



Communications Act 2003

2003 CHAPTER 21

PART 2

NETWORKS, SERVICES AND THE RADIO SPECTRUM

CHAPTER 1

ELECTRONIC COMMUNICATIONS NETWORKS AND SERVICES

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^{F1}...;
 - (b) sustainable competition^{F2}...; ^{F3}...
 - [^{F4}(bza) the bringing into operation, where OFCOM consider it appropriate, of very high capacity networks;]
 - [^{F5}(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^{F6}... in arrangements for—
 - (a) sharing the use of electronic communications apparatus; and

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- (b) apportioning and making contributions towards costs incurred in relation to shared electronic communications apparatus.

[^{F7}(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.]

^{F8}(4)

[^{F9}(4A) Access-related conditions may include conditions permitted by section 74A.]

- (5) Access-related conditions may include conditions containing any provision required by section 75(2).

Textual Amendments

- F1** 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)
- F2** 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)
- F3** 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)
- F4** S. 73(2)(bza) inserted (21.12.2020) by [The Electronic Communications and Wireless Telegraphy \(Amendment\) \(European Electronic Communications Code and EU Exit\) Regulations 2020 \(S.I. 2020/1419\)](#), reg. 1(2), **Sch. 1 para. 30(2)**
- F5** 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)
- F6** 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)
- F7** 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)
- F8** 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)
- F9** S. 73(4A) inserted (21.12.2020) by [The Electronic Communications and Wireless Telegraphy \(Amendment\) \(European Electronic Communications Code and EU Exit\) Regulations 2020 \(S.I. 2020/1419\)](#), reg. 1(2), **Sch. 1 para. 30(3)**

Commencement Information

- I1** 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))
- I2** 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.

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[^{F10}(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
 - (ii) do not involve, or tend to give rise to, any undue discrimination against any person or description of persons.

[^{F11}(2A) The conditions that may be set by virtue of section 73(2) also include conditions imposing on a person who provides an electronic communications network that includes a line or associated facility to which this subsection applies, or who owns such a line or associated facility, obligations for the purposes of giving to other persons such entitlements as OFCOM may from time to time direct as respects the availability and use of the line or associated facility in cases where OFCOM are satisfied that it would be economically inefficient or physically impracticable for those other persons to replicate the line or associated facility.

(2B) Subsection (2A) applies—

- (a) to a line or associated facility that is—
 - (i) in a building, or
 - (ii) between the network termination point as determined by OFCOM and the first concentration or distribution point as so determined; and
- (b) in a case where OFCOM consider, having regard where applicable to any analysis of a services market under section 79, that obligations imposed by virtue of paragraph (a) will not in their opinion sufficiently address high and non-transitory economic or physical barriers to replication which underlie an existing or emerging market situation significantly limiting competitive outcomes for end-users, to a line or associated facility that is outside a building beyond the first concentration or distribution point to a point determined by OFCOM to be the closest point to end-users that is capable of hosting a sufficient number of end-user connections to be commercially viable for those seeking access.

(2C) OFCOM may not apply a condition authorised by virtue of subsection (2B)(b) to a person providing an electronic communications network if—

- (a) the network concerned is not publicly funded and the person providing the network makes available a viable and similar alternative means of reaching end-users by providing any undertaking with access to a very high capacity network on fair, non-discriminatory and reasonable terms and conditions; or
- (b) the obligations would compromise the economic or financial viability of the bringing of a new network into operation.

(2D) The conditions authorised by subsection (2A) may include provision—

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- (a) for securing fairness and reasonableness in the way in which requests for entitlements are made and responded to;
- (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;
- (c) requiring the person to whom the condition applies (“the relevant provider”) not to discriminate unduly against particular persons, or against a particular description of persons, in relation to matters connected with the entitlements mentioned in subsection (2A);
- (d) requiring the relevant 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;
- (e) requiring the relevant provider to publish, in such manner as OFCOM may from time to time direct, the terms and conditions on which the relevant provider is willing to enter into a contract giving the entitlements mentioned in subsection (2A);
- (f) requiring the terms and conditions on which the relevant provider is willing to enter into such a contract to include such terms and conditions as may be specified or described in the condition;
- (g) requiring the relevant provider to make such modifications as OFCOM may direct of any offer by that provider which sets out the terms and conditions on which that provider is willing to enter into such a contract;
- (h) imposing rules about the apportionment and recovery of costs.]

(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.

[^{F12}“line” means any wire, cable, tube, pipe or similar thing (including its casing or coating) which is designed or adapted for use in connection with the provision of any electronic communications network or electronic communications service.]

(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

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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

- F10** 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)
- F11** S. 74(2A)-(2D) inserted (21.12.2020) by [The Electronic Communications and Wireless Telegraphy \(Amendment\) \(European Electronic Communications Code and EU Exit\) Regulations 2020 \(S.I. 2020/1419\)](#), reg. 1(2), **Sch. 1 para. 31(2)**
- F12** Words in s. 74(3) inserted (21.12.2020) by [The Electronic Communications and Wireless Telegraphy \(Amendment\) \(European Electronic Communications Code and EU Exit\) Regulations 2020 \(S.I. 2020/1419\)](#), reg. 1(2), **Sch. 1 para. 31(3)**

Commencement Information

- I3** 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))
- I4** 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)

[^{F13}74A Access-related conditions in certain cases involving use of radio spectrum

- (1) OFCOM may apply a condition falling within subsection (2) to a person who provides an electronic communications network (“the host network”) if it appears to OFCOM that—
- (a) in a particular local area within the United Kingdom (“the relevant area”), access by end-users to electronic communications services which depend on the use of wireless telegraphy is unavailable or severely restricted;
- (b) the unavailability or restriction results from the physical characteristics of the relevant area or from other characteristics of the relevant area that tend to make the bringing into operation of infrastructure uneconomic;
- (c) the provider of the host network has not made network access available on fair and reasonable commercial terms and conditions to other persons providing electronic communications services; and
- (d) when granting or varying the wireless telegraphy licence relating to the host network, OFCOM had made clear the possibility that a requirement to provide network access or to enter into wholesale roaming access agreements might subsequently be imposed.
- (2) A condition falling within this subsection is one requiring the provider of the host network—
- (a) to provide network access in relation to network elements which are not active; or
- (b) to enter into wholesale roaming access agreements relating to the relevant area or any part of the relevant area, on such terms and conditions as may be specified or described in the condition, in response to a request meeting specified requirements.

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- (3) If OFCOM are satisfied as to the matters in subsection (1) but it appears to them that in the circumstances a condition falling within subsection (2) does not suffice to address the situation, OFCOM may also apply a condition requiring the provider of the host network to provide network access in relation to network elements which are active.
- (4) The conditions authorised by subsection (2) or (3) may include any provision mentioned in subsection (2D) of section 74, reading references in that subsection to subsection (2A) of that section as references to subsection (2) or (3) of this section (as the case requires).
- (5) In exercising their powers under this section, OFCOM must have regard to—
 - (a) the need to maximise the coverage and availability of electronic communications services throughout the member States, along major transport paths and in particular territorial areas;
 - (b) the desirability of significantly increasing choice, and improving the quality of service, for end-users;
 - (c) the desirability of promoting the efficient use of radio spectrum;
 - (d) the technical feasibility of network access and associated conditions;
 - (e) the extent of infrastructure-based and service-based competition in the market concerned;
 - (f) the desirability of promoting technological innovation;
 - (g) the need to maintain incentives for investment in infrastructure.
- (6) In this section “a wholesale roaming access agreement” means an agreement between the provider of the host network and the provider of a public electronic communications service that depends on the use of wireless telegraphy (“the roaming provider”) for the purpose of enabling public electronic communications services to be provided in the relevant area to the customers of the roaming provider.

Textual Amendments

F13 Ss. 74A, 74B inserted (21.12.2020) by [The Electronic Communications and Wireless Telegraphy \(Amendment\) \(European Electronic Communications Code and EU Exit\) Regulations 2020 \(S.I. 2020/1419\)](#), reg. 1(2), **Sch. 1 para. 32**

74B Review of access-related conditions

- (1) This section applies to a condition set by virtue of section 73(2) or (4A) and applied to a particular person, so long as the condition remains in force, but does not apply to a condition required by section 75(2).
- (2) OFCOM must within the specified period review the results of imposing the obligations in question and consider whether the condition should be modified or revoked.
- (3) OFCOM must, as soon as reasonably practicable after complying with subsection (2), publish—
 - (a) a report on the review, and
 - (b) if the review concludes that the condition should be modified or revoked, a notification under section 48(1) or, where section 48A applies, section 48A(3).

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- (4) In this section “the specified period”, in relation to a condition, means the period of 5 years beginning with the latest of the following days—
- (a) the commencement of this section;
 - (b) the date of the most recent notification under section 48(1) setting or modifying the condition;
 - (c) the date of the most recent report under subsection (3)(a) in relation to the condition.]

Textual Amendments

F13 Ss. 74A, 74B inserted (21.12.2020) by [The Electronic Communications and Wireless Telegraphy \(Amendment\) \(European Electronic Communications Code and EU Exit\) Regulations 2020 \(S.I. 2020/1419\)](#), reg. 1(2), [Sch. 1 para. 32](#)

75 Conditional access systems and access to digital services

^{F14}(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
 - (b) that those conditions make all such provision as is required by the provision contained from time to time in Part I of [^{F15}Annex 2 to the EECC Directive] (conditions relating to access to digital programme services).

[^{F16}(2B) OFCOM may also apply access-related conditions to any person who provides a conditional access system in relation to services which are not protected programme services but appear to OFCOM to be complementary to protected programme services; and those conditions may contain any provision of the kind mentioned in subsection (2)(b).]

- (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

F14 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](#))

F15 Words in s. 75(2)(b) substituted (21.12.2020) by [The Electronic Communications and Wireless Telegraphy \(Amendment\) \(European Electronic Communications Code and EU Exit\) Regulations 2020 \(S.I. 2020/1419\)](#), reg. 1(2), [Sch. 1 para. 33\(2\)](#)

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F16 S. 75(2B) inserted (21.12.2020) by [The Electronic Communications and Wireless Telegraphy \(Amendment\) \(European Electronic Communications Code and EU Exit\) Regulations 2020 \(S.I. 2020/1419\)](#), reg. 1(2), [Sch. 1 para. 33\(3\)](#)

Commencement Information

- I5** 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))
- I6** 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.

Commencement Information

- I7** 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))
- I8** 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)

[^{F17}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.]

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Textual Amendments

F17 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)

Status:

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