



Communications Act 2003

2003 CHAPTER 21

PART 2

NETWORKS, SERVICES AND THE RADIO SPECTRUM

CHAPTER 1

ELECTRONIC COMMUNICATIONS NETWORKS AND SERVICES

Enforcement of conditions

94 Notification of contravention of conditions

- (1) Where OFCOM determine that there are reasonable grounds for believing that a person is contravening, or has contravened, a 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; and
 - (c) specifies the period during which the person notified has an opportunity of doing the things specified in subsection (3).
- (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.

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- (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.
- (10) OFCOM must not give a notification under this section in a case in which—
 - (a) they decide that a more appropriate way of proceeding in relation to the contravention in question would be under the Competition Act 1998 (c. 41); and
 - (b) they publish a statement to that effect in such manner as they consider appropriate for bringing their decision to the attention of the persons who, in their opinion, 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—
 - (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.

95 Enforcement notification for contravention of conditions

- (1) This section applies where—

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- (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;
 - (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.

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

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- (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.
- (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.

97 Amount of penalty under s. 96

- (1) The amount of a penalty imposed under section 96 is to be such amount not exceeding ten per cent. of the turnover of the notified provider'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 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; 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.

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- (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 notified provider as consists in any one or more of the following—
- (a) the provision of an electronic communications network;
 - (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;
 - (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 relating to such a condition.
- (8) In this section “the notified provider” has the same meaning as in section 96.

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 94 with respect to a contravention by a person (“the contravening provider”) of a condition set under section 45, other than an SMP apparatus condition;

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- (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.
- (3) OFCOM may, in a notification under section 94 with respect to the contravention, specify a period of less than one month for doing the things mentioned in subsection (3) of that section.
- (4) OFCOM shall also 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)—
 - (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.

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, 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) 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.

100 Suspending service provision for contraventions of conditions

- (1) OFCOM may give a direction under this section to a person who is a communications provider or makes associated facilities available (“the contravening provider”) if they are satisfied—
 - (a) that he is or has been in serious and repeated contravention of conditions set under section 45, other than an SMP apparatus condition;
 - (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 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

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- (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 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—
 - (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 a condition set under section 45; and
 - (c) the previous notification and the subsequent ones all relate to contraventions of the same condition (whether the same contravention or different contraventions).

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—

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- (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.
- (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).

102 Procedure for directions under ss. 100 and 101

- (1) Except in an urgent case, 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;

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- (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.
- (2) That period must be one 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.
- (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—
- “contravening provider” has the same meaning as in section 100; and
 - “contravening supplier” has the same meaning as in section 101.

103 Enforcement of directions under ss. 98, 100 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 98(4) or 100; 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.
- (4) Sections 94 to 99 apply in relation to a contravention of conditions imposed by a direction under section 98, 100 or 101 as they apply in relation to a contravention of conditions set under section 45.

104 Civil liability for breach of conditions or enforcement notification

- (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, and
 - (c) the conditions imposed by a direction under section 98 or 100,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 are 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.