



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.

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 [^{F1}(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) [^{F2}The 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 [^{F3}(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.

Changes to legislation: Communications Act 2003, Section 49 is up to date with all changes known to be in force on or before 23 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) View outstanding changes

- [^{F4}(2A) Subsection (2)(a) does not apply in relation to a direction, approval or consent affecting a general condition.]
- (3) [^{F5}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 [^{F6}six] requirements set out in section 4.
- [^{F7}(4) Where section 49A applies, the applicable requirements of that section ^{F8}... must be complied with before the direction, approval or consent is given, modified or withdrawn.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) [^{F9}section 49A does] not apply in relation to the proposal; ^{F10}...
 - ^{F10}(b)
- (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); [^{F11}and]
 - (b) whether OFCOM is of the opinion mentioned in section 49A(2); ^{F12}...
 - ^{F12}(c)
- (4D) OFCOM must immediately determine any question so referred to them.]

Textual Amendments

- F1** 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)
- F2** 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)
- F3** 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)
- F4** 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)
- F5** 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)
- F6** Word in s. 49(3) substituted (31.12.2020) by [The Electronic Communications and Wireless Telegraphy \(Amendment\) \(European Electronic Communications Code and EU Exit\) Regulations 2020 \(S.I. 2020/1419\)](#), reg. 1(3)(a), **Sch. 1 para. 69**
- F7** 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)
- F8** Words in s. 49(4) omitted (31.12.2020) by virtue of [The Electronic Communications and Wireless Telegraphy \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/246\)](#), reg. 1(2), **Sch. 1 para. 13(3)**; 2020 c. 1, Sch. 5 para. 1(1)

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- F9** Words in s. 49(4B)(a) substituted (31.12.2020) by The Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/246), reg. 1(2), **Sch. 1 para. 13(4)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F10** S. 49(4B)(b) and word omitted (31.12.2020) by virtue of The Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/246), reg. 1(2), **Sch. 1 para. 13(4)(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F11** Word in s. 49(4C)(a) inserted (31.12.2020) by The Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/246), reg. 1(2), **Sch. 1 para. 13(5)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F12** S. 49(4C)(c) and word omitted (31.12.2020) by virtue of The Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/246), reg. 1(2), **Sch. 1 para. 13(5)(b)**; 2020 c. 1, Sch. 5 para. 1(1)

Commencement Information

- I1** 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))
- I2** 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)

Changes to legislation:

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Changes and effects yet to be applied to :

- s. 49(3) word substituted by [S.I. 2019/246 Sch. 1 para. 13\(2\)](#) (This amendment not applied to legislation.gov.uk. Amending provision omitted (21.12.2020) by virtue of S.I. 2020/1419, reg. 1(2), Sch. 2 para. 4(2))
- specified provision(s) amendment to earlier commencing SI 2003/1900, art. 3(2) by [S.I. 2003/3142 art. 1\(3\)](#)
- specified provision(s) amendment to earlier commencing SI 2003/3142 by [S.I. 2004/1492 art. 2](#)
- specified provision(s) amendment to earlier commencing SI 2003/3142 by [S.I. 2004/697 art. 2](#)
- specified provision(s) amendment to earlier commencing SI 2003/3142 art. 4 Sch. 2 by [S.I. 2004/545 art. 2](#)

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 124Q(7)(a) words substituted by [2013 c. 22 Sch. 9 para. 52](#)
- s. 148A and cross-heading inserted by [2022 c. 46 s. 73\(2\)](#)
- s. 368E(5)(d)(e) inserted by [2017 c. 30 s. 94\(3\)](#)
- s. 402(2A)(za)(zb) inserted by [2022 c. 46 Sch. para. 2](#)
- Sch. 3A para. 21(6) inserted by [2022 c. 46 Sch. para. 3\(5\)\(b\)](#)
- Sch. 3A para. 37(3)(aza) inserted by [2022 c. 46 Sch. para. 3\(9\)](#)
- Sch. 3A para. 84(1)(aza) inserted by [2022 c. 46 Sch. para. 3\(10\)](#)
- Sch. 3A para. 103(1)(ca) inserted by [2022 c. 46 s. 70](#)
- Sch. 3A para. 119A inserted by [2022 c. 46 s. 72](#)
- Sch. 3A Pt. 4ZA inserted by [2022 c. 46 s. 67\(1\)](#)