a)(i)** (with Sch. 3 para. 2)

F206 S. 137(2)(e) and word inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 80(a)(ii)** (with Sch. 3 para. 2)

F207 S. 137(2A) inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 80(b)** (with Sch. 3 para. 2)

Commencement Information

I206 S. 137 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))

I207 S. 137 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)

138 Notification of contravention of information requirements

(1) Where OFCOM determine that there are reasonable grounds for believing that a person is contravening, or has contravened, a requirement imposed under section 135 or 136, they may give that person a notification under this section.

(2) A notification under this section is one which—

(a) sets out the determination made by OFCOM;

(b) specifies the requirement and contravention in respect of which that determination has been made; [F208]...

[F209](c) specifies the period during which the person notified has an opportunity to make representations;

(d) specifies the information to be provided by the person to OFCOM in order to comply with a requirement under section 135 or 136;

(e) specifies any penalty which OFCOM are minded to impose in accordance with section 139; and

(f) where the contravention is serious, specifies any direction which OFCOM are minded to give under section 140.]

[F210](3) . . . . . .

[F210](4) . . . . . .

[F210](5) . . . . . .

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

F210(6) . . . . . .

F210(7) . . . . . .

(8) A notification under this section—

(a) may be given in respect of more than one contravention; and

(b) if it is given in respect of a continuing contravention, may be given in respect of any period during which the contravention has continued.

(9) Where a notification under this section has been given to a person in respect of a contravention of a requirement, OFCOM may give a further notification in respect of the same contravention of that requirement if, and only if—

(a) the contravention is one occurring after the time of the giving of the earlier notification;

(b) the contravention is a continuing contravention and the subsequent notification is in respect of so much of a period as falls after a period to which the earlier notification relates; or

(c) the earlier notification has been withdrawn without a penalty having been imposed in respect of the notified contravention.

[F211(9A) OFCOM may not give a person a notification under this section in respect of a contravention of a requirement imposed under section 135(3)(ig) if the information required was previously provided by the person to OFCOM within the period of 6 months ending with the day on which the requirement was imposed.**]**

F212(10) . . . . . .

Textual Amendments

F208 Word in s. 138(2)(b) 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. 81(a)** (with Sch. 3 paras. 2, 18)

F209 S. 138(2)(c)-(f) substituted for s. 138(2)(c) (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 81(a)** (with Sch. 3 paras. 2, 18)

F210 S. 138(3)-(7) 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. 81(b)** (with Sch. 3 paras. 2, 18)

F211 S. 138(9A) inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 81(c)** (with Sch. 3 paras. 2, 18)

F212 S. 138(10) 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. 81(b)** (with Sch. 3 paras. 2, 18)

Commencement Information

I208 S. 138 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))

I209 S. 138 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)

139 Penalties for contravention of information requirements

[F213(1) This section applies where a person is given a notification under section 138 which specifies a proposed penalty.**]**

(2) OFCOM may **[**F214specify a penalty**]** if—

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

F215(a) . . . . . .

F215(b) . . . . . .

(c) no proceedings for an offence under section 144 have been brought against the notified person in respect of the contravention.

(3) Where a notification under section 138 relates to more than one contravention, a separate penalty may be **[**F216specified**]** in respect of each contravention.

(4) Where such a notification relates to a continuing contravention, no more than one penalty may be **[**F217specified**]** in respect of the period of contravention specified in the notification.

[F218(4A) But, in relation to a continuing contravention, a penalty may be specified in respect of each day on which the contravention continues after—

(a) the giving of a confirmation decision under section 139A(4)(c) which requires immediate action; or

(b) the expiry of any period specified in the confirmation decision for complying with a requirement so specified.

(4B) The amount of a penalty under subsection (4A) is to be such amount not exceeding £500 per day as OFCOM determine to be—

(a) appropriate; and

(b) proportionate to the contravention in respect of which it is imposed.**]**

(5) The amount of **[**F219any other penalty notified**]** under this section is to be such amount not exceeding **[**F220£2,000,000**]** as OFCOM determine to be both—

(a) appropriate; and

(b) proportionate to the contravention in respect of which it is imposed.

F221(6) . . . . . .

F221(7) . . . . . .

F221(8) . . . . . .

(9) The Secretary of State may by order amend this section so as to substitute a different maximum penalty for the maximum penalty for the time being specified in subsection (5).

(10) No order is to be made containing provision authorised by subsection (9) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

Textual Amendments

F213 S. 139(1) substituted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 82(a)** (with Sch. 3 paras. 2, 18)

F214 Words in s. 139(2) substituted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 82(b)** (with Sch. 3 paras. 2, 18)

F215 S. 139(2)(a)(b) 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. 82(c)** (with Sch. 3 paras. 2, 18)

F216 Word in s. 139(3) substituted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 82(d)** (with Sch. 3 paras. 2, 18)

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

F217 Word in s. 139(4) substituted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 82(d)** (with Sch. 3 paras. 2, 18)

F218 S. 139(4A)(4B) inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 82(e)** (with Sch. 3 paras. 2, 18)

F219 Words in s. 139(5) substituted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 82(f)** (with Sch. 3 paras. 2, 18)

F220 Word in s. 139(5) substituted (13.7.2011) by The Communications Act 2003 (Maximum Penalty for Contravention of Information Requirements) Order 2011 (S.I. 2011/1773), arts. 1, **2(1)** (with art. 2(2))

F221 S. 139(6)-(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. 82(g)** (with Sch. 3 paras. 2, 18)

Commencement Information

I210 S. 139 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))

I211 S. 139 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)

[F222 139A Enforcement of notification under section 138

(1) This section applies where—

(a) a person has been given a notification under section 138;

(b) OFCOM have allowed the person an opportunity to make representations about the matters notified; and

(c) the period allowed for the making of representations has expired.

(2) OFCOM may—

(a) give the person a decision (a "confirmation decision") confirming the imposition of requirements on the person, or the giving of a direction to the person, or both, in accordance with the notification under section 138; or

(b) inform the person that they are satisfied with the person's representations and that no further action will be taken.

(3) OFCOM may not give a confirmation decision to a person unless, after considering any representations, they are satisfied that the person has, in one or more of the respects notified, been in contravention of a requirement notified under section 138.

(4) A confirmation decision—

(a) must be given to the person without delay;

(b) must include reasons for the decision;

(c) may require immediate action by the person to comply with a requirement notified under section 138(2)(d), or may specify a period within which the person must comply with the requirement; and

(d) may require the person to pay—

(i) the penalty specified in the notification under section 138, or

(ii) such lesser penalty as OFCOM consider appropriate in the light of the person's representations or steps taken by the person to comply with the condition or remedy the consequences of the contravention,

and may specify the period within which the penalty is to be paid.

(5) It is the duty of the person to comply with any requirement imposed by a confirmation decision.

(6) That duty is enforceable in civil proceedings by OFCOM—

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) for an injunction;
(b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988; or
(c) for any other appropriate remedy or relief.

(7) A penalty imposed by a confirmation decision—
(a) must be paid to OFCOM; and
(b) if not paid within the period specified by them, is to be recoverable by them accordingly.

Textual Amendments

F222 Ss. 139A-139C inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 83** (with Sch. 3 paras. 2, 18)

139B. Power to deal with urgent cases

(1) This section applies where OFCOM determine—
(a) that they are entitled to give a notification under section 138 with respect to a contravention by a person ("P") of a requirement imposed under section 135 or 136;
(b) that there are reasonable grounds for suspecting that the case is an urgent case; and
(c) that the urgency of the case makes it appropriate for OFCOM to take action under this section.

(2) A case is an urgent case for the purposes of this section if the contravention has resulted in, or creates an immediate risk of—
(a) a serious threat to the safety of the public, to public health or to national security;
(b) serious economic or operational problems for persons (other than P) who are communications providers or persons who make associated facilities available; or
(c) serious economic or operational problems for persons who make use of electronic communications networks, electronic communications services or associated facilities.

(3) OFCOM may give P a direction—
(a) that the entitlement of P to provide electronic communications networks or electronic communications services, or to make associated facilities available, is suspended (either generally or in relation to particular networks, services or facilities); or
(b) that that entitlement is restricted in the respects set out in the direction.

(4) Subsections (3) to (6) of section 140 apply in relation to a direction under subsection (3) as they apply in relation to a direction under section 140.

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F222 Ss. 139A-139C inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 83** (with Sch. 3 paras. 2, 18)

139C. Confirmation of direction under section 139B

(1) As soon as reasonably practicable after giving a direction under section 139B(3), OFCOM must give the person to whom it is given—

(a) an opportunity to make representations to them about the grounds on which it was given and its effect; and

(b) an opportunity to propose steps to remedy the situation.

(2) As soon as practicable after the period allowed by OFCOM for making those representations has ended (and in any event within 3 months beginning with the day on which the direction was given), they must determine—

(a) whether the contravention providing the grounds for the giving of the direction did occur; and

(b) whether the circumstances made it an urgent case justifying the giving of the direction.

(3) The period of 3 months mentioned in subsection (2) may be extended by up to 3 months if OFCOM—

(a) require additional time to consider representations received; or

(b) decide that it is necessary to obtain additional information from the person in order to make a determination under subsection (2).

(4) If OFCOM decide that the contravention did occur and that the direction was justified, they may confirm the direction.

(5) If not, they must exercise their power to revoke it.

(6) As soon as reasonably practicable after deciding whether to confirm the direction, OFCOM must notify the person to whom it was given of their decision.**]**

Textual Amendments

F222 Ss. 139A-139C inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 83** (with Sch. 3 paras. 2, 18)

140 Suspending service provision for information contraventions

(1) OFCOM may give a direction under this section to a person who is a communications provider or who makes associated facilities available ("the contravening provider") if they are satisfied—

(a) that he is or has been in **[**[F223]serious or repeated**]** contravention of requirements imposed under sections 135 and 136, or either of them;

(b) the requirements are not requirements imposed for purposes connected with the carrying out of OFCOM's functions in relation to SMP apparatus conditions;

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(c) **[**F224in the case of a repeated contravention,**]** that an attempt, by the imposition of penalties **[**F225or the giving of notifications under section 138 and confirmation decisions under section 139A, or both,**]** or the bringing of proceedings for an offence under section 144, to secure compliance with the contravened requirements has failed; and

[F226(d) that the giving of the direction is appropriate and proportionate to the contravention in respect of which it is given.**]**

(2) A direction under this section is—

(a) a direction that the entitlement of the contravening provider to provide electronic communications networks or electronic communications services, or to make associated facilities available, is suspended (either generally or in relation to particular networks, services or facilities); or

(b) a direction that that entitlement is restricted in the respects set out in the direction.

(3) A direction under this section—

(a) must specify the networks, services and facilities to which it relates; and

(b) except so far as it otherwise provides, takes effect for an indefinite period beginning with the time at which it is notified to the person to whom it is given.

(4) A direction under this section—

(a) in providing for the effect of a suspension or restriction to be postponed, may provide for it to take effect only at a time determined by or in accordance with the terms of the direction; and

(b) in connection with the suspension or restriction contained in the direction or with the postponement of its effect, may impose such conditions on the contravening provider as appear to OFCOM to be appropriate for the purpose of protecting that provider's customers.

(5) Those conditions may include a condition requiring the making of payments—

(a) by way of compensation for loss or damage suffered by the contravening provider's customers as a result of the direction; or

(b) in respect of annoyance, inconvenience or anxiety to which they have been put in consequence of the direction.

(6) If OFCOM consider it appropriate to do so (whether or not in consequence of any representations or proposals made to them), they may revoke a direction under this section or modify its conditions—

(a) with effect from such time as they may direct;

(b) subject to compliance with such requirements as they may specify; and

(c) to such extent and in relation to such networks, services or facilities, or parts of a network, service or facility, as they may determine.

(7) For the purposes of this section there are repeated contraventions by a person of requirements imposed under sections 135 and 136, or either of them, to the extent that—

[F227(a) in the case of a previous notification of a contravention given to that person under section 138, OFCOM have given a confirmation decision to that person under section 139A(2) in respect of the contravention; and

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) in the period of 24 months following the giving of that confirmation decision, one or more further confirmation decisions have been given to the person in respect of contraventions of numbering conditions;**]**

and for the purposes of this subsection it shall be immaterial whether the notifications related to the same contravention or to different contraventions of the same or different requirements or of requirements under different sections.

Textual Amendments

F223 Words in s. 140(1)(a) substituted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 84(a)(i)** (with Sch. 3 paras. 2, 18, 19)

F224 Words in s. 140(1)(c) inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 84(a)(ii)** (with Sch. 3 paras. 2, 18, 19)

F225 Words in s. 140(1)(c) substituted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 84(a)(ii)** (with Sch. 3 paras. 2, 18, 19)

F226 S. 140(1)(d) substituted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 84(a)(iii)** (with Sch. 3 paras. 2, 18, 19)

F227 S. 140(7)(a)(b) substituted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 84(b)** (with Sch. 3 paras. 2, 18, 19)

Commencement Information

I212 S. 140 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))

I213 S. 140 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)

141 Suspending apparatus supply for information contraventions

(1) OFCOM may give a direction under this section to a person who supplies electronic communications apparatus ("the contravening supplier") if they are satisfied—

(a) that he is or has been in serious and repeated contravention of requirements imposed under section 135;

(b) that an attempt, by the imposition of penalties under section 139 or the bringing of proceedings for an offence under section 144, to secure compliance with the contravened requirements has failed; and

(c) that the giving of the direction is appropriate and proportionate to the seriousness (when repeated as they have been) of the contraventions.

(2) A direction under this section is—

(a) a direction to the contravening supplier to cease to act as a supplier of electronic communications apparatus (either generally or in relation to apparatus of a particular description); or

(b) a direction imposing such restrictions as may be set out in the direction on the supply by that supplier of electronic communications apparatus (either generally or in relation to apparatus of a particular description).

(3) A direction under this section takes effect, except so far as it otherwise provides, for an indefinite period beginning with the time at which it is notified to the person to whom it is given.

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(4) A direction under this section—

(a) may provide for a prohibition or restriction to take effect only at a time determined by or in accordance with the terms of the direction; and

(b) in connection with a prohibition or restriction contained in the direction or with the postponement of its effect, may impose such conditions on the contravening supplier as appear to OFCOM to be appropriate for the purpose of protecting that supplier's customers.

(5) Those conditions may include a condition requiring the making of payments—

(a) by way of compensation for loss or damage suffered by the contravening supplier's customers as a result of the direction; or

(b) in respect of annoyance, inconvenience or anxiety to which they have been put in consequence of the direction.

(6) If OFCOM consider it appropriate to do so (whether or not in consequence of representations or proposals made to them), they may revoke a direction under this section or modify its conditions—

(a) with effect from such time as they may direct;

(b) subject to compliance with such requirements as they may specify; and

(c) to such extent and in relation to such apparatus or descriptions of apparatus as they may determine.

(7) For the purposes of this section contraventions by a person of requirements imposed under section 135 are repeated contraventions if—

(a) in the case of a previous notification given to that person under section 138, OFCOM have determined for the purposes of section 139(2) that such a contravention did occur; and

(b) in the period of twelve months following the day of the making of that determination, one or more further notifications have been given to that person in respect of contraventions of such requirements;

and for the purposes of this subsection it shall be immaterial whether the notifications related to the same contravention or to different contraventions of the same or different requirements.

Commencement Information

I214 S. 141 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))

I215 S. 141 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)

142 Procedure for directions under ss. 140 and 141

(1) Except in an urgent case, **[**[F228]or a case where a proposed direction has been notified to a person in accordance with section 138(2)(f)**]** OFCOM are not to give a direction under section 140 or 141 unless they have—

(a) notified the contravening provider or contravening supplier of the proposed direction and of the conditions (if any) which they are proposing to impose by that direction;

(b) provided him with an opportunity of making representations about the proposals and of proposing steps for remedying the situation; and

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(c) considered every representation and proposal made to them during the period allowed by them for the contravening provider or the contravening supplier to take advantage of that opportunity.

[F229(2A) That period must be—

(a) in relation to a direction under section 140, such reasonable period as OFCOM may determine, and

(b) in relation to a direction under section 141, a period ending not less than one month after the day of the giving of the notification.**]**

(3) As soon as practicable after giving a direction under section 140 or 141 in an urgent case, OFCOM must provide the contravening provider or contravening supplier with an opportunity of—

(a) making representations about the effect of the direction and of any of its conditions; and

(b) proposing steps for remedying the situation.

[F230(3A) In relation to a direction under section 140 in an urgent case, as soon as practicable after the period allowed by OFCOM for making those representations has ended (and in any event within 3 months beginning with the day on which the direction was given), they must determine—

(a) whether the contravention providing the grounds for the giving of the direction did occur; and

(b) whether the circumstances made it an urgent case justifying the giving of the direction.

(3B) The period of 3 months mentioned in subsection (3A) may be extended by up to 3 months if OFCOM—

(a) require additional time to consider representations received; or

(b) decide that it is necessary to obtain additional information from the person in order to make a determination under subsection (3A).**]**

(4) A case is an urgent case for the purposes of this section if OFCOM—

(a) consider that it would be inappropriate, because the contraventions in question fall within subsection (5), to allow time, before giving a direction under section 140 or 141, for the making and consideration of representations; and

(b) decide for that reason to act in accordance with subsection (3), instead of subsection (1).

(5) The contraventions fall within this subsection if they have resulted in, or create an immediate risk of—

(a) a serious threat to the safety of the public, to public health or to national security;

(b) serious economic or operational problems for persons (apart from the contravening provider or contravening supplier) who are communications providers or persons who make associated facilities available; or

(c) serious economic or operational problems for persons who make use of electronic communications networks, electronic communications services or associated facilities.

(6) In this section—

"contravening provider" has the same meaning as in section 140; and

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

"contravening supplier" has the same meaning as in section 141.

Textual Amendments

F228 Words in s. 142(1) inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 85(a)** (with Sch. 3 paras. 2, 18, 19)

F229 S. 142(2A) substituted for s. 142(2) (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 85(b)** (with Sch. 3 paras. 2, 18, 19)

F230 S. 142(3A)(3B) inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 85(c)** (with Sch. 3 paras. 2, 18, 19)

Commencement Information

I216 S. 142 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))

I217 S. 142 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)

143 Enforcement of directions under ss. 140 and 141

(1) A person is guilty of an offence if he provides an electronic communications network or electronic communications service, or makes available any associated facility—

(a) while his entitlement to do so is suspended by a direction under section 140; or

(b) in contravention of a restriction contained in such a direction.

(2) A person is guilty of an offence if he supplies electronic communications apparatus—

(a) while prohibited from doing so by a direction under section 141; or

(b) in contravention of a restriction contained in such a direction.

(3) A person guilty of an offence under this section shall be liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to a fine.

[[F231](4) Sections 96A to 99 apply in relation to a contravention of conditions imposed by a direction under section 139B or 140 as they apply in relation to a contravention of conditions set under section 45, other than SMP apparatus conditions.

(5) Sections 94 to 96 and 97 to 99 apply in relation to a contravention of conditions imposed by a direction under section 141 as they apply in relation to a contravention of SMP apparatus conditions.**]**

Textual Amendments

F231 S. 143(4)(5) substituted for s. 143(4) (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 86** (with Sch. 3 paras. 2, 18, 19)

Commencement Information

I218 S. 143 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))

I219 S. 143 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)

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

144 Offences in connection with information requirements

(1) A person who fails to provide information in accordance with a requirement of OFCOM under section 135 or 136 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 a fine.

(2) In proceedings against a person for an offence under subsection (1) it shall be a defence for that person to show—

(a) that it was not reasonably practicable for him to comply with the requirement within the period specified by OFCOM; but

(b) that he has taken all reasonable steps to provide the required information after the end of that period.

(3) A person is guilty of an offence if—

(a) in pursuance of any requirement under section 135 or 136, he provides any information that is false in any material particular; and

(b) at the time he provides it, he either knows it to be false or is reckless as to whether or not it is false.

(4) A person guilty of an offence under subsection (3) 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.

(5) Proceedings for an offence under subsection (1) may be brought in respect of a contravention by a person of a requirement imposed under section 135 or 136 only if—

(a) OFCOM have given the person a notification under section 138 in respect of that contravention;

[[F232](b) the notification required the person to provide information, a confirmation decision has been given under section 139A in respect of that requirement and the period allowed under that decision has expired without the required information having been provided; and**]**

(c) OFCOM have not imposed a financial penalty under section 139 in respect of that contravention.

Textual Amendments

F232 S. 144(5)(b) substituted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 87** (with Sch. 3 paras. 2, 18, 19)

Commencement Information

I220 S. 144 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))

I221 S. 144 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)

145 Statement of policy on information gathering

(1) It shall be the duty of OFCOM to prepare and publish a statement of their general policy with respect to—

(a) the exercise of their powers under sections 135 to 136; and

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) the uses to which they are proposing to put information obtained under those sections.

(2) OFCOM may from time to time revise that statement as they think fit.

(3) Where OFCOM make or revise their statement of policy under this section, they must publish that 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) It shall be the duty of OFCOM, in exercising the powers conferred on them by sections 135 to 144 to have regard to the statement for the time being in force under this section.

Commencement Information

I222 S. 145 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))

I223 S. 145 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)

146 Provision of information by OFCOM

(1) OFCOM must comply with a request made by a person for the purposes of this section—

(a) to notify the person whether or not a notification is required to be submitted by him under section 33;

(b) to notify the person whether a notification submitted by him for the purposes of that section satisfies the requirements of this Chapter;

(c) to provide the person with such information about his rights as may be necessary for the purpose of facilitating the negotiation by him of his right to network access; or

(d) to provide the person with such information as they consider necessary to enable the applicant to apply for a direction under section 106 to be made in his case.

(2) A request for the purposes of this section must be made in such manner as OFCOM may require.

(3) OFCOM are not required to comply with a request under this section if (without having been asked to do so) they have already given that person the notification or information for which he is asking.

(4) Any notification or information which under subsection (1) must be given or provided by OFCOM must be given or provided before the end of the period of one week beginning with the day on which the request for the notification or information was made to OFCOM.

Commencement Information

I224 S. 146 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))

I225 S. 146 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)

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

[F233 146A Rights of third parties to use information without charge

(1) Any person has a right to use, free of charge, information published by a communications provider if the use is for the purpose specified in subsection (2).

(2) That purpose is to sell or make available an interactive guide or other technique for evaluating the cost of alternative usage patterns in relation to electronic communications services.]

Textual Amendments

F233 S. 146A inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 88** (with Sch. 3 para. 2)

Abolition of telecommunications licensing etc.

147 Repeal of provisions of Telecommunications Act 1984

The following provisions of the Telecommunications Act 1984 (c. 12) shall cease to have effect—

(a) sections 5 to 8 (licensing provisions);
(b) sections 9 to 11 (public telecommunications systems);
(c) sections 12 to 15 (modification of licences);
(d) sections 16 to 19 (enforcement of licences); and
(e) sections 27A to 27L (standards of performance of designated public telecommunications operators).

Commencement Information

I226 S. 147 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))

I227 S. 147 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)

Local authority powers in relation to networks and services

148 Powers of local authorities in connection with networks

(1) A local authority may borrow money for the purpose of providing a public electronic communications network or public electronic communications service.

(2) A local authority may—

(a) provide a public electronic communications network part of which is outside their area; and
(b) provide a public electronic communications service even if some of the persons to whom they provide the service are outside their area.

(3) In this section, a "local authority" means—

(a) in relation to England, a London borough council or a district council;
(b) in relation to Wales, a county council or a county borough council;

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(c) in Scotland, a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39).

Commencement Information

I228 S. 148 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))

I229 S. 148 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)

Grants for networks and services in Northern Ireland

149 Grants by Department of Enterprise, Trade and Investment

(1) The Department of Enterprise, Trade and Investment may, in accordance with this section, make payments to persons engaged in, or in commercial activities connected with—

(a) the provision of electronic communications networks and electronic communications services in Northern Ireland; or

(b) improving the extent, quality and reliability of such networks or services.

(2) A payment shall not be made under this section unless in the opinion of the Department of Enterprise, Trade and Investment—

(a) the making of the payment is likely to achieve—

(i) one or more of the purposes set out in subsection (1); and

(ii) any other purposes prescribed by regulations made by that Department with the approval of the Department of Finance and Personnel; and

(b) the amount of the payment is reasonable having regard to all the circumstances.

(3) Payments under this section shall—

(a) be of such amounts, and

(b) be made subject to such conditions (including conditions as to repayment),

as the Department of Enterprise, Trade and Investment may determine.

(4) This section extends only to Northern Ireland.

Commencement Information

I230 S. 149 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))

I231 S. 149 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)

150 Grants by district councils

(1) This section applies where a district council in Northern Ireland consider that it would be for the benefit of their area—

(a) for a public electronic communications network or electronic communications service to be provided by a particular person;

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) for facilities to be made available by a particular person for the purposes of, or in connection with, the provision of such a network or service; or

(c) for such a network or service that is being provided by a particular person, or for any such facilities that are being so made available by a particular person, to continue to be provided or made available.

(2) The district council may—

(a) undertake to pay to that person, and

(b) pay him,

whatever sums they think appropriate for, or towards, compensating him for losses sustained in the provision of the network or service or in making the facilities available.

(3) For the purposes of this section it is immaterial—

(a) in the case of a network, whether any part of the network is situated in the council's area; and

(b) in the case of a service or facility, whether any of the persons to whom the service or facility is provided or made available are in that area.

Commencement Information

I232 S. 150 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))

I233 S. 150 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)

Interpretation of Chapter 1

[F234 150A Proposals of EU significance

(1) This section applies in relation to a proposal—

(a) to set, modify or revoke a condition under section 45;

(b) to give a direction, approval or consent for the purposes of such a condition;

(c) to modify or withdraw such a direction, approval or consent;

(d) to identify a market for the purposes of making or reviewing a market power determination; or

(e) to make or review a market power determination.

(2) The proposal is of EU significance for the purposes of this Chapter if—

(a) paragraph (3) of Article 7 of the Framework Directive applies, or would apply but for paragraph (9) of that Article, in relation to it;

(b) (in a case within paragraph (a), (b) or (c) of subsection (1)) the condition is an access-related condition falling within section 73(2) or an SMP services condition;

(c) (in a case within paragraph (d) or (e) of subsection (1)) the market in question is a services market; and

(d) in OFCOM's opinion it would affect trade between member States.]

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F234 S. 150A inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 89** (with Sch. 3 para. 2)

151 Interpretation of Chapter 1

(1) In this Chapter—

"the Access Directive" means Directive 2002/19/EC of the European Parliament and of the Council on access to, and interconnection of, electronic communications networks and associated facilities **[**F235, as amended by Directive 2009/140/EC of the European Parliament and of the Council**]** ;

"access-related condition" means a condition set as an access-related condition under section 45;

"allocation" and "adoption", in relation to telephone numbers, and cognate expressions, are to be construed in accordance with section 56;

"apparatus market", in relation to a market power determination, is to be construed in accordance with section 46(9)(b);

"designated universal service provider" means a person who is for the time being designated in accordance with regulations under section 66 as a person to whom universal service conditions are applicable;

"electronic communications apparatus"—

(a) in relation to SMP apparatus conditions and in section 141, means apparatus that is designed or adapted for a use which consists of or includes the sending or receiving of communications or other signals (within the meaning of section 32) that are transmitted by means of an electronic communications network; and

(b) in all other contexts, has the same meaning as in the electronic communications code;

"the electronic communications code" has the meaning given by section 106(1);

"end-user", in relation to a public electronic communications service, means—

(a) a person who, otherwise than as a communications provider, is a customer of the provider of that service;

(b) a person who makes use of the service otherwise than as a communications provider; or

(c) a person who may be authorised, by a person falling within paragraph (a), so to make use of the service;

"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 **[**F236, as amended by Directive 2009/140/EC of the European Parliament and of the Council**]** ;

"general condition" means a condition set as a general condition under section 45;

"interconnection" is to be construed in accordance with subsection (2);

"market power determination" means—

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) a determination, for the purposes of provisions of this Chapter, that a person has significant market power in an identified services market or an identified apparatus market, or

(b) a confirmation for such purposes of a market power determination reviewed on a further analysis under section 84 or 85;

"misuse", in relation to an electronic communications network or electronic communications service, is to be construed in accordance with section 128(5) and (8), and cognate expressions are to be construed accordingly;

"network access" is to be construed in accordance with subsection (3);

"persistent" and "persistently", in relation to misuse of an electronic communications network or electronic communications service, are to be construed in accordance with section 128(6) and (7);

"premium rate service" is to be construed in accordance with section 120(7);

"privileged supplier condition" means a condition set as a privileged supplier condition under section 45;

"provider", in relation to a premium rate service, is to be construed in accordance with section 120(9) to (12), and cognate expressions are to be construed accordingly;

"public communications provider" means—

(a) a provider of a public electronic communications network;

(b) a provider of a public electronic communications service; or

(c) a person who makes available facilities that are associated facilities by reference to a public electronic communications network or a public electronic communications service;

"public electronic communications network" means an electronic communications network provided wholly or mainly for the purpose of making electronic communications services available to members of the public;

"public electronic communications service" means any electronic communications service that is provided so as to be available for use by members of the public;

"regulatory authorities" is to be construed in accordance with subsection (5);

"relevant international standards" means—

(a) any standards or specifications from time to time drawn up and published in accordance with Article 17 of the Framework Directive;

(b) the standards and specifications from time to time adopted by—

(i) the European Committee for Standardisation,

(ii) the European Committee for Electrotechnical Standardisation; or

(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; or

(iii) the International Electrotechnical Committee;

"service interoperability" means interoperability between different electronic communications services;

"services market", in relation to a market power determination or market identification, is to be construed in accordance with section 46(8)(a);

"significant market power" is to be construed in accordance with section 78;

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

"SMP condition" means a condition set as an SMP condition under section 45, and "SMP services condition" and "SMP apparatus condition" are to be construed in accordance with subsections (8) and (9) of that section respectively;

"telephone number" has the meaning given by section 56(5);

"the Universal Service Directive" means 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 **[**F237, as amended by Directive 2009/136/EC of the European Parliament and of the Council**]** ;

"universal service condition" means a condition set as a universal service condition under section 45;

"the universal service order" means the order for the time being in force under section 65.

(2) In this Chapter references to interconnection are references to the linking (whether directly or indirectly by physical or logical means, or by a combination of physical and logical means) of one public electronic communications network to another for the purpose of enabling the persons using one of them to be able—

(a) to communicate with users of the other one; or

(b) to make use of services provided by means of the other one (whether by the provider of that network or by another person).

(3) In this Chapter references to network access are references to—

(a) interconnection of public electronic communications networks; or

(b) any services, facilities or arrangements which—

(i) are not comprised in interconnection; but

(ii) are services, facilities or arrangements by means of which **[**F238a person**]** is able, for the purposes of the provision of an electronic communications service (whether by him or by another), to make use of anything mentioned in subsection (4);

and references to providing network access include references to providing any such services, making available any such facilities or entering into any such arrangements.

(4) The things referred to in subsection (3)(b) are—

(a) any electronic communications network or electronic communications service provided by another communications provider;

(b) any apparatus comprised in such a network or used for the purposes of such a network or service;

[F239(ba) any electronic communications apparatus;**]**

(c) any facilities made available by another that are associated facilities by reference to any network or service (whether one provided by that provider or by another);

(d) any other services or facilities which are provided or made available by another person and are capable of being used for the provision of an electronic communications service.

[F240(4A) In subsections (3)(b)(ii) and (4)(d), the references to an electronic communications service include the conveyance by means of an electronic communications network of signals, including an information society service or content service so conveyed.

(4B) In subsection (4A)—

Status: *Point in time view as at 13/04/2015.*
Changes to legislation: *Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

"content service" has the meaning given by section 32(7), and

"information society service" has the meaning given by Article 2(a) of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market.**]**

(5) References in this Chapter to the regulatory authorities of member States are references to such of the authorities of the member States as have been notified to the European Commission as the regulatory authorities of those States for the purposes of the Framework Directive.

(6) For the purposes of this Chapter, where there is a contravention of an obligation that requires a person to do anything within a particular period or before a particular time, that contravention shall be taken to continue after the end of that period, or after that time, until that thing is done.

(7) References in this Chapter to remedying the consequences of a contravention include references to paying an amount to a person—

(a) by way of compensation for loss or damage suffered by that person; or

(b) in respect of annoyance, inconvenience or anxiety to which he has been put.

(8) In determining for the purposes of provisions of this Chapter whether a contravention is a repeated contravention for any purposes, a notification of a contravention under that provision shall be disregarded if it has been withdrawn before the imposition of a penalty in respect of the matters notified.

(9) For the purposes of this section a service is made available to members of the public if members of the public are customers, in respect of that service, of the provider of that service.

Textual Amendments

F235 Words in s. 151(1) inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 90(a)(i)** (with Sch. 3 para. 2, 20)

F236 Words in s. 151(1) inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 90(a)(ii)** (with Sch. 3 para. 2, 20)

F237 Words in s. 151(1) inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 90(a)(iii)** (with Sch. 3 para. 2, 20)

F238 Words in s. 151(3)(b)(ii) substituted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 90(b)** (with Sch. 3 para. 2)

F239 S. 151(4)(ba) inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 90(c)** (with Sch. 3 para. 2)

F240 S. 151(4A)(4B) inserted (26.5.2011) by The Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210), reg. 1(2), **Sch. 1 para. 90(d)** (with Sch. 3 para. 2)

Commencement Information

I234 S. 151 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))

I235 S. 151 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)

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Point in time view as at 13/04/2015.

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Communications Act 2003, Chapter 1 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.