

SCHEDULES

SCHEDULE 12

OFCOM’S POWERS OF ENTRY, INSPECTION AND AUDIT

Audit

- 4 (1) OFCOM may give the provider of a regulated service a notice (an “audit notice”) requiring the provider to permit OFCOM to carry out an audit—
- (a) to assess whether the provider has complied or is complying with enforceable requirements that apply in respect of the service, or
 - (b) to assess—
 - (i) the nature and level of risk of the provider failing to comply with an enforceable requirement that applies in respect of the service, and
 - (ii) ways to mitigate such a risk.
- (2) An audit notice may require the provider to take any of the following actions for a purpose mentioned in sub-paragraph (1)—
- (a) to permit an authorised person to enter and inspect specified premises;
 - (b) to permit an authorised person to observe the carrying on of the regulated service at the premises;
 - (c) to direct an authorised person to documents on the premises that are of a specified description;
 - (d) to assist an authorised person to view information of a specified description that is capable of being viewed using equipment or a device on the premises;
 - (e) to assist an authorised person to view, using equipment or a device on the premises, information demonstrating in real time the operation of systems, processes or features of a specified description, including functionalities or algorithms of a specified description;
 - (f) to assist an authorised person to view, using equipment or a device on the premises, information generated in real time by the performance of a test or demonstration of a specified description;
 - (g) to comply with a request from an authorised person for a copy (in such form as may be requested) of the documents or information to which the person is directed or which the person is assisted to view;
 - (h) to permit an authorised person to inspect the documents, information or equipment to which the person is directed or which the person is assisted to view;
 - (i) to provide an authorised person with an explanation of such documents or information;
 - (j) to make available for interview by the authorised person a specified number of people of a specified description who are involved in the provision of the regulated service (not exceeding the number who are willing to be interviewed).

Status: This is the original version (as it was originally enacted).

- (3) An audit notice—
 - (a) must be given at least 28 days in advance of the start of the audit, and
 - (b) must specify the time or times at which, or period or periods within which, each requirement imposed by the notice must be complied with.
- (4) An audit notice may not require a provider to permit an authorised person to enter domestic premises.
- (5) An audit notice may not require a provider to do anything that would result in the disclosure of information or documents in respect of which a claim to legal professional privilege, or (in Scotland) to confidentiality of communications, could be maintained in legal proceedings.
- (6) An audit notice must contain information about the consequences of not complying with the requirements which it imposes.
- (7) An audit notice may by further notice—
 - (a) be revoked by OFCOM;
 - (b) be varied by OFCOM so as to make it less onerous.
- (8) OFCOM may require a provider to pay some or all of the reasonable costs of an audit carried out in accordance with an audit notice.
- (9) If OFCOM require a provider to pay an amount as mentioned in sub-paragraph (8), paragraph 6 of Schedule 13 applies in relation to the amount as it applies in relation to a penalty within the meaning of that Schedule.
- (10) In this paragraph “specified” means specified in an audit notice.