

2003 No. 3142 (C. 125)

ELECTRONIC COMMUNICATIONS

BROADCASTING

The Office of Communications Act 2002 (Commencement No. 3) and Communications Act 2003 (Commencement No. 2) Order 2003

Made - - - -

8th December 2003

The Secretary of State, in exercise of the powers conferred upon her by section 7(2) of the Office of Communications Act 2002(a) and sections 408(6)(b) and 411(2) and (4) of the Communications Act 2003(b), hereby makes the following Order:

Citation, interpretation and revocation

1.—(1) This Order may be cited as the Office of Communications Act 2002 (Commencement No. 3) and Communications Act 2003 (Commencement No. 2) Order 2003.

(2) In this Order—

“the 1949 Act” means the Wireless Telegraphy Act 1949(c);

“the 1990 Act” means the Broadcasting Act 1990(d);

“the 1996 Act” means the Broadcasting Act 1996(e);

“BSC” means the Broadcasting Standards Commission;

“the first commencement order” means the Communications Act 2003 (Commencement No. 1) Order 2003(f);

“ITC” means the Independent Television Commission;

“the principal Act” means the Communications Act 2003;

“television licence” and “television receiver” have the meanings provided by section 1(7) of the 1949 Act; and

“the transitionally commenced provisions” has the same meaning as in the first commencement order.

(3) Article 3(2) of the first commencement order is revoked.

(a) 2002 c. 11.

(b) 2003 c. 21.

(c) 1949 c. 54: sections 1, 2, 15 and 19 were amended in respect of television licences and television receivers by 1990 c. 42, section 180(1) and Schedule 18, Part 1.

(d) 1990 c. 42.

(e) 1996 c. 55.

(f) S.I. 2003/1900 (C. 77).

Commencement on 12th December 2003

2. Section 282 of and paragraphs 10 and 17 of Schedule 14 to the principal Act shall come into force on 12th December 2003.

Commencement on 29th December 2003

3.—(1) Paragraph 12 of the Schedule to the Office of Communications Act 2002 and the provisions of the principal Act set out in Schedule 1 hereto shall, subject to the exceptions set out therein and to paragraph (3) below, come into force on 29th December 2003.

(2) The transitionally commenced provisions are brought into force by this Order on 29th December 2003 for the purpose of conferring the networks and services functions and the spectrum functions on OFCOM.

(3) Section 2 of, and paragraph 1(1)(a) of Schedule 1 and paragraphs 6 and 15 of Schedule 17 to, the principal Act shall not come into force on 29th December 2003 to the extent that the 1949 Act applies in respect of television licences and television receivers; and until those provisions are further brought into force by article 4 below on 1st April 2004—

- (a) the 1949 Act shall continue to apply in respect of television licences and television receivers as it applies immediately before 29th December 2003,
- (b) the reference to section 1(7) of the 1949 Act in section 1(1) of the Wireless Telegraphy Act 1998(a) shall be construed accordingly,
- (c) the reference to the enactments relating to the management of the radio spectrum in section 394(2)(c) of the principal Act shall be construed in respect of television licences and television receivers as a reference to those enactments as they apply immediately before 29th December 2003, and
- (d) section 15 of the 1949 Act shall apply in respect of television licences and television receivers as if references therein to the Secretary of State included references to OFCOM, save that in respect of television licences and television receivers, OFCOM may do under the said section 15 only those things which they will be able to do under section 366 of the principal Act when it comes into force on 1st April 2004.

Subsequent commencement

4.—(1) Section 253 of the principal Act shall come into force on 2nd January 2004.

(2) The provisions of the principal Act set out in Schedule 2 hereto shall come into force on 1st April 2004.

(3) Sections 299 (so far as not already in force) and 300 of the principal Act shall come into force on 30th June 2004.

Transitional provision: advisory bodies under Telecommunications Act 1984, section 54

5. If, upon the repeal of section 54 of the Telecommunications Act 1984(b) on 29th December 2003, any of the advisory bodies established thereunder has not ceased to exist by virtue of an order under section 31(5) of the principal Act, subsections (7) and (8) of the said section 54 shall continue to have effect in respect of that body until it ceases to exist as if the reference to the Director(c) in subsection (7) were a reference to OFCOM and the reference thereto in subsection (8) were omitted.

(a) 1998 c. 6.

(b) 1984 c. 12.

(c) The Director General of Telecommunications, appointed under 1984 c. 12, section 1.

Transitional provisions: Independent Television Commission, Radio Authority and Broadcasting Standards Commission

6.—(1) In any period between the repeal of section 1 of and Schedule 1 to the 1990 Act on 29th December 2003 and the day on which the ITC ceases to exist by virtue of an order under section 31(4) of the principal Act—

- (a) the ITC—
 - (i) shall continue in existence only for one or more of the purposes specified in this paragraph or for any purpose connected with the making or coming into force of a scheme under section 30 of the principal Act, and
 - (ii) in that period shall consist of a chairman appointed by the Secretary of State and, if the Secretary of State thinks fit, such one or more other persons as he may appoint as members of the ITC;
- (b) the said section 1 (except for subsection (2)(b)) and, subject to the following subparagraphs, Schedule 1 (except for paragraph 2(3) and in paragraph 9(1) the words “shall appoint a secretary and” and “other”) and any definitions relevant to their interpretation the repeal of which is brought into force on 29th December 2003 shall continue to have effect during that period for those purposes;
- (c) the ITC shall prepare a statement of accounts and annual report for the period beginning on 1st January 2003 and ending with 28th December 2003;
- (d) Schedule 1 to the 1990 Act shall have effect for the purposes of the accounts and report referred to in subparagraph (c) above as if any reference to “financial year ” or “year” were a reference to the period referred to in that subparagraph;
- (e) the ITC shall prepare a statement of accounts in respect of the period of twelve months beginning on 29th December in any year; and
- (f) Schedule 1 to the 1990 Act shall have effect for the purposes of any accounts referred to in subparagraph (e) above as if any reference to the “financial year” or “year” were a reference to the period referred to in that subparagraph.

(2) In any period between the repeal of section 83 of and Schedule 8 to the 1990 Act on 29th December 2003 and the day on which the Radio Authority ceases to exist by virtue of an order under section 31(4) of the principal Act—

- (a) the Authority—
 - (i) shall continue in existence only for one or more of the purposes specified in this paragraph or for any purpose connected with the making or coming into force of a scheme under section 30 of the principal Act, and
 - (ii) in that period shall consist of a chairman appointed by the Secretary of State and, if the Secretary of State thinks fit, such one or more other persons as he may appoint as members of the Authority;
- (b) the said section 83 (except for subsection (2)(b)) and, subject to the following subparagraphs, Schedule 8 (except for the words “shall appoint a secretary and” and “other” in paragraph 9(1)) and any definitions relevant to their interpretation the repeal of which is brought into force on 29th December 2003 shall continue to have effect during that period for those purposes;
- (c) the Authority shall prepare a statement of accounts and annual report for the period beginning on 1st January 2003 and ending with 28th December 2003;
- (d) Schedule 8 to the 1990 Act shall have effect for the purposes of the accounts and report referred to in subparagraph (c) above as if any reference to “financial year ” or “year” were a reference to the period referred to in that subparagraph;
- (e) the Authority shall prepare a statement of accounts in respect of the period of twelve months beginning on 29th December in any year; and

- (f) Schedule 8 to the 1990 Act shall have effect for the purposes of any accounts referred to in subparagraph (e) above as if any reference to the “financial year” or “year” were a reference to the period referred to in that subparagraph.

(3) In any period between the repeal of sections 106, 121 and 125 of and Schedule 3 to the 1996 Act on 29th December 2003 and the day on which the BSC ceases to exist by virtue of an order under section 31(4) of the principal Act—

- (a) the BSC—
 - (i) shall continue in existence only for one or more of the purposes specified in this paragraph or for any purpose connected with the making or coming into force of a scheme under section 30 of the principal Act, and
 - (ii) in that period shall consist of a chairman appointed by the Secretary of State and, if the Secretary of State thinks fit, such one or more other persons as he may appoint as members of the BSC;
- (b) the said sections 106 (except for the words from “or” in subsection (2)(b) to the end of subsection (2)), 121 and, subject to the following subparagraphs, 125 and Schedule 3 and any definitions relevant to their interpretation the repeal of which is brought into force on 29th December 2003 shall continue to have effect during that period for those purposes;
- (c) the BSC shall prepare a statement of accounts and annual report for the period beginning on 1st April 2003 and ending with 28th December 2003;
- (d) section 125 of and Schedule 3 to the 1996 Act shall have effect for the purposes of the accounts and report referred to in subparagraph (c) above as if—
 - (i) any reference to “financial year ” or “year” were a reference to the period referred to in that subparagraph, and
 - (ii) any reference to a person providing a licensed service were a reference to a person providing such a service immediately before 29th December 2003;
- (e) the BSC shall prepare a statement of accounts in respect of the period of twelve months beginning on 29th December in any year; and
- (f) section 125 of and Schedule 3 to the 1996 Act shall have effect for the purposes of any accounts referred to in subparagraph (e) above as if—
 - (i) any reference to the “financial year” or “year” were a reference to the period referred to in that subparagraph, and
 - (ii) any reference to a person providing a licensed service were a reference to a person providing such a service immediately before 29th December 2003.

Transitional provision: section 199 of the principal Act

7. In relation to any period between the commencement of section 199 of the principal Act and the commencement of section 265 of that Act, the reference in subsection (2)(b) of section 199 to “the public service remit for that Channel under section 265” shall have effect, notwithstanding any repeal brought into force by this Order, as if the public service remit for Channel Four consisted of the requirements to be complied with by that Channel which are specified in subsection (1) and paragraphs (a) and (b) of subsection (2) of section 25 of the 1990 Act.

Transitional provisions: section 221 of the principal Act

8.—(1) Sections 219, 220 and 298 of and Schedule 10 to the principal Act shall not apply in relation to the existing licence referred to in section 221(1) thereof.

(2) Sections 276 and 308 of and paragraph 21(4) of Schedule 15 to the principal Act shall not apply in relation to the existing service as defined in section 221(11) thereof.

Transitional provision: section 237 of the principal Act

9. Section 237 of the principal Act applies in relation to a contravention of a condition of a licence or a failure to comply with a direction only if it is one occurring after the commencement of that section.

Transitional provisions: existing legislation

10.—(1) The repeal of sections 45(5) to (6A) and 47(8) to (9A) of the 1990 Act shall not affect the operation of section 41 of that Act, as applied by those provisions, in relation to any matter arising before the coming into force of those repeals.

(2) In the period beginning with the transfer of functions from the ITC to OFCOM on 29th December 2003 in accordance with the provisions of the principal Act brought into force by this Order and ending immediately before section 299(1) of the principal Act is brought into force by this Order on 30th June 2004, for the reference to “the Commission” in section 97(2)(c) of the 1996 Act there shall be substituted a reference to “OFCOM”.

(3) In relation to any time between the commencement of the repeal of section 2 of the 1990 Act on 29th December 2003 and the commencement of the repeal of section 181 of that Act on 1st April 2004, section 181 shall have effect as if the definition of “television broadcasting service” in subsection (4) were—

““television broadcasting service” means a television broadcasting service within the meaning of Part 3 of the Communications Act 2003, whether provided by the holder of a licence under Part 1 of this Act or by the BBC or the Welsh Authority.”

(4) In relation to any time between the commencement of the repeal of section 2 of the 1990 Act on 29th December 2003 and the coming into force of any revocation of regulation 3 of the Wireless Telegraphy (Television Licence Fees) Regulations 1997(a), the reference in that regulation to “television programme services” as defined by section 2(4) of the 1990 Act shall be read as if it were a reference to such services as defined by section 362 of the principal Act.

Transitional provision: complaints to Broadcasting Standards Commission

11.—(1) This article shall apply to a standards complaint made to, but not disposed of by, the BSC before the transfer to OFCOM on 29th December 2003, in accordance with the provisions of the principal Act brought into force by this Order, of the functions of the BSC under Part 5 of the 1996 Act.

(2) The standards complaint shall be treated as if—

- (a) anything done, or treated as done, by or in relation to the BSC for the purposes of, or in connection with, that complaint had been done by or in relation to OFCOM; and
- (b) those functions had been functions of OFCOM at the time when it was done.

(3) The procedure for the handling and resolution of complaints established by OFCOM under section 325 of the principal Act shall apply in relation to anything remaining to be done for the purposes of, or in connection with, the complaint.

(a) SI 1997/290, which set the level of the television licence fee. Regulation 3 provides the definition of “television receiver” for the purposes of 1949 c. 54.

(4) In exercising their functions in relation to the complaint, OFCOM shall apply any relevant provisions of the code maintained by the BSC under section 108 of the 1996 Act immediately before 29th December 2003.

(5) In this article, “standards complaint” has the same meaning as in Part 5 of the 1996 Act, notwithstanding any repeal brought into force by this Order.

8th December 2003

Stephen Timms,
Minister of State for Energy, E-Commerce and Postal Services,
Department of Trade and Industry

SCHEDULE 1

Article 3(1)

Provisions of the Communications Act 2003 coming into force on 29th December 2003

The following sections so far as not already in force: 1, 26, 31, 56 to 63, 152, 350, 360, 369, 393 and 394.

Section 2, except as provided in article 3(3) of this Order.

Sections 3, 6 to 23, 27, 120 to 124, 155 to 163, 168, 170, 171, 175 to 177, 182 and 198 to 230.

Section 231, except for subsection (1) and paragraph (c) of subsection (2).

Sections 232 to 252, 254 to 263, 271, 275 to 277, 279 to 281 and 283 to 298.

Section 299(2).

Sections 301 to 337.

Section 338 in respect of the provisions of Schedule 12 set out in this Schedule.

Sections 339 to 349.

Section 351, except for subparagraph (i) in subsection (4)(a), the definition of “original production” in subsection (10) and paragraph (a) of the definition of “peak viewing time” in subsection (10).

Section 352.

Section 353, except for subparagraph (i) in subsection (4)(a), the definition of “original production” in subsection (7) and paragraph (a) of the definition of “peak viewing time” in subsection (7).

Sections 354 to 359, 372 to 392 and 400.

Section 406(1), (6) and (7) in respect of the provisions of Schedules 17, 18 and 19 set out in this Schedule.

In Schedule 1—

paragraph 1(1)(a), except as provided in article 3(3) of this Order;

paragraph 1(1)(b) to (d), (2) and (3);

paragraphs 2 to 14.

Schedules 5, 7 and 9 to 11.

In Schedule 12, paragraphs 1 to 4, 7 and 9 to 24.

Schedule 13.

Schedules 14 and 15 (so far as not already in force).

Schedule 16.

In Schedule 17—

the following paragraphs so far as not already in force: 8, 9, 11, 14, 37, 72, 73, 129, 147, 150, 166 and 174;

paragraphs 12, 13, 17, 34 to 36, 39, 48 to 50, 61, 62, 64 to 69, 74, 76, 83, 91 to 93, 132, 145, 146, 148, 151, 161(1) and (3), 164, 167 and 171 to 173;

paragraphs 6(1), (2) and (4) to (7) and 15, except as provided in article 3(3) of this Order.

In Schedule 18—

paragraphs 5, 6, 20, 27 to 29, 31 to 53 and 59 to 62;

paragraph 54 (so far as not already in force).

In Schedule 19—

the entries for—

Wireless Telegraphy Act 1949, section 1D(8)(a) (so far as not already in force);

Parliamentary Commissioner Act 1967;

Wireless Telegraphy Act 1967, section 7(5);

Fair Trading Act 1973;

House of Commons Disqualification Act 1975;

Northern Ireland Assembly Disqualification Act 1975;

Welsh Development Agency Act 1975;

Telecommunications Act 1984, except in respect of sections 1 and 55 and Schedule 1;

Copyright, Designs and Patents Act 1988 (so far as not already in force);

Companies Act 1989 (so far as not already in force);

Broadcasting Act 1990, except in respect of sections 180 and 181 and Schedule 18;

Competition and Service (Utilities) Act 1992 (so far as not already in force);

Deregulation and Contracting Out Act 1994 (so far as not already in force);

Criminal Procedure (Consequential Provisions) (Scotland) Act 1995;

Broadcasting Act 1996;

Planning (Consequential Provisions) (Scotland) Act 1997;

Wireless Telegraphy Act 1998, sections 3 and 5;

Competition Act 1998 (so far as not already in force);

Freedom of Information Act 2000, except in respect of the entries relating to the Broadcasting Standards Commission, the Independent Television Commission and the Radio Authority;

Transport Act 2000 (so far as not already in force);

Political Parties, Elections and Referendums Act 2000;

Anti-terrorism, Crime and Security Act 2001;

Office of Communications Act 2002;

Tobacco Advertising and Promotion Act 2002;

Enterprise Act 2002 (so far as not already in force);

European Parliament (Representation) Act 2003;

note 3;

the entry for the Race Relations (Northern Ireland) Order 1997.

(a) 1949 c. 54: section 1D was inserted by S.I. 1997/2930.

SCHEDULE 2

Article 4(2)

Provisions of the Communications Act 2003 coming into force on 1st April 2004

Sections 2, 351 and 353 (so far as not already in force).

Sections 278 and 363 to 368.

Section 406(1) and (7) in respect of the provisions of Schedules 17 and 19 set out in this Schedule.

Section 406(6) (so far as not already in force).

Schedule 1 (so far as not already in force).

In Schedule 12, paragraph 8.

In Schedule 17—

the following paragraphs so far as not already in force: 6, 15 and 161;
paragraphs 133(1) and (3) and 159.

Schedule 18 (so far as not already in force).

In Schedule 19, the entries for—

Wireless Telegraphy Act 1949 (so far as not already in force);

Wireless Telegraphy Act 1967 (so far as not already in force);

Broadcasting Act 1990 (so far as not already in force);

Criminal Procedure (Scotland) Act 1995;

Wireless Telegraphy Act 1998 (so far as not already in force).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order brings into force—

on 12th December 2003, section 282 of and paragraphs 10 and 17 of Schedule 14 to the Communications Act 2003 (article 2);

on 29th December 2003, paragraph 12 of the Schedule to the Office of Communications Act 2002 and the provisions of the Communications Act 2003 listed in Schedule 1 to this Order (article 3(1));

on 2nd January 2004, section 253 of the Communications Act 2003 (article 4(1));

on 1st April 2004 the provisions listed in Schedule 2 to the Communications Act 2003 (article 4(2)); and

on 30th June 2004, sections 299 (except subsection (2), already in force) and 300 of the Communications Act 2003 (article 4(3)).

Article 1(3) revokes one of the transitional provisions contained in the first commencement order.

By virtue of article 3(2), the transitional period (during which the Director General of Telecommunications and the Secretary of State exercised the functions of the Office of Communications in respect of the “transitionally commenced provisions” defined in article 1(2) of the first commencement order) will come to an end.

Article 3(3) provides that where provisions brought into force on 29th December apply to television licences, they do not come into force for that purpose until 1st April.

Articles 5 to 11 contain transitional provisions.

All of the provisions of the Office of Communications Act 2002 which have not been repealed by the Communications Act 2003 will be in force by 29th December 2003.

Including the provisions which came into force on Royal assent and the provisions brought into force by the first commencement order, the following provisions of the Communications Act 2003 will be in force by 29th December 2003:

sections 1, 2 (in part), 3 to 179, 181 to 230, 231 (in part), 232 to 252, 254 to 264, 271, 275 to 277, 279 to 298, 299 (in part), 301 to 337, 338 (in part), 339 to 350, 351 (in part), 352, 353 (in part), 354 to 362, 369 to 400, 402 to 405, 406 (in part), 407, 408, 410 and 411;

Schedules 1 (in part), 2 to 5, 7 to 11, 12 (in part), 13 to 16, 17 (in part), 18 and 19 (in part).

Subsequently—

on 2nd January 2004, section 253 will come into force,

on 1st April 2004, sections 278 and 363 to 368 will come into force, together with sections 2, 351 and 353 and Schedules 1 and 18 so far as they were not already in force, and also further provision in sections 338 and 406 and Schedules 12, 17 and 19, and

on 30th June 2004, sections 299 (except subsection (2), already in force) and 300 will come into force.

The following provisions of the Communications Act 2003 remain to be brought into force: sections 180, 231 (in part), 265 to 270, 272 to 274, 338 (in part), 401, 406 (in part) and 409 and Schedules 6, 12 (in part) 17 (in part) and 19 (in part).

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ELECTRONIC COMMUNICATIONS

BROADCASTING

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