



Communications Act 2003

2003 CHAPTER 21

PART 2

NETWORKS, SERVICES AND THE RADIO SPECTRUM

CHAPTER 1

ELECTRONIC COMMUNICATIONS NETWORKS AND SERVICES

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;
 - ^[F1](ia) a social tariff 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.
- ^[F2](4A) A social tariff condition is a condition which contains only provision authorised by section 72F.]

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- (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 [F391] ; or
 - (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 [F489A] .
- (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

- F1** S. 45(2)(b)(ia) 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. 10(2)**
- F2** S. 45(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. 10(3)**

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- F3** 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)
- F4** 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

- I1** 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))
- I2** 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
 - (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.
- [^{F5}(5A) A social tariff condition may be applied—
 - (a) generally to every person providing a public electronic communications service;
 - (b) generally to every person providing such a service of a particular description specified in the condition; or
 - (c) to a particular person specified in the condition.]
 - (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;
 - [^{F6}(aa) in the case of a condition falling within section 74(2A), must be—
 - (i) a person providing a public electronic communications network; or
 - (ii) the owner of a line or associated facility;

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- (ab) in the case of a condition falling within section 74A, must be a person who provides an electronic communications network; 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 [F7]89A].
- [F8]8A) A person whom OFCOM have previously determined to be a person having significant market power in a services market but whom OFCOM determine no longer to be a person having significant market power in that market is to be treated as continuing to fall within subsection (8) for so long as OFCOM consider necessary to ensure a sustainable transition for those benefitting from obligations imposed on that person as a result of the previous determination.]
- (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

- F5** S. 46(5A) 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. 11(2)**
- F6** S. 46(6)(aa)(ab) substituted (21.12.2020) for word 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. 11(3)**
- F7** 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)
- F8** S. 46(8A) 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. 11(4)**

Commencement Information

- I3** 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))
- I4** 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)

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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 [^{F9}(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.

[^{F10}(3) Subsection (2)(a) does not apply in relation to the setting of a general condition.]

[^{F11}(4) This section does not apply in relation to the setting or modification of a social tariff condition in accordance with a direction under section 72D(7).]

Textual Amendments

- F9** 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)
- F10** 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)
- F11** S. 47(4) 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. 12**

Commencement Information

- I5** 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))
- I6** 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.

[^{F12}(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.

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- (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 [^{F13}proposal by OFCOM] with respect to an SMP condition, the applicable requirements of sections 79 to 86 must also be complied with.
- ^{F14}(5)
- (6) The publication of a notification under this section [^{F15}or 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 [^{F16}, section 48A or section 48B] .

Textual Amendments

- F12** 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)
- F13** 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)
- F14** 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)
- F15** 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)
- F16** 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

- I7** 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))
- I8** 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)

[^{F17}48A. Domestic consultation for section 45 conditions

- (1) This section applies where OFCOM propose to set, modify or revoke—
- (a) SMP apparatus conditions; or

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- (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.
- [This section also does not apply to the proposed setting, modification or revocation ^{F18}(2A) of a social tariff condition.]
- (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 [^{F19}30 days] 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

- F17** 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)
- F18** S. 48A(2A) 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. 13(2)**
- F19** Words in s. 48A(4) 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. 13(3)**

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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.
- (3) If at the end of the period of one month referred to in [F20 Article 32(3) of the EECC Directive] no notification has been given to OFCOM by the Commission under [F21 Article 33(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 [F22 Article 33 of the EECC 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 [F23 Article 33 of the EECC 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

- F17** 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)
- F20** Words in s. 48B(3) 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. 14(2)(a)**

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- F21** Words in s. 48B(3) 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. 14(2)(b)**
- F22** Words in s. 48B(7) 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. 14(3)**
- F23** Words in s. 48B(9) 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. 14(4)**

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.
- (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

- F17** 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 [F24(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) [F25The responsible person] must not give, modify or withdraw the direction, approval or consent unless he is satisfied that to do so is—

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- (a) objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates [^{F26}(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.
- [^{F27}(2A) Subsection (2)(a) does not apply in relation to a direction, approval or consent affecting a general condition.]
- (3) [^{F28}Where 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 [^{F29}seven] Community requirements set out in section 4.
- [^{F30}(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
 - (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

- F24** 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)
- F25** 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)
- F26** 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)
- F27** 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)
- F28** 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)

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- F29** Word in s. 49(3) 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. 15**
- F30** 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

- I9** 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))
- I10** 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)

[^{F31}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
 - (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 [^{F32}30 days] 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

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- (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

- F31** 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)
- F32** Words in s. 49A(4) 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. 16**

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
 - (c) the regulatory authorities in every other member State.
- (3) If at the end of the period of one month referred to in ^{F33}Article 32(3) of the EECC Directive] no notification has been given to the responsible person by the Commission under ^{F34}Article 33(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

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may be allowed under paragraph (6) of [^{F35}Article 33 of the EECC 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 [^{F36}Article 33 of the EECC 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

- F31** 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)
- F33** Words in s. 49B(3) 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. 17(2)(a)**
- F34** Words in s. 49B(3) 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. 17(2)(b)**
- F35** Words in s. 49B(7) 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. 17(3)**
- F36** Words in s. 49B(10) 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. 17(4)**

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—

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- (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 [^{F37}Article 33(1) of the EECC Directive];
 - (g) a copy of every recommendation made in respect of the proposal by the Commission under [^{F38}Article 33(5)(a) of the EECC 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 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

F31 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)

F37 Words in s. 49C(4)(f) 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. 18(a)**

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F38 Words in s. 49C(4)(g) 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. 18(b)**

F39 **50 Delivery of copies of notifications etc.**

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Textual Amendments

F39 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

I11 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))

I12 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)

Status:

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Changes to legislation:

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